



June 6, 2013

Mr. Mickey H. Osterreicher, General Counsel
National Press Photographers Association
1100 M&T Center, 3 Fountain Plaza
Buffalo, New York 14203

Dear Mr. Osterreicher:

Re: KGTV Incident at San Onofre State Beach – Event No. 213314040

Your May 6, 2013 letter to Louis Nastro, Assistant to the California State Park and Recreation Commission, was forwarded to me for response. The California Department of Parks and Recreation (“DPR”) appreciates your interest in protecting the constitutional rights of journalists and takes very seriously the allegations that were made regarding DPR staff’s handling of the April 22, 2013 incident involving a KGTV reporter and photographer videotaping on the grounds of the San Onofre Nuclear Generating Station (“SONGS”).

DPR investigated the April 22 incident in response to your letter. It appears that there was a misunderstanding on the part of DPR staff as to the legality of photographing the power plant. Because San Onofre State Beach surrounds SONGS on three sides and the SONGS security detail is comprised of non-sworn personnel, SONGS security Staff will often call on DPR officers to assist in checking out suspicious circumstances adjacent to the secured area of SONGS.

Our investigation of the April 22 incident indicates that our officers were following the lead of SONGS security staff, who stated that it was illegal to photograph or film the power plant and instructed the news reporter and photographer to delete the footage. The DPR officer watched to make sure the footage was deleted. We now know that the SONGS security person spoke in error, and DPR staff unknowingly perpetuated the error.

While we realize it is not an excuse, we would like to note that the videotaping came on the heels of the Boston Marathon bombing and staff was on high alert for the possibility of additional terrorist actions. In hindsight, they may have acted with an overabundance of caution while detaining the news crew—but there was never an intention to violate anyone’s constitutional rights during their brief detention.

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I would also like to respond to your email inquiry regarding a second incident that occurred on May 14, 2013 at about 12:40 p.m. In that incident, DPR officers responded to a request for assistance from security staff at SONGS, who reported that two men on SONGS property were filming the power plant's north gate and security activities, became aggressive and refused to comply when told to leave. The DPR officers stopped a vehicle matching the description provided by SONGS. The men in the vehicle stated they were members of the news media but did not produce any credentials. Their vehicle also had no marks or labels identifying it as a news truck. After identifying the men, DPR officers found no outstanding warrants or drivers license violations. SONGS security staff arrived, a call was made to the FBI, and it was eventually determined that the men would not be charged with any crime. They were released from temporary detention. It appears that the DPR officers acted appropriately during this contact.

All personnel involved in the April 22 incident have been counseled on proper procedures for dealing with the press, especially in emergency situations, so that First Amendment rights can be protected and both the press and DPR staff can carry out their functions with minimal interference with each other. All DPR officers in the district that includes San Onofre State Beach have been clearly advised that there is no legal basis for DPR peace officers to seize or cause destruction of photographs or video. DPR has taken initial steps to make sure that the officers involved and all other staff understand that the public, including journalists, may photograph the SONGS from any public vantage point. DPR also intends to expand its staff training in this regard in order to avoid situations similar to the ones discussed herein, and would be happy to consider including any suggestions you might have.

Finally, your letter has served as a reminder to DPR to review our procedures and update our working agreements with SONGS regarding communication and response protocols. We have initiated this effort in the hopes of avoiding similar problematic incidents in the future.

Please feel free to call me at (916) 653-9905 if you wish to discuss this further.

Sincerely,



Claire P. LeFlore
Chief Counsel

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