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Via E-mail: GCody@marionks.net

Chief of Police Gideon Cody
Marion Police Department
112 N. Fifth St.
Marion, KS 66861

Re: Illegal *Marion County Record* searches

Dear Chief Cody:

I represent the *Marion County Record* and am writing to offer you an opportunity to mitigate my client's damages from the illegal searches you personally authorized, directed and conducted on Friday.

First, as you were told on Friday, the computers, cell phones and other items you illegally seized contain the identify of confidential sources, as well as information provided by those confidential sources. This information is protected by both federal and state law. *See Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 438 (10th Cir. 1977); *State v. Sandstrom*, 224 Kan. 573, 574, 581 P.2d 812, 814 (1978).

Accordingly, demand is made that you not review any information on those devices, or any other information you illegally seized, so that you do not willfully violate that privilege.

Second, Kansas law recognizes a journalist's privilege not just for information received from confidential sources, but for "**any** information gathered, received or processed by a journalist, whether or not such information is actually published, and whether or not related information has been disseminated, and includes, but is not limited to, all notes, outtakes, photographs, tapes and other recordings or other data of whatever sort that is gathered by a journalist in the process of gathering, receiving or processing information for communication to the public." KSA 60-480(b) (emphasis added).

Kansas law further provides that "[t]he party claiming the privilege ... **shall** be entitled to a hearing." KSA 60-483 (emphasis added). The *Record* therefore is entitled to a court hearing before you review **any** information you illegally seized.

Accordingly, demand is made that you not review any information on the devices you illegally seized, or any other information you illegally seized, until a court hearing can be scheduled, during which the *Record* can be represented by counsel.

Third, I have seen the post on the Department's Facebook page in which you mistakenly suggest the federal Privacy Protection Act did not bar your illegal search because you had "reason to

believe the journalist [wa]s taking part in the underlying wrongdoing.” Your characterization of the law is wrong.

The Act contains a provision dealing with situations in which “there is **probable cause** to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate.” 42 U.S.C. § 2000aa (emphasis added).

From the face of the subpoena, it appears you told the magistrate you were investigating “identity theft” and “unlawful acts concerning computers.” Because it is patently clear no such crimes occurred, it is impossible for you to have met the heightened standard of “probable cause.”

Based on public reporting, the *Record* received information from a confidential source that Kari Newell is not eligible to receive a driver’s license because of a DUI conviction. That same reporting states that the paper verified that fact using the Kansas Department of Revenue public website—but did not publish this information when it learned it.

The federal Driver’s Privacy Protection Act, 18 U.S.C. 2721, (b)(5) allows access to information about a person’s driver’s status “[f]or use in research activities ... so long as the personal information is not published, redisclosed, or used to contact individuals.” Because the *Record* did not publish any information it observed on the public website, its use was for a valid research purpose, *i.e.*, to verify the information provided by the confidential source. *See Research, Black’s Law Dictionary* (11th ed.) (defining “research” as “1. Serious study of a subject with the purpose of acquiring more knowledge, discovering new facts, or testing new ideas. 2. The activity of finding information that one needs to answer a question or solve a problem.”)

Accordingly, your suggestion that your search was not illegal under the Privacy Protection Act is unfounded.

Finally, to be clear, regardless of whether your search was exempt from the protections of the Privacy Protection Act, it plainly violated the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, as well as Sections 11, 15, and 18 of the Kansas Bill of Rights.

As Joan Meyer said less than 24 hours before she died, “These are Hitler tactics.” She is right. Your personal decision to treat the local newspaper as a drug cartel or a street gang offends the constitutional protections the founding fathers gave the free press.

I can assure you that the *Record* will take every step to obtain relief for the damages your heavy-handed actions have already caused my client. As I stated at the beginning, this letter offers you an opportunity to mitigate those damages going forward.

If I were you, I would jump at this opportunity.

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Very truly yours,

Lathrop GPM LLP



By: _____
Bernard J. Rhodes
Partner

cc: Joel Ensey, Marion County Attorney