

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. OP 21-0173

BETH McLAUGHLIN,

Petitioner,

v.

The MONTANA STATE LEGISLATURE, and the MONTANA
DEPARTMENT of ADMINISTRATION,

Respondents.

**DEPARTMENT OF ADMINISTRATION'S
SUMMARY RESPONSE TO PETITION**

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The Department of Administration does not intend to state a position on the legal issues raised in this case concerning the Legislative subpoenas or this Court's orders. Rather, this summary response is intended to provide the Court and the parties a potential framework to respond to the legislative subpoena and protect privileged, confidential, and sensitive documents from disclosure, should the Court vacate its orders suspending the subpoenas.

The Department has received two Legislative subpoenas for email records of Court Administrator, Beth McLaughlin, both of which are currently suspended by order of this Court. This Court has already addressed the April 8, 2021 subpoena signed by Senator Regier. *See Bradley v. Gianforte*, OP 21-0125, Temporary Order (April 11, 2021). The Department had submitted some documents in response to the first subpoena before this Court issued its order. The Department has not yet provided the remaining documents responsive to the first subpoena.

Senate President Blasdel issued a second subpoena on April 13, 2021, which stipulates that responsive documents should be redacted of "any personal, confidential, or protected documents" and "excludes any emails and attachments related to decisional case-related matters made by Montana justices or judges in the disposition of such matters." Petitioner's Notice of Additional Legislative Subpoena, Ex. 1. Court Administrator McLaughlin and this Court have similarly

expressed concern that documents responsive to the subpoena may include privileged, protected, and/or sensitive information that should be redacted or excluded from production. Pet. ¶¶ 72-82; Temporary Order (OP 21-0125), pp. 2-3. The Department has not submitted documents to the Legislature in response to the April 13, 2021 subpoena, and, as the Department has made clear to counsel for Petitioner, it will not respond to the subpoena until this Court either vacates the order suspending the subpoenas or the parties otherwise agree to production. The Legislature, for its part, has extended the deadline to respond to the subpoena so that the dispute between the Legislature and Petitioner McLaughlin may be resolved.

Counsel for the Department has been coordinating with counsel for Petitioner to provide a process to redact and/or exclude protected, privileged, and sensitive information from responsive documents. The Department sent counsel for Petitioner (and only counsel for Petitioner) all documents responsive to the subpoenas not previously provided to the Legislature. Those documents were sent to counsel for Petitioner via the State's secure File Transfer System on April 23, 2021. Counsel for Petitioner has indicated that he intends to complete review of the documents and send the Department requested redactions and exclusions by Friday, April 30, 2021. Counsel for Petitioner will include a privilege log of the

requested exclusions and redactions. That privilege log may be viewed by the Legislature without revealing protected content of the documents.

The Department will then review the Petitioner's proposed redactions and exclusions and send Petitioner a proposed final production of documents, and will send the Legislature a finalized log of excluded and redacted documents. If either party is dissatisfied with the Department's proposed final redactions or exclusions, the Department will delay production so that any party may have an opportunity to seek judicial review.

The Department believes that this process will help achieve the twin goals of protecting confidential, sensitive, and privileged information, while also complying with the terms of the Legislative subpoena. As noted, however, the Department will await an order from the Court before releasing any documents in response to the subpoenas.

Respectfully submitted March 29, 2021.

/s/ Dale Schowengerdt

Counsel for Respondent Department of
Administration

Certificate of Compliance

Pursuant to Montana Rule of Appellate Procedure 11, I certify that this pleading is printed in a proportionally spaced Times New Roman typeface of 14 point, is double spaced, and the word count is 568 words, excluding the certificate of compliance.

/s/ Dale Schowengerdt

CERTIFICATE OF SERVICE

I, Dale Schowengerdt, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Petition to the following on 04-29-2021:

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