



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

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April 4, 2014

Professor Brian Patrick O'Donoghue
Chair, Journalism Department
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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.

2 AAC 96.335. Denial of request

- (a) A request for a public record that complies with this chapter may be denied only if
 - (1) the record is not known to exist after the public agency makes a diligent search for it;
 - (2) the record is not in the public agency's possession, and after a diligent search the public agency does not know where the record is to be found;
 - (3) the record has been destroyed in accordance with an applicable record-retention schedule;
 - (4) nondisclosure of the record is authorized by a federal law or regulation, or by state law; or
 - (5) the record is believed to be in the agency's possession but has not yet been located, in which case the public agency shall proceed under (f) of this section.
- (b) A request may be denied by the public agency head or by an agency employee to whom denial authority has been delegated by the public agency head.
- (c) An initial denial of a written request must be in writing; must state the reasons for the denial, including any specific legal grounds for the denial; and must be dated and signed by the person issuing the denial. If a request is denied by a public agency employee to whom denial authority has been delegated, the notice of denial must reflect this delegation. A copy of 2 AAC 96.335 - 2 AAC 96.350 must be enclosed with the denial.
- (d) A denial of a written request, in whole or in part, must state that
 - (1) the requestor may administratively appeal the denial by complying with the procedures in 2 AAC 96.340;
 - (2) the requestor may obtain immediate judicial review of the denial by seeking an injunction from the superior court under AS 40.25.125 ;
 - (3) an election not to pursue injunctive remedies in superior court shall have no adverse effects on the rights of the requestor before the public agency; and
 - (4) an administrative appeal from a denial of a request for public records requires no appeal bond.
- (e) A denial of a written request is considered to be issued at the time the denial is either delivered to the United States Postal Service for mailing, or hand-delivered to the requestor by an employee or agent of the public agency.
- (f) If a written request is denied because a record has not yet been located and the record is believed to exist in the agency's possession, the office in the public agency responsible for maintaining the record is believed to exist in the agency's possession, the office in the public agency responsible for maintaining the record shall continue to search until the record is located or until it appears that the