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Affiliations appear only for purposes of identification.

February 26, 2024

VIA EMAIL

Captain Shaun Jones
Commander, Professional Standards Division
Owasso Police Department
111 N Main St
Owasso, OK 74055
918-376-1565
SJones@cityofowasso.com

Re: Oklahoma Watch open records request for records regarding the death of Nex Benedict, dated February 23, 2024

Dear Captain Shaun Jones:

On Friday, February 16, 2024, Oklahoma Watch reporter Jennifer Palmer sent a request to the City of Owasso seeking police records pertaining to a February 7, 2024, physical altercation at Owasso High School involving 16-year-old student Nex Benedict, and Benedict's death the following day. Palmer's request asked for "any/all reports related to a fight at Owasso High School where Dagny Benedict was injured and Benedict's death."¹ Her request thus seeks any reports generated by any Owasso police officer related to the incidents, including any reports generated by a school resource officer present at Owasso High School at the time of the altercation. On February 19, 2024, Owasso Police Records informed Ms. Palmer that any initial incident report(s) would not be released at that time. In a subsequent email to me on February 22, 2024, you explained that records other than the Department's prepared public statement would not be released in the near term due to the involvement of juveniles in the underlying incident and due to the existence of an ongoing investigation into the incident.

In the days since that exchange, the Department has released footage from surveillance cameras at the Owasso High School, footage from the body-worn camera worn by an officer during his February 7, 2024, interaction with the Benedict family at the hospital, as well as a search warrant affidavit. I commend the Owasso Police Department for taking this important step. Nevertheless, I write today to inform you that the Department's response to Ms. Palmer's open records request does not comply with Oklahoma law.

¹ Dagny was a name previously used by Benedict, who was non-binary, and was used in reference to Nex in early discussions of, and reporting on, the incident, including by Benedict's family.

Under Oklahoma's Open Records Act, the Owasso Police Department is required to release an initial report created after officers respond to an incident, regardless of whether the department calls that document an "incident report," or an "arrest report," or uses some other nomenclature. As you noted in your email to me, under 51 O.S § 24A.8(B)(1), the Department may deny access to law enforcement records *except for the records listed in subsection A* of 51 O.S § 24A.8. Those non-exempt records include:

1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;
2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;
3. ***A chronological list of all incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred.***

(Emphasis added). The records Ms. Palmer seeks, including any and all initial incident reports generated by the Department's resource officer at Owasso High School, the officer(s) who responded to the Benedict family at the hospital on February 7, and any incident report generated after Benedict's death on February 8, are thus non-exempt and must be released to the public upon request.

Moreover, your office is obligated to turn these records over pursuant to an open records request regardless of the status of any ongoing investigation. In a 2011 letter to Oklahoma law enforcement, then-Attorney General Scott Pruitt addressed this very issue to clear up any lingering confusion. In that letter, attached hereto, the AG stated that the Legislature has made it clear that "a police department's initial offense report or 'cover sheet' should be open for public inspection, regardless of its inclusion in an investigation file."

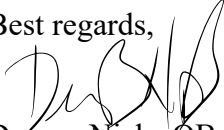
You pointed to the involvement of juveniles in the incident in question as cause for the Department's decision to withhold records related this incident. While the Oklahoma Children's Code requires that certain information be withheld from the public, the Open Records Act states that "[a]ny reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions ..." 51 O.S. § 24.A.5(3). The presence of exempt material in a public record does not justify withholding release of the entire record. Instead, to the extent the records sought by Ms. Palmer contain any exempt material, such as identifying information about a juvenile, such information should be obscured so that the records may be released in redacted form.

The death of Nex Benedict, like the death of any child, is a tragedy, and considering the likely involvement of multiple juveniles in the altercation that preceded Nex's death, there are numerous sensitive issues your Department must consider as you release relevant records. Nonetheless, the Owasso Police Department must still fulfill its obligations under § 24A.8 of Oklahoma's Open Records Act to release upon request, to the fullest extent

possible and in a timely manner, the information enumerated in the section of the statute quoted above. The records released thus far indicate a laudable commitment to transparency by the Owasso Police Department, but your response remains incomplete, at the very least, in that it does not identify the responding officer(s), nor does it indicate whether or not additional responsive records do exist but are being withheld.

Given that Ms. Palmer's request has been pending for over a week, I look forward to your prompt response. Please do not hesitate to contact me if I can be of further assistance.

Best regards,

A handwritten signature in black ink, appearing to read "Denver Nicks", written over the typed name.

Denver Nicks OBA # 35187

Reporters Committee for Freedom of the Press
Local Legal Initiative Attorney (Oklahoma)

Encl.



E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA

January 4, 2011

Stacey Puckett, Executive Director
Oklahoma Association of Chiefs of Police
1141 N Robinson Ave., Suite 200
Oklahoma City, OK 73103

Dear Director Puckett,

I appreciate your consideration of this letter as a representative of our state's fine law enforcement officers who do an excellent job working with limited resources to keep our communities and families safe.

This fall, First Assistant Attorney General Rob Hudson and Communications Director Diane Clay traveled the state to deliver seminars on Oklahoma's Open Meeting and Open Records acts. During the workshops, citizens and members of the media expressed concern that their local police departments were withholding initial incident reports or "cover sheets," or were withholding release of reports for up to a week after the incident occurred.

We also received a letter from an open records group claiming that department personnel in one instance cited the Oklahoma Open Records Act (51 O.S. 24A.1) and its provisions related to investigatory files as the reasons for denial. I want to make sure Oklahoma's law enforcement departments are aware of the complaints and the two provisions of the Act that address this issue.

Section 24A.8 – A1-3 of the Act states:

- A. Law enforcement agencies shall make available for public inspection, if kept, the following records:
1. An arrestee description, including the name, date of birth, address, race, sex, physical description and occupation of the arrestee;
 2. Facts concerning the arrest, including the cause of the arrest and the name of the arresting officer;
 3. A chronological list of all incidents, including the initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred[.]

(Emphasis added.)

Section 24A.20 of the Act addresses litigation and investigation files, and states:

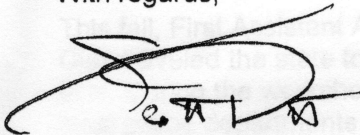
Access to records which, under the Oklahoma Open Records Act, would otherwise be available for public inspection and copying, shall not be denied because a public body or public official is using or has taken possession of such records for investigatory purposes or has placed the records in a litigation or investigation file.

The state Legislature has made it clear in this regard that a police department's initial offense report or "cover sheet" should be open for public inspection, regardless of its inclusion in an investigation file. However, the Act does not require records created for the investigation file or supplemental reports to be made public, thus leaving the decision to the departments on the release of such documents beyond the initial police report.

I urge you to discuss these provisions of the Act with police chiefs and law enforcement officers across the state to ensure they are aware of the statutes and can avoid unintended complications during their resolute service to Oklahomans.

Please forward my gratitude and recognition of the tremendous contribution of local law enforcement in the safety of our communities. I appreciate the difficult job departments have in balancing the many demands upon their resources and time.

With regards,



E. Scott Pruitt
Attorney General

ESP:dc

Section 24A.20 - A1-3 of the Act states:

A. Law enforcement agencies shall make available for public inspection, if kept, the following records:

1. An arrestee description, including the name, date of birth, address, race, sex, physical description and occupation of the arrestee;
2. Facts concerning the arrest, including the cause of the arrest and the name of the arresting officer;
3. A chronological list of all incidents, including the initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred[.]

(Examples added.)