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April 30, 2020

VIA EMAIL

Sara Peterson
Municipal Clerk
City and Borough of Sitka
100 Lincoln Street
Sitka, Alaska 99835

Re: Appeal to the Assembly of the City and Borough of Sitka Concerning the Municipal Clerk's Errant Denial of Public Records Request Regarding Sitka Police Department Case Number 20-0020.

Dear Municipal Clerk:

Our office submitted a public records request to the City and Borough of Sitka on April 14, 2020. A copy of this request is attached hereto as Exhibit 1. It requested "[a]ll records from and concerning Sitka Police Department case number 20-0020." As an additional description of the records at issue, the request stated:

This case concerns Ryan Silva. It might be listed under "suspicious activity." SPD employees Ewers, Baty, and Steele were/are involved. We request all records including but not limited to reports, audio recordings, photos, videos, officer/employee notes, emails, text messages, and other documents.

On April 30, 2020, we received a response letter via email regarding our April 14, 2020 request. This letter was dated April 28, 2020. The letter indicated that it was from Sara Peterson, Municipal Clerk, and listed an address of 100 Lincoln Street, Sitka, Alaska 99835. A copy of this letter is attached hereto as Exhibit 2.

This letter denied our office's April 14, 2020 public records request. It claimed that three public records exceptions applied under Sitka General Code 1.25.040(A)(5)(a-c), reproduced in pertinent part below:

SGC 1.25.040(A) Every person has a right to inspect a public record except:

[...] 5. Records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information:

- a. Could reasonably be expected to interfere with enforcement proceedings;
- b. Would deprive a person of a right to a fair trial or an impartial adjudication;
- c. Could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim or witness; [...]

Pursuant to Sitka General Code 1.25.080, we hereby appeal the denial of this request to the City and Borough of Sitka Assembly. This appeal concerns all of the records previously identified in this letter and in the initial request that our office made on April 14, 2020.

The April 28, 2020 letter seemingly contained only one fact in support of applying these above three exceptions and denying the public records request. It claimed that the requested "records involve an active case that is still under investigation."

The Alaska Supreme Court has already explained why this sort of rationalization cannot pass muster. *See Basey v. State*, 408 P.3d 1173, 1180 (Alaska 2017) (emphasis added).

It suffices to say the State cannot invoke the law-enforcement-interference exception merely by pointing to a pending criminal case involving the requestor. If the legislature had intended to create a per se exception that applies any time the requestor is being prosecuted — even by the federal government and not the State — the legislature would not have required that the requested records be "reasonably . . . expected to interfere" with the prosecution.

Here, the municipal clerk's reasons for denial are just as, if not more, tenuous. Our office has requested records about a criminal case. Yet the request has been denied because the case apparently remains "active" and "under investigation." Full stop. Under *Basey*, this is — again — clearly deficient. There has been no showing — indeed, not even an attempt at a showing — as to why disclosure would somehow interfere with enforcement, or sacrifice fairness at a trial, or invade someone's privacy.

We also note that, in *Anchorage v. Anchorage Daily News*, 794 P.2d 584, 589 (Alaska 1990), the Alaska Supreme Court stated that "exceptions to these disclosure requirements are construed narrowly in furtherance of the legislature's expressed bias in favor of broad public access." In support, the *Court* cited its decision in *Kenai v. Kenai Peninsula Newspapers*, 642 P.2d 1316, 1323 (Alaska 1982), where it stated that "[d]oubtful cases should be resolved by permitting public inspection."

Please reconsider the errant denial and provide the requested records.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nick Feronti".

Nick Feronti