

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Alaska Dispatch News, a d/b/a of Alaska)
Dispatch Publishing, LLC, and Alaska Public)
Media a d/b/a of Alaska Public)
Telecommunications, Inc.,)

Plaintiffs,)

v.)

Sean Parnell, Governor, State of Alaska, in)
his official capacity, Office of the Governor,)
State of Alaska)

Defendants.)

Case No: 3AN-14-9599 CI

MEMORANDUM OF AGREEMENT

The parties to the above-captioned matter (the “Suit”) met and conferred on Thursday, October 9, 2014. The following is a memorandum of understandings and agreements reached pursuant to this meeting.

1. In response to the filing of the Suit, the Office of the Attorney General contacted counsel for plaintiffs. At a meeting held on Thursday, October 9, 2014, the parties agreed to attempt to cooperate by working through the Department of Law to obtain the relief being sought without proceeding directly to an adversarial court hearing if that might be avoided.

2. The parties agreed to cooperate in efforts to achieve prompt, meaningful resolution of the records requests—i.e. the Alaska Public Records Act requests that are the subject of plaintiffs’ Complaint for Access to Public Records Concerning Alaska National Guard (Complaint), filed October 8, 2014. The parties agreed that Plaintiffs and the State were not relinquishing any rights they would otherwise have, in the litigation or otherwise. The parties agreed that if it appeared necessary or appropriate to seek relief from the court because agreement or cooperation could not be achieved neither party would oppose having the matter heard on an expedited basis.

3. The Department of Law agreed to assign a team of attorneys and to direct them to meet promptly and cooperate fully with Plaintiffs to process searches of documents in order to effectuate production of the releasable records that are the subject of the records requests at issue in the Complaint as soon as possible, and to produce a log of any responsive documents to be withheld as soon as possible.

a) Insofar as the records requests require searches for e-mails in state databases, the Department of Law will use its best efforts to give top priority to said searches, and to get the cooperation of any other state agencies involved to do the same.

b) Documents identified as responsive to the Plaintiffs' requests shall be subjected to any pre-production review including necessary consultation with the Governor's office as promptly as possible. Once the Department of Law obtains documents from other state agencies or records custodians, it will assign additional personnel to assist in expediting any review necessary before documents can be released and specifying the grounds for any withholding or redacting of particular documents or portions of documents.

c) The Department of Law will provide "rolling production" of releasable records, rather than delay release until all documents or requests have been addressed. The parties will confer on appropriate intervals for this rolling production. It is not intended that that this rolling production will occur in real time as individual documents are cleared for release, but it is the parties' intent that releasable documents be produced as regularly and promptly as practicable.

d) The Department of Law will prepare a log identifying all responsive public records it is withholding, identifying the documents at issue by sender, recipient(s), date, type of document, and number of pages, and specifying the subject of the withheld information and any ground(s) for such withholding. Where a document has been produced in redacted form, the Department of Law need not include that document on its log if the document's identifying information and grounds for redaction are evident from the face of the redacted document.

4. Attorneys for the Department of Law will work with representatives of the Plaintiffs to identify priorities for processing requests, including priorities for reviewing documents identified by searches.

5. In agreeing to proceed as outlined above, the State is not waiving any right to assert in good faith any applicable legal objections to production of all or part of any documents at issue. Nor are Plaintiffs waiving any rights to have all document requests fulfilled in a complete and timely manner as required by all applicable laws and regulations.

6. The State has agreed to take reasonable measures to preserve all existing documents in the custody or control of the Governor's Office relating to the records requests that are the subject of the complaint, pending resolution of the litigation. Plaintiffs specifically acknowledge that the State has not thereby agreed that these documents, or all categories of such documents (e.g., text messages), are subject to disclosure as public records. This agreement simply preserves the documents while any relevant legal issues can be addressed.

7. Without limitation on the foregoing, the Department of Law agrees to promptly provide or identify in a privilege log:

a) all emails between July 26, 2009, and October 14, 2014, on any of Chief of Staff Mike Nizich's personal email accounts (i) to or from any United States or Alaska National Guard chaplains and/or (ii) to or from any other person(s) regarding complaints, problems or issues relating to or concerning violations of civil or criminal laws or military codes or regulations, or an environment that discourages the reporting of such violations at the Alaska National Guard or by members of the Guard, or relating to or concerning responses or lack of responses by state officials to such Guard-related complaints, problems or issues, and

b) a certification by Mr. Nizich that the documents identified and produced as responsive to the preceding subsection comprise, to the best of his knowledge, the entirety of any and all such documents created at any time using his non-state accounts.

8. The parties intend that this preliminary agreement can be supplemented to further their goals of working cooperatively to promptly, meaningfully and fully provide all releasable documents, and to promptly identify and resolve areas of disagreement about documents claimed to be subject to withholding or redaction.

Dated: 10/22/14

For Defendant
State of Alaska
Attorney General

Kathryn R Vogel, AAG

Dated: 10/22/14

For Plaintiffs
Alaska Dispatch News
Alaska Public Media

[Signature]