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"Confidential Sources or Methods"

Judge says police can't always claim confidentiality when blocking records requests without first giving some proof

October 19, 2016, 12:00 am
By [Steven Hsieh](#)

When Erin Noll asked three law enforcement agencies for records related to the fatal police shooting of her husband last year, they all denied her request.

The three entities—the Santa Fe County Sheriff's Department, the Town of Edgewood and the state Department of Public Safety—cited a section of New Mexico's public records law that exempts police from releasing records that would "reveal confidential sources, methods, information, or individuals accused but not charged with a crime."

Noll sued for the records, only to be denied again. This time, the agencies deferred to then-District Attorney Angela "Spence" Pacheco, who asked them to hold off on releasing any documents pending a grand jury investigation.

Pacheco never convened that grand jury. Neither did her successor, Jennifer Padgett, who this year stopped the practice of using special grand juries to investigate officers' deadly use of force.

Five state police officers reportedly fired at Ethan Noll, a former Marine, after he stepped out of his truck carrying a rifle. The shooting happened after a 13-hour standoff. Padgett called the use of force "tragic," but "appropriate."

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Oct. 24, 2016 by [Peter St. Cyr](#)

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Cleared by the district attorney's office, the three agencies in May handed Noll the records she asked for. But the police reports and video recordings didn't seem to reveal anything sensitive. All the officers involved in the shooting had already been identified by the Department of Public Safety. So Noll asked for attorney's fees, on the basis that her request was improperly delayed.

One of the parties involved, Santa Fe County, settled with the widow for \$6,000. In the agreement, the county does not admit to any wrongdoing. Asked whether the settlement will change the way the sheriff's department handles records request, spokesman Juan Rios says, "We will continue to follow the state's Inspection of Public Records Act as stipulated by law as we did in this particular instance."

Following a bench trial last month, a district judge ruled that the other two agencies violated public records law by improperly invoking the confidentiality provision, commonly known as the "law enforcement exemption."

Judge Francis J Mathews' opinion, notably, does not declare whether records under review by a grand jury should fall under the law enforcement exemption. But it does say that when someone challenges a records denial, it is up to the agency in question to prove to a judge why certain records should be exempt. Neither the Department of Public Safety nor the Town of Edgewood took that step.

Mathews awarded Noll her attorney's fees—\$11,804 from the Department of Public Safety and \$9,523 from Edgewood. Asked if the decision would change the agency's IPRA policy, a spokesperson for the Department of Public Safety said, "DPS is reviewing the decision and considering our options."

Edgewood Police Chief Ron Crow, who took his post in July, tells SFR he's not familiar with the case but noted, "I am very forthcoming with our records. When we can, I will release information."

Both agencies gave notice that they would appeal the judgment.

"The intent of DPS and the Town of Edgewood was to delay the delivery of the requested documents until the District Attorney conducted a grand jury proceeding to review the officer involved shooting of Ethan Noll," Mathews writes.

The decision could have broader implications for journalists, advocates and families seeking law enforcement records, according to Greg Williams, president of the New Mexico Foundation for Open Government.

"It's a significant result in that the court rejected efforts to expand the law enforcement exemption into something that it is not," Williams tells SFR. "The law enforcement entities have an independent obligation to produce public records. And they can't take cover from a district attorney telling them not to release them."

"THE LAW ENFORCEMENT ENTITIES HAVE AN INDEPENDENT OBLIGATION TO PRODUCE PUBLIC

The City of Albuquerque in 2015 **invoked** the law enforcement exemption to block the release of cell phone footage of a skate park shootout that left one 17-year-old dead. A judge rejected that defense and ordered the release of the video.

Former Attorney General Gary King **raised the same exemption** when his office refused to release a 2013 audit of 15 behavioral health

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RECORDS. AND THEY CAN'T TAKE COVER FROM A DISTRICT ATTORNEY TELLING THEM NOT TO RELEASE THEM."

-GREG WILLIAMS, NMFOG

providers. Gov. Susana Martinez' administration used the audit as a basis for freezing Medicaid payments to the providers, claiming fraud. King's successor Hector Balderas released a version of the audit in January 2015, more than a year after a lawsuit from *Las Cruces Sun-News* and *New Mexico In Depth*.

In Noll's case, lawyers for the Department of Public Safety said the department had an obligation to delay the release of the records and failing to do so would be violating state law that mandates police

cooperation with district attorneys. Lawyers also argued that releasing the records too early could compromise an investigation.

Edgewood's lawyers presented a similar line of argument: "When faced with what appears to be a reasonable request from the District Attorney, what is a law enforcement officer to do—ignore the District Attorney's request?"

Noll's attorney declined to speak with SFR on the record.

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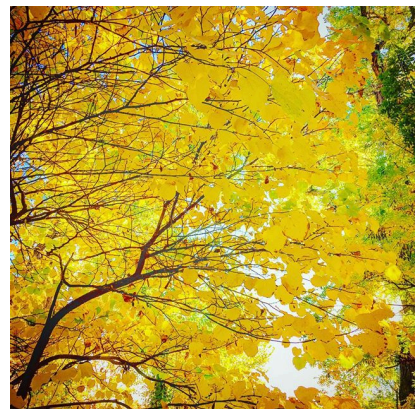
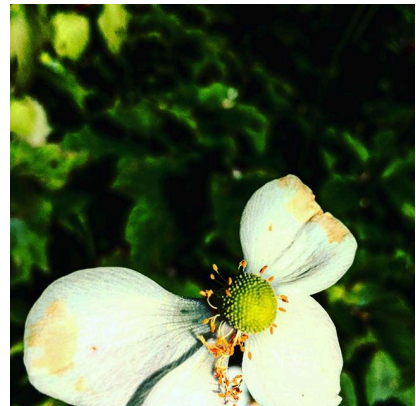
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