



September 21, 2026

VIA EMAIL AND U.S. MAIL
Aaron Killings, Esq.
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Re: Project Marvel / Logistics Land Investments Data Center; Alabama State Conference of the NAACP Open Records Request; Request for Additional Information; Concerns Regarding Non-Disclosure Agreement; and Formal Litigation Hold Request

Dear Mr. Killings:

We represent the NAACP and Alabama State Conference of the NAACP (collectively "NAACP") regarding issues arising from the City of Bessemer's handling of records relating to the proposed data center project, also known as "Project Marvel." We are also writing in response to your July 7, 2026, letter in which the City produced a copy of a February 5, 2025, Non-Disclosure and Confidentiality Agreement ("NDA"), asserted that no additional non-privileged responsive records would be produced, and declined to identify or describe records withheld from production.

At the outset, we wish to emphasize that our clients remain hopeful that these issues may be resolved without litigation. At the same time, the City's response raises significant concerns regarding transparency, public access to records concerning an important development project, and the preservation of records relating to that project.

As discussed below, we are actively evaluating potential litigation concerning the City's handling of responsive records, the legal effect of the NDA, and the preservation of records relating to Project Marvel. Accordingly, litigation is reasonably foreseeable, and this letter constitutes a formal litigation hold request and preservation demand.

I. Concerns Regarding the City's Response and Lack of Transparency

The Alabama Open Records Act embodies Alabama's strong public policy favoring transparency and public access to governmental records. *See* Ala. Code §§ 36-12-40 and 36-12-41. Alabama courts have repeatedly recognized that the Act is to be liberally construed in favor of disclosure and that the burden rests on the governmental entity refusing disclosure to establish the applicability of any exemption. Against that

backdrop, we remain concerned that the City's original production consisted primarily of publicly available zoning materials, notices, applications, planning documents, utility letters, and meeting minutes, while apparently excluding virtually all internal communications, correspondence with the project sponsor, communications concerning negotiation or approval of Project Marvel, records concerning approval or execution of the NDA, records concerning confidentiality determinations, records concerning withholding decisions, and records concerning retention or destruction of Project Marvel records.

These concerns are heightened by the public record itself. The meeting minutes produced by the City reflect substantial interactions among City officials, legal counsel, consultants, engineers, utility providers, project representatives, and members of the public regarding Project Marvel over a period of months. Those records strongly suggest the existence of additional communications and records beyond the approximately thirty-two pages of documents originally produced.

Moreover, we are particularly concerned by the City's acknowledgment that records may exist that were withheld from disclosure, coupled with its refusal to provide any description of those records or the basis for their withholding. For example, it is unclear whether specific records were withheld pursuant to a legally-recognized privilege or the terms of the NDA. The City's response makes it impossible to tell what justification the City relies upon to deny the public access to documents; much less whether such justifications are defensible. While we recognize that Alabama law does not expressly require a privilege log in response to an Open Records Act request, meaningful public and judicial review becomes difficult when neither the requester nor a court can determine what categories of records have been withheld and on what bases.

II. The NDA Raises Significant Concerns Regarding Public Records and Record Retention

The City's production of the NDA also raises transparency concerns. As you know, the NDA purports to impose broad confidentiality obligations concerning information exchanged in connection with Project Marvel. More significantly, Section 7 of the NDA requires the destruction of confidential information and related notes upon request by the disclosing party. We are concerned that the NDA appears to contemplate the destruction of records that may constitute public records under Alabama law.

Alabama law imposes affirmative obligations on municipal officials to maintain and preserve public records. Ala. Code § 36-12-2 requires public officials to maintain records concerning public business and provides that such records "shall be carefully

protected and safely preserved and guarded from mutilation, loss or destruction." Likewise, Ala. Code §§ 41-13-5 and 41-13-23 restrict the destruction of municipal records and provide that municipal records ordinarily may not be destroyed without compliance with the requirements of the Local Government Records Commission.

The concerns raised by the NDA are compounded by the City's July 7 response, which appears to rely heavily upon the NDA while simultaneously declining to identify the records withheld, whether the NDA has been invoked with respect to particular records, whether any records have been designated confidential, whether any records have been returned to third parties, or whether any records have been destroyed.

Our clients are also concerned that Alabama law generally does not permit governmental entities to bargain away statutory public-records obligations through confidentiality agreements. As the Alabama Supreme Court explains, "[a] private party cannot render public records exempt from disclosure merely by designating information it furnishes a governmental agency confidential" and "[t]he right to examine these records is a right belonging to the public; it cannot be bargained away by a representative of the government." *Tennessee Valley Printing Co. v. Health Care Authority of Lauderdale County*, 61 So. 3d 1027, 1037 (Ala. 2010) (quoting *National Collegiate Athletic Ass'n v. Associated Press*, 18 So.3d 1201, 1208–09 (Fla. Dist. Ct. App. 2009)).

To the extent the NDA is being used to justify withholding records otherwise subject to disclosure, to permit a private project proponent to influence municipal disclosure decisions, or to support the destruction of public records, substantial legal questions exist concerning the validity and enforceability of those provisions.

III. Information Necessary to Evaluate and Potentially Avoid Litigation

In light of the foregoing, our clients are evaluating potential claims and remedies, including but not limited to relief concerning public-records compliance, declaratory relief concerning the NDA, preservation-related relief, and other remedies available under Alabama law. Nevertheless, our clients remain hopeful that litigation may be avoided if the City provides information sufficient to permit an informed assessment of the City's positions.

Accordingly, we respectfully request that the City provide the following information and records. These requests are not intended to replace or supersede NAACP's prior public-records request. Rather, they are directed toward issues that have arisen as a result of the City's July 7, 2026, response and are intended to facilitate a

meaningful dialogue concerning the need for litigation. Please provide:

1. All records concerning the negotiation, review, approval, authorization, execution, amendment, implementation, or interpretation of the NDA.
2. All records concerning any decision to withhold records responsive to the NAACP's public-records request.
3. All records reflecting any invocation of the NDA by any Project Marvel project participant.
4. All records reflecting any request that records be withheld, treated as confidential, returned, removed from City files, deleted, archived, destroyed, or otherwise rendered unavailable.
5. All records concerning the retention, preservation, deletion, destruction, transfer, return, archiving, or disposition of records relating to Project Marvel.
6. All records reflecting compliance with Ala. Code §§ 41-13-5 and 41-13-23 with respect to Project Marvel records including, but not limited to correspondence with the Local Government Records Commission.
7. All records reflecting the authority of any City official, employee, representative, or agent to execute, authorize, approve, or implement the NDA.
8. All communications concerning public-records requests, public disclosure obligations, confidentiality obligations, records retention, records destruction, document management, or preservation obligations relating to Project Marvel.
9. Records sufficient to identify categories of Project Marvel records that the City contends are privileged, exempt, confidential, withheld, archived, deleted, destroyed, transferred, returned to third parties, or otherwise unavailable for production.
10. Records sufficient to identify whether any responsive records once existed but are no longer maintained by the City, including the reason such records are no longer available.

IV. Formal Litigation Hold Request and Preservation Notice

Because litigation is reasonably foreseeable, the City must take immediate steps to identify, preserve, and prevent the destruction, deletion, alteration, overwriting, transfer, loss, or disposal of potentially relevant information. Accordingly, the City should regard this correspondence as a formal litigation hold request and preservation demand.

The City's preservation obligations arise independently of this litigation hold request and independently of the Alabama Open Records Act. This letter is intended to ensure that the City, its officials, employees, agents, consultants, contractors, and counsel are aware that litigation is reasonably foreseeable and that potentially relevant evidence must be preserved. The City's preservation obligations are reinforced by, among other authorities, Ala. Code § 36-12-2, Ala. Code §§ 41-13-5 and 41-13-23, Alabama Rules of Civil Procedure 26, 34, and 37, Alabama Rule of Professional Conduct 3.4(a), and the inherent authority of courts to address the destruction, loss, or spoliation of evidence.

This preservation demand extends to all records and information relating to the NAACP's public-records request and documents requested therein, documents requested above, the NDA, confidentiality determinations, withholding decisions, records-retention matters, and any issues discussed in this correspondence. The preservation obligation includes, without limitation:

- Emails and email attachments;
- Text messages and multimedia messages;
- Communications conducted through Microsoft Teams, Signal, WhatsApp, Telegram, Slack, Google Chat, or similar platforms;
- Communications occurring through personal devices used for City business;
- Drafts and draft revisions;
- Notes, memoranda, annotations, markups, and handwritten materials;
- Meeting agendas, packets, presentations, and recordings;
- Calendars and scheduling records;
- Voicemails and audio recordings;
- Shared-drive records, cloud-hosted records, and archived records;
- Records claimed to be privileged, confidential, exempt, proprietary, or subject to the NDA; and
- Records that have been segregated, archived, removed from ordinary files, or otherwise excluded from prior productions.

The City should immediately suspend any routine or automatic deletion processes, document-destruction practices, records-purge procedures, overwriting protocols, retention-limit triggers, mailbox-cleanup procedures, or similar systems that could result in the loss of relevant information. This includes, without limitation, any destruction procedures that may be undertaken pursuant to Section 7 of the NDA or any request by a project participant that documents be returned, deleted, destroyed, removed from municipal custody, or otherwise rendered unavailable.

To the extent any records have already been destroyed, deleted, lost, returned, removed, overwritten, transferred, or otherwise rendered unavailable, please promptly identify:

- The nature of the records;
- The approximate date of disposition;
- The individual(s) involved;
- The reason for the disposition;
- The authority relied upon for the disposition; and
- Any efforts undertaken to preserve or recover the records.

V. Conclusion

Our clients sincerely hope that litigation can be avoided. However, given the City's responses to date, the apparent withholding of records, and the substantial concerns raised by the NDA's confidentiality and destruction provisions, our clients must ensure that relevant information is preserved while they continue evaluating all available legal remedies.

We therefore ask that the City confirm in writing within ten (10) business days that it has implemented a litigation hold and taken reasonable steps to preserve potentially relevant records and information. We further request a substantive response to the requests set forth in Sections III above on the same timetable.

We remain willing to discuss these matters in an effort to avoid litigation and would welcome the opportunity to confer.

Sincerely,

Todd W. Gleason, Esq.
Morgan Taradash, Esq.
Melina Goldfarb, Esq.

cc: Wanda D. Taylor, City Clerk