



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Law

CRIMINAL DIVISION
Criminal Division Central Office

310 K St., Suite 403
Anchorage, Alaska 99501
Main: 907.269.6379
Fax: 907.269.6305

April 4, 2014

Professor Brian Patrick O'Donoghue
Chair, Journalism Department
University of Alaska Fairbanks
bpodonoghue@alaska.edu

Re: Alaska Public Records Act Request, dated March 25, 2014

Dear Professor O'Donoghue:

The Alaska Department of Law (LAW) received your request, dated March 25, 2014, for the following record: "the letter from a California prison guard or his supervisor regarding William Holmes' statements about John Hartman's murder." I have been delegated the authority to deny Alaska Public Records Act requests under 2AAC 96.335(b) and I am denying your request for the reasons discussed below.

First, as you are aware the Hartman murder case is the subject of ongoing litigation. Thus the requested record is exempted from disclosure under AS 40.25.120(a)(6)(A), (because disclosure "could reasonably be expected to interfere with enforcement proceedings") and AS 40.25.120(a)(6)(B) (because disclosure "would deprive a person of a right to a fair trial or an impartial adjudication"). These exemptions do not mean the public will be deprived of this information, but rather that this record will likely be the made public during the course of the litigation, or would be available to the public once the litigation has finished.

Second, LAW must also comply with the Alaska Rules of Professional Conduct (ARPC). These are the ethical rules that apply to lawyers. ARPC 3.6 prohibits all lawyers from making "extra judicial statements" that would be "disseminated by means of public communication" and that could materially prejudice an adjudicative proceeding. Release of records is an "extra judicial statement" and your request makes clear your intent to publish this information in the media or some other form of public communication. Thus AS 40.25.120(a)(4) also exempts this record from disclosure as contrary to state law because it would violate ARPC 3.6.

Third, AS 40.25.120(a)(4) also exempts the record under the balance-of-interests principle. *See, e.g., Alaska Wildlife Alliance v. Rue*, 948 P.2d 976, 981 (Alaska 1997) (stating that to determine whether the Alaska Public Records Act requires disclosure “requires . . . balance[ing] the public’s interest in the full accountability of the state to its people against the Department employees’ and private contractors’ interests in anonymity”). This is so because the potential harms from disclosure—i.e., from interfering with and prematurely disclosing information regarding an ongoing post-conviction relief investigation or subsequent adjudication—outweigh any potential benefit to the public, at this point. As stated above, this record will ultimately be available to the public, but not during the current litigation.

I have discussed your request with Ms. Bachman, the assigned prosecutor, and she indicates that she has discussed the department’s concerns with you before. She also informed you, as I have now repeated, that she expects the record of the investigation will be available at a later time, once the litigation is complete.

Because the Department is not producing the requested record, your request is denied. *See* 2 AAC 96.335(a)(4). You may administratively appeal this denial by complying with 2 AAC 96.340. An administrative appeal requires no appeal bond. Also, you may seek immediate judicial review by seeking an injunction from the superior court under AS 40.25.125. Not seeking an injunction will not adversely affect your rights before the Department, including in administratively appealing this denial. 2 AAC 96.335 – 2 AAC 96.350 are enclosed.

If you have any questions, please contact me at 907-269-6379 or john.skidmore@alaska.gov.

Sincerely,

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

A handwritten signature in dark ink, appearing to read 'John Skidmore', is written over a horizontal line.

By: John Skidmore
Director, Criminal Division