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Executive Director

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VIA EMAIL (robert.l.quinn@dos.nh.gov; Eddie.Edwards@DOS.NH.GOV;
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Commissioner Robert Quinn
Assistant Commissioner Eddie Edwards
Colonel Nathan Noyes
New Hampshire Department of Safety
33 Hazen Drive
Concord, NH 03305

Re: Right-to-Know Request

Dear Commissioner Quinn, Commissioner Edwards, and Colonel Noyes:

This is a Right-to-Know request to the New Hampshire Department of Safety (“the Department”) pursuant to RSA 91-A and Part I, Article 8 of the New Hampshire Constitution by the American Civil Liberties Union of New Hampshire (“ACLU-NH”). The ACLU-NH defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Hampshire Constitutions. In furtherance of that mission, the ACLU-NH regularly conducts research into government activities in New Hampshire. We ask that your Department waive all fees associated with responding to this request. Please contact me to discuss the fee waiver in advance of preparing any copies.

As you know, Customs and Border Patrol (“CBP”) issued a press release on January 25, 2023 stating the following: “Between October 1, 2022, and December 31, 2022, U.S. Border Patrol’s Swanton Sector recorded an approximate 743% increase in apprehensions and encounters compared to the same period the year prior.”¹ CBP issued another press release on February 13, 2023 stating the following: “U.S. Border Patrol’s (BP) Swanton Sector recorded 367 apprehensions and encounters during January of fiscal year 2023 (FY23.) January’s total surpassed the preceding January apprehensions for the past 12 years combined (Total: 344).”²

However, these statistics—which various state actors seem to be relying on—are not specific to New Hampshire, but rather cover the entire Swanton sector. The Swanton sector covers (i) the entire State of Vermont, (ii) Clinton, Essex, Franklin, St. Lawrence and Herkimer counties in New York, and (iii) Coos, Grafton and Carroll counties in New Hampshire.³ And the New Hampshire/Canadian border only constitutes about 58 of the 295 miles of Canadian border in the Swanton sector. Further, these statistics referenced by CBP do not seem to be limited to cross-border apprehensions, but rather seem to cover apprehensions in the entire sector and potentially deep into the interior of New England. This would

¹ <https://www.cbp.gov/newsroom/local-media-release/increased-illicit-border-crossings-carry-higher-risk-winter-months>

² <https://www.cbp.gov/newsroom/local-media-release/border-patrol-s-swanton-sector-apprehensions-encounters-reach-historic>

³ <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/swanton-sector-vermont>

include, if they in fact occurred, apprehensions deep in the interior of New Hampshire in Grafton and Carroll Counties—far from the border.

Thus, additional data is needed on the degree to which these cited apprehensions actually occurred in New Hampshire and whether they were near the Canadian border. Accordingly, the ACLU-NH makes the following requests:

October 1, 2022 to December 31, 2022

1. Of the apprehensions that occurred in the Swanton sector from October 1, 2022 to December 31, 2022, documents sufficient to identify how many of the individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
2. Documents sufficient to identify how many of the apprehensions from October 1, 2022 to December 31, 2022 occurred in New Hampshire—including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties)—relative to the total number of apprehensions by the sector during that three-month time period.
3. Of these October 1, 2022 to December 31, 2022 apprehensions in New Hampshire identified in Request No. 2, documents sufficient to identify (i) the municipality of the apprehension and (ii) how many occurred within 25 miles of the New Hampshire border or at the border.
4. Of these October 1, 2022 to December 31, 2022 apprehensions in New Hampshire identified in Request No. 2, documents sufficient to identify how many of the individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
5. Of these October 1, 2022 to December 31, 2022 apprehensions in New Hampshire identified in Request No. 2, documents sufficient to identify how many of the individuals apprehended involved the filing of criminal charges under state or federal law, including a breakdown of those alleged offenses (e.g., possession of alleged contraband)?

January 2023

6. Of the 367 apprehensions that occurred in the Swanton sector in January 2023, documents sufficient to identify how many of the 367 individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
7. Documents sufficient to identify how many of these 367 January 2023 apprehensions occurred in New Hampshire, including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties).

8. Of these January 2023 apprehensions in New Hampshire identified in Request No. 7, documents sufficient to identify (i) the municipality of the apprehension and (ii) how many occurred within 25 miles of the New Hampshire border or at the border.
9. Of these January 2023 apprehensions in New Hampshire identified in Request No. 7, documents sufficient to identify how many of the individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
10. Of these January 2023 apprehensions in New Hampshire identified in Request No. 7, documents sufficient to identify how many of the individuals apprehended involved the filing of criminal charges under state or federal law, including a breakdown of those alleged offenses (e.g., possession of alleged contraband)?

In responding to this request, please consider the time limits mandated by the Right-to-Know law. In discussing those limits in *ATV Watch v. N.H. Dep’t of Res. & Econ. Dev.*, 155 N.H. 434 (2007), the New Hampshire Supreme Court has stated that RSA 91-A:4, IV requires that a public body or agency, “within 5 business days of the request, make such records available, deny the request in writing with reasons, or to furnish written acknowledgement of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied.” *Id.* at 440.

If produced, these records must be produced irrespective of their storage format; that is, they must be produced whether they are kept in tangible (hard copy) form or in an electronically-stored format, including but not limited to e-mail communications. If any records are withheld, or any portion redacted, please specify the specific reasons and statutory exemption relied upon. *See* RSA 91-A:4, IV(c) (“A public body or agency denying, in whole or part, inspection or copying of any record shall provide a written statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.”).

Thank you for your anticipated cooperation. I look forward to hearing from you as soon as possible. Of course, if you have any questions or concerns, do not hesitate to contact me.

Very truly yours,

/s/ Gilles Bissonnette

Gilles Bissonnette
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