



Florida Department of
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June 18, 2012

MEMORANDUM

TO: Commissioner Gerald M. Bailey

FROM: Director Cindy Sanz 
Office of Executive Investigations

SUBJECT: FDLE Case EI-14-0105 (Scott Transition Team Emails)

The Florida Department of Law Enforcement, Office of Executive Investigations, has completed its investigation regarding the closure and deletion of scotttransition.com email accounts by Rackspace US, Inc. A copy of the final Investigative Summary is attached.

CBS/cbs

Attachment

*Florida Department of Law Enforcement***OFFICE OF EXECUTIVE INVESTIGATIONS*****Governor Scott
Transition Emails******INVESTIGATIVE SUMMARY*****INVESTIGATIVE PREDICATE**

On August 19, 2011, Florida Governor Rick Scott requested that the Florida Department of Law Enforcement (FDLE) investigate the circumstances surrounding the closure of the Governor Scott Transition Team (GSTT) email accounts and the deletion of the email data associated with these accounts. In addition, Governor Scott requested that FDLE determine if any of the deleted email information could be recovered.

INVESTIGATIVE NARRATIVE

FDLE's initial investigation revealed that the GSTT email accounts used the domain name of scotttransition.com and were hosted by Rackspace US, Inc., a San Antonio, Texas based company hired by Harris Media of Austin, Texas. The initial investigation further revealed that these accounts were opened in November 2010, immediately following Governor Scott's election, and later closed on January 31, 2011, at the direction of Susie Wiles, GSTT Chairperson.

As a part of the initial investigation, FDLE interviewed Attorney Chris Kise, who served as a legal advisor for the GSTT. During the interview, Kise provided FDLE with a list of the email addresses assigned to GSTT members who used the @scotttransition.com domain name. Kise advised FDLE Inspectors that this list included all of those persons having GSTT email accounts. Kise also advised Inspectors that April 26, 2011 was the first time he became aware of the fact that the scotttransition.com email accounts had been closed by Rackspace on January 31, 2011 and that none of the email data associated with these accounts had been retained for future retrieval.

During the course of the ensuing investigation, FDLE interviewed individuals associated with the GSTT, as well as representatives of Rackspace and Harris Media. The interviews revealed that Harris Media was hired by the Rick Scott for Governor Campaign in April of 2010 to manage the campaign's email, website, and social media functions. Harris Media subsequently contracted with Rackspace to host the campaign email addresses using the domain name Rickscottforflorida.com. When Governor Scott was elected in November of 2010, the GSTT also contracted with Rackspace and Harris Media for the same services, and additional email accounts were added using the new domain name of scotttransition.com.

On January 26, 2011, Harris Media employee Amy Brown sent an email message to all scotttransition.com and rickscottforflorida.com email addresses. In this email, Brown advised that all email inboxes associated with scotttransition.com would be closed on January 31, 2010. Brown also advised the recipients of the email that they would no longer have access to their email inboxes, contacts, or messages after the accounts were closed. Brown additionally directed the recipients of her email to save any and all data, including emails and contact information that they might need in the future.

In response to the aforementioned January 26, 2011 email, GSTT member Fritz Brogan contacted Brown and requested that the email accounts of Brogan, Enu Mainigi, and Tim D'Elia remain open indefinitely because they were still being utilized. Following receipt of Brogan's request, Brown directed Rackspace to close all but the three noted scotttransition.com email accounts on January 31, 2011.

During the interview of Brown, Brown confirmed that she and Wiles had discussed closing the GSTT email accounts prior to Brown's notification email of January 26, 2011. Brown additionally confirmed that, during their discussion, she and Wiles determined that the email accounts were no longer needed. Brown stated that, subsequent to her discussion with Wiles, she notified Rackspace that all of the scotttransition.com email accounts, except for those of Brogan, Enu Mainigi and Tim D'Elia, were no longer needed and should be closed effective January 31, 2011.

FDLE interviewed Wiles regarding her discussion with Brown and the decision to close the scotttransition.com email accounts. Wiles stated that Florida law requires a gubernatorial campaign be dissolved within ninety days of a governor's election, and, because of this law, she advised Brown that the campaign email accounts, including the scotttransition.com email accounts, needed to be closed by the end of January of 2011. Wiles also stated that she instructed Brown to send an email to all GSTT email accounts, notifying the account holders that the GSTT accounts would be closed on January 31, 2011. Wiles stated that Brown followed her direction and, on January 26, 2011, sent an email to all Rick Scott Campaign and Transition Team email accounts indicating that the accounts would be closed and inaccessible after January 31, 2011. In clarifying her decision to close the email accounts, Wiles advised FDLE that, although she was aware that the Transition Team email accounts were going to be closed and

that the associated data would no longer be readily accessible to the account holders, she had no knowledge that the email data associated to the closed accounts would not be preserved or retrievable after the accounts were closed. Wiles further advised, however, that, at no time, did she inquire as to the manner in which the email data hosted by Rackspace would be preserved following closure of the accounts. Wiles additionally indicated that she assumed that the email data would be 'backed up' on Rackspace servers for future access and retrieval.

In addition to interviewing the managers of the GSTT, FDLE interviewed those members of the GSTT having scotttransition.com email accounts. Each GSTT member was asked whether or not they had received the January 26, 2011 email message from Brown, and, if so, had they taken steps to preserve their Transition emails prior to the closure of the accounts on January 31, 2011. A substantial number of the GSTT members advised that they had not, in fact, received the message from Brown because, by January 26, 2011, they were no longer involved with the GSTT and therefore no longer logged in to their scotttransition.com email accounts. The majority of the members who reported receiving the email stated that they understood the email message to mean only that they would no longer have access to their email accounts, not that their email data would actually be deleted.

During the FDLE interviews, the GSTT members were asked if they were aware that all of their emails, correspondence, and documents associated with Transition business were subject to Florida's public records laws. Each member interviewed stated that, the day following Governor Scott's election, all members of GSTT, including Governor-Elect Scott, attended a briefing on Florida's public records laws. This briefing was provided by Attorneys Chris Kise and Patricia Gleason. Each Transition Team member who attended the briefing reported that Kise and Gleason explicitly stated that all records created regarding the Transition should be considered public records and were to be preserved.

At the conclusion of each interview, FDLE asked the GSTT member if they had retained their emails from the Transition email accounts. Of the forty-four (44) persons identified as being GSTT members, forty-two (42) were interviewed and two could not be located. Of the forty-two (42) interviewed, sixteen (16) advised that they had retained their scotttransition.com emails and voluntarily provided them to FDLE. The remaining members advised that they had not saved their Transition emails because they had believed that the email data would be preserved on a server.

In an effort to recover the data from the Rackspace servers, an FDLE Systems Programming Consultant contacted Rackspace to determine the process used to close email accounts, specifically the scotttransition.com email accounts. Rackspace representatives advised FDLE that, once an account is terminated by a subscriber, the subscriber would have thirty (30) days to either renew the account, directly copy (preserve) any content they wished to retain, or engage Rackspace.com to preserve the data. After thirty (30) days, any data associated with the closed account would be 'purged' from the Rackspace system. According to Rackspace,

'purged' means that all account content, including email messages, and personal information management data such as tasks, contacts, calendar, etc..., and all snapshots of the account (backups), which are created nightly, would be deleted from the system, thereby leaving no data available/accessible for future reproduction or retrieval.

Additional FDLE technical and professional review of the deletion process used by Rackspace revealed that their process for the deletion of data would not involve a wiping or overwriting of the data. Rather, this type of deletion would simply mark the relevant areas of the data storage system as being available to be overwritten in the future as the space is needed. In a highly active and dynamic computing environment like that of Rackspace.com, available space, including space resulting from recent deletions, would quickly be overwritten in favor of new, active (unrelated) data. Further, Rackspace would use any storage space made available as a result of the deletion of data from closed accounts before purchasing additional storage capability. Once the overwriting process occurs, complete forensic recovery is not possible, and, at best, a few fragmented artifacts may remain in what is known as "file slack space."

EMAIL DATA RECOVERY PROCESS

Given the process used by Rackspace to delete data associated with closed Rackspace accounts and the fact that the scotttransition.com account was closed in January of 2011, it was determined that the forensic recovery of data associated with the scotttransition.com account would be impossible. It was also determined that any attempt to recover the deleted data would likely necessitate shutting down and imaging the entire Rackspace.com storage server cluster, approximately 1.9 Petabytes of private, unrelated data distributed over several dozen server clusters, and there existed insufficient legal basis for any action of this nature.

As previously noted, FDLE attempted to contact and interview each person who had an email account using the @scotttransition.com domain. FDLE was able to recover emails from sixteen (16) Transition members who reported saving their scotttransition.com emails. These members voluntarily provided FDLE with all of their saved email data.

The scotttransition.com email accounts of Enu Mainigi, Fritz Brogan, and Tim D'Elia were not closed, and all data associated with these accounts was preserved by Rackspace. Rackspace provided FDLE with access to these email accounts, and all data contained in the accounts was recovered by FDLE. FDLE also performed an analysis of the Apple I-Pad and Blackberry used by Governor Scott during the Transition period, and email data was recovered from each device. Additionally, FDLE conducted an analysis of twenty-two (22) additional Blackberry devices issued to GSTT members; however, pertinent email data could be recovered from only one of these devices.

In addition to the GSTT members having email accounts using the @scotttransition.com domain, the Executive Office of the Governor (EOG) identified an additional twenty-seven (27)

individuals who may have been associated with the Transition. The EOG contacted these individuals to determine if they were in possession of any Transition related emails sent from or received in their personal or business email accounts.

A total of seventy-one (71) individuals were identified by FDLE and the EOG as either having been assigned a scotttransition.com email account or having potentially used a personal or business email account to conduct Transition related business. Of the seventy-one (71) persons identified, twenty-one (21) stated that they had no records, and thirty-nine (39) provided emails to FDLE, the EOG, or both. The remaining eleven (11) were not contacted either because they were determined not to have been involved in the Transition, or they could not be located. Combined, FDLE and the EOG recovered approximately 4.5 GB of transition related email data during the course of this investigation.

It should be noted that FDLE cannot, with absolute certainty, state that all Transition related emails deleted from the Rackspace servers were recovered and/or reviewed during the course of this investigation. The majority of the emails recovered during the investigation were voluntarily provided to FDLE by GSTT members, either personally or via the EOG. While it is possible that additional Transition related emails may exist, the fact that multiple persons were copied on many of the transmissions greatly increases the probability that the majority of the email correspondence has been obtained by FDLE.

INVESTIGATIVE FINDINGS

The day following the election of Governor Scott, Attorneys Chris Kise and Patricia Gleason conducted a briefing for members of the GSTT and provided clear direction to these individuals regarding Florida Statute 119 and the application of this statute to records produced during the Transition period. Each GSTT member interviewed by FDLE advised that they were made aware that the emails and other records created during the Transition period were subject to Florida's public records laws and were to be preserved.

During this inquiry, no evidence was found which would indicate that Governor Scott or any GSTT member instructed Harris Media, Rackspace, or any other person or entity to delete or otherwise destroy Transition emails. Additionally, no evidence was discovered which would indicate that Governor Scott or any member of the GSTT was aware that email data would be permanently deleted upon closure of the GSTT email accounts. Further, information obtained by FDLE during the course of this investigation would indicate that the decision to close the scotttransition.com email accounts was made by Susan Wiles and Amy Brown without consulting Governor Scott or any other GSTT member and with no intention of deleting data.

This conclusion is supported by the interviews of Wiles and Brown, wherein it was established that neither of them had any discussion with Rackspace with regard to the manner in which the GSTT email data would be preserved after the accounts were closed. Rackspace representatives

advised that, had any GSTT member specifically inquired with Rackspace as to the accessibility/preservation of the email data subsequent to closure of the accounts, Rackspace would have provided the GSTT member with options for preserving the data.

The FDLE investigation revealed that neither Kise nor Gleason, who provided legal counsel relating to Florida's public record laws to GSTT members, were assigned email accounts using the scotttransition.com or rickscottforflorida.com domains. Therefore, neither Kise nor Gleason would have received the January 26, 2011 email from Amy Brown informing GSTT members that the email accounts were going to be closed.

In summary, the evidence obtained during the course of this investigation would indicate that the email data associated with the scotttransition.com email accounts was deleted as a result of an oversight by the members of the GSTT and not as a result of any malicious or criminal intent to destroy public records.