



THE STATE  
of ALASKA  
GOVERNOR MICHAEL J. DUNLEAVY

## Department of Public Safety

OFFICE OF THE COMMISSIONER  
Amanda Price

5700 East Tudor Road  
Anchorage, Alaska 99507-1225  
Main: 907.269.5086  
Fax: 907.269.4543

150 3<sup>rd</sup> Street  
PO Box 111200  
Juneau, Alaska 99811-1200  
Main: 907.465.4322  
Fax: 907.465.4362

June 25, 2019

Mr. Bob Klein, Chair  
Alcoholic Beverage Control Board  
550 W 7<sup>th</sup> Ave, Ste 1600  
Anchorage, AK 99501  
SENT VIA EMAIL ONLY

Dear Chair Klein,

Alcohol and Marijuana Control Office (AMCO) Director Erika McConnell relayed several questions to me from the Alcoholic Beverage Control (ABC) Board in an email received on June 20, 2019. While each of the questions posed by Director McConnell has previously been answered, both in person and in writing, I want to ensure that the ABC Board receives the answers directly. This letter is my response to those questions.

**1. There has been a long-standing interpretation that ABC Board/AMCO investigators are peace officers. What is the benefit to public safety in changing this interpretation?**

Whether Special Investigators employed by the Alcohol & Marijuana Control Office (AMCO) are considered peace officers is not relevant to the question of whether they are authorized to have direct access to criminal justice information systems (CJIS). This was explained in a letter to Director McConnell from DPS dated November 1, 2018, at in-person meetings, and is explained again in my response to the next question.

**2. If the concern of investigators having access to APSIN/ARMS relates to the conflict between state and federal law regarding marijuana, why can't ABC Board investigators have access to APSIN/ARMS for the purposes of enforcement of Title 04 and the alcohol program?**

It is DPS' position that AMCO does not meet the definition of a "criminal justice agency" under 28 CFR 20.3<sup>1</sup> or AS 12.62.900(11)<sup>2</sup>. As such, its employees are not authorized to have direct access to CJIS under both federal and state law. This was thoroughly explained to Ms. McConnell in the November 1, 2018, letter and during a follow up meeting. That same letter also provided a mechanism for AMCO Special Investigators to obtain criminal justice information through DPS when needed for criminal investigations that AMCO Special Investigators are conducting. Additionally, I personally asked Director McConnell to communicate with me immediately if investigators experienced any challenges with the recommended mechanism of support. To date, I have received nothing from Director McConnell expressing discontent or delay with the support DPS offered.

**3. Is it your intention that all criminal enforcement of Title 04 should be performed by the Alaska State Troopers? If yes, why?**

No, this is not DPS' intention. AMCO Special Investigators have authority to enforce the criminal provisions of Title 04 under AS 04.06.090(d), and under AS 04.06.110 through their appointment as special officers by the DPS commissioner under AS 18.65.010. Additionally, the duty to ensure compliance and investigate criminal violations of alcohol laws under Title 04 is outlined in the job class specifications for the Special Investigator job class.

**4. From the perspective of your department, what is hindering full cooperation between AMCO and DPS?**

It is my position that productive communication and partnership between DPS and AMCO has been challenged as a result of Director McConnell's tactics and behaviors. This breakdown of communication is detrimental to a healthy partnership between our agencies. DPS has responded to every request for a meeting, has offered multiple recommended solutions, has graciously (in Director McConnell's own words) accepted her apologies, and continues to strive to have a collaborative working relationship with AMCO.

Director McConnell has clearly demonstrated that she demands an outcome from DPS and reflects a wholly unacceptable ability or capacity to acknowledge, in even the most basic capacity, the sound reasoning that supports DPS's decision to remove AMCO Special Investigators' direct access to CJIS. She has also neglected to provide any necessary information that would show an error in judgement on DPS' behalf, though I have repeatedly invited her to do so.

Not only does it seem Director McConnell's tactics and behavior are singularly responsible for any challenges the AMCO investigative unit may experience – alleged delays in DPS providing information have never been communicated with me per my request—she blatantly and repeatedly misrepresented information to your boards, and the public, in an effort to support her narrative.

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<sup>1</sup> 28 CFR 20.3(g) "criminal justice agency means...a governmental agency or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice."

<sup>2</sup> AS 12.62.900(11) "criminal justice agency means...a government entity or subdivision of a government entity that allocates a substantial portion of its budget to a criminal justice activity under a law, regulation, or ordinance..."

Bob Klein, ABC Board Chair

June 25, 2019

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DPS has lost faith in our ability to communicate effectively with Director McConnell. As such, from this point forward, DPS will address all future communications directly to the chairs of the Alcoholic Beverage Control Board and Marijuana Control Board.

We remain committed in our efforts to foster a productive partnership with AMCO to meet the mutual goal of public safety. I welcome the opportunity to meet in person if you would like to discuss this further.

Sincerely,



Amanda Price  
Commissioner

Attachment

Cc: The Honorable Julie Anderson, Commissioner  
Dept. of Commerce, Community & Economic Development

Erika McConnell, Division Director  
Alcohol & Marijuana Control Office  
Dept. of Commerce, Community & Economic Development

Mark Springer, Chair  
Marijuana Control Board

Kathryn Monfreda, Division Director/Alaska CJIS Systems Officer  
Division of Statewide Services  
Dept. of Public Safety

Colonel Barry Wilson, Division Director  
Division of Alaska State Troopers  
Dept. of Public Safety

Major Andrew Greenstreet, Deputy Director  
Division of Alaska State Troopers  
Dept. of Public Safety



THE STATE  
of ALASKA  
GOVERNOR BILL WALKER

## Department of Public Safety

DIVISION OF ALASKA STATE TROOPERS  
Office of the Director

5700 East Tudor Road  
Anchorage, Alaska 99507-1225  
Main: 907.269.5511  
Fax: 907.337.2059

November 1, 2018

Erika McConnell, Director  
Alaska Marijuana Control Office  
550 W 7th AVE, STE 1600  
Anchorage, AK 99501

Re: AMCO Access to ARMS and APSIN

Dear Director McConnell:

In the past, the Department of Public Safety (DPS) has granted employees of your office direct access to Criminal Justice Information (CJI) via the Alaska Records Management System (ARMS) and the Alaska Public Safety Information Network (APSIN) for the purposes of enforcing statutes and regulations governing the production, sale, and distribution of marijuana. DPS granted this access by presuming that the Alaska Marijuana Control Office (AMCO) functioned as a “criminal justice agency” under relevant federal and state statutes.

However, after further consultation and analysis with the Department’s General Counsel and Records Bureau Chief and based on the reasons outlined below, DPS has determined that AMCO does not meet the statutory definition of a “criminal justice agency”. As a result, and pursuant to the APSIN User Agreement, this letter serves as notice that we will terminate your agency’s direct access to both ARMS and APSIN effective December 1, 2018.

Title 28 Part 20 of the Code of Federal Regulations delineates the proper dissemination of CJI and criminal history record information on the federal level. As the designated Criminal Justice Information System (CJIS) Agency (CSA) for the State of Alaska, DPS is responsible for ensuring that all government and non-government agencies accessing CJIS data adhere to the law, policies, and standards developed by the state and federal government pertaining to the proper use, storage, dissemination, and destruction of CJI.<sup>i,ii</sup>

13 AAC 68.215 authorizes DPS to allow direct access to criminal justice information to a “criminal justice agency, for a criminal justice activity”. A criminal justice agency is defined in AS 12.62.900(11), in part, as “a government entity or subdivision of a government entity that allocates a *substantial portion of its budget to a criminal justice activity* under a law, regulation or ordinance”(emphasis added).

Direct access to these sensitive criminal justice databases is, therefore, predicated on meeting one of two separate but related standards. The first is whether employees of a given agency truly function as

peace officers. While Alaska Statutes do grant some AMCO employees limited peace officer powers<sup>iii</sup>, a 1998 Attorney General's Opinion concludes those limited powers are insufficient for such employees to be considered peace officers under statute.<sup>iv</sup>

Second, both federal and state definitions of a "criminal justice agency" require that a "substantial portion of an agency's budget be allocated to a criminal justice activity..." The Federal Bureau of Investigation (FBI) has determined that "substantial portion" means over 50%. While AMCO's special investigators conduct some criminal justice activity in the course of their work, much of it – if not a substantial majority – appears to be regulatory in nature.

When viewed in sum, AMCO does not meet the qualifications of being a "criminal justice agency, for a criminal justice activity." Much of the agency's work is predicated on maintaining compliance with existing statute and regulations, and while that work may require some criminal justice activity, it is not a substantial portion of AMCO's budget under the FBI's definition. Moreover, the agency's employees do not meet the statutory definition of a "peace officer" even with their limited powers.

It is, therefore, the Department's conclusion that because AMCO does not meet the qualifications of a "criminal justice agency", agency employees may not have direct access to CJI, including ARMS and APSIN. Their direct access to those systems will be terminated on December 1, 2018. After the termination takes place, the Department will provide AMCO with a list and brief summary of all AMCO and Alcoholic Beverage Control (ABC) Office incidents from ARMS.

Previously, some conversations had taken place as to whether AMCO employees could access Alaska State Trooper (AST) radio channels on the Alaska Land Mobile Radio Network (ALMR) for the purposes of conducting criminal justice activity. For the same reasons as noted above, DPS and AST are not able to grant AMCO employees that access. However, we would invite AMCO to consider reaching out to the Network and area dispatch centers to establish its own closed ALMR frequency and necessary arrangements. Should a need for coordination arise, dispatchers could patch the AMCO ALMR channel in with the relevant AST channels for the duration of the incident.

We recognize that AMCO employees do conduct some criminal justice activity as a part of their investigations and may, from time to time, need access to information contained in APSIN and ARMS. Should employees need to access specific information, they should contact Lieutenant Kat Shuey at [kat.shuey@alaska.gov](mailto:kat.shuey@alaska.gov), or Captain Dan Lowden at [daniel.lowden@alaska.gov](mailto:daniel.lowden@alaska.gov) to facilitate access to needed records.

November 1, 2018

If you have additional questions or concerns or wish to discuss this matter further, please contact Brandy See at [brandy.see@alaska.gov](mailto:brandy.see@alaska.gov) or 907-269-5641 to set up a phone call or meeting.

Sincerely,



Major Andrew J. Greenstreet  
Acting Director, Alaska State Troopers

Cc: Walt Monegan, Commissioner, Department of Public Safety  
Bill Comer, Deputy Commissioner  
Allison Hanzawa, Special Assistant to the Commissioner  
John Novak, General Counsel  
Kathryn Monfreda, Criminal Records and Identification Bureau Chief  
Brian Barlow, Deputy Director, Alaska State Troopers  
Dan Lowden, Captain, Alaska State Troopers  
Kat Shuey, Lieutenant, Alaska State Troopers  
Mark Springer, Chair, Marijuana Control Board

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<sup>1</sup> The national CJIS Security Policy defines criminal justice information as follows:

Section 4.1 CJIS Security Policy V5.7: "Criminal Justice Information is the term used to refer to all of the FBI CJIS provided data necessary for law enforcement and civil agencies to perform their missions including, but not limited to biometric, identity history, biographic, property, and case/incident history data. The following categories of CJIS describe the various data sets housed by the FBI CJIS architecture:

1. Biometric Data—data derived from one or more intrinsic physical or behavioral traits of humans typically for the purpose of uniquely identifying individuals from within a population. Used to identify individuals, to include: fingerprints, palm prints, iris scans, and facial recognition data.
2. Identity History Data—textual data that corresponds with an individual's biometric data, providing a history of criminal and/or civil events for the identified individual.
3. Biographic Data—information about individuals associated with a unique case, and not necessarily connected to identity data. Biographic data does not provide a history of an individual, only information related to a unique case.
4. Property Data—information about vehicles and property associated with crime when accompanied by any personally identifiable information (PII).
5. Case/Incident History—information about the history of criminal incidents."

<sup>11</sup> AS 12.62.900(12) defines criminal justice information as "any of the following, other than a court record, a record of traffic offenses maintained for the purpose of regulating drivers' licenses, or a record of a juvenile subject to the jurisdiction of a court under AS 47.12:

- A. Criminal history record information;
- B. Nonconviction information
- C. Correctional treatment information;
- D. Information relating to a person to be located, whether or not that person is wanted in connection with the commission of a crime."

<sup>12</sup> AS 04.06.110 states, "The director and the persons employed for the administration and enforcement of this title may, with the concurrence of the commissioner of public safety, exercise the powers of peace officers when those powers are specifically granted by the board. Powers granted by the board under this section may be exercised only when necessary for the enforcement of the criminally punishable provisions of this title, regulations of the board, and other criminally punishable provisions of this title...."

<sup>13</sup> The definition of a peace officer is found in AS 01.10.060(6). A 1998 written opinion from the Attorney General's Office to the Commissioner of the Department of Fish and Game determined, "In summary, it is our view that the statutory framework of the Alaska Statutes viewed as a whole contemplates that for any publicly employed law enforcement officer to be considered a peace officer within the meaning of AS 01.10.060(6), he or she must be empowered with a full range of police duties and authority and must be currently functioning on essentially a full-time basis in that role."