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March 14, 2016

Gaston County Clerk of Superior Court  
325 Dr. Martin Luther King Jr. Way  
Suite 1004  
Gastonia, NC 28052-2331

**Re: *Dan Deitz and Ellen Deitz Tucker v. City of Belmont, Adrian Miller in his Official Capacity as City Manager of the City of Belmont***  
***Docket No.: 15 CVS 3203***  
***CLF File No.: 0016***

Dear Clerk of Court:

Please find enclosed an original and one copy of Plaintiffs' Amended Motion for Summary Judgment in the above-captioned matter. A previously filed version of this motion mistakenly identified Greg Scoles as the person occupying the official capacity of City Manager for the City of Belmont. This motion has been amended to name Adrian Miller as the proper person operating that official capacity.

Please file the original in the court file and return a file-stamped, executed copy to our office in the enclosed self-addressed, prepaid envelope.

Please call me with any questions or concerns. Thank you for your assistance in this matter.

Regards,

Elliot Engstrom  
Lead Counsel  
Center for Law and Freedom  
Civitas Institute

Cc: Brad Kline, Esq.  
Christian Ayers, Esq.

STATE OF NORTH CAROLINA  
COUNTY OF GASTON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
15 CVS 3203

DAN DEITZ, ELLEN DEITZ TUCKER, )  
Plaintiffs, )  
 )  
v. )  
 )  
CITY OF BELMONT, ADRIAN MILLER in his )  
Official capacity as City Manager for the City of )  
Belmont, )  
Defendants. )

PLAINTIFFS' AMENDED  
MOTION FOR SUMMARY  
JUDGMENT

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Pursuant to N.C.G.S. § 1A-1, Rule 56, Plaintiffs Dan Deitz and Ellen Deitz Tucker move for summary judgment in their favor and seek compelled production of public records, and in support of the motion show the Court as follows:

1. A previously filed version of this motion mistakenly identified Greg Scoles as the person occupying the official capacity of City Manager for the City of Belmont. This motion has been amended to name Adrian Miller as the proper person operating in that official capacity.
2. This is a declaratory judgment action brought pursuant to N.C.G.S. § 1-253 challenging the Defendants' characterization of public records as confidential personnel files.
3. This is further an action seeking compelled production of public records pursuant to N.C.G.S. § 132-9(a). The Plaintiffs therefore seek reasonable attorneys' fees, to which they are entitled pursuant to N.C.G.S. § 132-9(c) should they substantially prevail.
4. Plaintiffs have filed their complaint and Defendants have filed their answer.
5. The parties have completed discovery.

6. The parties have complied with the public records mediation statutes, and they have waived mediation pursuant to N.C.G.S. § 7A-38.3E(e).
7. There are no material facts in dispute, and the only issues to be determined by the Court are matters of law.
8. The undisputed material facts are:
  - a. The City of Belmont reached an agreement with the U.S. ISS Agency, LLC, to conduct an investigation into allegations of mismanagement and misconduct within the Belmont Police Department. Def.'s Admis. 1. *See* Defendants' Responses to Plaintiffs' Requests for Admissions, attached hereto as Exhibit A.
  - b. In acquiring the services of the U.S. ISS Agency, LCC, Defendants made a decision *not* to use City employees to conduct the investigation of the Belmont Police Department. Def.'s Admis. 2.
  - c. The City employs human resources staff. Def.'s Admis. 3.
  - d. One of the reasons that Defendants retained the services of the U.S. ISS Agency, LLC, was to ensure an independent investigation. Def.'s Admis. 4
  - e. The U.S. ISS Agency, LLC, was or will be paid for its services with funds other than those budgeted to pay the salaries of City employees. Def.'s Admis. 6.
  - f. The total cost of the report resulting from the aforementioned investigation (hereinafter the "ISS Report") was in excess of \$90,000. Def.'s Admis. 7.
  - g. The ISS Report is a document spanning over 150 pages. Def.'s Admis. 8.
  - h. The U.S. ISS Agency, LLC, is a limited liability corporation comprised of individuals who are *not* employees of the City of Belmont. Def.'s Admis. 10.

- i. Plaintiffs filed a public records request seeking access to the ISS Report, and Defendants denied that request. Def.'s Admis. 12.
  - j. Plaintiffs claim that the ISS Report is a public record pursuant to N.C.G.S. §§ 132, while Defendants claim that the ISS Report is a confidential personnel file pursuant to N.C.G.S. § 160A-168. The parties' dispute therefore turns on a question of law that is properly resolved by this Court on summary judgment.
9. The ISS Report was not "gathered by the city," and is therefore not a personnel record as described in N.C.G.S. § 160A-168; it is instead a public record subject to disclosure in its entirety pursuant to N.C.G.S. § 132-6(a).
  10. The ISS Report is not "with respect to" individual employees, and is therefore not a personnel record as described in N.C.G.S. § 160A-168; it is instead a public record subject to disclosure pursuant to N.C.G.S. § 132-6(a).

Accordingly, Plaintiffs move that the Court:

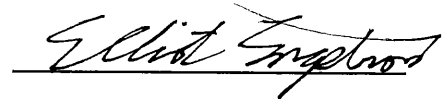
1. Grant summary judgment in their favor;
2. Declare that the ISS Report was not "gathered by the city" for the purposes of N.C.G.S. § 160A-168;
3. Declare that the ISS Report is not "with respect to" individual employees for the purposes of N.C.G.S. § 160A-168.
4. If necessary, conduct an *in camera* review of the ISS Report to determine which portions are public record and therefore subject to disclosure pursuant to N.C.G.S. § 132-6(c).
5. Declare that the ISS Report is a public record subject to disclosure pursuant to N.C.G.S. § 132-6(a).

6. Compel Defendants to produce the ISS Report as a public record pursuant to N.C.G.S. § 132-9(a).
7. Order Defendants to pay Plaintiffs' reasonable attorneys' fees pursuant to N.C.G.S. § 132-9(c).
8. Grant Plaintiffs the costs of this action.
9. Grant such other and further relief as necessary and appropriate.

A brief in support of Plaintiffs' motion for summary judgment will be submitted to the Court in advance of a hearing on this motion.

Respectfully submitted this the 14<sup>th</sup> day of March 2016.

For the Plaintiffs:



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/s/ Christian Ayers

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing MOTION FOR SUMMARY JUDGMENT has been served this day by depositing a copy thereof in the care of the United States Postal Service, with postage prepaid and addressed as follows:

Bradley P. Kline  
Post Office Box 30787  
Charlotte, North NC 28230  
*Counsel for Defendants*

Respectfully submitted this the 14<sup>th</sup> day of March, 2016.



Elliot Engstrom  
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# **EXHIBIT A**

Defendants' Responses to  
Plaintiffs' First Set of  
Requests for Admissions

STATE OF NORTH CAROLINA  
COUNTY OF GASTON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
15-CVS-3203

DAN DEITZ and ELLEN DEITZ  
TUCKER,

Plaintiffs,

v.

CITY OF BELMONT, BARRY WEBB, in  
his official capacity as City Manager for the  
City of Belmont,

Defendants.

**DEFENDANTS' RESPONSES TO  
PLAINTIFFS' FIRST SET OF REQUESTS  
FOR ADMISSION, INTERROGATORIES  
AND REQUEST FOR PRODUCTION OF  
DOCUMENTS**

Defendants City of Belmont and Barry Webb, in his official capacity as City Manager for the City of Belmont, by and through undersigned counsel and pursuant to Rules 26 and 33 of the North Carolina Rules of Civil Procedure, provides these responses to the Interrogatories served by Plaintiffs, Dan Deitz and Ellen Deitz Tucker. Each response separately and fully answers each Interrogatory, except those to which objections are made. The interrogatories, objections, and responses are attached.

**GENERAL OBJECTIONS AND LIMITATIONS**

1. Defendants object to the Discovery Requests to the extent that they purport to impose on them obligations beyond those imposed by the North Carolina Rules of Civil Procedure.

2. Defendants object to the Discovery Requests as overly broad and unduly burdensome to the extent that they seek the identification and disclosure of information or documents that are irrelevant or immaterial or are otherwise not reasonably calculated to lead to the discovery of admissible or relevant evidence. Defendants further object to the Discovery Requests as overly broad and unduly burdensome to the extent they seek information beyond the custody, control, or scope of knowledge of Defendants.

3. Defendants object to the Discovery Requests as overly broad and unduly burdensome to the extent that they seek "all" information concerning a given subject matter. In accordance with the North Carolina Rules of Civil Procedure, Defendants will conduct a diligent, good faith search and will provide responsive information.

4. Defendants object to the Discovery Requests to the extent that they purport to require the identification and disclosure of information or documents that are subject to the attorney-client privilege, attorney work product doctrine, or any other applicable privilege or doctrine that may be asserted. Defendants claim such privileges and protections and excludes privileged and protected information and documents from its responses. Any disclosure of such privileged or protected information or documents is inadvertent and is not intended to waive those privileges or protections.

5. Defendants' responses to the Discovery Requests are not intended to waive or prejudice any objections it may assert now or in the future, including, without limitation, objections as to the admissibility of any responses at any proceeding in this matter.

The general objections are applicable to, and incorporated in, each of Defendants' responses as if specifically set forth in each response. The stating of specific objections to a particular Discovery Request, or the absence of any specific objections to a particular Discovery Request, shall not be construed as a waiver of Defendants' General Objections.

#### **RESPONSES TO REQUESTS FOR ADMISSION**

1. Defendants reached an agreement with the U.S. ISS Agency, LLC under which the U.S. ISS Agency, LLC would conduct an investigation into the Belmont Police Department.

**RESPONSE: It is admitted that the City of Belmont reached an agreement with the U.S. ISS Agency, LLC to conduct a personnel investigation, as an agent and representative of the City of Belmont, into allegations of individual mismanagement and misconduct within the Belmont Police Department.**

2. In acquiring the services of the U.S. ISS Agency, LLC, Defendants made a decision not to use City employees to conduct the investigation of the Belmont Police Department.

**RESPONSE: Admitted.**

3. The City employs human resources staff.

**RESPONSE: Admitted.**

4. One of the reasons that Defendants retained the services of the U.S. ISS Agency, LLC was to ensure an independent investigation.

**RESPONSE: Admitted.**

5. The U.S. ISS Agency, LLC is not and never has been an agent of the City of Belmont.

**RESPONSE: Denied. The U.S. ISS Agency, LLC, as an agent and representative of the City of Belmont, conducted an internal personnel investigation into allegations of individual mismanagement and misconduct within the Belmont Police Department.**

6. The U.S. ISS Agency, LLC was or will be paid for its services with funds other than those budgeted to pay the salaries of City employees.

**RESPONSE: Admitted.**

7. The total cost of the ISS Report was in excess of \$90,000.

**RESPONSE: Admitted.**

8. The ISS Report is a document spanning over 150 pages.

**RESPONSE: Admitted.**

9. There is information within the ISS Report that touches and concerns Plaintiffs' sister's death.

**RESPONSE: Denied.**

10. The U.S. ISS Agency, LLC is a limited liability corporation comprised of individuals who are not employees of the City of Belmont.

**RESPONSE: Admitted, upon information and belief.**

11. The U.S. ISS Agency, LLC is a limited liability corporation comprised of individuals who are not representatives of the City of Belmont.

**RESPONSE: Denied to the extent the U.S. ISS Agency, LLC, as an agent and representative of the City of Belmont, conducted an internal personnel investigation into allegations of individual mismanagement and misconduct within the Belmont Police Department.**

12. Plaintiffs filed a public records request seeking access to the ISS Report, and Defendants denied that request.

**RESPONSE: Admitted.**

13. The ISS Report, or portions thereof, contains information on subjects other than individual City employees.

**RESPONSE: Denied.**

14. The ISS Report was not “gathered by the [Defendants]” for purposes of N.C. Gen. Stat. § 160A-168.

**RESPONSE: Denied.**

15. The ISS Report, or portions thereof, is not a record “with respect to” individual employees for the purposes of N.C. Gen. Stat. § 160A-168.

**RESPONSE: Denied.**

### RESPONSES TO INTERROGATORIES

1. For each of Plaintiffs’ Requests for Admission that Defendants denied in whole or in part, please provide the following information:

- a. State the facts upon which Defendants have based their denial;
- b. Identify all documents which support Defendants’ denial and;
- c. Identify all persons with knowledge of the facts that support Defendants’ denial.

**ANSWER: Objection.** Plaintiff’s Interrogatory No. 1 seeks information subject to the attorney/client privilege and/or the attorney work product doctrine, as well as documents subject to the provisions of N.C.G.S. §160A-168. Subject to, and without waiving said objection, the facts upon which Defendants based their denial of Requests for Admissions Nos. 1, 5 and 11 are set out in Defendants’ responses to said Requests.

Regarding Request for Admission No. 9, Defendants based their denial upon the information contained in the document referenced by Plaintiffs as the "ISS Report". Defendants have cited the provisions of N.C.G.S. § 160A-168 in support of their decision not to disclose the contents of said document.

Regarding Request for Admission Nos. 13 and 15, please see Defendants' response to Plaintiff's Interrogatory No. 5.

Regarding Request for Admission No. 14, please see Defendants' response to Plaintiff's Interrogatory No. 4.

2. Please provide the names and contact information for those employees of Defendants involved in reviewing data or records, preparing recommendations, and making final decisions relating to the retention of the U.S. ISS Agency, LLC.

**ANSWER:** Barry Webb, City Manager for the City of Belmont. Any attempts to contact Mr. Webb should be made through undersigned counsel.

3. Please provide a list of individuals outside of the City of Belmont who were consulted by Defendants or their employees regarding the ISS Report.

**ANSWER:** Objection. Plaintiff's Interrogatory No. 3 is vague. Subject to, and without waiving said objection, Defendants are not aware of any individuals outside of the City of Belmont who were consulted by the City of Belmont, or any employees of the City of Belmont, regarding the ISS report, other than undersigned counsel.

4. If you contend that the ISS Report was “gathered by the city” for the purposes of N.C. Gen. Stat. § 160A-168:

- a. State the legal and factual basis for this contention;
- b. Identify by name and address all persons known to Defendants to have knowledge of the facts stated in response to subpart (a) of this Interrogatory; and
- c. Identify any and all documents which contain information relating or referring to the facts stated in response to subpart (a) of this Interrogatory.

**ANSWER: Objection. Plaintiff’s Document Request No. 4 seeks information subject to the attorney/client privilege and/or the attorney work product doctrine, as well as documents subject to the provisions of N.C.G.S. § 160A-168. Subject to, and without waiving said objections, Defendants do contend the document referenced by Plaintiffs as the “ISS Report” is a document that “was gathered by the City” for purposes of N.C.G.S. § 160A-168. Specifically, the U.S. ISS Agency, LLC was retained by the City of Belmont to act an agent and representative of the City of Belmont while conducting an internal personnel investigation into allegations of individual mismanagement and misconduct within the Belmont Police Department.**

Regarding individuals known to have facts stated in this response, please see Defendants’ response to Plaintiff’s Interrogatory No. 6, as well as undersigned counsel and Parks Wilson, City Attorney for the City of Belmont.

Regarding documents containing information related to the facts stated in this response, other than the contents of the documents referred to by Plaintiff as the “ISS Report,” which Defendants have cited the provisions of N.C.G.S. § 160A-168 in support of

their decision not to disclose, please see the documents attached hereto as Exhibit A, Exhibit B and Exhibit C.

5. If you contend that the ISS Report is a document “with respect to” individual City employees in its entirety for purposes of N.C. Gen. Stat. § 160A-168;
- a. State the legal and factual basis for this contention;
  - b. Identify by name and address all persons known to Defendants to have knowledge of the facts stated in response to subpart (a) of this Interrogatory; and
  - c. Identify any and all documents which contain information relating or referring to the facts stated in response to subpart (a) of this Interrogatory.

**ANSWER: Objection. Plaintiff’s Document Request No. 5 seeks information subject to the attorney/client privilege and/or the attorney work product doctrine, as well as documents subject to the provisions of N.C.G.S. § 160A-168. Subject to, and without waiving said objections, Defendants do contend the document referenced by Plaintiffs as the “ISS Report” is a document “with respect to” individual City employees for purposes of N.C.G.S. § 160A-168. Specifically, the U.S. ISS Agency, LLC was retained by the City of Belmont to act an agent and representative of the City of Belmont while conducting an internal personnel investigation into allegations of individual mismanagement and misconduct within the Belmont Police Department. These allegations were in reference to complaints made by employees during their exit interviews with Debra Brown, City Clerk for the City of Belmont, and made in reference to specific employees of the City of Belmont.**

Regarding individuals known to have facts stated in this response, please see Defendants' response to Plaintiff's Interrogatory No. 6, as well as undersigned counsel and Parks Wilson, City Attorney for the City of Belmont.

Regarding documents containing information related to the facts stated in this response, other than the contents of the documents referred to by Plaintiff as the "ISS Report," which Defendants have cited the provisions of N.C.G.S. § 160A-168 in support of their decision not to disclose, please see the documents attached hereto as Exhibit A, Exhibit B and Exhibit C.

6. Please identify any person Defendants plan to call as a witness at the trial of this case. For each witness identified, state the substance of the expected testimony.

**ANSWER: Objection. Plaintiff's Interrogatory No. 6 seeks information subject to the attorney-client privilege and/or the work product doctrine. By way of further answer, Defendants have not yet made a determination as to the persons who may be called to testify at the trial of this matter. However, at this time Defendants list the following individuals:**

(1) Barry Webb, City Manager for the City of Belmont. It is anticipated Mr. Webb may testify regarding the circumstances surrounding his decision to retain U.S. ISS Agency as an agent and representative of the City of Belmont to conduct an internal personnel investigation into allegations of individual mismanagement and misconduct within the Belmont Police Department; the findings made in the report produced following the investigation; and, any personnel decisions made following his review of the report produced following the investigation.

(2) Debra Brown, City Clerk for the City of Belmont. It is anticipated Ms. Brown may testify regarding complaints made by employees during their exit interviews with her regarding specific employees of the City of Belmont.

(3) David Graham and Michael Sloop, U.S. ISS Agency. It is anticipated Mr. Graham and Mr. Sloop may testify regarding their internal personnel investigation as an agent and representative of the City of Belmont into allegations of individual mismanagement and misconduct within the Belmont Police Department, and the findings of said investigation.

Defendants reserve the right supplement this answer in accordance with any scheduling order entered into this matter and the North Carolina Rules of Civil Procedure.

7. With respect to each person who you expect to call as an expert witness at the hearing to be held in this matter, please provide the following information:

- a. Identify each such person;
- b. For each person identified, state the subject matter on which the expert is expected to testify;
- c. For each person identified, state the substance of the facts and opinions of which the expert is expected to testify;
- d. For each person identified, state a summary of the grounds for each opinion identified in response to subpart (c) of this Interrogatory.

**ANSWER: Objection.** Plaintiff's Interrogatory No. 7 seeks information subject to the attorney-client privilege and/or the work product doctrine. By way of further answer, Defendants have not yet made a determination as to the persons who may be called as an expert witness at the trial of this matter. Defendants will supplement this answer in accordance with any scheduling order entered into this matter and the North Carolina Rules of Civil Procedure.

8. Please identify all persons answering these interrogatories on your behalf, and every other person who provided or helped provide information used in answering or responding, and for each person, identify the specific interrogatory to which the person contributed information.

**ANSWER: These answers and responses were prepared by counsel with assistance provided by Barry Webb, City Manager for the City of Belmont.**

#### **RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. All documents relied upon or consulted by Defendants in preparing Defendants' responses to the Plaintiffs' First Set of Interrogatories.

**RESPONSE: Objection.** Plaintiff's Document Request No. 1 is overbroad and seeks information subject to the attorney/client privilege and/or the attorney work product doctrine, as well as documents subject to the provisions of N.C.G.S. § 160A-168. Subject to, and without waiving said objection, see documents attached hereto.

2. All documents identified in response to Plaintiff's First Set of Interrogatories.

**RESPONSE: Objection. Plaintiff's Document Request No. 2 is vague, overbroad, and seeks information subject to the attorney/client privilege and/or the attorney work product doctrine, as well as documents whose disclosure is subject to the provisions of N.C.G.S. §160A-168. Subject to, and without waiving said objection, see documents attached hereto.**

3. All documents Defendants relied on for their retention of the services of the U.S. ISS Agency, LLC.

**RESPONSE: Objection. Plaintiff's Document Request No. 3 is vague and overbroad. Subject to, and without waiving said objection, please see attached Exhibit A.**

4. All communications between Defendants and the U.S. ISS Agency, LLC.

**RESPONSE: Objection. Plaintiff's Document Request No. 4 seeks information subject to the attorney/client privilege and/or the attorney work product doctrine, as well as documents whose disclosure is subject to the provisions of N.C.G.S. §160A-168. Subject to, and without waiving said objection, please see attached Exhibit B.**

5. Copies of any contractual agreements between Defendant and ISS.

**RESPONSE: Defendants have no responsive documents in their possession, other than the attached Exhibit A and Exhibit C.**

6. Copies of any ISS invoices or bills in Defendants' possession.


**RESPONSE:** Please see attached Exhibit C.

7. Copies of any formal recommendations or policies drafted by Defendants as a result of receipt of the ISS report.

**RESPONSE: Objection.** Plaintiff's Document Request No. 7 seeks information subject to the attorney/client privilege and/or the attorney work product doctrine, as well as documents whose disclosure is subject to the provisions of N.C.G.S. §160A-168. Subject to, and without waiving said objection, Defendants have no responsive documents in their possession.

This the 18<sup>th</sup> day of December, 2015.

CRANFILL SUMNER & HARTZOG, LLP

By:   
Brad P. Kline, Esq. (State Bar # 34045)  
Attorneys for Defendants  
P.O. Box 30787  
Charlotte, NC 28230  
Telephone (704)332-8300  
Facsimile (704) 332-9994

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the attached *Defendants' Responses to Plaintiffs' First Set of Requests for Admission, Interrogatories and Requests for Production of Documents* on all parties to this cause by:


- \_\_\_\_\_ Hand delivering a copy hereof to the attorney for each said party addressed as follows:
- X   Depositing a copy hereof, postage prepaid, in the United States Mail, addressed to the attorney for each said party as follows:
- \_\_\_\_\_ Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to the attorney for each said party as follows:
- \_\_\_\_\_ Telecopying a copy hereof to the attorney for each said party as follows:

Elliot Engstrom  
Center for Law and Freedom  
Civitas Institute  
100 S. Harrington St.  
Raleigh, NC 27603

Christian Ayers  
Brett Dressler  
Sellers Ayers Dortch & Lyons  
301 S. McDowell St., Ste. 410  
Charlotte, NC 28204

This the 15<sup>th</sup> day of December, 2015.

CRANFILL SUMNER & HARTZOG, LLP

BY:   
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