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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

THE WHITE CORPORATION, INC.,	*	
d/b/a THE ABILENE REFLECTOR-	*	
CHRONICLE,	*	
	*	
Plaintiff,	*	
	*	Case No. 2020-CV-000488
vs.	*	
	*	
KANSAS BUREAU OF	*	
INVESTIGATION,	*	
	*	
Defendant.	*	Pursuant to K.S.A. 45-222

**AMENDED PETITION FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND ATTORNEY FEES**

COMES NOW Plaintiff The White Corporation, Inc., d/b/a *The Abilene Reflector-Chronicle*, by and through its attorney of record, Maxwell E. Kautsch of Kautsch Law, LLC, and for its cause of action against Defendant Kansas Bureau of Investigation (“KBI”), files its Amended Petition as a matter of course pursuant to K.S.A. 60-215(a)(1)(A) and alleges as follows:

Introduction

1. This is an action seeking declaratory relief, injunctive relief, and attorney fees concerning the Defendant’s denial of Plaintiff’s April 24, 2020 request under the Kansas Open Records Act (“KORA”), K.S.A. 45-215, *et seq.*
2. Defendant is a state agency created by statute as a division of the Kansas Attorney

General's Office under K.S.A. 75-711 and which can be served at 120 SW 10th Ave. 2nd Floor, Topeka, Kansas 66612.

3. Defendant is a "public agency" as defined in K.S.A. 45-217(f)(1) of the KORA.
4. Plaintiff The White Corporation, Inc., d/b/a *The Abilene Reflector-Chronicle* (hereinafter "the *Chronicle*"), is a news organization that publishes a daily newspaper in Abilene, Dickinson County, Kansas.
5. Since 2018, the *Chronicle* has reported on allegations, and in one instance, a criminal conviction, related to allegations of misconduct involving the Dickinson County Sheriff's Office (hereinafter "DK SO").
6. At all material times, Tim Horan is and was the editor for the *Chronicle*.
7. More *Chronicle* readers have approached Mr. Horan to ask about the alleged misconduct involving the DK SO when he has been out in public in Abilene, such as when he goes to the grocery store, than any other issue he has covered in over seven years that he has been employed at the *Chronicle*.
8. Jurisdiction and venue are proper in this court pursuant to K.S.A. 45-222(a) as the district court in any county in which public records are located shall have jurisdiction to enforce the purposes of the KORA, and the records the *Chronicle* has requested are in Shawnee County, Kansas.
9. Defendant has failed to comply with KORA because although it provided copies of three "front" pages of Kansas Standard Offense Reports ("KSORs") in response to the *Chronicle*'s April 24, 2020 KORA request, it also denied the *Chronicle*'s request to provide copies of every other record contained in Case Number KBI17-247 and Case Number KBI18-265, subject to redaction under K.S.A. 45-221(d). See Exhibit A, Email

to Kansas Bureau of Investigation, April 24, 2020 (letter inadvertently dated April 24, 2010); Exhibit B, Letter from Kansas Bureau of Investigation, April 29, 2020; Exhibit C, KSOR “front” page, Case Number KBI17-247; Exhibit D, KSOR “front” page, Case Number KBI18-265; and Exhibit E, KSOR “front” page, Case Number 17001119.

Defendant investigates misconduct in the Dickinson County Sheriff’s Office

10. In 2017, Defendant investigated allegations of theft from the DK SO evidence room, and other crimes, by then-DK SO Lieutenant Greg Swanson (hereinafter “the Swanson investigation”).
11. In 2017, Defendant delivered a probable cause affidavit related to the allegations against Mr. Swanson to the Dickinson County Attorney’s Office.
12. Mr. Swanson was charged in Dickinson County Court on August 31, 2017.
13. In 2018, Mr. Swanson pled guilty and was convicted in Dickinson County District Court of one count of felony theft related to stealing over \$18,000 in cash from the DK SO evidence room. *See* Exhibit F, Horan, T., *Former Dickinson County deputy accused of theft of \$25,760*, ABILENE REFLECTOR-CHRONICLE, April 27, 2018.
14. Beginning in about late May of 2017, Defendant investigated approximately \$72,000 in cash determined to be missing from the DK SO evidence room (hereinafter “the 2017 investigation”). *See* Exhibit G, Letter from Kansas Bureau of Investigation, September 11, 2020.
15. The 2017 investigation lasted approximately a year and a half. *Id.*
16. Defendant did not deliver a probable cause affidavit to the Dickinson County Attorney’s Office in connection with the 2017 investigation.
17. Records related to the 2017 investigation are contained in Case Number KBI17-247.

18. Defendant has closed its investigation related to Case Number KBI17-247.
19. Beginning in about early May of 2018, Defendant investigated possible evidence destruction and interference with law enforcement by the Dickinson County Sheriff, Gareth Hoffman, or persons under his command (hereinafter “the 2018 investigation”).
Id.
20. The 2018 investigation lasted approximately a year. *Id.*
21. Defendant did not deliver a probable cause affidavit to the Dickinson County Attorney’s Office in connection with the 2018 investigation.
22. Records related to the 2018 investigation are contained in Case Number KBI18-265.
23. Defendant has closed its investigation related to Case Number KBI18-265.

Plaintiff’s April 24, 2020 KORA request

24. Pursuant to K.S.A.45-218(a), “[a]ll public records shall be open for inspection by any person, except as otherwise provided by” the Kansas Open Records Act.
25. In a letter signed by Mr. Horan indicating his title was editor of the *Chronicle*, the *Chronicle* delivered a KORA request to Defendant on Friday, April 24, 2020 via email.
Exhibit A.
26. In that April 24, 2020 KORA request, inadvertently dated April 24, 2010, the *Chronicle* sought “Documents identifying the outcome of the the [sic] Kansas Bureau of Investigation’s investigation into the missing funds of \$72,000 from the Dickinson County Sheriff’s Office Drug Investigation Task Force main property room in January 2017”; “Document[s] identifying the outcome of the Kansas Bureau of Investigation’s investigation of the sheriff’s deputy Toby Osborne the principal custodian of the Dickinson County Sheriff’s Office Drug Investigation Task Force main property room in

May 2017”; and “Documents identifying the outcome of the Kansas Bureau of Investigation’s...investigation of Dickinson County Sheriff Gareth Hoffman and Undersheriff James Swisher for failure to report the theft in May 2017”. *Id.*

27. The *Chronicle*’s April 24, 2020 KORA request also provided in pertinent part that “[i]f this request is denied, KORA requires that you provide me with ‘a written statement of the ground for denial. Such statement shall cite the specific provision of law under which access is denied.’ K.S.A. 45-218(d). In the event of denial, I hereby request that this ‘statement’ be furnished to me ‘no later than the end of the third business day following the date that the request for the statement is received.’ K.S.A. 45-218(d).” *Id.*

Defendant’s April 29, 2020 response

28. In a letter to Mr. Horan dated April 29, 2020, Defendant wrote that it had “identified two cases that [it] believe[s] relate to your request.” Exhibit B, p. 1.
29. The two cases Defendant identified that relate to the *Chronicle*’s request are KBI17-247 and KBI18-265. *See* Exhibit C and Exhibit D.
30. The records in Defendant’s possession that relate to the *Chronicle*’s April 24, 2020 KORA request, including but not limited to the “front” pages of KSORs, are “criminal investigation records” as defined in KORA, K.S.A. 45-217(c), as they were compiled in the process of preventing, detecting or investigating violations of criminal law.
31. The records in Defendant’s possession that relate to the *Chronicle*’s April 24, 2020 KORA request, including but not limited to the “front” pages of KSORs, are “public records” as defined in KORA, K.S.A. 45-217(g)(1), as they were made, maintained or kept by or are in the possession of a public agency.
32. To the extent that the records that relate to the *Chronicle*’s April 24, 2020 request contain

material which is not subject to disclosure under KORA, Defendant has a duty to make available that material which is subject to disclosure pursuant to K.S.A. 45-221(d).

33. Disclosure of “criminal investigation records” under KORA is generally governed by K.S.A. 45-221(a)(10), which provides in part that “[t]he district court, in an action brought pursuant to K.S.A. 45-222...may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure: (A) Is in the public interest; (B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution; (C) would not reveal the identity of any confidential source or undercover agent; (D) would not reveal confidential investigative techniques or procedures not known to the general public; (E) would not endanger the life or physical safety of any person; and (F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.”
34. K.S.A. 45-221(a)(10) also provides in part that “[i]f a public record is *discretionarily closed* by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.” (emphasis added).
35. On or about April 29, 2020, Defendant denied the *Chronicle*’s request to provide copies of records except for three pages: the “front” pages of the Kansas Standard Offense Reports (“KSORs”) related to Case Numbers KBI17-247 and KBI18-265 and the “front” page of a KSOR completed by the DK SO dated January 21, 2017. *See* Exhibit C and D;

see also Exhibit E.

36. According to Defendant’s April 29, 2020 letter, the records that relate to the *Chronicle*’s request are “criminal investigation records” as defined under KORA “with few exceptions—as explained below.” Exhibit B, p. 1.
37. According to Defendant, because of an “exception” for “the ‘front’ page of a Kansas Standard Offense Report (KSOR),” Defendant produced the three “front” pages in response to the *Chronicle*’s April 24, 2020 KORA request. *Id.*, p. 2.
38. Indeed, the Attorney General’s Office has found that a “front” page of a KSOR is presumed to be subject to discretionary disclosure under the KORA because application of K.S.A. 45-221(a)(10)(A) through (F) to the information generally contained thereon would ordinarily result in court-ordered disclosure of that information. *See* Kan. Att’y Gen. Op. 92-149, p. 2; *see also* Kan. Att’y Gen. Op. 98-38; 87-25; 84-124 (FN 1).
39. However, instead of explaining that it was exercising its discretion under K.S.A. 45-221(a)(10)(A) through (F) to close every record contained in Case Number KBI17-247 and Case Number KBI18-265 other than the three “front” pages, Defendant claimed it denied the *Chronicle*’s request because “[g]enerally, in accordance with K.S.A. 45-221(a)(10), [Defendant] do[es] not disclose criminal investigation records” without “a subpoena or court order”. Exhibit B, p. 1.
40. Instead of explaining that it was exercising its discretion under K.S.A. 45-221(a)(10)(A) through (F) to disclose the three “front” pages, Defendant claimed that it was permitted to disclose the “front” pages due to an unspecified “exception”. Exhibit B, pp. 1-2.
41. In response to KORA requests made by persons or entities other than Plaintiff on one or more occasion since January 10, 2011, Defendant has provided to such persons or entities

copies of “criminal investigation records” without a subpoena or court order.

42. Defendant’s April 29, 2020 letter failed to explain why it did not disclose the records that relate to the *Chronicle*’s April 24, 2020 request even though Defendant has provided copies of “criminal investigation records” to other persons or entities under the KORA without a subpoena or court.
43. Defendant’s April 29, 2020 letter did not include any reference to subsections (A), (B), (C), (D), (E) or (F) of K.S.A. 45-221(a)(10), despite the *Chronicle*’s request that it do so. *See Exhibits A and B.*
44. As such, Defendant failed to provide a “written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record” as required under K.S.A. 45-221(a)(10) when it denied the *Chronicle*’s April 24, 2020 KORA request except for the three “front” pages.

**The 2017 and 2018 investigations become a campaign issue in the
2020 Dickinson County Sheriff’s election**

45. Gareth Hoffman was elected Dickinson County Sheriff in 2008, 2012, and 2016.
46. On July 9, 2020, at a town hall forum in advance of the Dickinson County Republican primary featuring the two candidates for Dickinson County Sheriff, Sheriff Hoffman and challenger Jerry Davis, Mr. Davis criticized Sheriff Hoffman for how Sheriff Hoffman handled the allegations that led to the 2017 and 2018 investigations.
47. During the forum, Mr. Davis indicated that Sheriff Hoffman and Undersheriff James Swisher decided to handle the allegations internally, rather than reporting them, and that they put a sheriff’s deputy on paid administrative leave both because they didn’t want the deputy to lose his 25-year law enforcement career and also so the deputy could seek legal counsel to get disability retirement. *See Exhibit H, Hageman, K., Sparks fly at sheriff’s*

town hall, ABILENE REFLECTOR-CHRONICLE, July 13, 2020.

48. During the forum, Sheriff Hoffman told the audience that “Jerry Davis was not in the room. He assumes he knows all the answers. He wasn’t present for any of that, so he can assume it was all covered up. He can assume it was handled inappropriately, but if you don’t know all the facts around the case then it’s merely an assumption.” *Id.*
49. During the forum, Sheriff Hoffman told the audience that he took the appropriate action. *See Id.*
50. On July 23, 2020, Plaintiff published a Letter to the Editor it received from Dickinson County Attorney Andrea Purvis, who was elected Dickinson County Attorney in 2016. Exhibit I, Purvis, A., *Setting the record straight*, ABILENE REFLECTOR-CHRONICLE, July 23, 2020.
51. Ms. Purvis’s purpose was to “set the record straight” with regard to Sheriff Hoffman’s assertion during the July 9 forum “that the decision to have this incident investigated was [her] decision from the very beginning of the case and that the delay in having it investigated by an outside agency was because [she] was not ready to move forward.” *Id.*
52. Ms. Purvis wrote that in January of 2017, she had “sent out a letter to all law enforcement in the county outlining the *Giglio/Brady* procedure for law enforcement agencies.” *Id.*
53. Her January 2017 letter had stated in pertinent part that “[i]f the law enforcement agency determines that an officer engaged in conduct that involves untruthfulness, dishonesty, deceit or criminal conduct either before or during their employment, they shall immediately report it to the county attorney.” *Id.*
54. Ms. Purvis further conveyed that any delay of any prosecution was attributable to Sheriff Hoffman, writing that “Gareth Hoffman was forced to request the KBI investigate this

crime because I had taken his obligation to report it out of his hands and reported it myself.” *Id.*

55. On August 4, 2020, Sheriff Hoffman was defeated in the 2020 Dickinson County Republican primary election, and his tenure ends no later than January 2021.

September 2020 correspondence between Plaintiff and Defendant

56. On September 3, 2020, the *Chronicle* delivered a letter to Defendant regarding Case Numbers KBI17-247 and KBI18-265 that indicated in pertinent part that the *Chronicle* might forgo litigation in this matter if the KBI would “craft a statement that will provide meaningful information about the status of the case[s]” and that “would disclose ... and explain why the information contained in the ‘front’ pages [of the KSORs previously provided by Defendant] did not lead, or has not yet led, to a prosecution.” Exhibit J, Letter to Kansas Bureau of Investigation, September 3, 2020.
57. In response, Defendant delivered a letter to the *Chronicle* on September 11, 2020, in which Defendant wrote in part: “Regrettably, the KBI is not in a position to provide a statement such as [the *Chronicle*] requested on these cases.” Exhibit G.

COUNT I—DECLARATORY RELIEF—RECORDS ARE SUBJECT TO DISCLOSURE

58. The *Chronicle* adopts and alleges paragraphs 1-57 above as if fully set forth herein.
59. Disclosure of the records that relate to the *Chronicle*’s April 24, 2020 request, to wit, Case Number KBI17-247 and Case Number KBI18-265, is in the public interest.
60. Defendant cannot show that disclosure of the records that relate to the *Chronicle*’s April 24, 2020 request is not in the public interest.
61. Defendant cannot show that disclosure of the records that relate to the *Chronicle*’s April 24, 2020 request would interfere with any prospective law enforcement action, criminal

- investigation or prosecution.
62. Defendant cannot show that disclosure of the records that relate to the *Chronicle's* April 24, 2020 request would reveal the identity of any confidential source or undercover agent.
 63. Defendant cannot show that disclosure of the records that relate to the *Chronicle's* April 24, 2020 request would reveal confidential investigative techniques or procedures not known to the general public.
 64. Defendant cannot show that disclosure of the records that relate to the *Chronicle's* April 24, 2020 request would endanger the life or physical safety of any person.
 65. Defendant cannot show that disclosure of the records that relate to the *Chronicle's* April 24, 2020 request would reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.
 66. Plaintiff seeks a declaration of its rights under the Kansas Open Records Act to obtain a copy of records that relate to the *Chronicle's* April 24, 2020 KORA request, to wit, Case Number KBI17-247 and Case Number KBI18-265, subject to redaction as set forth in K.S.A. 45-221(d).
 67. Except for three pages, Defendant denied the *Chronicle's* request for copies of the records that relate to Plaintiff's April 24, 2020 request "in accordance with K.S.A. 45-221(a)(10)".
 68. Accordingly, a genuine controversy exists between the *Chronicle* and Defendant as to whether the requested records, other than the three pages, are subject to disclosure.

WHEREFORE, Plaintiff requests the Court enter its judgment declaring that the records that relate to Plaintiff's April 24, 2020 KORA request, to wit, Case Number KBI17-247 and Case Number KBI18-265, are public records subject to disclosure under the KORA, subject to redaction under K.S.A. 45-221(d), together with such other and further relief as the Court deems just and proper under the circumstances herein.

COUNT II—DECLARATORY RELIEF—WRITTEN CITATION FOR CLOSURE

69. The *Chronicle* adopts and alleges paragraphs 1-68 above as if fully set forth herein.
70. The *Chronicle* seeks a declaration of its right to receive “a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record” when a KORA request is denied under K.S.A. 45-221(a)(10) when the *Chronicle* has made a written request for such citation.
71. Defendant has disregarded its statutory obligation to provide such written citation, despite the *Chronicle*'s written request.
72. Accordingly, a genuine controversy exists between Plaintiff and the *Chronicle* as to whether Defendant was required to provide the *Chronicle* a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

WHEREFORE, Plaintiff requests the Court enter its judgment declaring that Defendant violated KORA when it failed to provide Plaintiff with a written citation to the specific provisions of paragraphs (A) through (F) that necessitated closure of the records that relate to Plaintiff's April 24, 2020 request, together with such other and further relief as the Court deems just and proper under the circumstances herein.

COUNT III—INJUNCTIVE RELIEF—DISCLOSURE OF REQUESTED RECORDS

73. The *Chronicle* adopts and alleges paragraphs 1-72 above as if fully set forth herein.

74. Pursuant to K.S.A. 45-222(a) and K.S.A. 60-901 *et seq.*, this Court has jurisdiction and authority to grant injunctive relief.
75. Defendant's refusal to disclose records that relate to the *Chronicle's* April 24, 2020 KORA request other than the three "front" pages, when such records are to be made available for public inspection upon request, constitutes irreparable injury and violates Plaintiff's rights as set forth herein.
76. Monetary damages would be insufficient to fully compensate or redress the injuries that the *Chronicle* has suffered, and will continue to suffer, absent injunctive relief, and monetary damages would be difficult, if not impossible, to calculate.
77. Unless injunctive relief sought is ordered, Defendant will continue to violate K.S.A. 45-215 *et seq.*
78. The Court should enter a mandatory injunction ordering Defendant to provide the *Chronicle* a copy of the records that relate to the *Chronicle's* April 24, 2020 request in addition to the three "front" pages, subject to redaction under K.S.A. 45-221(d), because disclosure would be in the public interest under K.S.A. 45-221(a)(10)(A) and would not cause any of the enumerated harms under K.S.A. 45-221(a)(10)(B) through (F).

WHEREFORE, Plaintiff requests the Court enter an order enjoining and compelling Defendant to comply with Plaintiff's KORA request and to disclose the records that relate to Plaintiff's April 24, 2020 KORA request in addition the three "front" pages, to wit, Case Number KBI17-247 and Case Number KBI18-265, subject to redaction under K.S.A. 45-221(d), together with such other and further relief as the Court deems just and proper under the circumstances herein.

COUNT IV—ATTORNEY FEES

79. Plaintiff adopts and alleges paragraphs 1-78 above as if fully set forth herein.
80. K.S.A. 45-216(a) provides that “[i]t is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy.”
81. K.S.A. 45-222(d) provides in pertinent part that “[i]n any action hereunder, the court shall award costs and a reasonable sum as an attorney’s fee for services rendered in such action, including proceedings on appeal, to be recovered and collected as part of the costs to the plaintiff if the court finds that the agency’s denial of access to the public record was not in good faith and without a reasonable basis in fact or law.”
82. To the extent that Defendant denied the *Chronicle*’s April 24, 2020 KORA request when it disclosed only the three “front” pages, such denial was not in good faith and without a reasonable basis in fact or law because Defendant knows or should know that disclosure of the requested records is in the public interest; disclosure of such records, redacted pursuant to K.S.A. 45-221(d), would not cause any of the harms set forth in K.S.A. 45-221(a)(10)(B) through (F); and Defendant is under a duty to make available that material which is subject to disclosure pursuant to K.S.A. 45-221(d).
83. To the extent that Defendant denied the *Chronicle*’s April 24, 2020 KORA request when it disclosed only the three “front” pages, such denial was not in good faith and without a reasonable basis in fact or law because Defendant failed to provide a written citation to the specific provisions of K.S.A. 45-221(a)(10)(A) through (F) that necessitated closure of all but three pages of the requested records despite Plaintiff’s written request and an express statutory obligation to do so under K.S.A. 45-221(a)(10).

84. To the extent that Defendant denied the *Chronicle's* April 24, 2020 KORA request when it disclosed only the three "front" pages, such denial was not in good faith and without a reasonable basis in fact or law because Defendant referenced an unspecified "exception" as its basis for disclosing the three "front" pages rather than explaining that the factors set forth in K.S.A. 45-221(a)(10)(A) through (F) allow for the discretionary disclosure of any criminal investigation record, including but not limited to "front" pages.
85. To the extent that Defendant denied the *Chronicle's* April 24, 2020 KORA request when it disclosed only the three "front" pages, such denial was not in good faith and without a reasonable basis in fact or law because Defendant knows or should know that the factors set forth in K.S.A. 45-221(a)(10)(A) through (F) allow for the discretionary disclosure of any criminal investigation record, including but not limited to "front" pages.
86. To the extent that Defendant denied the *Chronicle's* April 24, 2020 KORA request when it disclosed only the three "front" pages, such denial was not in good faith and without a reasonable basis in fact or law because Defendant failed to explain why it has disclosed criminal investigation records without a subpoena or court order to persons or entities who have requested such records under the KORA, but did not do so in response to the *Chronicle's* April 24, 2020 KORA request.

WHEREFORE, Plaintiff requests the Court enter its judgment declaring that Defendant's denial of all but three pages of records that relate to Plaintiff's April 24, 2020 KORA request, to wit, Case Number KBI17-247 and Case Number KBI18-265, was in bad faith and without a reasonable basis in fact or law for the purpose of awarding attorney fees under K.S.A. 45-222(d), and to order that Defendant pay Plaintiff's attorney fees, together with such other and further relief as the Court deems just and proper under the circumstances herein.

Respectfully submitted,

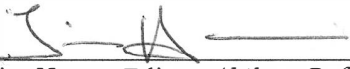
/s/ Maxwell E. Kautsch

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VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF DICKINSON)

I, Tim Horan, of lawful age, and after being first duly sworn on oath, state that I am an authorized representative of the named Plaintiff in the above-captioned action, that I have read the foregoing and know the contents thereof, and that all allegations of fact therein are true.



Tim Horan, Editor, *Abilene Reflector-Chronicle*

Subscribed and sworn to before me this 9th day of November, 2020.



Notary Public

My Appointment Expires:

7-31-2021



CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was filed electronically on the date and time shown on the electronic file stamp, with the Clerk of the Shawnee County District Court, providing notice to the following:

Laura Graham
Kansas Bureau of Investigation
1620 SW Tyler St.
Topeka, KS 66612
laura.graham@kbi.state.ks.us

/s/ Maxwell E. Kautsch

Maxwell E. Kautsch

April 24, 2010

Laura M. Graham
 Kansas Bureau of Investigation
 1620 S.W. Tyler Street
 Topeka, KS, 66612

I hereby submit this request under the Kansas Open Records Act (KORA) via email and regular mail for physical or electronic copies of the following public records:

- Documents identifying the outcome of the the Kansas Bureau of Investigation's investigation into the missing funds of \$72,000 from the Dickinson County Sheriff's Office Drug Investigation Task Force main property room in January 2017;
- Documents identifying the outcome the Kansas Bureau of Investigation's investigation of the sheriff's deputy Toby Osborne the principal custodian of the Dickinson County Sheriff's Office Drug Investigation Task Force main property room in May 2017;
- Documents identifying the outcome the Kansas Bureau of Investigation's outcome of the investigation of Dickinson County Sheriff Gareth Hoffman and Undersheriff James Swisher for failure to report the theft in May 2017;


If there is a cost associated with meeting this open request under K.S.A. 45-219, please indicate the approximate cost, both for copies and for any staff time that might be required to complete the request. electronic copies only.

If this request is denied, KORA requires that you provide me with "a written statement of the ground for denial. Such statement shall cite the specific provision of law under which access is denied." K.S.A. 45-218(d). In the event of denial, I hereby request that this "statement" be furnished to me "no later than the end of the third business day following the date that the request for the statement is received." K.S.A. 45-218(d).

In the event any record or records are disclosed as a result of this request, I certify, in accordance with K.S.A. 45-220(c)(2), that I do not intend to, and will not: "(A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.

Thank you for your assistance.

Tim Horan


 Editor, Abilene Reflector-Chronicle
 timdhoran@gmail.com
 785-263-1000
 KS drivers license k01-16-5955



Kansas Bureau of Investigation

Kirk D. Thompson
Director

Derek Schmidt
Attorney General

April 29, 2020

Tim Horan, Editor
Abilene Reflector-Chronicle
By e-mail: editor@abilene-rc.com

RE: Kansas Open Records Act (KORA) Request

Dear Mr. Horan:

Thank you for your latest letter, dated April 24, 2020, which was received via e-mail on the same date. You requested “physical or electronic copies of the following records:

- Documents identifying the outcome of the the [sic] Kansas Bureau of Investigation's investigation into the missing funds of \$72,000 from the Dickinson County Sheriff's Office Drug Investigation Task Force main property room in January 2017;
- Documents identifying the outcome the Kansas Bureau of Investigation's investigation of the sheriff's deputy Toby Osborne the principal custodian of the Dickinson County Sheriff's Office Drug Investigation Task Force main property room in May 2017;
- Documents identifying the outcome the Kansas Bureau of Investigation's outcome [sic] of the investigation of Dickinson County Sheriff Gareth Hoffman and Undersheriff James Swisher for failure to report the theft in May 2017;”

Based on the additional information you provided to clarify your previous requests dated April 9 and April 16, 2020, we queried our case management system and identified two cases that we believe relate to your request, notwithstanding that some of the dates and names you provided as being of interest differed somewhat from how they were captured in the KBI records. At any rate, we reviewed both of the cases we believe are relevant and concluded that with few exceptions – as explained below – the records you seek are criminal investigation records pursuant to K.S.A. 45-217(c), in that they were compiled by the KBI in the process of investigating possible violations of criminal law. Generally, in accordance with K.S.A. 45-221(a)(10), we do not disclose criminal investigation records except to a law enforcement agency or prosecutor’s office with a justified need for those records, or through the discovery process in connection with any associated prosecution. Otherwise, we require service of a subpoena or court order before disclosing the records.

Letter to Tim Horan

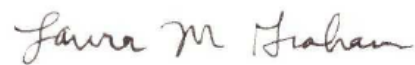
April 29, 2020

Page 2

One exception is the “front” page of a Kansas Standard Offense Report (KSOR), of which we located three within the two investigative files that relate to the matters identified in your request. One KSOR was completed by the Dickinson County Sheriff’s Office, and two were completed by the KBI. Therefore, enclosed are copies of the front pages from the three KSORs we located. Due to the minimal number of pages implicated, we are waiving our standard fee for providing these records on this occasion.

We hope this information is helpful. Please feel free to contact me if you have any questions or concerns. Otherwise, if you obtain a subpoena or court order for any of the records sought, please direct it to my attention.

Respectfully,

A handwritten signature in cursive script that reads "Laura M. Graham".

Laura M. Graham
General Counsel – AAG

LMG/sst
Enclosures

KANSAS STANDARD OFFENSE REPORT
FRONT PAGE OPEN PUBLIC RECORD

<input checked="" type="checkbox"/> INITIAL <input type="checkbox"/> MODIFY	<input type="checkbox"/> DELETE <input type="checkbox"/> ADD	NAME OF AGENCY Kansas Bureau of Investigation			KS AGENCY ORI NUMBER KSKBI0000			CASE NUMBER KBI17-247							
<input type="checkbox"/> ON VIEW <input type="checkbox"/> CITIZEN	<input checked="" type="checkbox"/> DISPATCHED	DATE OFFENSE STARTED (MMDDCCYY) 01/22/2017	TIME (HHMM) 12:00	DATE OFFENSE ENDED (MMDDCCYY) 05/22/2018	TIME (HHMM) 12:00	DATE OF REPORT (MMDDCCYY) 10/10/2018									
EXCEPTIONAL CLEARANCE DATE (MMDDCCYY)		EXCEPTIONAL CLEARANCE	A. <input type="checkbox"/> DEATH OF OFFENDER D. <input type="checkbox"/> VICTIM REFUSES TO TESTIFY		B. <input type="checkbox"/> PROSECUTION DENIED E. <input type="checkbox"/> JUVENILE - NO CUSTODY		C. <input type="checkbox"/> EXTRADITION DENIED N. <input checked="" type="checkbox"/> NOT APPLICABLE								
LOCATION OF OFFENSE 109 E First ST Abilene KS 67410			REPORT AREA		TIME REPORTED 11:00	TIME ARRIVED 12:00	TIME CLEARED 12:00								
CHAPTER SECTION SUB 1 SUB 2 21-5801(a)(1)(b2)			<input type="checkbox"/> ATTEMPTED <input checked="" type="checkbox"/> COMPLETED		<input type="checkbox"/> AID / ABET <input type="checkbox"/> CONSPIRACY <input type="checkbox"/> SOLICITATION		CHAPTER SECTION SUB 1 SUB 2 21-5801(a)(1)(b2)			<input type="checkbox"/> ATTEMPTED <input checked="" type="checkbox"/> COMPLETED		<input type="checkbox"/> AID / ABET <input type="checkbox"/> CONSPIRACY <input type="checkbox"/> SOLICITATION			
DESCRIPTION Theft of property or services; Value \$25,000 to \$100,000															
PREMISE 16	# OF PREM.	HATE/BIAS 88	CAMPUS CODE	METHOD OF ENTRY F. <input type="checkbox"/> FORCE N. <input type="checkbox"/> NO FORCE		PREMISE # OF PREM. HATE/BIAS CAMPUS CODE METHOD OF ENTRY F. <input type="checkbox"/> FORCE N. <input type="checkbox"/> NO FORCE									
TYPE OF THEFT M. <input type="checkbox"/> COIN MACHINE B. <input checked="" type="checkbox"/> FROM BUILDING A. <input type="checkbox"/> M V PARTS & ACC. L. <input type="checkbox"/> SHOPLIFTING P. <input type="checkbox"/> POCKET-PICKING S. <input type="checkbox"/> PURSE SNATCHING				E. <input type="checkbox"/> EMBEZZLEMENT T. <input type="checkbox"/> POSS. STOLEN PROP. V. <input type="checkbox"/> MOTOR VEHICLE F. <input type="checkbox"/> THEFT FROM M.V. O. <input type="checkbox"/> ALL OTHER N. <input type="checkbox"/> NOT APPLICABLE				TYPE OF FORCE / WEAPON 11. <input type="checkbox"/> FIREARM <input type="checkbox"/> AUTO 12. <input type="checkbox"/> HANDGUN <input type="checkbox"/> AUTO 13. <input type="checkbox"/> RIFLE <input type="checkbox"/> AUTO 14. <input type="checkbox"/> SHOTGUN <input type="checkbox"/> AUTO 15. <input type="checkbox"/> OTHER <input type="checkbox"/> AUTO							
OFFENDER SUSPECTED OF USING (SELECT UP TO 3) A. <input type="checkbox"/> ALCOHOL C. <input type="checkbox"/> COMPUTER EQUIP.				D. <input type="checkbox"/> DRUG / NARCOTICS N. <input checked="" type="checkbox"/> NOT APPLICABLE				TYPE OF CRIMINAL ACTIVITY (SELECT UP TO 3) B. <input type="checkbox"/> BUYING / RECEIVING C. <input type="checkbox"/> CULT / MANU / PUBL D. <input type="checkbox"/> DIST / SELLING E. <input type="checkbox"/> EXPLOIT. CHILDREN O. <input type="checkbox"/> OPER/PROMOTE P. <input type="checkbox"/> ASSIST POSSESS / CONCEAL.				T. <input type="checkbox"/> TRANS/TRANSMIT IMPORT U. <input type="checkbox"/> USING/CONSUMING J. <input type="checkbox"/> JUVENILE GANG G. <input type="checkbox"/> OTHER GANG N. <input type="checkbox"/> NO GANG INVOLVEMENT			
LOCAL CODE															

TYPE OF VICTIM I. <input type="checkbox"/> INDIVIDUAL B. <input type="checkbox"/> BUSINESS										S. <input type="checkbox"/> SOCIETY / PUBLIC F. <input type="checkbox"/> FINANCIAL INSTITUTION		R. <input type="checkbox"/> RELIGIOUS ORGANIZATION G. <input checked="" type="checkbox"/> GOVERNMENT		O. <input type="checkbox"/> OTHER U. <input type="checkbox"/> UNKNOWN		VICTIM OF OFFENSE NUMBER 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/>			
NAME: LAST Dickinson County										FIRST Sheriff's Off.		MIDDLE							
ADDRESS: STREET 109 E First ST										CITY Abilene		STATE KS		ZIP 67410					
TELEPHONE NUMBER (HOME)		RACE	SEX	ETHNICITY	RES. / N- RES	AGE	DATE OF BIRTH (MMDDCCYY)		HEIGHT	WEIGHT	HAIR	EYES							
DRIVERS LICENSE NUMBER		DL STATE	EMPLOYER / SCHOOL																
TELEPHONE NUMBER (WORK/SCHOOL)		ADDRESS: STREET										CITY		STATE		ZIP			
CIRCUM. AGG ASLT/BATTERY (MAX 2)		VICTIMS RELATIONSHIP TO CORRESPONDING SUSPECT NUMBER (INDICATE ALL SUSPECTS)						TYPE OF INJURY (MAX 5)											

NAME: LAST										FIRST		MIDDLE		ADDRESS: STREET										CITY		STATE		ZIP	
TELEPHONE NUMBER (HOME)		RACE	SEX	ETHNICITY	RES./N- RES.	AGE	DATE OF BIRTH (MMDDCCYY)		HEIGHT	WEIGHT	HAIR	EYES																	
EMPLOYER/SCHOOL			ADDRESS: STREET										CITY		STATE		ZIP		TELEPHONE NUMBER (WORK/SCHOOL)										

P	TYPE LOSS	PROPERTY / DRUG CODE	DESCRIPTION / SUSPECTED DRUG TYPE	ESTIMATED QUANTITY	FRACTION	TYPE DRUG MEASURE	VALUE	DATE RECOVERED
R <td>7</td> <td>0101</td> <td>\$72,020 in cash</td> <td></td> <td></td> <td></td> <td>\$72,020.00</td> <td></td>	7	0101	\$72,020 in cash				\$72,020.00	
D								
E								
S								

REPORTING OFFICER Crystal Hornseth	BADGE # 0606	DATE 10/10/2018	COPIES TO 21	PROPERTY TOTAL \$72,020.00
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KANSAS STANDARD OFFENSE REPORT
FRONT PAGE OPEN PUBLIC RECORD

INITIAL DELETE
 MODIFY ADD

ON VIEW DISPATCHED CITIZEN
NAME OF AGENCY: Kansas Bureau of Investigation
KS AGENCY ORI NUMBER: KSKBI0000
CASE NUMBER: KBI18-265

INCIDENT
DATE OFFENSE STARTED (MMDDCCYY): 01/19/2017
TIME (HHMM): 12:00
DATE OFFENSE ENDED (MMDDCCYY): 02/03/2017
TIME (HHMM): 16:00
DATE OF REPORT (MMDDCCYY): 10/10/2018

EXCEPTIONAL CLEARANCE DATE (MMDDCCYY):
EXCEPTIONAL CLEARANCE: A. DEATH OF OFFENDER B. PROSECUTION DENIED C. EXTRADITION DENIED
D. VICTIM REFUSES TO TESTIFY E. JUVENILE - NO CUSTODY N. NOT APPLICABLE

LOCATION OF OFFENSE: 2363 Jeep RD Abilene KS 67410
REPORT AREA:
TIME REPORTED: 11:00
TIME ARRIVED: 11:00
TIME CLEARED: 12:00

CHAPTER SECTION SUB 1 SUB 2
21-6002(a)(5)
 ATTEMPTED COMPLETED
 AID / ABET CONSPIRACY SOLICITATION

DESCRIPTION: Official misconduct; Destroy/tamper/conceal felony evidence

PREMISE # OF PREM. HATE/BIAS CAMPUS CODE METHOD OF ENTRY
16 88
F. FORCE N. NO FORCE

TYPE OF THEFT
M. COIN MACHINE E. EMBEZZLEMENT
B. FROM BUILDING T. POSS. STOLEN PROP.
A. M V PARTS & ACC. V. MOTOR VEHICLE
L. SHOPLIFTING F. THEFT FROM M V
P. POCKET-PICKING O. ALL OTHER
S. PURSE SNATCHING N. NOT APPLICABLE

OFFENDER SUSPECTED OF USING (SELECT UP TO 3)
A. ALCOHOL D. DRUG / NARCOTICS
C. COMPUTER EQUIP. N. NOT APPLICABLE

TYPE OF CRIMINAL ACTIVITY (SELECT UP TO 3)
B. BUYING / RECEIVING T. TRANS/TRANSMIT IMPORT
C. CULT / MANU / PUBL U. USING/CONSUMING
D. DIST / SELLING J. JUVENILE GANG
E. EXPLOIT. CHILDREN G. OTHER GANG
O. OPER/PROMOTE N. NO GANG INVOLVEMENT
F. POSSESS / CONCEAL

LOCAL CODE: 99 NONE

TYPE OF VICTIM
I. INDIVIDUAL S. SOCIETY / PUBLIC R. RELIGIOUS ORGANIZATION O. OTHER
B. BUSINESS F. FINANCIAL INSTITUTION G. GOVERNMENT U. UNKNOWN

VICTIM OF OFFENSE NUMBER: 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.

NAME: LAST FIRST MIDDLE
State of Kansas

ADDRESS: STREET CITY STATE ZIP

TELEPHONE NUMBER (HOME) RACE SEX ETHNICITY RES. / N-RES. AGE DATE OF BIRTH (MMDDCCYY) HEIGHT WEIGHT HAIR EYES

DRIVERS LICENSE NUMBER DL STATE EMPLOYER / SCHOOL

TELEPHONE NUMBER (WORK/SCHOOL) ADDRESS: STREET CITY STATE ZIP

CIRCUM. AGG ASLT/BATTERY (MAX 2) VICTIMS RELATIONSHIP TO CORRESPONDING SUSPECT NUMBER (INDICATE ALL SUSPECTS) TYPE OF INJURY (MAX 5)

NAME: LAST FIRST MIDDLE ADDRESS: STREET CITY STATE ZIP

TELEPHONE NUMBER (HOME) RACE SEX ETHNICITY RES./N-RES. AGE DATE OF BIRTH (MMDDCCYY) HEIGHT WEIGHT HAIR EYES

EMPLOYER/SCHOOL ADDRESS: STREET CITY STATE ZIP TELEPHONE NUMBER (WORK/SCHOOL)

Table with 7 columns: TYPE LOSS, PROPERTY / DRUG CODE, DESCRIPTION / SUSPECTED DRUG TYPE, ESTIMATED QUANTITY, FRACTION, TYPE DRUG MEASURE, VALUE, DATE RECOVERED. Row 1: 2, 0509, Evidence packaging, 5, \$5.00

REPORTING OFFICER: Crystal Hornseth
BADGE #: 0606
DATE: 10/10/2018
COPIES TO: 22
PROPERTY TOTAL: \$5.00

KANSAS STANDARD OFFENSE REPORT
FRONT PAGE OPEN PUBLIC RECORD

INITIAL DELETE
 MODIFY ADD

ON VIEW DISPATCHED CITIZEN
NAME OF AGENCY: Dickinson County SO
KS AGENCY ORI NUMBER: KS0210000
CASE NUMBER: 17001119

DATE OFFENSE STARTED (MMDDCCYY): 01/21/2017
TIME (HHMM): 15:35
DATE OFFENSE ENDED (MMDDCCYY):
TIME (HHMM):
DATE OF REPORT (MMDDCCYY): 01/21/2017

EXCEPTIONAL CLEARANCE DATE (MMDDCCYY):
EXCEPTIONAL CLEARANCE: A. DEATH OF OFFENDER B. PROSECUTION DENIED C. EXTRADITION DENIED
D. VICTIM REFUSES TO TESTIFY E. JUVENILE - NO CUSTODY N. NOT APPLICABLE

LOCATION OF OFFENSE: I-70 mm275 wb Abilene KS 67410
REPORT AREA:
TIME REPORTED: 15:35
TIME ARRIVED:
TIME CLEARED: 18:00

CHAPTER SECTION SUB 1 SUB 2: 21-5716(a)(e)(2)
 ATTEMPTED COMPLETED
 AID / ABET CONSPIRACY SOLICITATION

DESCRIPTION: Unlawful to aquire proceeds from drug trans; Value \$5,000 - \$100,000

PREMISE: 04 # OF PREM: HATE/BIAS: 88 CAMPUS CODE:
METHOD OF ENTRY: F. FORCE N. NO FORCE

TYPE OF THEFT: M. COIN MACHINE E. EMBEZZLEMENT
B. FROM BUILDING T. POSS. STOLEN PROP.
A. M V PARTS & ACC. V. MOTOR VEHICLE
L. SHOPLIFTING F. THEFT FROM M V
P. POCKET-PICKING O. ALL OTHER
S. PURSE SNATCHING N. NOT APPLICABLE

TYPE OF FORCE / WEAPON: 11. FIREARM AUTO
12. HANDGUN AUTO
13. RIFLE AUTO
14. SHOTGUN AUTO
15. OTHER AUTO

OFFENDER SUSPECTED OF USING (SELECT UP TO 3):
A. ALCOHOL D. DRUG / NARCOTICS
C. COMPUTER EQUIP. N. NOT APPLICABLE

TYPE OF CRIMINAL ACTIVITY (SELECT UP TO 3):
B. BUYING / RECEIVING T. TRANS/TRANSMIT IMPORT
C. CULT / MANU / PUBL U. USING/CONSUMING
D. DIST / SELLING J. JUVENILE GANG
E. EXPLOIT. CHILDREN G. OTHER GANG
O. OPER/PROMOTE N. NO GANG
P. POSSESS / CONCEAL. ASSIST INVOLVEMENT

LOCAL CODE:
TYPE OF VICTIM: I. INDIVIDUAL S. SOCIETY / PUBLIC R. RELIGIOUS ORGANIZATION O. OTHER
B. BUSINESS F. FINANCIAL INSTITUTION G. GOVERNMENT U. UNKNOWN
VICTIM OF OFFENSE NUMBER: 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.

NAME: LAST: State of Kansas FIRST: MIDDLE:

ADDRESS: STREET: CITY: STATE: ZIP:

TELEPHONE NUMBER (HOME): RACE: SEX: ETHNICITY: RES. / N- RES: AGE: DATE OF BIRTH (MMDDCCYY): HEIGHT: WEIGHT: HAIR: EYES:

DRIVERS LICENSE NUMBER: DL STATE: EMPLOYER / SCHOOL:

TELEPHONE NUMBER (WORK/SCHOOL): ADDRESS: STREET: CITY: STATE: ZIP:

CIRCUM. AGG ASLT/BATTERY (MAX 2): VICTIMS RELATIONSHIP TO CORRESPONDING SUSPECT NUMBER (INDICATE ALL SUSPECTS): TYPE OF INJURY (MAX 5):

NAME: LAST: FIRST: MIDDLE: ADDRESS: STREET: CITY: STATE: ZIP:

TELEPHONE NUMBER (HOME): RACE: SEX: ETHNICITY: RES./N- RES: AGE: DATE OF BIRTH (MMDDCCYY): HEIGHT: WEIGHT: HAIR: EYES:

EMPLOYER/SCHOOL: ADDRESS: STREET: CITY: STATE: ZIP: TELEPHONE NUMBER (WORK/SCHOOL):

TYPE LOSS	PROPERTY / DRUG CODE	DESCRIPTION / SUSPECTED DRUG TYPE	ESTIMATED QUANTITY	FRACTION	TYPE DRUG MEASURE	VALUE	DATE RECOVERED
6	0101	U.S. Currency				\$75,000.00	
6	0915	Zip-lock bags	24			\$1.00	
6	0611	Cell Phones	3			\$400.00	
6	0402	2009 Nissan Versa	1			\$5,000.00	

REPORTING OFFICER: Robison BADGE #: 812 DATE: 01/21/2017 COPIES TO: KBI 23 PROPERTY TOTAL: \$80,401.00

Former Dickinson County deputy accused of theft of \$25,760

April 27, 2018

Abilene Reflector-Chronicle

By Tim Horan

Reflector-Chronicle

Former Dickinson County Sheriff's Office Lieutenant Greg R. Swanson is accused of taking \$25,760 from the drug enforcement unit office evidence room, according to the affidavit filed by Christopher M. Nicholson, special agent, Kansas Bureau of Investigation.

The affidavit with some minor redactions was released by Senior Judge Robert W. Fairchild who is hearing the case to the Abilene Reflector-Chronicle after a Kansas Open Records request.

Swanson and the Kansas Attorney General's Office have agreed to a plea agreement for Swanson to serve five days in jail and receive 24 months of supervised probation in District Court of Dickinson County.

Judge Fairchild is scheduled to sentence Swanson at a hearing at 11 a.m. July 11.

The affidavit said that Gregory Swanson, as part of his duties, had custody and control to funds used to purchase narcotics in an undercover capacity. Swanson also had access to the drug enforcement unit (DEU) and evidence room with the DEU office.

According to the affidavit, on Jan. 25, 2012 a search warrant was executed on the residence of Judith Beal in Chapman.

"DKSO investigator Bret Gering seized 24 items of evidence to include \$18,085 in US currency," the affidavit read.

On Jan. 19, 2017 Gering was asked by DKSO Undersheriff James

Swisher to retrieve the money seized in the Beal case and get it deposited with the Dickinson County treasurer's office after Swanson had not completed the task.

"Gering went to get the money from the DEU evidence room but was met in the parking lot by Swanson," the affidavit said. "Swanson inquired of Gering what he was doing and Gering responded he was asked to deposit the Beal money. Swanson asked Gering to take a ride in his DKSO car with him. During the ride, Gering stated in his interview with the affiant, that Swanson admitted to him that he had stolen the Beal money. Swanson told Gering, 'I had to use the money for my dad's funeral and other things that have come up.' Swanson asked Gering not to tell anyone and stated he had spoken to his mom and she was going to the bank and would put the money back by 1/22/2017."

An audit conducted by Gering and Swisher revealed the missing funds totaled \$25,760.

The affidavit said that Swanson admitted to taking the Beal money but not all at once.

"Swanson stated he would take \$50 here and \$100 there and then pay back or attempt to pay back the money taken but he just got in over his head. Swanson was asked by the affiant about an open evidence bag found in his desk. Gering found the bag in Swanson's desk, the evidence tape was cut open, and the bag was missing \$500 of the \$700 it was supposed to contain. Swanson admitted he kept the evidence bag as a way of keeping track of what he had taken and needed to pay back", according to the affidavit.

When he resigned Swanson paid back \$19,000 from a loan his mother received on her home to provide the cash.



Kansas Bureau of Investigation

Kirk D. Thompson
Director

Derek Schmidt
Attorney General

September 11, 2020

Maxwell E. Kautsch, Attorney at Law
KAUTSCH LAW, L.L.C.
810 Pennsylvania Street, Suite 207
Lawrence, KS 66044
Via email to: maxk@kautschlaw.com

RE: September 3, 2020 Demand Letter – Case Numbers KBI17-247 and KBI18-265

Dear Mr. Kautsch:

I am writing to acknowledge receipt of your demand letter dated September 3, 2020. Your correspondence indicated you represent the *Abilene Reflector-Chronicle* and have been authorized by your client to file a petition seeking to compel disclosure of records from the above-referenced criminal investigation case files. Nonetheless, you relayed that your client might forego litigation if the KBI would “craft a statement that will provide meaningful information about the status of the case[s]” and further, that “would disclose . . . and explain why the information contained in the ‘front’ pages [of the KSORs previously provided by the KBI] did not lead, or has not yet led, to a prosecution.”

Regrettably, the KBI is not in a position to provide a statement such as your client requested on these cases. What the agency can tell you is the following:

- In late May 2017, the Dickinson County Sheriff’s Office (DKSO) requested that the KBI investigate approximately \$72,000 in cash determined to be missing from the DKSO evidence room. The KBI conducted a thorough investigation over the course of approximately a year and a half. Ultimately, it was determined that there was insufficient evidence to file criminal charges.
- In early May 2018, the Dickinson County Attorney requested that the KBI investigate possible evidence destruction and interference with law enforcement by the Dickinson County Sheriff or persons under his command. The KBI conducted a thorough investigation over the course of more than a year. Ultimately it was determined that there was insufficient evidence to file criminal charges.
- All criminal investigations involve unique facts and circumstances; they differ as to the type, quantity and quality of evidence available for consideration. *Suspecting* that a crime has been committed, and *proving* criminal conduct beyond a reasonable doubt to a jury, are at two ends of a spectrum.
- The KBI does not make charging determinations or file charges. It conducts investigations, gathers evidence and presents cases for prosecutorial consideration.

- Since no charges were brought in either of these cases, it would be inappropriate for the KBI to comment as to alleged involvement of any parties or the findings of the investigations. Doing so undoubtedly would have a chilling effect on future investigations. In the eyes of the law, all persons are considered innocent until proven guilty.

We realize this information may not satisfy your client's demands, and your client may decide to proceed with litigation. We appreciate the courtesy you have afforded by notifying the agency of this possibility, prior to filing a petition in Shawnee County District Court.

Respectfully,



Laura M. Graham
General Counsel - AAG

Reflector-Chronicle

50 cents

www.abilene-rc.com

Sparks fly at sheriff's town hall



Kathy Hageman • Reflector-Chronicle

Sheriff Gareth Hoffman makes his point.

Note: This is the first installment regarding Thursday's town hall meeting between the two candidates seeking the Republican nomination for Dickinson County Sheriff.

By Kathy Hageman
Reflector-Chronicle

Allegations regarding the theft of money from an evidence room, inappropriate behavior of officers and other issues were addressed during a town hall candidate forum Thursday night at Sterl Hall in Abilene.

Incumbent Sheriff Gareth Hoffman and challenger Jerry Davis, former detective and captain with the Dickinson County Sheriff's department, are both seeking the Republican nomination for Dickinson County sheriff.

Tim Horan, editor of the Abilene Reflector-Chronicle, moderated the forum, assisted by Allison Blake, director of the Abilene Area Chamber of Commerce.

Hoffman is seeking his fourth term as sheriff and also served as undersheriff for a time and held other positions in the department.

Davis was employed with the sheriff's department for 31 years until April when he was terminated by Undersheriff James Swisher.

Approximately 70 people attended the town hall in Sterl Hall, Abilene's largest indoor venue. Attendees were asked to wear masks and chairs were spaced in compliance with social distancing due to COVID-19 restrictions.

The candidates were not masked so they could be heard and understood.

The forum consisted of two segments. The first included allegations made by Davis which have been widely circulated on the "Support Jerry Davis for Sheriff" Facebook page, while the second segment included questions from the public.

"We had over 74 questions from the public," Horan said. "We're not going to get to them all. A lot of them were repeats."

The town hall format was unconventional with both candidates given the opportunity to provide multiple rebuttals. The forum lasted nearly 90 minutes and can be viewed on Davis' Facebook page. Hoffman also has a Facebook page "Re-



Kathy Hageman • Reflector-Chronicle

Former investigator Jerry Davis challenges the current sheriff.

Elect Gareth Hoffman."

Decision to run

Davis said he started his law enforcement career in 1989 at the sheriff's department, moved through the ranks from drug enforcement to patrol to criminal investigations which is where he worked until his termination on April 7.

Davis said the sheriff's office is more than a career, noting it has been "his life" the past 30 plus years and he was not ready to leave. He loves serving the people of Dickinson County and is ready to get back to work.

"I've seen the sheriff's office crumble down around me over the last several years with internal investigations, criminal investigations involving actual law enforcement officers at the agency and it broke my heart," he said.

Davis said that he truly wants to be sheriff. He related that Hoffman made it clear to everyone at the sheriff's department that his intention was to "win election one more time, serve two years and retire and hand the reins off to his undersheriff James Swisher."

Hoffman said he was running because a number of people came forward and asked him to "stick around." He loves the community, is blessed to serve in the community and, more importantly, loves the people he works with.

Also, his administration has several unfinished projects he would like to see through, including drug court, community policing, and addressing training needs for the physical and emotional well-being of law enforcement officers.

Hoffman has a story that will serve new young officers on his staff and wants them to feel comfortable enough to have conversations with him. "Not always as employee to boss, but as person to person," he said.

As for retirement, Hoffman said he has made hundreds of comments about retiring, likening it to comments people make about retiring after winning the lottery, so he does not know when he will retire. It may be two, four or eight years.

"I will retire when it feel right for me, my family and God," Hoffman said.

See **Town hall**, Page 2

Two seek Republican nomination for Kansas Senate

There will be two candidates on the official August 4 Republican primary ballot for the Kansas Senate in the 24th District.

Incumbent Randall Hardy is seeking reelection and is being challenged by J.R. Claeys.

The Abilene Reflector-Chronicle asked each candidate to respond to questions via email.

Candidates were asked to introduce themselves in 50 words or less and each answer was limited to 100 words.

Tuesday is the last day to register to vote in a primary election. Advanced voting starts on Wednesday, July 28 is the deadline for voters to apply for advance ballots by mail for the primary elections.

The primary Election Day is Aug. 4.

Randall Hardy

Age: 68
City: Salina

Tell us about yourself:

I have lived in Salina for 40 years, have three sons and was president

of Construction Rental in Kansas/Nebraska for 27 years. I'm active in church and served on civic, community and industry boards for 30 years...four

as Salina City Commissioner, prior to the past four years as state senator.

Your view on Medicaid expansion:

I believe strongly that citizens should have access to health care. Currently, local doctors and Abilene Memorial are asked to absorb medical expenses of the uninsured. That is wrong. I believe our medical providers should be reimbursed for their services. Harold Courtois, CEO of the hospital, told me in 2018 the hospital wrote off \$800,000 in uninsured claims. With access to Medicaid Ex-



Randall Hardy

pansion, citizens would not need to use emergency rooms, the very most expensive health care option, instead of primary care physicians.

Your view on medical marijuana

When I was knocking on doors in 2016, I met a family whose son with epilepsy would respond well to treatment with medical marijuana. They were thinking of moving to Colorado because they did not have access to this option in Kansas. I believe that if citizens with chronic conditions can be helped by the use of medical marijuana, they should have access to it for those purposes.

Your view on mail-in election ballots:

I am Vice-Chair of the Elections Committee in the Senate, and I have learned much about voting processes across the country. I like what the Kansas Secretary of State's office did this year to facilitate the use of advance mail-in ballots. This method provides voters another option, especially this year, if they are not comfortable going to the polls on election day or voting in advance in person. The advance mail-in ballot is absolutely safe and secure; otherwise, the Secretary of State would not ap-

See **Hardy**, Page 2

J.R. Claeys

Age: 42
City: Salina

Tell us about yourself:

For the past eight years I served in the Kansas House. I am currently employed by the

Trump campaign, working in battleground states for the president's reelection. This spring I was elected as a delegate to the Republican Convention. I live in south Salina with my wife, Caitlin, and my son, Grayson.



J.R. Claeys

Your view on medicaid expansion:

'No. My opponent voted with Democrats to expand Obamacare in Kansas, placing work-capable adults at the front of the line ahead of children, pregnant mothers and the disabled. My opponent caucused with Democrats to increase taxes on working Kansans, voting for the largest tax increase in the history of the state. My opponent also joined Democrats to vote against lower property taxes and property tax trans-

parency. My opponent chose a Democrat to lead his campaign for Kansas Senate. His campaign is funded by more than 25 Democrat donors.

Your view on medical marijuana:

Sure. Known as an expert on transportation issues, I designed budgets that maintained a Kansas highway system ranked as one of the top two in the nation — and a rural interstate system ranked number one in the country. I served on the Transportation Vision Task Force, developing the state's 10-year transportation program, and as a member of the Kansas Unmanned Aircraft Systems Joint Task Force. Committed to keeping your family safe, I championed the plan to increase the number of State Troopers on our highways, and delivered on a new prison to prevent early releases of dangerous criminals.

Your view on mail-in election ballots:

Okay. My opponent chose a Democrat to lead his campaign for Kansas Senate. His campaign is funded by more than 25 Democrat donors. My opponent votes with Democrat Governor Laura Kelly 94 percent of the time. He voted to restrict your

See **Claeys**, Page 2

Weather Watch

Record

Today's forecast high — 95
Today's forecast low — 74
Sunday's high — 90
Overnight low — 67
Weekend's precip. — 0
2020 precipitation — 17.47
Sunrise Tuesday. — 6:15 a.m.
Sunset today — 8:55 p.m.



Tuesday

High: 94
Low: 68
Mostly sunny.



Wednesday

High: 86
Low: 69
Cloudy. A 30% chance of showers before 1 p.m.



Thursday

High: 94
Low: 77
Party sunny.



Friday

High: 102
Low: 79
Sunny and hot.

We want your news:

Do you have something that should be seen in the Reflector-Chronicle? Send it to editor@abilene-rc.com.

Find us on Facebook:



Death notice

Joseph C. "Joe" Blackman

Funeral services for Joseph C. "Joe" Blackman, 76, of rural Abilene, are pending with Martin-Becker-Carlson Funeral Home in Abilene. Blackman died Thursday, July 9, 2020 at his home.

Preliminary hearing waived in aggravated assault involving crash

Reflector-Chronicle staff

The preliminary hearing of four felony charges against Colby Mohn was waived in Dickinson County District Court on Friday afternoon.

Special prosecutor Krista Blaisdell from Geary County said a plea agreement was being negotiated.

Magistrate Judge Keith Collett set arraignment for 9 a.m. on Aug. 19 before Judge Benjamin Sexton.

Mohn, 19, is accused of three counts of aggravated battery and failure to stop and remain at the scene of an accident resulting in great bodily harm stemming from a Sept. 17 crash in rural Dickinson County.

According to the affidavit, at approximately 1:35 a.m. on that date, Dickinson County Sheriff's deputies were called to a crash of a 2001 Ford F150 pickup in the 800 block of 2100 Avenue. The vehicle appeared to have rolled multiple times before coming to rest upright.

The driver of the vehicle, alleged to have been Mohn, had fled the scene.

According to the affidavit, the driver was trying to show three passengers he could "drift" the vehicle. Drifting a vehicle involves the driver of the vehicle forcing the vehicle to slide sideways through a turn.

One of the passengers stated that as the vehicle rounded the curve, the driver attempted to drift the rear end of the vehicle and lost control.

Another passenger stated that the driver was asked several times to stop.

The driver accelerated to what was estimated to be 40 to 50 miles per hour. In an attempted drift the driver lost control, forcing the vehicle to the west side of the road. The driver overcorrected, causing the vehicle to leave the roadway where it rolled.

Mohn is also accused of two misdemeanor possessions of marijuana and a DUI.

Conclusion:

I have been a fully engaged senator the past four years in Abilene. Chapman, Enterprise and Solomon...present in your communities and responsive to your concerns. I walked in parades (I was the Twizzler guy!), attended chamber functions, spoke at Rotary, presented residents turning 100 with Senate Tributes, visited with local and county commissions and councils and sponsored a bill that would help the Eisenhower Museum and Library. I averaged 25-30 trips to Dickinson County annually. It has been an honor to represent you in the Kansas Senate, and I hope I have earned your vote in the 2020 primary.

Hardy

Continued from Page 1
prove its use.

Your view on legal sports wagering:

Every year I have enjoyed visiting Abilene for the NGA spring and fall meets and have gotten to know several greyhound owners. I have great respect for the industry and believe greyhound racing should have access to legal sports wagering. Last session I carried an amendment to include greyhound racing in the sports gaming bill. If re-elected, I will continue to work hard for greyhound farms in Dickinson County—they are an important part of the county's economy.

Claeys

Continued from Page 1

Second Amendment Rights, receiving an F from the NRA. There is a reason no Democrat filed to run in Senate District 24. Democrats are happy with the voting record of my opponent. Republicans are right to be concerned about his record.

Your view on legal sports wagering:

Yep. I am known in the Kansas Legislature as a Conservative Fighter, defending Kansas values of Life, Faith and Family. I won the Award for Conservative Excellence from the American Conservative Union and co-authored welfare reform legislation that moved thousands of Kansans from welfare to work. Growing a strong economy and good-paying jobs in Kansas led me to public service. Raised in a family rooted in agriculture and entrepreneurship, I worked to cut red tape and make starting a business easier in Kansas. My career in small business advocacy prepared me to lead the fight against punishing taxes and the burden of regulation.

Conclusion:

I am a Republican and I ap-

preciate Republican votes on August 4. I served as chairman of the Kansas Young Republicans and as a member the State Executive Committee of the Kansas Republican Party.

I have served as a senior advisor, campaign manager, and general consultant for Republican congressional, senatorial and gubernatorial races in Kansas.

I also managed fundraising and pre-rally activities for the 2018 Topeka visit of President Donald J. Trump at the Kansas Expo Centre and managed the rally and event planning for the Wichita visit of Vice President Mike Pence in 2018.

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3	1	9	6	8	2	5	7	4
7	3	6	4	2	1	9	5	8
5	4	1	9	7	8	3	6	2
8	9	2	3	6	5	4	1	7
9	6	5	2	3	7	8	4	1
1	7	3	8	9	4	6	2	5
2	8	4	1	5	6	7	9	3



Kathy Hageman • Reflector-Chronicle

About 70 people attended the town hall for the two candidates seeking the Republican nomination for Dickinson County sheriff. Most were wearing masks and social distancing.

Town hall

Continued from Page 1

Theft and KBI investigation

One of Davis' allegations made public on Facebook involves several cases involving the theft of money from the evidence room and the sheriff's alleged non-cooperation with the KBI investigation.

Davis said one case occurred in 2017 when \$25,000 came up missing from the drug enforcement unit and involved the head detective of the unit. When confronted about the theft, the officer freely admitted to it and told the sheriff he had taken the money.

"What the sheriff did after that is what concerned me most. He placed the individual on paid administrative leave without starting any criminal investigation. The sheriff and that detective were good friends at the time," Davis said.

Later, a second theft from the other property room was discovered. Davis said Hoffman met with him and told Davis the second theft "didn't look good with what went on with the first theft" and that Hoffman and Swisher decided to handle it internally, not to report it, and put the individual on paid administrative leave for two reasons: They didn't want the officer to lose his 25-year law enforcement career and wanted him to be able to seek legal counsel to get disability retirement.

"To me, that's plain and simple covering up the theft of \$25,000," Davis said.

When the Kansas Bureau of Investigation (KBI) was investigating the theft, "the sheriff refused to answer certain questions posed to him by the KBI investigator," Davis said.

"I understand that every individual accused of a crime has the right to remain silent and refuse to answer questions. However, I believe the sheriff of Dickinson County owes the citizens of Dickinson County an answer as to why he refused to cooperate with that investigation," he said.

In reply, Hoffman said the first part of the story is correct and that the individual in the first case did confess, but that is not the time for a "knee jerk reaction" because it's important to determine who is and is not involved.

"Jerry Davis was not in the room. He assumes he knows all the answers. He wasn't present for any of that, so he can assume it was all covered up. He can assume it was handled inappropriately, but if you don't know all the facts around the case then it's merely an assumption," Hoffman said.

Hoffman said he took the appropriate action, including notifying the Dickinson County Attorney's office and was lead to believe she was not prepared

to move forward because of other issues surrounding the incident.

"Those issues, in my opinion fall under HIPAA (protecting sensitive health information) and I wouldn't discuss a case like that openly in the public because all it does is hinder the investigation," Hoffman said. "The KBI came in at my request once I believed the county attorney was ready to move forward. That is the delay."

Davis replied that during his conversations with the county attorney, he was advised that Hoffman had not provided the full information from the beginning and she asked him numerous times to contact the KBI and Hoffman refused. It was not until the county attorney contacted the attorney general's office and they told her to "make him" report it which is why it was finally reported.

Davis further noted that Hoffman did not even answer the question of why he did not cooperate with the criminal investigation. Davis feels the citizens need to know if the sheriff ever "fully cooperated with every question asked by the KBI" and Hoffman "never answered the question."

Hoffman responded that asking the KBI to investigate is cooperation and said Davis did not know it, but Hoffman took and passed a polygraph test which also is cooperation.

Davis replied he did know about the polygraph, but again noted that Hoffman did not answer the question. He wants to know if Hoffman answered the KBI's questions and whether the polygraph was a KBI-administered polygraph. Part of enforcing the law is cooperating fully in every criminal investigation, Davis said.

Hoffman responded that he had answered it and now they were just "playing tag."

Pornography viewing at work

Davis alleges that two separate officers were caught surfing pornography "while on duty getting paid by the taxpayers at the sheriff's office on county computer systems." One incident occurred in late 2018, the second in January 2020.

In the first incident, the officer was disciplined by being given two weeks off without pay and his schedule was changed so he came in one hour later in the morning, Davis said. As for the second incident, he does not know whether it was investigated or if any "discipline was meted out to that officer."

Hoffman replied he was only aware of one incident and the second one is "news to me." Hoffman said just because Davis was "informed" something happened, doesn't mean it's

necessarily true.

As for the one incident Hoffman said he knows of, the disciplinary action is not open record and was made after consulting with the county counsel, human resources and the group decided the appropriate disciplinary action.

"In a manner we felt was appropriate should there be any future incidents throughout the entire county. That we had drawn the line in the sand in the appropriate place," Hoffman said.

Hoffman asked the audience if they had ever worked somewhere and made a mistake. He asked them if they would want that information put out publicly. So even if he could discuss it, he won't because it's not legal and it's also not appropriate.

Hoffman did note that if he could talk about an employee's personnel file he would explain why he terminated Jerry Davis, but he could not do so legally.

Davis responded that individual (watching pornography on duty) held a position of rank and wants to know if the person still holds a position of rank, has authority and is still employed by the sheriff's office.

As for the second incident, Davis said he learned about it from a county IT (internet technology) person while Davis was still employed at the sheriff's office. The IT person initially was not going to report it to the sheriff because he felt the sheriff did not act appropriately to the first incident. Davis said he thought about it and told the IT person to report it to the sheriff. Davis said he later followed up with the IT employee and learned the second

incident had been reported to the sheriff.

Getting personal

Also, since Hoffman brought up Davis' termination, Davis said there were a lot of rumors going around why he was terminated and he keeps the letter of termination with him and shows it to anyone interested so they can form their own opinions.

"I was fired April 7 of this year because I wanted to run for sheriff. That's why I was terminated. Anybody who wants to see those letters, they're available," Davis said.

He will not post them on the internet because he is involved with litigation regarding the termination.

Davis also addressed Hoffman's comments regarding inappropriate talking in public. Davis said an officer working for the sheriff's department told people Davis was fired for breaking the law and told people that Jerry's supporters were taking down Gareth Hoffman signs and putting Davis signs in their place. "Which is absolutely not true," Davis said.

Another officer, less than a month ago, told people that Davis likes to attend boys wrestling matches, implying that "maybe I was a pedophile or to that effect," Davis said. "That hurt deeply. I want to know if he's taking any action against that officer even if it's initiating an investigation."

When Hoffman was asked if he had any rebuttal, he replied, "I think I've answered."

The second installment will include information about drug interdiction on I-70 and other topics.

Lotteries

Powerball

Drawing July 11
14 19 61 62 64 4
Power Play = 2

Mega Millions

Drawing July 10
10 15 20 49 53 22
Megaplier = 5

Lucky for Life

Drawing July 9
10 24 28 33 39 12

Super Kansas Cash

Drawing July 11
7 10 15 22 26 25

2by2 Kansas

Drawing July 12
Red — 14 20
White — 15 21

Pick 3

Drawing July 12
Midday — 0 6 6
Evening — 4 0 3

*Numbers are unofficial

Market Watch

	End of day	\$			
	Friday	Change			
DJIA	26,075.30	+369.21			
ADM	37.81	-0.87	Johnson & Jo.	142.37	-0.12
ADM	39.38	1.57	McDonald's	184.88	0.55
Apple	383.68	0.95	Microsoft	213.67	-0.65
AT&T	30.13	0.59	Pepsico	134.46	1.75
Bank of Am.	24.02	1.25	Pfizer	33.83	0.37
Bayer	17.98	0.08	Sprint	8.62	0
Boeing	178.44	5.16	Union Pacific	166.39	0.4
BP	22.46	0.41	UPS	115.07	0.62
Caterpillar	128.01	2.28	Wal-Mart	130.68	2.93
Coca-Cola	45.15	1.24			Stock Market Watch
ConocoPhillips	39.69	1.34			
Deere	159.09	1.44			
Everygy	61.98	1.11			
Exxon Mobile	42.65	1.29			
Ford Motor	6.1	0.26			
Harley-David	26.4	0.65			
Home Depot	250.11	2.15			
IBM	118.35	2.64			

Grains:

Prices as of 7:15 a.m.

Wheat	\$4.56
Change	-0.01
Corn	\$3.08
Change	-0.17
Soybeans	\$8.08
Change	-0.19
Milo	\$3.53
Change	-0.17

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Setting the record straight

By Andrea Purvis

Dickinson County Attorney

I recently received a telephone call from a friend asking me if I had watched the debate between the two candidates for Dickinson County Sheriff. It was the debate that occurred in Abilene on July 9.

They called because there was a public discussion between the candidates regarding my involvement, as county attorney in the reporting and investigation of the theft of a large sum of money by one of the drug task force investigators.

Specifically, Gareth Hoffman asserted that the decision to have this incident investigated was my decision from the very beginning of the case and that the delay in having it investigated by an outside agency was because I was not ready to move forward.

I want to set the record straight about what occurred leading up to the request for the KBI to investigate this incident. Prior to becoming county attorney, I had been the assistant county attorney for Dickinson County since August 2012. I had a good working relationship with law enforcement in this county and trusted the Sheriff and Chief of Police to do their jobs and lead their departments professionally and ethically. I was sworn in as county attorney in January 2017.

In January 2017, I sent out a letter to all law enforcement in the county outlining the Giglio/Brady procedure for law enforcement agencies. It in part says, "If the law enforcement agency determines that an officer engaged in conduct that involves untruthfulness, dishonesty, deceit or criminal conduct either before or during their employment, they shall immediately report it to the county attorney. The law enforcement agency will provide all materials related to this conduct. The county attorney will review the conduct to determine if it is "Giglio/Brady" material.

It goes on to explain that, if the county attorney determines there are issues with an officer's credibility, that the County Attorney has to provide that information to defense counsel as part of the discovery process. Most often, Giglio/Brady issues are not criminal in nature. Those types of investigations are usually internal investigations into the officers' honesty.

However, if there are any indications that the officer has actually committed a crime, it is the responsibility of the sheriff or chief

of police to immediately call an outside/unconflicted agency in to do the criminal investigation. The County Attorney is then informed of the outside investigation of a potential crime and will arrange for an unconflicted prosecutor to get involved to work with the investigative agency and make the decisions about prosecution.

This did not happen in the case involving the drug task force investigator. I was informed by Gareth Hoffman and James Swisher on Jan. 30, 2017, that the investigator had Giglio/Brady issues. At that time, they did not tell me there was a theft. They indicated that they were doing an internal investigation and they would provide me the information to review. I assumed it was non-criminal in nature.

Around Feb. 8, 2017, I met with them again. They informed me it was a theft but they couldn't give me details yet since they were looking into it. Because I trusted them, I assumed at that time that they would be contacting the KBI or another non-conflicted agency to investigate. I then sent out letters to defense counsel informing them that this investigator had Giglio/Brady issues.

Sometime around the first part of March, we met again and they provided me with more details from their investigation including the amounts of money in question. I asked whether they had gotten the KBI on board. I was told that they had talked with outside counsel – no name provided – and that they were told that because they were the victim in the case they didn't have to report it.

I was shocked and disagreed with them. I told them, at that time, to contact the KBI and ask for the incident to be investigated. I came back and let my deputy county attorney know what was going on and he agreed that I advised them appropriately. I believed that they would be contacting someone to investigate after being instructed to do so.

Later in March or in early April, Hoffman and Swisher asked to meet with me again. This time they had a stack of information showing me that the investigator had physical and mental health issues that had caused him to commit this crime and that we shouldn't move forward to investigate because of these factors. It was at this time I realized that they hadn't requested the outside investigation as I had previously advised. I explained to them that this information was information that could be used by

defense counsel during prosecution. It did not mean that it shouldn't be investigated and prosecuted. I told them again to contact the KBI.

After this meeting, I updated my deputy county attorney. I then met with four fellow prosecutors and consulted with them on what my obligation was as county attorney in this situation as I now believed that Gareth Hoffman and James Swisher were not going to report this crime and have it investigated. They confirmed that I would need to call the attorney general's office to report what was happening, request that they assist in this investigation and eventual prosecution, and to get the KBI involved.

On May 3, 2017, I took my deputy county attorney with me to meet with Gareth Hoffman and James Swisher. I told them, because they had failed to have this crime investigated, I was now obligated to report the crime myself and that as soon as I returned to my office I would be doing so. I returned to my office and called the Attorney General's office.

They referred me to the KBI supervising agent for our area and I called him. He told me that he had just gotten off the phone with Gareth Hoffman who was letting him know that I would be calling him to request this investigation. He then said that he told Gareth Hoffman that Gareth should have been the one to request this investigation when they first discovered the theft and he told Gareth that Gareth would be requesting the investigation – not the county attorney.

So finally, Gareth Hoffman was forced to request the KBI investigate this crime because I had taken his obligation to report it out of his hands and reported it myself.

My only regret in this situation is, by trusting law enforcement to do the right thing immediately, it took me so long to understand that the right thing was not being done before I took matters into my own hands. A difficult lesson to learn as a brand-new county attorney.

By coming forward with this information, I am not advocating for one candidate over the other. I just wanted to set the record straight as far as my part in that investigation and how things actually happened.

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September 3, 2020

Laura Graham
Kansas Bureau of Investigation
1620 SW Tyler St.
Topeka, KS 66612

VIA REGULAR MAIL AND EMAIL TO laura.graham@kbi.state.ks.us

Re: Case Numbers KBI17-247 and KBI18-265

Dear Ms. Graham:

I am writing on behalf of my client, the *Abilene Reflector-Chronicle*. As you may recall, the *Reflector-Chronicle* submitted a request under the Kansas Open Records Act (hereinafter “KORA”) on April 24, 2020. The KBI responded in a letter dated April 29, 2020, with which were enclosed the “front” pages of three Kansas Standard Offense Reports, including two “front” pages containing the above-referenced case numbers. However, also in that April 29 letter, your agency declined to disclose any additional records, citing K.S.A. 45-221(a)(10). The letter further advised that the KBI would be unwilling to disclose the balance of the requested records without a court order.

My client appreciates the disclosure of the “front” pages and understands your agency’s position that the KBI would disclose the remaining records only pursuant to a court order. But my client is also hopeful that your agency can appreciate that the “front” pages do not contain sufficient information for my client to report on the status of the KBI’s investigations. Rather, the “front” pages, as responses to my client’s specific KORA request, beg more questions than they answer. They suggest that on multiple occasions, a Dickinson County Sheriff’s Office deputy allegedly stole tens of thousands of dollars from the evidence room of the Dickinson County Sheriff’s Office. Yet no one has been prosecuted, even though a different Dickinson County sheriff’s deputy, Gregory Swanson, was convicted in 2018 for felony theft of over \$20,000 from the same evidence room, and his law enforcement certification was revoked.

As there is no criminal prosecution in connection with Case Numbers KBI17-247 and KBI18-265, my client is unable to report on the matter as would be possible if the case were to proceed through the court system. There is no probable cause affidavit, or even a complaint, to help

inform the public. Even so, interest in the matter remains high, and was further heightened during election season this year. As you may know, in the run-up to the 2020 primary election last month, which the current sheriff lost, his participation in the KBI's investigations became a central campaign issue, particularly after the local county attorney wrote a Letter to the Editor published in the *Reflector-Chronicle* challenging the sheriff's public statements about the investigations.

Given the complexity of the issues at hand, the "front" pages do not enable my client to adequately explain to its readers why your agency's investigations of two sheriff's deputies for ostensibly the same conduct have not resulted in the same outcomes. The community wonders why one deputy, Mr. Swanson, suffered penalties but the other hasn't, even though the investigations in connection with Case Numbers KBI17-247 and KBI18-265 appear long concluded. The records contained in those case files would surely shed light on those questions and others begged by the "front" pages.

Thus, on behalf of my client, I have drafted a petition to seek disclosure of those records, and my office has authority to file a civil action in Shawnee County District Court. However, that step may only be necessary if my client cannot otherwise report why no one has been charged in connection with Case Numbers KBI17-247 and KBI18-265. Thus, my client proposes that your agency craft a statement that will provide meaningful information about the status of the case. For example, if your agency has declined to recommend charging anyone in connection with Case Numbers KBI17-247 and KBI18-265, the statement would disclose that fact and explain why the information contained in the "front" pages did not lead, or has not yet led, to a prosecution. I would be happy to negotiate the details of such a statement if you would like.

If I do not hear from you by the close of business on Friday, September 11, 2020, this offer will be withdrawn, and my client will have no choice but to proceed with litigation. But I am hopeful your agency will consider the foregoing proposal as a potential alternative. Thank you for your assistance.

Sincerely,

Max Kautsch

Maxwell E. Kautsch

cc T. Horan