

STATE OF INDIANA)	IN THE HAMILTON SUPERIOR COURT
) SS:	
COUNTY OF HAMILTON)	CAUSE NO.: 29D02-
 CITY OF WESTFIELD, INDIANA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
CINDY GOSSARD, in her)	
individual capacity, and JOHN)	
DOE,)	
)	
Defendants.)	

THE CITY OF WESTFIELD, INDIANA’S COMPLAINT FOR DAMAGES AND REQUEST FOR INJUNCTIVE RELIEF

The City of Westfield, Indiana (the “City”), for its Complaint for Damages and Request for Injunctive Relief against Defendant Cindy Gossard, in her individual capacity (“Gossard”), and John Doe, alleges and states the following:

I. Introduction

1. Cindy Gossard has again forced the City to file a lawsuit at taxpayer expense. This time, however, the actions she took to necessitate this filing did not relate to her duties as the City’s Clerk-Treasurer. Instead, she took those actions selfishly and recklessly to shift attention away from her gross incompetence.

II. Parties, Jurisdiction, & Venue

2. The City is a third class city located in Hamilton County, Indiana.

3. Gossard is the Clerk-Treasurer of the City, but the claims alleged herein are against her in her individual capacity

4. This Court has jurisdiction over the City's claims.

5. Hamilton County is the preferred venue pursuant to Trial Rule 75(A)(5).

III. Factual Background

i. The Statutory Examination of City Accounts and Property

6. In August 2020, Mayor J. Andrew Cook, under Indiana Code § 36-4-5-7, ordered an examination of the City's accounts and property in the possession or custody of City departments, officers, and employees (the "Examination").

7. Mayor Cook appointed Zachary Klutz of Taft Stettinius & Hollister, LLP; Bryan Callahan of BKD CPAs & Advisors; and Daniel A. Hedden of Baker Tilly (collectively, the "Examiners") to conduct the Examination.

8. On September 2, 2020, the Examiners notified Gossard they would need login credentials and access to the City's Microsoft Cloud Navigator account, ADP account, and Purchase Card (P-Card) account through Chase MasterCard.

9. Delays ensued.

- a. Over a month later, Gossard still had not provided the requested information. As a result, the Examiners contacted Gossard on October 14, 2020, to request the information again and to ask for all monthly bank statements and credit card

statements from January 1, 2017, through June 30, 2020. The Examiners asked Gossard to produce all of the requested information by October 21, 2020.

- b. On October 28, 2020, Gossard provided only partial payroll and P-Card information to BKD, and it was in a format different than what BKD had requested. Two days later, Gossard provided the Examiners with a flash drive containing certain P-Card and ADP information. Gossard, however, refused to provide the Examiners with the direct read-only access to the databases they had requested.
- c. Because Gossard refused to provide direct access to the databases, on November 3, 2020, the Examiners asked Gossard to provide copies of credit card statements and payroll information in a specific data file format other than .pdf files.
- d. The Examiners followed up with Gossard on their requests on November 10 and November 12, 2020. The Examiners also offered to schedule a telephonic conference with Gossard to discuss any questions.

- e. As of January 11, 2021, Gossard had refused to provide any additional information that the Examiners had requested. Without the requested information, the Examiners were unable to finalize the Examination.
- f. Instead of cooperating with the Investigation, Gossard was thwarting the Examiners' access to critical information by, among other things, threatening to switch payroll providers.

10. As a result, on January 14, 2021, the City filed a lawsuit against Gossard in the Hamilton Superior Court seeking an order from the Court enjoining Gossard from executing any contract to bring the City's payroll functions "in house." The City also asked the Court declare that Gossard did not have the authority to execute contracts over \$25,000 and did not have the power to control or limit the City's access to payroll, financial, and other information of the City by using the software the City purchased for that purpose.

11. On the day the City sued her, Gossard—for the first time—provided BKD with access to the City's Navigator portal.

12. On February 1, 2021, only after the City had to spend public funds to sue her, Gossard finally agreed to provide some of the information the Examiners had been requesting for several months. She also agreed to allow them to conduct an on-site visit at her office on February 12, 2021. (Ex. A, Agreed Entry)

13. Since then, and despite Gossard's obligations under the Agreed Entry, more delays to produce public documents followed.

14. On April 16, 2021, the Examiners once again provided Gossard's counsel, Will Webster ("Webster") with a list of items they had previously requested but had not yet received. They also requested an on-site visit the week of May 17, 2021, to obtain and receive additional information requested.

15. On April 21, 2021, BKD finally received from Gossard copies of some of the City contracts it had requested from her in September 2020.

ii. The Ruse – Turning Decade-Old IT Software Into "Spyware"

16. On May 10, 2021 Webster sent City Attorney Blake Burgan ("Burgan") an email with a screenshot of software called "BeyondTrust." The BeyondTrust software (or its predecessor) had been installed on every City computer for 10 years. Webster stated that it was not a problem for the City's IT Department to remotely access Gossard's computers, so long as she was prompted to provide permission before anyone accessed them. Of course, the City's IT Department could not and cannot remotely access *anyone's* computer without the user giving permission.

17. On May 18, 2021, BKD met with Gossard at her office to obtain a significant portion of the remaining information it had requested from her back in September 2020.

18. That same day, Burgan contacted Webster to follow up on Gossard's concern about the alleged "monitoring" of her staff's computers. Burgan suggested that

Webster and Gossard participate in a conference call with the City's IT Director, Chris Larsen ("Larsen"), so he could explain the BeyondTrust software to them.

19. Three days after the last on-site inspection by the Examiners, and instead of agreeing to a call with Larsen, Webster sent Burgan a letter in which Gossard alleged—for the very first time—that some software had been installed on her computer and that some unknown party had been using the software to access Gossard's information. The ruse was on.

20. According to Webster, "the City's systems [had] been compromised and the extent of the damage is unknown." He requested that the City remove the BeyondTrust software from Gossard's computer. Again, that software (or a previous version of it) had been on the City's system for at least 10 years and Gossard was well aware of it and had used it several times.

21. On June 4, 2021, Burgan informed Webster that the City took Gossard's allegations of criminal activity very seriously and that the City was taking appropriate action.

22. Again, instead of scheduling a call with Larsen to discuss the BeyondTrust software, on June 8, 2021, Webster (while conceding that "it might be easier to jump on a call"), emailed Burgan suggesting that the City just remove the BeyondTrust software.

23. On June 11, 2021, instead of agreeing to participate in a telephone call with Larsen, Webster restated his concerns to Burgan about the BeyondTrust software and

remote access to Gossard's computers. He suggested that the only options were for the City to remove the software, litigation, or for Gossard to move to her own network.

24. On June 15, 2021, Burgan told Webster that City Councilman Jake Gilbert had requested that they arrange a meeting with Larsen so he could explain to Gossard how the BeyondTrust software works. Burgan noted that he has suggested such a meeting in May and was following up to see if Gossard would finally agree to participate.

25. On June 16, 2021, Webster again did not agree to participate in a call. Instead, he stated that Gossard had an "IT person come out and understand the capabilities of the software and simply need it removed." He again asked if the City would remove the BeyondTrust software.

26. Due to Gossard's allegation that some unknown third party had unlawfully accessed the City's network that may have compromised the City's financial and other information, on June 30, 2021, Burgan provided Webster with a list of independent third-party cyber security firms (all recommended by Larsen) that could perform a forensic audit of the City's computer system to determine if there has been a breach. Burgan asked for Gossard to select one of the firms by July 2, 2021, and told Webster that if she did not do so, the City would select one and proceed.

27. On July 1, 2021, Webster responded that Gossard was on vacation and that he was leaving the next day with his family for the holiday weekend. As a result, he requested that the City hold off on selecting an IT firm until the following week. He noted

that Gossard had also “been in discussions with IT companies” and that it didn’t make sense for the City to pay for two forensic audits. Incredibly, he claimed that he had asked to meet and for the software to be removed and that he had gotten no response or cooperation. Webster again asked if the City would be removing the BeyondTrust software.

28. That same day, Councilman Gilbert questioned Burgan and Webster about what was causing the holdup of the meeting. Gilbert noted that there were no problems between Gossard and the IT Director and that they trusted each other. He requested that the parties schedule a meeting immediately.

29. On July 2, 2021, Webster’s senior associate, Stephen Thompson, emailed that Webster was available for a meeting July 8, July 13, or July 14.

30. On July 6, 2021, Webster told Burgan he had car trouble and was still out-of-state, so he would not be back in the office until July 8. He said he heard from the Clerk and that she “has been speaking with IT companies and has someone that is looking into the issue.” Instead of agreeing to schedule a meeting as requested by Councilman Gilbert, Webster again asked that the City remove the BeyondTrust software.

31. That same day, Councilman Gilbert responded to Webster asking if the parties could just meet before any software was removed, noting that he thought it was important for Gossard to hear from the City’s IT Director before anything happened.

32. Burgan notified Councilman Gilbert and Webster on July 8, 2021, that the City remained willing to participate in a meeting with Larsen, but that it still needed to engage a third party forensics expert to investigate Gossard's allegations regarding some unauthorized access to the City's network. Burgan again asked Webster to have Gossard select one of the firms he previously provided by the close of business on July 9, 2021.

33. That same day, Webster stated that Gossard was still willing to meet with the Larsen. Incredibly, despite the City's repeated attempts to schedule a meeting, Webster stated that "[t]he fact that we haven't been able to set this meeting up, get information on Beyond Trust or look for alternative software only adds to the confusion and mistrust and calls into question what is really going on with the Clerk's computers."

34. In a separate email, Webster told Councilman Gilbert and Burgan that Gossard was working with an IT company who would be reviewing the computers and that she had reservations about using an IT company selected by the City. He stated that when he and Gossard met with Larsen, they would be "happy to provide more information on the company, scope of work, so [Larsen] can review, cost, information needed from [Larsen] and the sharing of information between the Administration, Council and the Clerk's office during the course of the review." Webster also asked for a time the parties could meet to "let you review what we are doing, let [Larsen] take a look and if it checks everyone's boxes, then hopefully we can avoid any potential issues or hiring multiple auditors, etc."

35. Webster and Gossard clearly understood that any “investigation” of the City’s network would, at a minimum, require the approval and involvement of Larsen.

36. On July 12, 2021, Burgan asked Webster and Councilman Gilbert if they could meet on July 14, 2021, which was a date Webster’s senior associate, Thompson, told everyone that Webster was available.

37. Instead of finding time to schedule this important meeting, Webster responded that he was leaving town July 15 and that “[his] Wed (July 14) got filled up and Steve (Thompson) is out of the office until July 21. I know this isn’t the best time, but we finished up w/ summer sports beginning of July, so trying to get some family trips in before school starts in Aug. I am out of the office July 15 to July 23, so I can make the 27th, 28th, or 29th work.”

38. Burgan asked if there is was any way Webster could make July 14 work, which was the date Thompson had said he was available. Burgan also suggested a meeting on July 15 or July 16.

39. On July 14, 2021, the date Burgan requested to meet, Webster stated he had no availability on July 14 and “we are trying to get on the road after work. Sorry wasn’t able to make an earlier date work.”

40. On July 17, 2021, Burgan asked Webster if there were anyone else in his office who could meet with Larsen the week of July 19. Significantly, because he had heard nothing back from Gossard about selecting an IT forensics firm to conduct an audit

of Gossard's computers, Burgan also notified Webster that Larsen had selected an outside vendor and engaged it to conduct a forensics audit of the City's IT system.

41. Nine days later, on July 26, 2021, Webster responded that he could be available August 4-5. He again stated that Gossard had been working with an IT company and wanted to discuss removal of the BeyondTrust software and provide an update on the status of Gossard's "investigation."

iii. Gossard Compromises City Data and Then Admits to Not Knowing What Her Agent Downloaded from the City's Network

42. What Webster failed to mention was that, three days before his email and without authorization, Gossard had personally engaged an unidentified third party, John Doe, to access the City's computer network.

43. John Doe arrived at Gossard's office at approximately 4:55 p.m. on Friday, July 23, 2021. After talking to Gossard for 10-15 minutes, he began his unauthorized operations. By 5:40 p.m., John Doe was alone in Gossard's office and remained there unsupervised until approximately 3:30 a.m. the following morning.

44. During that time, John Doe visited multiple locations. He accessed three different employees' computers using their usernames and passwords (while the employees were not there). The City has no idea what information was accessed.

45. On the evening of July 26, 2021, Larsen entered City Hall to attend the City Council meeting. He took his normal path, which was to walk through the back entry

and through Gossard's office space to the IT room. As he was walking by Gossard's office, and through the glass of Gossard's unlocked office door, Larsen noticed a computer he did not recognize.

46. He entered Gossard's office and discovered two, unapproved and non-City laptops.

47. He also saw four City-issued laptops that were unassembled and had the hard drive storage devices removed. After taking pictures, Larsen left the office to attend to his duties during the meeting.

48. During the meeting, Gossard read a prepared statement about "spyware." In response, Larsen refuted most of the allegations made by Gossard, and specifically stated that the BeyondTrust software was not "spyware."

49. Because Gossard's actions were not authorized and she had not communicated in any way with the IT Department, Larsen recognized the situation in Gossard's office as a cyber security threat and decided that to protect the City's data, he needed to stop the unauthorized activity as he would do in any other circumstance.

50. Accompanied by a member of the Westfield Police Department, Larsen secured all of the system in question in Gossard's office. He collected the dismantled machines and secured them in the IT closet. He also collected all of the unauthorized and unknown devices, including two laptops, two charger cables, a bag that had two computer components in it, and 4 USB devices.

51. On July 27, 2021, Burgan wrote Webster demanding answers about what information was removed from the City's systems, the contact information for John Doe, and a copy of the "contract" Gossard entered into with John Doe.

52. Webster and Gossard have refused to identify John Doe or to provide a copy of the contract Gossard allegedly entered with John Doe.

53. According to Mike Johns, president of the Westfield City Council, and as reported in the *Hamilton County Reporter* on July 29, 2021, the City Council was "fully aware of the actions Gossard was taking to investigate the software." The Council never met in public to discuss the investigation, nor did it ever vote to authorize the investigation.

54. In fact, Councilman Scott Willis denied that the Council was aware of the investigation as characterized by Councilman Johns.

55. Because John Doe accessed the City's system with Gossard's and other employees' passwords, he had access to the City's financial information, bank information, confidential vendor documents, confidential police and other data, and employee personal information.

56. Shockingly, yet consistent with her general incompetence, Gossard admitted that she had no idea what City information John Doe accessed or copied at her apparent direction, but she knows that he copied the entirety of the hard drives.

57. Gossard had no authority, statutory or otherwise, to order John Doe to access and download the City's information. Gossard engaged in such conduct for her personal benefit and not to serve any purpose of the City. That is evidenced, in part, by her refusal to provide either the name of John Doe or the alleged contract, both of which would be public record if entered into on behalf of the City.

58. Indeed, Gossard's willful, wanton, and malicious conduct violated the City's policies governing use of its computer network.

59. The City has contacted its insurance provider about this potential breach of security, and it has advised that the City need to take steps to secure immediate return of the information unlawfully obtained by Gossard and John Doe.

60. Without a Court order, the confidential personal information of the City's employees, residents, vendors, and others remains at risk.

61. As of this filing, neither Gossard nor her attorneys have taken action to provide the City with the contract for John Doe or to arrange return of the data he has in his possession that the City assumes Gossard remains ignorant of.

III. Claims

COUNT I **(Computer Trespass)**

62. The City realleges the preceding paragraphs as if fully restated here.

63. Gossard knowingly or intentionally accessed the City's computer system and/or computer network, or part thereof, without authorization, in violation of Indiana Code Section 35-43-2-3.

64. The City is entitled to relief under the Indiana Offenses Against Property Act, Indiana Code Section 34-24-3-1, including treble damages and attorney's fees.

65. The City is also entitled to an injunction ordering Gossard and John Doe to return to the City all property and information in their possession, custody, or control.

66. The City has made multiple attempts to obtain the contract Gossard signed with John Doe and the identity of John Doe, but Gossard has refused to provide that information. The City has no adequate remedy at law because Gossard's and John Doe's unlawful conduct is ongoing, will have significant negative effects on the City and its employees, vendors, and residents, and cause damage to the City and its residents that money damages will not repair.

67. The balance of harms favors issuance of injunctive relief. Gossard had no authority to use an unidentified third party to access the City's confidential information and data, and it has a duty to ensure that such data is not compromised by Gossard's and John Doe's conduct. Gossard, on the other hand, has none of those powers or duties and certainly has no right to interfere with or usurp the City's duties.

68. Finally, the public interest will not be disserved by the entry of injunctive relief. To the contrary, it is in the public's interest to ensure that the City's information is returned and that the data of its employees, residents, and vendors is protected.

WHEREFORE, the City seeks a judgment against Cindy Gossard, in her individual capacity, and John Doe, in an amount to be determined at trial, treble damages, and reasonable attorney's fees under the Indiana Crime Victims Relief Act, and all other just and proper relief.

COUNT II
(Conversion)

69. The City realleges the preceding paragraphs as if fully restated here.

70. The City is the owner of property that is in the possession of Gossard and/or her agent, John Doe, and the City is lawfully entitled to possession of such property.

71. Gossard and John Doe have knowingly or intentionally exerted unauthorized control over property belonging to the City in violation of Ind. Code §35-43-4-3.

72. The City has been injured and has suffered damages as a direct and proximate result of Gossard's unauthorized control over such property.

73. The City is entitled under Ind. Code §34-4-30-1 to treble damages, costs of this action and reasonable attorney's fees.

74. The City is also entitled to an injunction ordering Gossard and John Doe to return to the City all property and information in their possession, custody, or control.

75. The City has no adequate remedy at law because Gossard's and John Doe's unlawful conduct is ongoing, will have significant negative effects on the City and its employees, vendors, and residents, and cause damage to the City and its residents that money damages will not repair.

76. The balance of harms favors issuance of injunctive relief. Gossard had no authority to use an unidentified third party to access the City's confidential information and data, and it has a duty to ensure that such data is not compromised by Gossard's and John Doe's conduct. Gossard, on the other hand, has none of those powers or duties and certainly has no right to interfere with or usurp the City's duties.

77. Finally, the public interest will not be disserved by the entry of injunctive relief. To the contrary, it is in the public's interest to ensure that the City's information is returned and that the data of its employees, residents, and vendors is protected.

WHEREFORE, the City seeks a judgment against Gossard, in her individual capacity, and John Doe, in an amount to be determined at trial, treble damages, and reasonable attorney's fees under the Indiana Crime Victims Relief Act, an injunction ordering Gossard and John Doe to return all City data downloaded by her or him at once, and all other just and proper relief.

Respectfully submitted,

/s/ Blake Burgan

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