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BREAKING

ALERT

FEATURED

Policing the police: Part 2

By Amy Efta

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Since the editorial “Policing the police” was printed on June 7, the public records request made by the Sidney Herald has progressed down an interesting path. One may be able to argue that “progress” isn’t exactly the right word. As this ordeal has unfolded, it’s been roadblock after roadblock, thrown down by elected and hired officials alike. The time has come to update the public on the refusal to cooperate with a public records request to the Sidney Police Department, Sidney City Council, Sidney City Council Attorney Tom Kalil and now Richland County Attorney Janet Christoffersen.

After some wrestling around about obtaining the full and proper arrest records from the police department, the Sidney Herald requested internal investigation reports from the department at the beginning of June. Kalil told the Herald he would redact information that was not deemed public, a normal practice for such documents, and turn them over. Montana Code Annotated (MCA) states public records request must be fulfilled within a reasonable amount of time. The first week of July, the Sidney Herald began to feel that window of reasonable time was closing.

And then the criminal charges were filed against Sidney Police Department Sgt. Alex Roselles, stemming from an incident in February wherein, according to charging documents, Roselles drove drunk, rolled his pickup in the ditch and fled the scene. The charges were filed a full five months after the incident occurred. The sheriff’s deputy who arrived upon the accident couldn’t locate or get in touch with Roselles for a full week after the accident. The two men work in the same building. When contact was finally made, Roselles refused to answer questions about the accident and handed over his insurance information. This is all documented in the sworn statement from the investigating deputy.

The Sidney Herald, after waiting for over a month, decided it was time the city handed over the internal investigation reports on Roselles. Kalil assured us we would have the documents the second week in July. By Friday, July 12, Kalil was singing a different tune, as he emailed the

Herald a letter that stated, "In this particular case, it is the position of the City of Sidney that the disclosure of any internal investigation documents related to Alex Roselles cannot be disclosed without violation of Montana law. As such, we cannot disclose them."

A letter was returned to Kalil, penned by Peter Michael Meloy on behalf of the Sidney Herald. Meloy is the Montana Freedom of Information Act Hotline attorney — he's the guy you go to for help obtaining public information. In the letter, Meloy stated, "While there may be a basis for withholding access to personnel records related to garden variety performance issues, you may not deny the Herald's right to examine investigatory records involving city officers suspected of or charged with violating Montana law. This is so, because a police officer is vested with the public trust and has a diminished right of privacy over city records related to a violation of that trust. See, for example, *Great Falls Tribune v. Cascade County Sheriff*, 238 Mont. 103, 775 P.2d 1267, (1989), *Citizens to Recall Whitlock v. Whitlock*, 255 Mont. 517, 844 P.2d 74 (1992), *Jefferson County v. Montana Standard*, 2003 MT 384, 318 Mont. 173, 79 P.3d 805, *Billings Gazette v. City of Billings*, 2011 MT 293, 362 Mont. 522, 267 P.3d 11 and *Bozeman Daily Chronicle v. City of Bozeman Police Dept.* 260 Mont. 218, 225, 859 P.2d 435, 439 (1993).

"Although your letter does not articulate a basis for denying access to the records as required by §2-6-1009 MCA, please be aware that in the Chronicle case, the Court ordered disclosure of the investigatory records before any final determination was made on the sexual assault."

In case anyone is keeping count, there are five cases quoted in the letter from Meloy to the City of Sidney which dictate the precedent set to allow the Sidney Herald access to the information. At the end of the letter, there is also a reminder to the city that Montana Code Annotated authorizes the recovery of attorney fees and costs associated with an action to enforce rights. The exchange of letters from city attorney to an attorney the Sidney Herald was consulting with is not considered litigation. However, to discuss the release of public records to the Herald, city council went into executive session at its Aug. 5 meeting. Kalil stated discussion of litigation strategy as the reason behind closing the meeting.

By Wednesday, Aug. 7, Kalil informed the Sidney Herald that council had agreed to turn over the personnel file of Alex Roselles. We were told we would have it by the end of the business day. By Thursday, Aug. 8, we still didn't have the file. Instead, what the editor received was a voicemail from the county attorney Janet Christoffersen informing the Herald she was not allowing the release of the file.

Christoffersen claimed she was using her authority as the prosecuting attorney on the criminal case against Roselles to prevent the file from being handed over to the newspaper. In a letter sent to Meloy from Christoffersen, she stated, "Pursuant to Montana Code Annotated Section 44-5-303, all requests for confidential criminal justice information must be sent to my office in written request form. Also pursuant to that statute, as county attorney, I have the right to refuse release of said information as it may affect the prosecution of any current charges. At this time, I have advised the city civil attorney, city office, and Sidney Police Department not to release any records until our prosecution of any case pending against Sgt. Roselles is resolved."

Let's dive into this argument put forth by the county attorney, who has no authority to direct city council on whether to disclose its city records. City council voted in favor of handing over the file. The city attorney, Kalil, would be responsible for redacting the information. Nowhere in this process is the county involved. It's an overreach and the Sidney Herald believes it to also be an abuse of power.

MCA defines criminal justice information as criminal investigative information, criminal intelligence, fingerprints and photographs, criminal justice information or records made confidential by law and other information not clearly defined as public criminal justice information.

With that definition in mind, there's one more glaring issue with this argument. The Sidney Herald did not request the criminal investigation report on Roselles. We requested the personnel disciplinary file, which her argument does not address. Christoffersen stated the Herald will have to wait until prosecution of ANY case against Roselles is completed, not just the current one.

The Sidney Herald will be covering the current case to its completion – including any motions or paperwork filed waiving the defendant's right to a speedy trial. As of the last hearing, Roselles doesn't have a defense attorney.

Christoffersen is just plain wrong. Access to records in Montana is governed by statutes, as well as the Constitution. The Bozeman Chronicle case cited by Meloy in the letter to Kalil required access to a police investigatory report before any prosecution took place. The county attorney doesn't get to decide which document will be kept secret simply because she may use it in court.

Meloy said the standard is whether there is a privacy interest in the document, not if it will be used in prosecution. He said, "Since a police officer is vested with the public in trust, he or she has a diminished right of privacy and it cannot serve as a basis for withholding a document."

That means the county attorney absolutely does not have the right to override the Constitution, as well as a city council decision.

Roselles is a police officer and we hold officers to high standards and expectations. He now is potentially facing legal consequences and we should know as much as possible about his background. The taxpaying public of Sidney has a right to know if he has a history of issues within the department, what those were, what disciplinary action was taken and if there is a pattern of misconduct.

The Sidney Herald hopes Sidney City Council, under the legal guidance of their attorney, understands Janet Christoffersen is not an authority over its decision or records and is in fact in violation of MCA as well as the Constitution. We hope to obtain the proper file, with necessary redacted information omitted, regardless of the status of Roselles' criminal case.