



American Civil Liberties Union
of Montana Foundation
P.O. Box 9138
Missoula, MT 59807
406-443-8590
www.aclumontana.org

McCone County Commissioner's Office
Attn: Right to Know/Public Information Request
P.O. Box 199
Circle, MT 59215

McCone County Attorney's Office
Attn: Right to Know/Public Information Request
P. O. Box 58
Circle, MT 59215

Tuesday, February 20, 2018

**Re: ACLU Request for Public Records Regarding Government Activities Related to
Keystone XL Construction in Montana.**

To Whom It May Concern:

On March 24, 2017, President Donald Trump announced federal approval for construction of the Keystone XL pipeline. This pipeline poses a threat¹ to the water supply of the Fort Peck Reservation.² Like the Water Protectors of Standing Rock, both Indigenous communities and their supporters in Montana are likely to protest the construction of Keystone XL as well as the continued desecration of Tribal sacred sites that pipelines bring. These issues moved onto the national stage when the Standing Rock Sioux Water Protectors rose up and protested to protect sacred water. These courageous actions inspired protests and rallies throughout Montana.³ The peaceful Water Protectors at Standing Rock were besieged by state law enforcement and made to endure caustic plumes of tear gas, the searing stings of rubber bullets, and torrents of government sanctioned force led by riot shields.⁴ Based on the tactical and forceful response seen from law enforcement during the Standing Rock protests, those in

¹ Karl Puckett, *Montana Tribes Seek Keystone Route Change*, Great Falls Tribune (Feb. 20, 2017), <http://www.greatfallstribune.com/story/news/local/2017/02/20/montana-tribes-seek-keystone-route-change/98179708/>.

² *Route Maps*, TransCanada (2018), <http://www.keystone-xl.com/wp-content/uploads/2017/01/Transcanada-KXL-Montana-map.pdf>.

³ Brie Ripley, *Standing Rock Rallies Echo Across Montana*, Yellowstone Public Radio (Nov. 16, 2016), <http://ypradio.org/post/standing-rock-rallies-echo-across-montana#stream/0>.

⁴ Sam Levin, *Dakota Access Pipeline Activists say Police have Used 'Excessive' Force*, The Guardian (Jan. 18, 2017), <https://www.theguardian.com/us-news/2017/jan/18/dakota-access-pipeline-protesters-police-used-excessive-force>.

Montana who intend to protest the construction of Keystone XL may be faced with a similar dangerous and oppressively forceful response from law enforcement.

Since the end of the Standing Rock protests, federal⁵ and state governments⁶ have taken actions to silence current and future Water Protectors. Further, it has been confirmed that law enforcement has engaged in unconstitutional monitoring and other insidious actions to undermine protests of this nature.⁷ The American Civil Liberties Union (“ACLU”) of Montana is committed to protecting the civil rights of Montanans engaged in pipeline protests and fighting so that Indigenous people are not oppressed or marginalized as they historically have been. The ACLU of Montana believes that public agencies of the State of Montana are involved in pre-emptive planning and coordination with private, local, and federal entities to assist in efforts to further criminalize Indigenous rights and environmental justice activism. Further, the ACLU is concerned that the Montana Department of Justice (“MTDoJ”) is engaged in unconstitutional monitoring of the individual and group financial information and contributions of persons and groups supporting Water Protectors.

The ACLU has obtained documentation that shows the involvement of divisions of the Montana Department of Justice, specifically the Montana Analysis and Technical Information Center (“MATIC”), in the production of a Department of Homeland Security field analysis report titled, *TTPs Used in Recent US Pipeline Attacks by Suspected Environmental Rights Extremists*.⁸ This report suggests that “Native American causes”, such as oil pipeline protests, are being used to obfuscate the presence and coordination of “environmental rights extremists” in carrying out acts of civil disobedience and criminal conduct.⁹ The ACLU is concerned that these reports will be used as a pretext for actions intended to chill the free speech and disrupt the right to free association of peaceful Pipeline protesters. The ACLU is also concerned that these efforts will result in discriminatory targeting and continued oppression of Indigenous protesters. To ensure the protection of the rights of Montana citizens, Indigenous and otherwise, the ACLU is requesting the public records and information listed below.

Pursuant to Mont. Code Ann. (“MCA”) § 2-6-1003, the ACLU respectfully requests the following records from the entities provided below, in electronic format unless only available in paper:

⁵ Timothy Gardner, *U.S. Lawmakers Ask DOJ If Terrorism Law Covers Pipeline Activists*, Reuters (Oct. 23, 2017), <https://www.reuters.com/article/us-usa-pipelines-activism/u-s-lawmakers-ask-doj-if-terrorism-law-covers-pipeline-activists-idUSKBN1CS2XY>.

⁶ Jayme Fraser, *Bill to Ban Masks at Protests that Become Riots Divides Police, Civil Rights Advocates*, Helena Independent Record (Mar. 22, 2017), http://helenair.com/news/politics/state/bill-to-ban-masks-at-protests-that-become-riots-divides/article_f381326a-ba79-5528-857c-7f9520a27a8f.html.

⁷ Sam Levin, *Revealed: FBI Terrorism Taskforce Investigating Standing Rock Activists*, The Guardian (Feb. 10, 2017), <https://www.theguardian.com/us-news/2017/feb/10/standing-rock-fbi-investigation-dakota-access>.

⁸ Department of Homeland Security, *TTPs Used in Recent US Pipeline Attacks by Suspected Environmental Rights Extremists*, Field Analysis Report (02 May 2017), (Accessible at: <https://www.documentcloud.org/documents/4325264-May-2017-Field-Analysis-Report.html>).

⁹ *Id.*

McCone County:

- 1) All records and public information generated and/or maintained by McCone County including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft ordinances, procurement requests, procurement bids, and informal meeting notes¹⁰ regarding coordination, cooperation, planning, with private, local, state, and federal entities related to Keystone XL pipeline construction and responses to protests associated with the Keystone XL pipeline.
- 2) All records and public information generated and/or maintained by McCone County including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft ordinances, procurement requests, procurement bids, and informal meeting notes¹¹ regarding polices, plans, coordination, or cooperation with private, local, state, and federal entities related to enforcement actions and incarceration of potential protestors.
- 3) All records and public information generated and/or maintained by McCone County including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes related to expenditures, policies, procedures, drafted legislation and work done by McCone County or any of its subdivisions dealing with the monitoring social media platforms for information related to the Keystone XL pipeline.

If any of these entities refuses to provide any of the information requested, the ACLU requests that those refusals be provided to them in writing. The ACLU also requests that the refusals contain specific reasons for each denial, and those reasons provided contain “specific findings concerning privacy or confidentiality of a particular document before withholding it”¹² specific to each denial. If access to the records I am requesting will take longer than a “reasonable” amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records. If this request could be restructured to minimize the demands on your department’s resources, I would be willing to discuss alternatives with you. Similarly, should you have any questions regarding the information sought in this request, please call me directly at 406.443.8590.

¹⁰ 41 Mont. A.G. Op. 151 (1985).

¹¹ 41 Mont. A.G. Op. 151 (1985).

¹² *Great Falls Tribune v. Montana Pub. Serv. Comm’n*, 2003 MT 359; 319 Mont. 38; 82 P.3d 876.

The ACLU of Montana was founded in 1972 and is a nonprofit and nonpartisan organization dedicated to fighting for racial justice and protecting civil rights in Montana. The ACLU of Montana also engages with Montanans to educate and help communities organize when dealing with issues of equality, racial justice, and civil rights. The ACLU of Montana provides newsletters, news briefings, and other materials that are widely disseminated to the Montana public. These materials are made available via website (<https://www.aclumontana.org>) to everyone—including tax-exempt organizations, non-profit groups, students and faculty.

Please contact me should you have any questions regarding this request. We look forward to your response and thank you for your prompt attention to this matter. Please furnish all documents to the address below.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Rate". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Alex Rate
Legal Director
ACLU of Montana
P.O. Box 9138
Missoula, MT 59807