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To: [NRCExecSec Resource](#)
Cc: [Gustave Woerner](#)
Subject: [External_Sender] Objections and Request to Quash the Subpoena in case no. 3-2023-007
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Attachments: [Obj. and Req. to Quash NRC Sub..pdf](#)
[3-2023-007 Subpoena for Documents SAC Signed.pdf](#)

To the Secretary of the Commission,

Attached is the Missouri Department of Public Safety's motion to quash the Nuclear Regulatory Commission Office of Investigation's subpoena – case no. 3-2023-007 –made pursuant to the instructions contained within.

Thank you,

Kayla Kemp
General Counsel
Department of Public Safety

ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

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MICHAEL L. PARSON
Governor

SANDRA K. KARSTEN
Director



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STATE OF MISSOURI
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE DIRECTOR

October 27, 2023

Brooke P. Clark
Secretary of the Commission
U.S. Nuclear Regulatory Commission
VIA Email: NRCExecSec@nrc.gov

Gustave Woerner
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RE: Motion to Quash and/or Modify the Office of Investigation's Subpoena

The Missouri Department of Public Safety – Director's Office, which oversees the State Emergency Management Agency ("SEMA"), is in receipt of your subpoena and provides the following responses and objections:

- A. Records from January 2021 to the present related to SEMA's storage, relocation, digitization, disposal, and/or destruction of sealed source leak test results, sealed source inventories, and documentation of annual radiation protection program reviews, including, but not limited to, emails and other correspondence, notes, log entries, meeting summaries, briefings, and reports.

Response to Request A: SEMA holds that it has no such documents. To the extent that the NRC seeks emails, SEMA is willing to conduct an email search with agreed upon search parameters, to include date range, email addresses to be searched, and search terms, are agreed to. SEMA reserves the right object to the production of any email that is privileged or is to be held confidential.

- B. Records from September 2022 to the present related to an unescorted access incident involving SEMA Radioactive Emergency Preparedness (REP) Program personnel that occurred on September 19, 2022, including, but not limited to, emails and other correspondence, notes, meeting summaries, briefings, and reports.

Response to Request B: SEMA holds that it has no such documents. To the extent that the NRC seeks emails, SEMA is willing to conduct an email search with agreed upon search parameters, to include date range, email addresses to be searched, and search terms, are agreed to. SEMA reserves the right object to the production of any email that is privileged or is to be held confidential.

C. Records related to Jason Davenport's employment at SEMA involving activities conducted under NRC license 24-07974-03, including, but not limited to, Mr. Davenport's tenure in the REP Program, specifically:

1. Any records of complaints against Mr. Davenport related to Mr. Davenport's compliance with NRC requirements or SEMA requirements, procedures, instructions, or policies, including, but not limited to:
 - a. Complaints to SEMA management
 - b. Complaints to Human Resources
 - c. Complaints to internal professional responsibility or ethics offices

Response to Request C.1.a-c: SEMA holds that it has no such documents as to Request C.1.c.

As for Requests C.1.a and C.1.b, SEMA objects and therefore moves to quash and/or modify this subpoena to the extent it seeks confidential, personnel records. The entire request is unlimited in time. Further, the request is overly broad in that any complaint that Mr. Davenport's potential noncompliance with a SEMA policy would be responsive. For example, it is against SEMA policy to violate copyright law or to discriminate based upon a protected quality, such as age. Thus, request C.1.a and C.1.b. seeks any complaint, made at any point, that Mr. Davenport was employed with SEMA related to any policy violation even if wholly unrelated to the REP Program. As the time period is unlimited, the scope of the complaints is unlimited in subject matter, and the request is overly broad as to include wholly unrelated complaints, this request should be quashed.

Furthermore, Missouri law, section 610.021(13), RSMo., provides that "individually identifiable personnel records, performance ratings or records pertaining to employees" are closed records under Missouri law. Further, the Missouri Supreme Court recognizes an employee's privacy rights, which prevent the disclosure of the personnel records that are sought: "Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed". *State ex rel. Delmar Gardens N. Operating, LLC v. Gaertner*, 239 S.W.3d 608, 611 (Mo. banc 2007). As written the subpoena seeks any records of complaints even when the complaints only concern violations of SEMA's policies and such disclosure would violate Missouri's recognized employee privacy rights.

2. Any records of investigations resulting from complaints against Mr. Davenport described in I.C.1, including, but not limited to, supporting investigative material; notes and correspondence related to the investigations; and reports documenting the results of the investigations.

Response to Request C.2: SEMA objects and therefore moves to quash and/or modify this subpoena to the extent it seeks confidential, personnel records. Section C seeks records related to Mr. Davenport's employment which are not under the scope of the NRC's investigation. Further, this request is unlimited in time. Furthermore, this request is overly broad in that any investigation that Mr. Davenport's potential noncompliance with a SEMA policy would be responsive. For example, if an investigation in a sexual harassment or wage and labor law violations occurred then as written those investigations would be responsive to this request. As such, this request is not limited in scope and the records sought exceed the scope of the NRC's investigation. Thus, this requests seeks the disclosure of

any investigation made at any point that Mr. Davenport was employed with SEMA. This request is overly broad, unlimited in time, and unlimited in scope.

Furthermore, Missouri law, section 610.021(13), RSMo., provides that “individually identifiable personnel records, performance ratings or records pertaining to employees” are closed records under Missouri law. Further, the Missouri Supreme Court recognizes an employee’s privacy rights, which prevent the disclosure of the personnel records that are sought: “Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed”. *State ex rel. Delmar Gardens N. Operating, LLC v. Gaertner*, 239 S.W.3d 608, 611 (Mo. banc 2007). As written the subpoena seeks any records of investigations resulting from the complaints referenced in C.1.a-c and such disclosure undoubtedly would violate Missouri’s recognized employee privacy rights.

3. Any records of disciplinary actions, work counseling notices, performance improvement plans, and other similar documents pertaining to Mr. Davenport.
Response to Request C.3: SEMA objects and therefore moves to quash and/or modify this subpoena to the extent it seeks confidential, personnel records. This request seeks all disciplinary actions, work counseling notices, performance improvement plans, and other similar documents. First, “similar documents” is vague and undefined and therefore SEMA is unable to locate any responsive records as similar documents does not adequately specify those records that are being sought. Second, this request is unlimited in that the records sought are for the entirety of Mr. Davenport’s employment with SEMA. Third, this request is unlimited in scope. If Mr. Davenport received any disciplinary action for being tardy to work, then the subpoena would require SEMA to disclose of confidential, personnel records concerning an issue wholly outside the scope of the NRC’s regulatory authority. Therefore, SEMA objects to the entirety of this request due to its overly broad, irrelevant, and unlimited nature.

Furthermore, Missouri law, section 610.021(13), RSMo., provides that “individually identifiable personnel records, performance ratings or records pertaining to employees” are closed records under Missouri law. Further, the Missouri Supreme Court recognizes an employee’s privacy rights, which prevent the disclosure of the personnel records that are sought: “Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed”. *State ex rel. Delmar Gardens N. Operating, LLC v. Gaertner*, 239 S.W.3d 608, 611 (Mo. banc 2007); See also *Laut v. City of Arnold*, 417 S.W.3d 315, 327 (Mo. App. E.D. 2013) (disciplinary records are closed records).

4. Mr. Davenport’s performance appraisals, including any correspondence regarding the content of the appraisal or the overall rating of the appraisal.
Response to Request C.4: SEMA objects and therefore moves to quash and/or modify this subpoena to the extent it seeks confidential, personnel records. This request seeks all performance appraisals, including correspondence regarding the

contents or the overall rating. First, this request is unlimited in that the records sought are for the entirety of Mr. Davenport's employment with SEMA. Second, this request is irrelevant. If Mr. Davenport received performance ratings that were raving or were mediocre, these ratings would be wholly outside the scope of the NRC's regulatory authority. Further, the type of information sought is so far removed from the NRC's scope of investigation that it is evident that the records sought were not tailored to the needs of the investigation. This request is overly broad in that it is unlimited in time. Therefore, SEMA objects to the entirety of this request due to its overly broad, irrelevant, and unlimited nature.

Furthermore, Missouri law, section 610.021(13), RSMo., provides that "individually identifiable personnel records, performance ratings or records pertaining to employees" are closed records under Missouri law. Further, the Missouri Supreme Court recognizes an employee's privacy rights, which prevent the disclosure of the personnel records that are sought: "Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed". *State ex rel. Delmar Gardens N. Operating, LLC v. Gaertner*, 239 S.W.3d 608, 611 (Mo. banc 2007). As written the subpoena seeks all performance appraisals to include correspondence and the overall rating of the appraisal and such disclosure would violate Missouri's recognized employee privacy rights.

5. Any records of Mr. Davenport's training on NRC regulations, the requirements of NRC license 24-07974-03, and SEMA requirements, procedures, instructions, or policies.

Response to Request C.5: SEMA objects and therefore moves to quash and/or modify this subpoena to the extent it seeks confidential, personnel records. First, this request is vague in that it simply seeks any record of Mr. Davenport's training on NRC regulations or the requirements of NRC license 24-07974-03 or SEMA requirements, procedures, instructions or policies. Thus, this request does not specify any particular training records that it seeks. Instead, the subpoena presumably seeks any record whatsoever since Mr. Davenport was employed with SEMA. After all, this request would require SEMA to produce every training record even if the training were on a subject wholly apart from the subject matter of the RNC's investigation. If SEMA had a training record related to Mr. Davenport's supervisory duties, then that training record would be responsive to the overly broad and vague nature of the request for any record of SEMA requirements. Further, this request is unlimited in time which compounds its overly broad nature. As written, SEMA would need to locate every record of every training Mr. Davenport completed during his entire tenure with SEMA. As written, this request is burdensome as it needlessly seeks –without any specificity– any training record unlimited in time or scope.

Lastly, pursuant to Missouri law, section 610.021(13), RSMo., provides that "individually identifiable personnel records, performance ratings or records pertaining to employees" are closed records under Missouri law. Further, the Missouri Supreme Court recognizes an employee's privacy rights, which prevent the disclosure of the personnel records that are sought: "Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed". *State ex rel. Delmar Gardens N. Operating, LLC v. Gaertner*, 239 S.W.3d 608, 611 (Mo. banc 2007). As written the subpoena seeks all training

records related to an employee and such disclosure would violate Missouri's recognized employee privacy rights.

6. Any training materials used in the training described in I.C.5.

Response to Request C.6: SEMA objects and therefore moves to quash and/or modify this subpoena to the extent it seeks confidential, personnel records. Pursuant to Missouri law, section 610.021(13), RSMo., provides that "individually identifiable personnel records, performance ratings or records pertaining to employees" are closed records under Missouri law. Further, the Missouri Supreme Court recognizes an employee's privacy rights, which prevent the disclosure of the personnel records that are sought: "Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed". *State ex rel. Delmar Gardens N. Operating, LLC v. Gaertner*, 239 S.W.3d 608, 611 (Mo. banc 2007)

7. Any records of Mr. Davenport's education and work experience, relevant to NRC licensed activities

Response to Request C.7: SEMA objects and therefore moves to quash and/or modify this subpoena to the extent it seeks confidential, personnel records. Pursuant to Missouri law, section 610.021(13), RSMo., provides that "individually identifiable personnel records, performance ratings or records pertaining to employees" are closed records under Missouri law. Further, the Missouri Supreme Court recognizes an employee's privacy rights, which prevent the disclosure of the personnel records that are sought: "Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed". *State ex rel. Delmar Gardens N. Operating, LLC v. Gaertner*, 239 S.W.3d 608, 611 (Mo. banc 2007). As written the subpoena seeks all records related to an employee's education and work experience and such disclosure would violate Missouri's recognized employee privacy rights.



Kayla Kemp
General Counsel