



KANSAS JUSTICE INSTITUTE

July 10, 2020

Sent via Electronic Mail Only (claycoatty@yahoo.com)

Richard “Rick” James, Esq.
Clay County Counselor
712 Fifth Street
Clay Center, Kansas 67432

Re: Clay County, Kansas, Covid-19 Tracking Program

Dear Mr. James,

Kansas Justice Institute¹ appreciates the time, consideration, and professionalism you and Clay County Health Administrator Dana Rickley exhibited in response to our July 7, 2020 open records request. Instead of “slow walking” the response, as some do, Clay County quickly and appropriately responded. KJI credits Clay County for its forthrightness. KJI reciprocates the professional courtesy. This letter is sent in a good faith.

In our view, Clay County’s Covid-19 tracking program violates the Fourth Amendment to the United States Constitution and violates Kansas’ Contact Tracing Privacy Act. Our sincere hope is Clay County will immediately, and permanently, rescind its Covid-19 tracking program based upon this correspondence.

According to The Clay Center Dispatch, Clay County government officials mandated that Clay County Park campers fill out registration forms related to COVID-19, and “[t]he park will keep track of anyone who use[s] the bathroom, spends the night, shares a meal or sleeps in the same bedroom[.]” Ryan D. Wilson, *Clay Co. Park to reopen at start of Phase 2*, THE CLAY CENTER DISPATCH (May 12, 2020). “Campers are to turn in this information weekly, and that information will be passed onto [Health Administrator Dana] Rickley for follow-up if it’s required. Campers are required to provide this information as part of the rules they’ll agree to when they sign up for a spot.” *Id.*

¹ Kansas Justice Institute is a non-profit, public-interest litigation firm committed to protecting individual liberty and the constitutional rights of all Kansans.

To that end, Clay County campers are required to sign the “Clay County Park Attestation of Statement of Health and Safety Practices” (Exhibit A²) and are required to turn in the “Clay County Park Covid-19 Outside Guest Tracker.” (Exhibit B³). This is part of the “Clay County Park Re-Opening Plan for COVID-19 Suppression in Clay County” (Exhibit C⁴), and the “Clay County Park Rental Agreement.” (Exhibit D⁵).

Clay County made a “slight change ... to the policy on tracking campers[.] ... Paperwork used to track contacts campers have with each other and others in the park will be kept at the park and will be disposed of by shredding it every 30 days, County Health Administrator Dana Rickley reported. This paperwork will only be turned over to the County Health Department in the event of a confirmed case of coronavirus, Rickley said.” Ryan D. Wilson, *Clay Co Park reopens without incident*, THE CLAY CENTER DISPATCH (May 27, 2020).

The Covid-19 tracking program is still in effect according to the response to our open records request.

In our view, the Clay County tracking program violates the Fourth Amendment to the United States Constitution.⁶

The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The Fourth Amendment protects people, not places, and its purpose is to safeguard the privacy of individuals from government intrusions (*Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018)) and “to protect against all general searches.” *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931).

A person does not surrender all Fourth Amendment protections by venturing into the public sphere, and in fact, the Fourth Amendment protects the privacy in the whole of their physical movements. *Carpenter* at 2217. One of the Amendment’s purposes is to secure the “privacies of life” and to “place obstacles in the way of [the government].” *Id.* at 2214 (cleaned up).

Requiring permit-holders to compile and disclose lists of their visitors is a warrantless “search” under the Fourth Amendment. *See City of Los Angeles, Calif. v. Patel*, 576 U.S. 409 (2015). The Supreme Court has repeatedly held that “searches conducted outside the judicial

² Also available here: <https://www.claycountykansas.org/DocumentCenter/View/853/Attestation>

³ Also available here: <https://www.claycountykansas.org/DocumentCenter/View/854/Guest-Tracker>

⁴ Also available here: <https://www.claycountykansas.org/DocumentCenter/View/851/Clay-County-Park-Re-Open-Plan>

⁵ Also available here: <https://www.claycountykansas.org/DocumentCenter/View/852/Clay-County-Park-Rental>

⁶ This list is not exclusive. The tracking program violates other constitutional and statutory provisions not discussed here.

process, without prior approval by [a] judge or [a] magistrate [judge], are per se unreasonable ... subject only to a few specifically established and well-delineated exceptions.” *Id* (cleaned up).

There can be no reasonable dispute that Clay County’s warrantless regime is unreasonable. It is so broad, and so pervasive, it reveals deeply intimate and personal details about a permit-holder and their guest, such as, “who spends the night, shares a meal or sleeps in the same bedroom[.]” See THE CLAY CENTER DISPATCH (May 12, 2020), above. This is precisely what the Fourth Amendment intends to protect against.

Just as in *Carpenter*, Clay County’s list compilation and dissemination requirement “provides an intimate window into a person’s life, revealing not only his particular movements, but through them his familial, political, professional, religious, and sexual associations. These location records hold for many Americans the privacies of life.” *Carpenter*, 2217 (cleaned up).

In short, Clay County’s list compilation and warrantless dissemination requirement violates the Fourth Amendment. There is no pandemic exception to the Fourth Amendment and no other Fourth Amendment exception applies.

Clay County’s Covid-19 Tracking program also violates Kansas’ “COVID-19 contact tracing privacy act,” in our view. See KSA Ch. 1, § 16 “COVID 19 contact tracing privacy act; purpose; rules; and regulations; definitions; expiration.”

In conclusion, Kansas Justice Institute respectfully urges you to immediately end Clay County’s unconstitutional, unwarranted, and unreasonable program. If you wish to discuss this matter, I will make myself available to you at any time, including this evening. If you call my direct line listed in the below signature block, it will automatically forward to my mobile phone. If for some reason I do not immediately answer, please leave a message and I will return the call.



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Clay County Park

Attestation of Statement of Health and Safety Practices

I, _____, attest to the following:

_____ I have not, nor any of my guests have traveled to a mandatory quarantine area in the last 14-days.

_____ I have not, nor any of my guests have been in close contact with someone confirmed to have or being evaluated for COVID-19 in the last 14 days.

I will assure:

1. Social distancing measures will be followed:

- a) Stay 6 feet away from others not in your immediate family unit.
- b) Abide by Mass Gathering limitations.

2. Provide fundamental cleaning:

- a) Provide fundamental cleaning in and around my campsite (high touch surfaces/items) before and after meals or more frequently as needed.

3. Assure public health practices:

- a) Assure public health practices are followed by you and guests of your campsite.
 - 1) Stay home when sick.
 - 2) Wash hands frequently.
 - 3) Cover your cough or sneeze, then immediately dispose of tissue and wash your hands.
 - 4) Avoid touching your eyes, nose, and mouth with unwashed hands.
 - 5) Follow isolation and quarantine orders issued in residential county.
 - 6) If you or one of your guests become ill in the next 14 days, please notify the Clay County Health Department at 785-632-3193.

Clay County Park Covid-19 Outside Guest Tracker

Name of Camper _____ Site # _____

Name of Guest	County & State	Date In	Date Out	Phone Number

Exhibit B

Clay County Park Re-Opening Plan for COVID-19 Suppression in Clay County

Planning Team: Wakefield City Council, Clay County Parks Board, Clay County Park Manager & Clay County Health Department

Goal: Ensure safety measures are implemented to protect our most vulnerable population.

Clay County Park operations will resume in a safe manner that allows for the suppression of COVID -19, and not overwhelm the ability of local public health to contain outbreaks and conduct contact tracing.

This will happen no sooner than Phase 2 of the Governor's Plan.

Strategies:

Initiate a Campsite Registration that includes: Date, Name, Co/State, and contact information at minimum.

Each Campsite Registrant will complete an attestation that they will enforce social distancing measures, mass gathering guidelines, and other items listed on attestation document. (See attached)

Each Campsite will keep records of visitors to their campsite who use their bathroom, share a meal/beverage or stay overnight.

Campsite records will be turned in weekly to the Campground Office. Campground office will turn records over to Public Health weekly or more frequently if requested.

Bathhouses/Restrooms may open no sooner than Phase Three with daily cleaning and informative signage on how to reduce risk of contracting COVID-19.

How to protect yourself and others from COVID-19 will be distributed.

Playground will remain closed to the public.

CLAY COUNTY PARK RENTAL AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between the Clay County Park, hereinafter called the Park, and _____, hereinafter called the Camper:

1. Property Rented:

WITNESSETH, that the Park agrees to rent property to, and Camper agrees to rent, the following described space, situated in the Clay County Park, Clay County, Kansas, to-wit:

2. Occupancy:

Occupancy of the property shall be immediate upon signing of the agreement or upon the following agreed upon date:

3. Term of Rental:

The rental term shall either be monthly or daily as agreed below:

4. Rental Fees, Payment, and Lien:

The rental price shall be:

_____ per month

_____ per day

For monthly rentals, the rent shall be due and owing on the first day of each month and shall be deemed late after the 10th of each month. Beginning with the 15th day of each month, a \$5.00 per day late fee will accrue each day for the next 10 days. In no case will the late fee exceed \$50.00 per month. If the rent is not paid by the 26th day of the month, this agreement is subject to termination.

For daily rentals, the rent shall be due and owing upon signing of this agreement.

By the Camper's signature below, the Camper agrees that if the rent is not paid in full, Clay County is granted a lien on the camper trailer belonging to the Camper and that in order to remove that lien, the rent must be paid in full. Failure to pay the rent may result in a towing lock placed upon the camper trailer. All rent must be paid in full before the camper trailer is allowed to be moved from the Park.

5. Termination of Agreement:

Either side may terminate this agreement with a three-day notice to the other party. If the Park gives written notice to terminate, the Camper must vacate the lot within three days, leaving the lot clean and in good repair.

6. Termination for Cause:

The Park may terminate this agreement for cause under the following conditions:

- a. Non-payment of rent
- b. Failing to maintain the lot free and clear of trash and other debris; the lot at all times must be kept in a clean and orderly condition
- c. Public Nudity
- d. Excessive noise
- e. Failure to respect the ability of fellow campers to quietly enjoy their space in the park
- f. Any violation of the Clay County Park rules attached to this document.

7. Damage and Cleaning:

The Camper must leave the space clean and as they found it. The Camper agrees to pay the reasonable cost of repair for any damage to the lot other than normal wear and tear or missing Park property. Camper further agrees to pay the reasonable cost of cleaning in the event the Camper fails to leave the lot in a clean and orderly condition.

8. Assignment of Agreement.

Neither party shall have the authority to assign this Agreement or any interest under this Agreement in and to said premises, without the express and prior written consent of the other party.

9. Persons Bound.

This agreement shall be binding upon their heirs, executors, administrators, devisees, trustees, surviving joint tenants, and approved assigns of the parties hereto. The Camper shall be responsible for the conduct of the Camper's guests.

10. Paragraph Headings.

The headings of particular paragraphs and subparagraphs are inserted only for convenience and are not part of this Agreement and are not to act as a limitation on the scope of the particular paragraph to which the heading refers.

11. Severability.

The provisions of this lease are severable and in the event any provision, clause, sentence, section or part thereof is held to be invalid, illegal, unconstitutional, inapplicable or unenforceable to any person or circumstances, such invalidity, illegality, unconstitutionality, inapplicability or unenforceability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, parts of the contract or their application to Park or Camper or other persons or circumstances. It is understood and agreed that the terms, conditions and covenants of this Contract would have been made by both parties if such invalid, illegal, unconstitutional, inapplicable or unenforceable provision, sentence, clause, section or part had not been included therein to the extent that portion of this agreement may be invalid by striking of certain words or phrases, such words or phrases shall be deemed to be stricken and the remainder of the provisions and the remainder of the other portions of this Contract agreement shall remain in full force and effect. It is further agreed that this Contract may be executed in counterparts, each of which when considered together shall constitute the original contract.

12. Prior Agreement.

This Contract represents the entire agreement between the parties as to the rental of the property. There are no other agreements, written or oral.

13. Entire Agreement and Choice of Law

The parties acknowledge that this document reflects their entire agreement and there are no other agreements, oral or written, between the parties concerning this transaction. In addition, the parties acknowledge that this agreement will be governed and interpreted by the laws of the State of Kansas.

14. Agreement to Terms and Receipt of Rules

By his/her signature below, the Camper agrees to all terms and conditions herein as well as acknowledges receipt of a copy of the Clay County Park Rules.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year above written.

PARK MANAGER OR REPRESENTATIVE

CAMPER