

ATTORNEY GENERAL
STATE OF MONTANA

Tim Fox
Attorney General



Department of Justice
Joseph P. Mazurek Justice Bldg.
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

July 23, 2020

Mr. John Strandell
Montana Division of Criminal Investigation
P.O. Box 201417
2225 Eleventh Avenue
Helena, MT 59620-1417

Re: *State v. Dial*, Unlawful Dissemination of Confidential Criminal Justice Information

Dear Mr. Strandell:

I have reviewed the investigative file you sent to me for my review regarding the possible dissemination of confidential criminal justice information by Whitefish Police Chief Bill Dial. I found the investigation to be thorough and professional. I do not believe any further investigation of this matter is warranted. For the reasons set forth below, I do not believe that a criminal prosecution is warranted or sustainable.

First, the statute criminalizing the unauthorized dissemination of confidential criminal justice information is quite narrow in scope:

45-7-601. Misuse of confidential criminal justice information. (1) A person commits the offense of misuse of confidential criminal justice information if the *person is entitled to directly access the criminal justice information network* [CJIN] and purposely or knowingly:

(a) accesses the criminal justice information network for personal use or financial gain; or

(b) disseminates information *accessed from the criminal justice information network* to any person who is not authorized to receive confidential criminal justice information pursuant to 44-5-303.

(2) A person convicted of the offense of misuse of confidential criminal justice information shall be imprisoned in the county jail for a term not to exceed 6 months and be fined an amount not less than \$500.

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MONTANA DEPARTMENT OF JUSTICE

Legal Services Division ★ Division of Criminal Investigation ★ Highway Patrol Division ★ Forensic Science Division
Gambling Control Division ★ Motor Vehicle Division ★ Information Technology Services Division ★ Central Services Division

(3) For purposes of this section, the following definitions apply:

(a) "Confidential criminal justice information" has the meaning provided in 44-5-103.¹

(b) "Criminal justice information network" has the meaning provided in 44-2-301.²

Thus, to be guilty of this crime, one must have direct access to the CJIN, and either (1) access CJIN for an improper purpose, or (2) disseminate information from CJIN to an unauthorized party. The statute does not *criminalize* the dissemination of any or all information that an officer develops during an investigation, although such dissemination to an unauthorized person would be in contradiction to Mont. Code Ann. § 44-5-303.

Part of this investigation included an audit of the use of CJIN by the Whitefish Police Department (WPD). That audit revealed no improper use of CJIN, either by Chief Dial or any other members of the WPD.

The e-mail between Chief Dial and M.M. on November 16, 2018 did not reveal confidential criminal justice information. It did inform another party of an ongoing investigation, which was not detailed enough to constitute criminal justice information. Finally, a telephone message left by Chief Dial on M.M.'s I-phone likewise did not violate the statute referenced above. It merely regurgitated third hand information given to Chief Dial from an attorney representing one of the parties involved in this matter and speculated about what may have happened. None of this information came from CJIN.

¹ Mont. Code Ann. §44-5-103. Definitions. As used in this chapter, the following definitions apply:

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

² Mont. Code Ann. § 44-2-301. Establishment — inclusion of other state agencies. (1) The attorney general is authorized to establish a criminal justice information network for the purpose of connecting federal, state, county, and city law enforcement agencies. The attorney general may bring into the network, if the parties desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state department or subdivision, the inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime.

(2) As used in this part, "criminal justice information network" means a telecommunications network used exclusively for the purpose of information exchange among the state's law enforcement agencies as provided in Title 44, chapter 5.

5-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when in an official capacity the public servant commits any of the following acts:

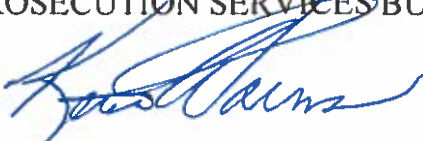
- (a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;
- (b) knowingly performs an act in an official capacity that the public servant knows is forbidden by law;
- (c) with the purpose to obtain a personal advantage or an advantage for another, performs an act in excess of the public servant's lawful authority

There is no evidence that Chief Dial failed to perform any mandatory duty. Nor, as discussed above, is there sufficient evidence that the chief performed an act in his official capacity knowing that it was unlawful or that he acted outside of his lawful authority.

After careful consideration, I have decided not to file charges because I do not believe this case could be proven beyond a reasonable doubt.

Sincerely,

PROSECUTION SERVICES BUREAU



KENNETH E. VARNIS

Assistant Attorney General