

JAMES J. DAVIS, JR. • Admitted in Alaska
jDavis@njp-law.com

GORIUNE DUDUKGIAN • Admitted in Alaska & California
gdudukgian@njp-law.com

NICK FERONTI • Admitted in Texas
nferonti@njp-law.com



406 G STREET, SUITE 207
ANCHORAGE, AK 99501

p 907.308.3395
f 866.813.8645

www.njp-law.com

a private civil rights and special education firm

June 17, 2020

VIA EMAIL

City and Borough of Sitka Assembly
100 Lincoln Street
Sitka, Alaska 99835

Re: Appeal to CBS Assembly over the Denial of an April 14, 2020 Public Records Request about Sitka Police Department Case Number 20-0020.

Dear City and Borough of Sitka Assembly:

Summary

This appeal gives the Assembly an easy choice, about a simple public records request. We request that the Assembly promote a transparent government, by and for the people of Sitka. We ask that the Assembly not be led again into more litigation, defending more misconduct by the Sitka Police Department.

Ryan Silva was forced out of the Sitka Police Department and he filed a lawsuit. The City paid Ryan hundreds of thousands of dollars to settle his lawsuit.

Since then, the Sitka Police Department has been attempting to gin up some sort of criminal charge against Ryan.

We have asked for records concerning these allegations. But the police department is refusing to produce these records and the City Attorney is rubberstamping the Sitka Police Department, yet again.

The City Attorney denied our request for one reason: the “records involve an active case that is still under investigation.”

The problem is that the Alaska Supreme Court has already held that such a denial is against the law and violates the Alaska Public Records Act. Indeed, in *Basey v. State*,

the Court held that a party cannot deny a public records request “merely by pointing to a pending criminal case.”¹ Yet that is exactly what the City Attorney is now doing.

This excuse will crumble in court. And a court will eventually order the city to produce these records. And pay huge legal fees, again. The Assembly can avoid this by telling its City Attorney to follow the law and the *Basey* decision.

Background about the Public Records Request

On April 14, 2020, the Northern Justice Project submitted a public records request to the City and Borough of Sitka for “[a]ll records from and concerning Sitka Police Department case number 20-0020.”² The request included an additional description:

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.

In response, the City and Borough of Sitka emailed an April 28, 2020 denial letter to the Northern Justice Project.³ This letter claimed the requested records were exempt from disclosure under the following three exceptions in the Sitka General Code:

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; [...]

The letter claimed that these exceptions applied by referencing only one fact: that the requested “records involve an active case that is still under investigation.”

¹ *Basey v. State*, 408 P.3d 1173, 1180 (Alaska 2017)

² See Exhibit 1.

³ See Exhibit 2 (the letter is dated April 28, 2020, but was emailed on April 30, 2020).

The Northern Justice Project requested an appeal on April 30, 2020.

On May 27, 2020, the City and Borough of Sitka attorney Brian Hanson emailed the Northern Justice Project indicating that the appeal date was set for June 23, 2020.

Background about the Alaska Public Records Act

- The Alaska Public Records Act is a state law that establishes a right for every person to inspect public agency records in the state.⁴
- The Alaska Public Records Act applies to all public records in the state, including the public records of municipalities.⁵
- In passing the Alaska Public Records Act, the Alaska Legislature expressed a bias in favor of public disclosure.⁶
- In 1990 the Alaska legislature emphasized that “public access to government information is a fundamental right that operates to check and balance the actions of elected and appointed officials and to maintain citizen control of government.”⁷
- Any exceptions to the Alaska Public Records Act must be narrowly construed in order to further the legislature’s policy of broad access.⁸
- Doubtful cases should be resolved by allowing public inspection.⁹

⁴ *Basey v. Dep't of Pub. Safety, Div. of Alaska State Troopers, Bureau of Investigations*, 462 P.3d 529 (Alaska 2020); *see also* AS 40.25.100-295.

⁵ *Anchorage Sch. Dist. v. Anchorage Daily News*, 779 P.2d 1191, 1192 (Alaska 1989); *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316, 1318-23 (Alaska 1982).

⁶ *Griswold v. Homer City Council*, 428 P.3d 180, 186 (Alaska 2018) (citing *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316, 1323 (Alaska 1982)).

⁷ *Capital Info. Group v. Office of the Governor*, 923 P.2d 29, 33 (Alaska 1996) (quoting ch. 200, § 1, SLA 1990).

⁸ *Bbasey v. Dep't of Pub. Safety, Div. of Alaska State Troopers, Bureau of Investigations*, 462 P.3d 529 (Alaska 2020); *Bbasey v. State, Dep't of Pub. Safety, Div. of Alaska State Troopers, Bureau of Investigations*, 408 P.3d 1173, 1176 (Alaska 2017) (quoting *Gwich'in Steering Comm. v. State, Office of the Governor*, 10 P.3d 572, 578 (Alaska 2000)).

⁹ *Anchorage v. Anchorage Daily News*, 794 P.2d 584, 589 (Alaska 1990), (citing *Kenai v. Kenai Peninsula Newspapers*, 642 P.2d 1316, 1323 (Alaska 1982))

The City and Borough of Sitka's Denial Violates the Law:

The City and Borough of Sitka denied the public records request at issue based on **only one fact**. It claimed that the requested “records involve an active case that is still under investigation.” No other facts were listed in the denial.

This violates the law. Three years ago, in *Basey v. State*, the Alaska Supreme Court rejected this very excuse by holding a party “..cannot invoke the law-enforcement-interference exception merely by pointing to a pending criminal case...”¹⁰

Here, the city has justified its denial **only** by pointing to a pending criminal case.

Meanwhile, the city's denial provided no other possible rationale for not providing the records. The denial did not explain how disclosing the records could somehow interfere with enforcement proceedings, or somehow deprive someone of a right to a fair trial, or somehow constitute an unwarranted invasion of personal privacy. There was nothing else to support the denial. As a result, the Assembly does not even have an argument to consider. There has been no showing – not even an attempt at a showing – why disclosure would interfere with enforcement, or sacrifice fairness at a trial, or invade someone's privacy.

This is deficient. The city cannot list off random exceptions, without explanation, and hope they stick. And the city cannot just point at an investigation being “active” and hope that it allows it to dodge its obligations under the Alaska Public Records Act.

Instead, as was outlined above, the Alaska Public Records Act **favours disclosure**. The act makes the public's access to government information a **fundamental right**. And any exceptions must be **narrowly construed**, because the act is about **broad access**, so much so that doubtful cases should be resolved by **allowing access**.

With this as a backdrop, the city cannot possibly deny this request by just pointing at an “active investigation.” The Alaska Supreme Court has rejected this already. And, if necessary, another court will do the same in this case.

Sincerely,

/s/ Nick Feronti

¹⁰ *Basey v. State*, 408 P.3d 1173, 1180 (Alaska 2017) (“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.)



PUBLIC RECORDS REQUEST FORM

Name: Nicholas Feronti Northern Justice Project, LLC		Address: 406 G Street, Suite 207	
Phone No.: 907-330-4070		City: Anchorage	State: AK Zip: 99501
Cell No.: 907-330-4070		E-Mail: nferonti@njp-law.com	

The employee having custody of public records shall give, on request and pre-payment of the fee established under 1.35.040, unless pre-payment is waived, a copy of the public record. The employee having custody of the public records shall respond within ten working days of the request. This time frame may be extended by notification of the need for additional time. If the request is denied in whole or in part, you will be notified in writing. You may appeal the denial to the municipal administrator, if written appeal is filed within five working days. If you are not satisfied with the ruling of the municipal administrator, you may appeal to the assembly within five working days, which will be heard at the next regular scheduled assembly meeting. Any appeal from the assembly's final decision is to Superior Court as long as that appeal is filed no later than thirty days after assembly action.

Title of Record(s): All records from and concerning Sitka Police Department case number 20-0020

Date of Record(s): Uncertain

Description of Record(s): Please provide any additional information that will assist us in locating the record(s) for you as quickly as possible:

This case concerns Ryan Silva. It might be listed under "suspicious activity." SPD employees Ewers, Barty, 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.

Requestor's Signature: *Nicholas Feronti* **Date:** 4/14/2020

***** Please Note: This form must be completed and returned to the Municipal Clerk's Office for processing. *****
FOR OFFICE USE ONLY

• Photocopies	\$.25 per page + tax	\$ _____
• Assembly Packets	\$ 10.00 each packet + tax	\$ _____
• Audio Copy	\$ 10.00 each + tax	\$ _____
• Video Copy	\$ 25.00 each + tax	\$ _____
• Mylar Copies of Plats	\$ 20.00 per mylar copy + tax	\$ _____
• Certified Copies	\$ 1.25 1 st page .25 each additional page	\$ _____
• Copy of Budget	\$ 25.00 each + tax	\$ _____
• Other _____	Price to be determined	\$ _____
• The salary of an employee(s)	\$ _____ labor x _____ hours + tax	\$ _____

(hourly rate plus benefits) filling a request, when retrieval and duplication of the documents requested generate labor in excess of one hour.

The municipality may reduce or waive a fee when the municipality determines that the reduction or waiver is in the public interest. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated. The municipality may waive a fee of five dollars or less if the fee is less than the cost would be to the municipality to arrange for payment.

TAX \$ _____
TOTAL CHARGES \$ _____

Date Request Received: 4/14/2020 Completed By or Referred to (check a box below) Name: Lyn

Request for Record(s) Copy(ies) total \$ _____ was received on _____ and provided or mailed/emailed on _____

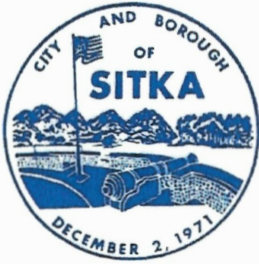
Record(s) or Information is exempt from disclosure and public access is denied and the requestor was notified on 4/30/2020

Record(s) or Information cannot be located or do not exist and the requestor was notified on _____

Record(s) or Information available online at www.cityofsitka.com

The departments that have a check mark have been copied to assist in filling this records request.

<input type="checkbox"/> Administration	<input type="checkbox"/> Finance	<input type="checkbox"/> IS - Email	<input type="checkbox"/> Planning Department
<input type="checkbox"/> Assessing	<input type="checkbox"/> Fire Department	<input type="checkbox"/> Library	<input checked="" type="checkbox"/> Police Department
<input type="checkbox"/> Centennial Building	<input type="checkbox"/> Harbor Department	<input type="checkbox"/> Legal Department	<input type="checkbox"/> Public Works
<input type="checkbox"/> Electric Department	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Municipal Clerk	<input type="checkbox"/> Other: _____



City and Borough of Sitka

100 Lincoln Street
Sitka, Alaska 99835

Coast Guard City, USA

April 28, 2020

Nicholas Feronti
Northern Justice Project, LLC
406 G Street, Suite 207
Anchorage, Alaska 99501

Re: Public Records Request of Nicholas Feronti (4/14/20)

Dear Mr. Feronti:

This letter responds to your Public Records Request (“PRR”), dated April 14, 2020 (copy attached).

Records of the City and Borough of Sitka (“CBS”) are subject to disclosure pursuant to municipal law, Sitka General Code (“SGC”), Chapter 1.25 “Public Records” and corresponding state law, Alaska Statutes (“AS”) Chapter 40.25 “Public Records Disclosures,” both commonly referred to as the Public Records Act (“PRA”). However, there are exceptions to these public records disclosure laws. The following exceptions apply to your PRR.

SGC 1.25.040 Public records exceptions—Certified copies.

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;

* * *

You have requested records that were compiled for law enforcement purposes. These records involve an active case that is still under investigation. Accordingly, the exceptions stated above in SGC 1.25.040 (A)(5)(a)(b) and (c) apply. Therefore, your request is denied. This exception will extend until no further court action is expected.

Exhibit 2

Mr. Feronti
April 28, 2020
Page 2

This decision has been made pursuant to the municipal and state PRA's cited above. You may be able to obtain copies of these records by court order or other legal process. Further, once the investigation is closed, you may renew your request at that time.

You may also appeal this denial, under SGC 1.25.080 "Appeals", to the CBS Assembly and, then, to the Sitka Superior Court. For more information contact the CBS Municipal Clerk's Office, Records Specialist, at 907-747-1826 and melissa.henshaw@cityofsitka.org.

Sincerely,



Sara Peterson
Municipal Clerk

cc: Lyn Blankenship, Dispatch and Records Clerk
Chief Robert Baty, Sitka Police Department
Brian E. Hanson, Municipal Attorney