

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
THIRD JUDICIAL DISTRICT – DIVISION 6

THE WHITE CORPORATION, INC.,)
d/b/a THE ABILENE REFLECTOR-)
CHRONICLE,)

Plaintiff,)

v.)

Case No. 2020-CV-488

KANSAS BUREAU OF)
INVESTIGATION,)

Defendant.)

**DEFENDANT’S RESPONSE AND ANSWERS TO
PLAINTIFF’S FIRST INTERROGATORIES TO DEFENDANT**

Defendant Kansas Bureau of Investigation, pursuant to K.S.A. §§ 60-226 and 60-233, sets forth the following objections and answers to Plaintiff’s First Set of Interrogatories.

DEFINITIONS

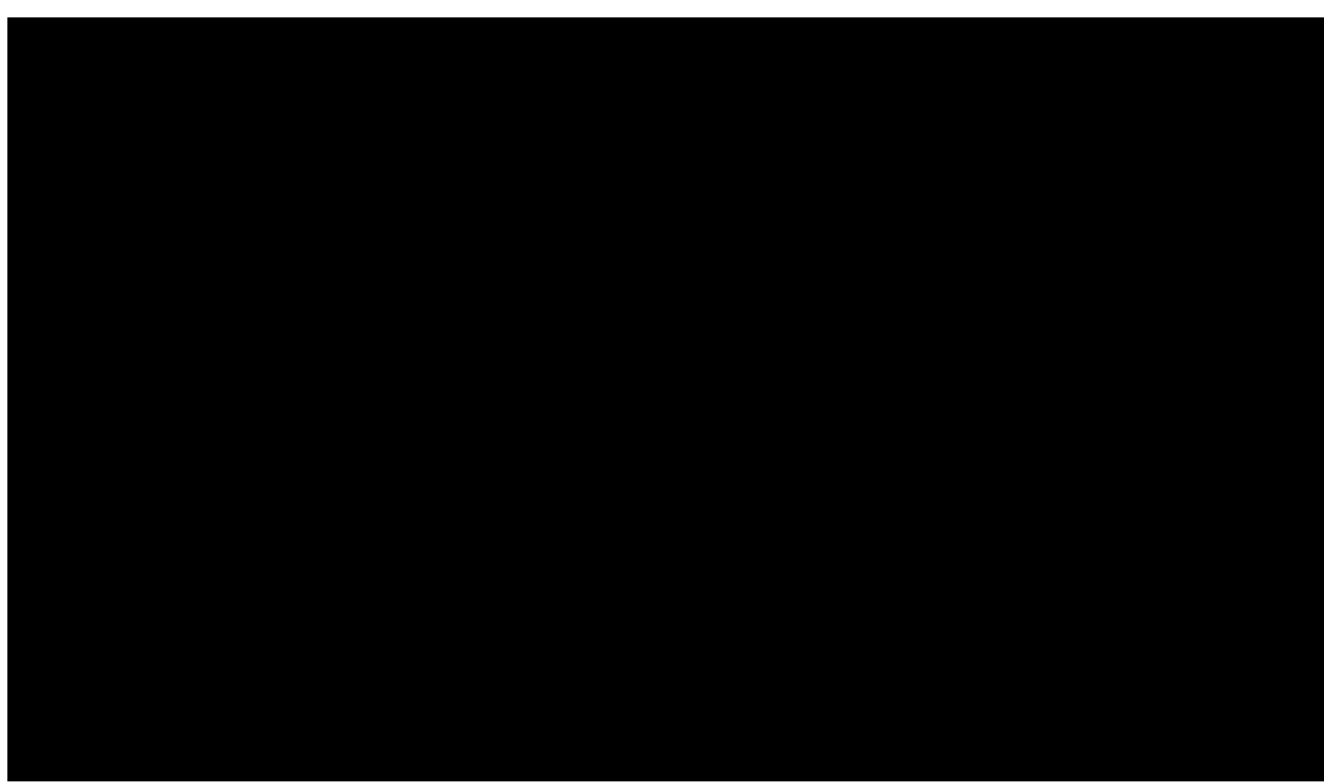
1. When referring to “you” or “yours” within these Interrogatories, the terms mean KBI as well as, and including, any of its affiliates, subsidiaries, representatives, employees, or agents.

2. When referring to “Defendant” or “KBI” within these Interrogatories, the term means the same as “you,” as defined previously.

3. The words, “document” or “documents” mean any kind of written or graphic matter, however produced or reproduced of any kind or description, whether sent or received or neither, including but not limited to: the original or any copy of correspondence, records, memoranda, data, notes, communications, text messages, instant messages, e-mails, e-mail attachments, telegrams, minutes, reports, schedules, word processing documents, tables, graphs, charts, books, accounts, vouchers, bills, statements, journals, ledgers, checks, invoices, contracts, agreements, orders, diaries, and magnetic or other recorded tapes.

4. The words, “tangible evidence,” mean any and all other physical materials or matter of any kinds or description, which is not a document.

5. The words, “regarding,” “in relation to,” “relating to,” or “pertaining to,” when used with respect to a document, agreement, subject or fact, means embodying, containing, evidencing, reflecting, reciting, recording, supporting, repeating or referring to.

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8. State with particularity each fact known to you and upon which you rely to support that the release of the records Plaintiff requested under the Kansas Open Records Act on April 24, 2020 would not be in the public interest.

ANSWER:

It is impossible to state all known facts and facts upon which Defendant relied in response to a general premise on a specific date. However, Defendant states that it is dedicated to providing professional investigative, laboratory and criminal justice information services to criminal justice agencies for the purpose of promoting public safety and preventing crime in Kansas. In carrying out its mission, the Bureau opens approximately 500 investigations per year. Many are high-profile cases, including homicides, rapes, officer-involved shootings or uses of deadly force, gang-related or high-level drug distribution schemes. A number of those cases result in charges being brought against public officials such as law enforcement officers and county and municipal employees. In order for the KBI to perform thorough, objective investigations, and in order for the public to trust in the KBI's investigations, it is critical that people questioned and interviewed know that the information they provide will be safeguarded and will be disclosed only as necessary to further the investigation and any prosecutions that ensue.

Criminal investigations, by nature, generally include detailed and very personal information about persons known or related to a crime victim or suspect. While some investigations produce information that allows for prompt identification of a suspect, others require extended and detailed exploration of many individuals who may be considered persons of interest or suspects. Even the most thorough and diligent

investigations do not always provide clarity to a person's involvement in a case. People frequently disclose sensitive information to KBI agents or to others who in turn provide it to the KBI along with evidence or other material that eventually makes its way into the criminal investigation case file records. Sometimes this information consists of false, uncertain, or mistaken allegations or leads that ultimately are pursued to a dead end. Potentially embarrassing, humiliating or upsetting personal information regarding victims, witnesses or suspects, or their families may be gathered in the course of investigations. Release of this information would be detrimental not only to the disclosing or affected persons individually, but also to the investigative process. Records containing this information, substantiated or not, may be damaging to a person's reputation. Knowledge that information—shared privately and in confidence with a KBI agent—could later be disclosed to the media or general public would have a chilling effect on the cooperation of both victims and witnesses in future investigations – related or not to the original investigation – therefore constraining successful resolution of criminal cases. Compromising the integrity of criminal investigations is not in the public interest.

Similarly, witnesses and victims may very well refuse to talk about information they observed or know about a crime, especially a high profile crime referenced above, if they believe their information could be made known to the media or general public. The fear of retribution and physical harm to a witness or their family has a chilling effect on successful investigations. Witness will not talk to law enforcement officers, including KBI agents, for fear of this retribution. Public disclosure of criminal investigation information is therefore against the public interest.

Specifically, one 2004 double homicide case was a witness elimination situation from an unrelated robbery/attempted murder. Word got out that a witness was talking to the police so the two suspects (one currently on death row) picked out who they felt was the likely individual and murdered her and her boyfriend. They were wrong about who provided information – and agents had to work very hard to protect the live witness who was cooperating. The cooperating witness was scared before the double homicide, and absolutely terrified after the murders.

The retribution fear is so pervasive that agents can't feasibly document all the times that they are asked in interviews as to who is going to know that the witness/victim spoke to the cops/cooperated, and if the agent is going to tell people what they said. Agents have learned over a number of years how to soothe the witness's/victim's fear or apprehension about speaking with officers/agents by telling them that the only time the information may come up is if the case goes to court. If investigation reports are made public, open record, witnesses will not talk for fear of retribution even if their personal information is redacted or not disclosed. This inability to effectively interview witnesses can disable the ability to solve crimes and is against public interest.

In numerous cases involving drugs it seems that very few witnesses want to talk to agents. There are many reasons that people don't want to cooperate: out of fear of retribution, being labeled a snitch, and being cut off from peers and drug sources. In a

recent case involving a missing person, several witnesses did not want to cooperate due to these fears. Agents cannot count how many times they hear from a witness that they do not want to testify and inquire if their statement will remain confidential. In most cases involving drugs, most witnesses are reluctant for fear of being exposed. If this fear is perpetuated by making investigative records open to the public, witness cooperation can only get worse and will make it that much harder to get evidence and testimony to solve crimes.

In any domestic violence (DV) investigation and sexual assault (when the suspect is known) investigation, public exposure of investigation records poses a major concern. The fear for law enforcement and victims (and their families) is that the suspect will commit further violence and re-attack the victim due to the disclosure, or lash out worse when it is known by the offender that the victim disclosed the abuse to law enforcement. In these DV and assault cases, the fear of public exposure also makes victims and even other witnesses not come forward with information about crimes due to fear of social retribution and loss of employment (if it is a co-worker). It is an embarrassment.

In the case of law enforcement officers being the suspect(s), many domestic victims are especially afraid of physical retaliation by the officer or social retribution from other officers or their spouses (“I did not report because my husband/wife is a cop and all cops stick together, no one would believe me.”) Public exposure of statements increases the fears of this retaliation and social retribution because it gives other officers and their spouses the specific knowledge of who complained about what officers, and what that person said.

In a former LEO domestic violence investigation it was very difficult to get the victim to completely disclose the abuse. It was a constant challenge to make sure she would be willing to testify all the way to the moment of trial. The victim was very scared of retaliation from the suspect/husband, concerned that law enforcement officers stick together and that no one would believe her. Once her testimony and the events were made public and information was disclosed to the public, things were more stressful for her and their children. Her fear of the events and her statements becoming public made it difficult to successfully prosecute the case.

In a case involving a former police chief with concerns of bullying and official misconduct, the victim was a co-worker in emergency management. The victim was very concerned that—as soon as the information was in the public and the suspect knew who disclosed it—retaliation and further bullying would occur. The fear of the witness statements and information becoming public information made it difficult to investigate this case. A public perception that their statements will become public—whether or not charges are filed, will make it very difficult to investigate cases. This, in turn, is against the public interest.

In a case involving a former sheriff for official misconduct and selling a firearm to a felon, the agent had to schedule an interview out of the county with a witness-deputy for a disclosure. The officer was very concerned about being fired or retaliated against after the agents contacted the suspect-sheriff. This concern was so severe that part of the bond requirements included the sheriff not creating a hostile work environment, no authorization to be in the law enforcement building after original charges were filed

and the arrest effected. The sheriff violated bond conditions and was re-arrested after confronting the witness-deputy who initially reported. With sheriffs' deputies being at-will employees, it is more of a concern for employees losing their jobs.

In a current investigation on a sheriff, the same concerns about witnesses exists. The deputies and undersheriff are afraid of losing their jobs if the information is made public. With these concerns, making KBI files open will only make it more difficult, if not impossible to effectively investigate cases, especially involving law enforcement misconduct. The inability to effectively investigate and solve crimes is against the public interest.

In one case involving the arrest and prosecution of a police chief, the case was riddled with witnesses or people scared to talk on the former chief. The former chief even retaliated against the investigating agent and a person inside the police department that was giving information. If witnesses believe their information is made public—regardless of whether charges will be filed—then they will not talk. When witnesses do not talk, it is harder to get enough information to solve crimes and prosecute criminals. Public disclosure of investigation records by way of open records requests, is contrary to the public interest.

This is also true in human trafficking cases. Victims rarely talk because they are terrified of the offender. If their statements are routinely made public based on open records requests, victims will be that much more hesitant to speak out.

In one 2012 missing person/homicide case. A witness was very hesitant to cooperate for fear of retribution and physical harm. The witness was attacked by an individual with a hammer. The attack caused exceptional fear in the witness and the witnesses' family regarding the perception by others about the witness's involvement in the missing person/homicide.

These concerns about witnesses not wanting to talk for fear of retribution, and thus public exposure of witness participation being adverse to public interest, is present in the underlying investigations at issue in the present case.

In one interview of a Dickinson County deputy, he stated that after his initial interview, his relationship with command staff officers has been strained. They get up and leave if he walks in the room.

One Dickinson County sergeant was asked whether he knew how the case was handled internally. He responded: "Yeah, but I better not say."

One deputy was advised by commanding officers that he would be fired if he spoke about a theft. That deputy initially refused to speak with the investigating county attorney for fear of losing his job.

If officers know their statements or cooperation against fellow officers can become public record through KORA requests, their fears will only magnify and it will be even more difficult to get them to cooperate. This is against the public interest.

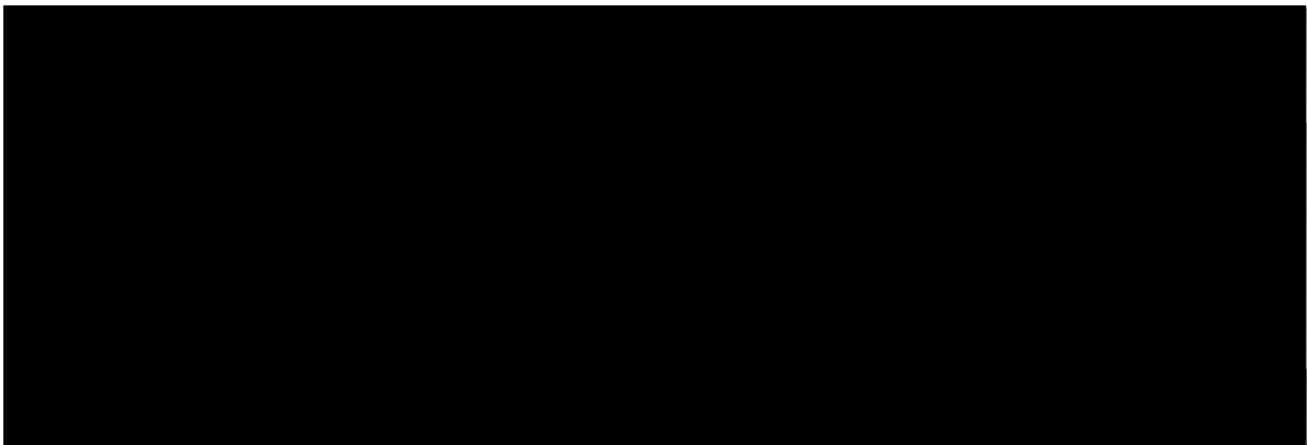
When KBI agents and other law enforcement officers investigate crimes, it is very common for persons they interview to express concern about cooperating in the investigation and providing information, due to the risks incumbent in doing so. By necessity, in order to garner trust and encourage persons to answer their questions and cooperate in their investigations, most if not all agents and officers assure persons, they interview that information they provide will be safeguarded and will not be made public unless or until the investigation results in prosecution and goes to trial.

It is in the public interest to have effective, functioning law enforcement investigations, which lead to prosecution of crimes against the public. If the techniques, witness names and other information officers gather during investigations is made public, or if persons questioned or interviewed believe their names and information will be made public, people will not cooperate and come forward with information. This compromises and disables law enforcement's ability to investigate crimes for prosecution and is therefore adverse to the public interest.

9. State with particularity each fact known to you and upon which you rely to support that the release of the records Plaintiff requested under the Kansas Open Records Act on April 24, 2020 would interfere with any prospective law enforcement action, criminal investigation or prosecution.

ANSWER:

It is impossible to state all known facts and facts upon which Defendant relied in response to a general premise on a specific date. However, Defendant states that KBI 17-216, KBI 17-247, and KBI 18-265 involved many of the same people. Information derived as a result of one or more of those cases has led to additional investigations, at least one of which is currently ongoing – and may implicate one or more people who were suspects or witnesses in the collective previous cases. Some allegations that were levied through the course of the previous cases appear to have been made in retaliation for information provided and for cooperating with KBI agents in previous investigations. Further facts and details of these cases are privileged as official information and they are also subject to the law enforcement investigatory privilege and will not be disclosed.



19. For every request for production (served herewith), please provide the full legal and factual basis for any denial or refusal.

ANSWER:

Defendant incorporates herein by reference, and further refers Plaintiff to Defendant's corresponding objections and responses to Plaintiff's First Request for Production of Documents and Things to Defendant.

20. For every request for admission (served herewith), please provide the full legal and factual basis for any denial or refusal.

ANSWER:

Defendant incorporates herein by reference, and further refers Plaintiff to Defendant's corresponding denials, refusals, objections and responses to Plaintiff's First Requests for Admissions to Defendant.

21. For every interrogatory which you denied or refused to answer in full, please provide the full legal and factual basis for any denial or refusal.

ANSWER:

Defendant incorporates herein by reference, and further refers Plaintiff to Defendant's corresponding denials, refusals, objections and responses hereinabove.

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

KBI Director Kirk Thompson, of lawful age, upon his oath, deposes and states that he has read the above and foregoing answers to the interrogatories, knows the contents thereof, and that the same are complete and accurate to the best of his knowledge, information and belief.



Subscribed and sworn to before me this 26 day of February, 2021.


Notary Public

