

The Palm Beach Post

REAL NEWS STARTS HERE

State drops cases against former Martin County commissioners in public records dispute

By Kimberly Miller

Posted Aug 20, 2019 at 12:01 AM

Updated Aug 20, 2019 at 5:09 PM

The state attorney's office for the 19th Judicial Circuit Court of Florida has dropped cases against two former Martin County commissioners that alleged public records violations.

Former commissioners Ed Fielding and Anne Scott were facing charges of failing to allow access to emails in a case stemming from a long-running dispute with Lake Point Restoration, a rock mining operation in western Martin County.

Martin County Commissioner Sarah Heard was found not guilty in April of similar charges. In Heard's case, the jury deliberated less than 30 minutes before delivering the not-guilty verdict.

RELATED: Powerhouse cast embroiled in Florida tale of taxpayer loss

Charges against the former commissioners were brought after the powerful Lake Point Restoration sued Martin County in 2014 for public records violations. After years in court and hundreds of thousands of dollars in legal fees, Lake Point won the case in February 2017.

Nine months later, Martin County settled a lawsuit with Lake Point, agreeing to pay \$12 million for 400 acres 30 miles southwest of Stuart and write a letter apologizing for "unnecessarily tarnishing" the company's reputation.

Assistant state attorneys Nita Denton and Ryan Butler said in an Aug. 5 memo that the state was prohibited in Heard's case from presenting evidence about the \$12 million settlement or that Martin County admitted to public records violations.

“Since the cases against Ed Fielding and Anne Scott are inextricably intertwined with the case against Sarah Heard, we have no reason to believe that we will not suffer the same legal rulings in their trials,” the memo states. “Our inability to present the jury with the complete picture of the case, thereby demonstrating the interrelated nature of these cases, is extremely detrimental to our ability to successfully prosecute these cases.”

Jordan Wagner, an attorney for Heard, said the state knew it couldn’t present the settlement agreement or arbitrator’s decision to the jury.

“The state agreed those factors were completely irrelevant in the criminal case,” Wagner said.

Lake Point, which is co-owned by former Wellington resident George Lindemann Jr., had a deal with Martin County and the South Florida Water Management District to mine land in western Martin County and donate the holes after 20 years for water storage.

RELATED: Bombshell ruling against leading Florida environmentalist

But concerns were raised by Maggy Hurchalla, a former Martin County commissioner, about whether Lake Point was destroying wetlands. Hurchalla emailed commissioners to their private and public email accounts. Hurchalla, sister to late U.S. Attorney General Janet Reno, was hit with a \$4.4 million judgment last year after Lake Point sued her for interfering with its agreement with Martin County.

Hurchalla lost an appeal to the 4th District Court of Appeals, but is asking for the full court to rehear the case as opposed to the three-judge panel that sided against her in June.

Kmiller@pbpost.com

@Kmillrweather

Criminal trial for Martin County Commissioner Sarah Heard for public records violations begins

Melissa E. Holsman, Treasure Coast Newspapers

Published 8:00 a.m. ET April 5, 2019 | Updated 12:26 p.m. ET April 8, 2019



Martin County Commissioner Sarah Heard exits the courtroom for lunch break during jury selection on Monday, April 8, 2019, for her misdemeanor trial at the Martin County Courthouse in Stuart. Commissioner Heard is accused of two first-degree misdemeanor offenses of violating public records laws. The trial under Senior Judge James David Langford is expected to last through the week. (Photo: PTCN)

STUART — Martin County Commissioner Sarah Heard will begin an expected weeklong trial Monday related to charges of [violating state public-records law](#). ([/story/news/2019/03/06/martin-county-commissioner-sarah-heard-faces-public-records-trial-april/3079225002/](#))

Heard faces two first-degree misdemeanors: failure of a public official to permit inspection and copying of public records and with failure to maintain public records, court records show. Both counts are punishable by up to a year in jail and a \$1,000 fine.

She's also charged with one [noncriminal public-records](#) ([/story/news/local/shaping-our-future/2017/12/18/martin-county-commissioner-sarah-heard-wants-know-specific-one-ex-commissioner-going-court-sunshine/956639001/](#)) violation that carries a maximum penalty of a \$500 fine. Change Selection

Heard has pleaded not guilty to the public-records offenses, which, if convicted, could be grounds for impeachment or [removal from office](#) ([/story/news/local/martin-county/2017/11/29/martin-county-commissioners-could-removed-office-gov-rick-scott-sunshine-law-violations/905180001/](#)), according to state law.

Lead defense attorney Barbara Kibbey Wagner said Heard "has been looking forward to her day in court since the beginning of this case."



Martin County Commissioner Sarah Heard exits the courtroom for lunch break during jury selection on Monday, April 8, 2019, for her misdemeanor trial at the Martin County Courthouse in Stuart. Commissioner Heard is accused of two first-degree misdemeanor offenses of violating public records laws. The trial under Senior Judge James David Langford is expected to last through the week. (Photo: ERIC HASERT/TCPALM)

"She is going to put her faith in seven strangers and hope that justice will prevail," said Kibbey Wagner, who declined to confirm whether Heard will testify on her own behalf.

Related: [County commissioner could be removed from office for misdemeanor conviction \(/story/news/local/martin-county/2017/11/29/martin-county-commissioners-could-removed-office-gov-rick-scott-sunshine-law-violations/905180001/\)](https://www.tcpalm.com/story/news/local/martin-county/2017/11/29/martin-county-commissioners-could-removed-office-gov-rick-scott-sunshine-law-violations/905180001/)

Florida law allows the governor to suspend or remove an official arrested for a felony or misdemeanor related to the duties of office. If the official is convicted, the governor is to remove that person from office, according to statute. State law also allows the governor to remove an official for a variety of other reasons, including malfeasance, neglect of duty and incompetence.

Senior Judge James David Langford will preside over Heard's trial beginning with jury selection to seat a panel of six jurors and one alternate. Opening statements could begin Tuesday before state prosecutors start presenting their case.



Senior Judge David Langford begins court in the Martin County Commissioner Sarah Heard trial. He's hearing a couple of motions before jury selection begins. (Photo: MELISSA HOLSMAN/TCPALM)

In 2018, a grand jury indicted Heard and former commissioners Anne Scott and Ed Fielding, who [already were facing public-records violations \(/story/news/crime/martin-county/2018/01/04/martin-county-commissioner-former-commissioner-arrested-public-records-violation-charges/1006226001/\)](#) stemming from a lawsuit filed against Martin County related to the Lake Point rock quarry.

Fielding and Scott also have been charged with violations of state public-records law. Both have pleaded not guilty, court records show. Scott's trial is slated for July 22, and Fielding's begins Aug. 5, with Langford presiding over both proceedings.

Related: [Grand jury indicts Heard, Scott on more charges as email scandal grows \(/story/news/local/shaping-our-future/2018/01/05/grand-jury-indicts-heard-scott-more-charges-martin-county-email-scandal-grows/1006787001/\)](#)



From left, Martin County Commissioner Sarah Heard, former commissioners Anne Scott and Ed Fielding (Photo: FILE PHOTOS)

During a nine-month investigation, investigators determined Fielding, Scott and Heard used private email accounts to conduct public business, according to the State Attorney's Office. Further, they failed, after several requests, to disclose public records from those accounts.

The charges followed a [2013 civil lawsuit \(/story/news/local/shaping-our-future/2017/11/14/martin-county-set-settle-lake-point-suits-15-million/853759001/\)](#) brought against the county by Lake Point and allegations that Scott, Fielding and Heard destroyed or failed to produce emails pertinent to the case.

In its lawsuit, Lake Point had demanded the three elected officials turn over certain emails, including some sent or received on personal email accounts.

At the time, Heard said she was unable to turn over public records from a Yahoo account she was using because it had been hacked and all of her emails and contacts deleted.

Related: [Martin commissioner, two former commissioner face public-records trials in 2018 \(/story/news/local/shaping-our-future/2017/12/18/martin-county-commissioner-sarah-heard-wants-know-specific-one-ex-commissioner-going-court-sunshine/956639001/\)](#)



The Lake Point property as seen Jan. 7, 2016, along Kanner Highway east of Lake Okeechobee in western Martin County. (Photo: ERIC HASERT)

The Lake Point saga dates to 2008 and sparked an avalanche of litigation, including a 2013 lawsuit against the Water Management District for breach of contract. Following an August 2017 meeting, the district announced it would settle, agreeing to buy 50,000 tons of rubble annually for 15 years and giving Lake Point the right to mine rock for 50 years before turning over the land to the state.

Three months later, county commissioners settled out of court with Lake Point in a November 2017 deal that required the county to pay \$12 million for 400 acres it had never wanted to buy and apologize for “harsh words and inappropriate deeds of certain commissioners that unnecessarily tarnished the reputation of Lake Point.”

More: [Appeals court hears environmentalist Maggy Hurchalla contest \\$4.4 million Lake Point verdict \(/story/news/local/indian-river-lagoon/health/2019/03/12/hurchalla-lake-point-appeals-court/3105136002/\)](https://www.tcpalm.com/story/news/local/indian-river-lagoon/health/2019/03/12/hurchalla-lake-point-appeals-court/3105136002/)

Get the **Storm Watch** newsletter in your inbox.

Latest news updates during the emergency.

Delivery: Varies

Your Email



For Heard's criminal trial, records show about 70 names have been listed as potential state and defense witnesses — a virtual who's who of Martin County politics, including past and present commissioners, top county administrators, lawyers and longtime county activists.

Heard's attorneys have issued witness subpoenas to Martin Commissioners Stacey Hetherington, Ed Ciampi and Doug Smith; along with Lake Point owner George Lindeman Jr, of Miami Beach; Stuart attorney Virginia Sherlock; and former commissioners Maggie Hurchalla and Donna Melzer.

Want more Treasure Coast breaking news coverage? If you're already a subscriber to TCPalm, thank you! If not, [please subscribe \(http://offers.tcpalm.com/specialoffer?gps-source=CPNEWS&utm_medium=onsite&utm_source=news&utm_campaign=NEWSROOM&utm_content=CHERYLMCCLOUD\)](http://offers.tcpalm.com/specialoffer?gps-source=CPNEWS&utm_medium=onsite&utm_source=news&utm_campaign=NEWSROOM&utm_content=CHERYLMCCLOUD) and help keep coverage of the Treasure Coast's most important breaking news coming.

Lawsuit against Sarasota city manager settled

By Nicole Rodriguez

Staff Writer

Posted Feb 6, 2019 at 9:53 PM

Updated Feb 6, 2019 at 9:53 PM

No findings that Barwin violated Florida's Sunshine Law for public records

SARASOTA — A lawsuit against Sarasota City Manager Tom Barwin that accused the top administrator of breaking state public records law by failing to produce city-related discussions from his private email account as part of numerous public records requests has been settled for \$30,000.

As part of a settlement agreement, the city will pay Michael Barfield, a paralegal consultant and president of the Florida American Civil Liberties Union who filed the suit in September, to cover his legal fees. Barwin does not admit he violated state records law, and there was no finding he did, the document states.

"This case was brought to hold the city manager accountable under the law," Barfield said in an email Wednesday.

"That task has been accomplished. I hope Mr. Barwin has finally learned his lesson that this is not Illinois, but the Sunshine State," Barfield added, referring to Barwin's time as city manager in Oak Park, Illinois, where public records laws are not as broad as in Florida.

In a letter dated Jan. 11 to Barfield and his attorney from Barwin's Palm Beach-based attorney, Barwin agrees to never again respond to emails pertaining to city business from his personal Gmail account, and if he receives any, he is to forward them to the city server for preservation. Barwin also agreed to set up an automatic response on his Gmail account alerting senders to correspond with him on his official city email account if the message is about city matters.

“If you are writing me regarding any possible subject related to municipalities, the city of Sarasota or even simply forwarding a general community wide newsletter, invitation to a public event, or forwarding a professional or contemporary issues publication, please send your note, inquiry or publication to my official city of Sarasota email,” a portion of the auto-reply message states.

As part of the settlement, both parties also agree the dispute is over and that the city of Sarasota and Barwin have obeyed the law.

“The decision to resolve the litigation — with the express agreement that there was no finding of any violations of the public records law — was made by the city’s insurance carrier and counsel,” Barwin lawyer Lloyd Schwed said in an email. “Mr. Barwin has produced every email or text that could possibly qualify as a ‘public record’ so there was no benefit or reason to continue the litigation. That would be a colossal waste of time and money.”

The city’s insurance carrier for such cases is paying the settlement fee and also covered the city’s legal costs of \$25,000, city officials said.

Barfield filed the lawsuit after allegations last August that Barwin extensively used his personal Gmail account to conduct city business — a charge Barwin has vehemently denied. Since the suit was filed, lawyers representing Barwin have produced nearly 3,000 emails from Barwin’s personal account that could be considered public records. The messages date back to 2012, when Barwin was appointed city manager.

While it is not illegal for government officials to use private email accounts, they must preserve the messages, because they are public records. Public officials are urged to use government emails for their official duties so that their conversations are properly archived and available to the public and those conducting oversight. Public records experts have said Barwin’s practice could be perceived as circumvention of state open records laws.

On several occasions dating back to 2013, Barfield requested public records from the city and Barwin on both work and personal devices since Barwin was appointed city manager, according to the lawsuit. Some, but not all, of the records were produced, the suit alleged. Last June, Barfield again requested the same records and was reportedly told by the city they did not exist. But a public

records request made last year by former City Commission candidate Martin Hyde for city-related emails on Barwin's Gmail account, which was fulfilled last August, revealed at least 500 messages to and from Barwin from 2015 to 2017 regarding city matters. The messages included electronic communications from his deputy, the mayor, city spokeswoman, private citizens and media outlets — with responses from Barwin to numerous messages. A large portion of the emails included flyers about local events.

"Most of the personal emails produced were already on the city's servers and fully accessible to the public. Of the remaining emails, virtually all were simply receiving newsletters or brochures from various neighborhood and community groups," Schwed said. "There has not been a single personal email identified that even meets the definition of a 'public record' under Florida law. And that's why the settlement includes an express agreement that there was no finding that Mr. Barwin or the city had violated the 'public records' law."

Barwin last August read a statement defending himself during a City Commission meeting in which board members remained silent.

"Both the city of Sarasota and I are strong believers in the importance of Florida's Sunshine Law, and it has always been our intention to fully comply with any proper and lawful request for public records," Barwin said at the Aug. 20 meeting. "Any documents covered by the Sunshine Law that have been overlooked will be produced as soon as we can gather them."