

BARRETT JOHNSTON MARTIN & GARRISON LLC

Statement of Jerry Martin

This morning I spoke with TBI Director Mark Gwyn to provide the TBI with the passcode for Mayor Barry's personal cell phone. This is her personal phone, not her Metro issued phone. I have confidence that Director Gwyn will ensure that the TBI limits its search of her personal phone to only items that are relevant to its investigation.

The reports that the Mayor has been uncooperative during this process are untrue. We have provided the TBI with thousands of pages of documents at its request.

I would like to set the record straight to clear up any confusion related to the Mayor's cooperation, especially as it relates to her personal cell phone.

On February 15, 2018, I met with District Attorney Glenn Funk at his request. At that meeting, he informed me that the TBI was in possession of the images described in the subsequent affidavit. He also informed me that the release of the images to the public was imminent. I informed him that if the images he described were of the Mayor, then they were taken without her consent. Therefore, the publication of those images would be a felony under Tennessee law.

That same evening, the TBI called me and requested a consensual search of the Mayor's personal cell phone the next day. During that call I asked what protocols the TBI would use to avoid encroaching on the attorney client privilege or to access personal materials plainly unrelated to their investigation. I was told that the TBI would follow up with me the next day.

We were in the process of preparing to turn over her phone when the TBI, presumably at the direction of the District Attorney, sought a search warrant. This tactic was surprising since the evening before the search warrant was issued, I communicated our willingness to turn over the phone. However, by seeking the phone via a search warrant the authorities were ultimately afforded the opportunity for the unorthodox release of the underlying affidavit. While it may be common for search warrants themselves to be made public, the underlying affidavits are typically not returned and made public at this stage in an investigation.

On February 20, 2018, the TBI called me and formally requested the passcode for the Mayor's personal phone. I requested the underlying affidavit that had been submitted in support of the search warrant to better understand the allegations but this request was denied. I was told by the TBI that this was up to the District Attorney but that it was not customary to release these affidavits at this stage of the investigation. Shortly thereafter, the affidavits were for some reason made public.

These facts raise serious concerns about the course and conduct of this investigation.

The Mayor has provided the TBI with thousands of pages of documents at its request. The Mayor was in the process of turning over her personal phone before it was unilaterally seized. The Mayor has provided the TBI with her passcode to her personal phone. Simply put, the Mayor continues to cooperate with the investigation and knows eventually she will be cleared of any criminal wrongdoing.