

In the
Supreme Court of Ohio

STATE OF OHIO, *ex rel.*
THE CINCINNATI ENQUIRER
A Division of Gannett GP Media, Inc.
312 Elm Street
Cincinnati, Ohio 45202

Case No.

STATE OF OHIO, *ex rel.*
SCRIPPS MEDIA INC. D/B/A WCPO-TV
1720 Gilbert Avenue
Cincinnati, Ohio 45202

COMPLAINT FOR
WRIT OF MANDAMUS

STATE OF OHIO, *ex rel.*
THE ASSOCIATED PRESS
312 Elm Street
Cincinnati, Ohio 45202

STATE OF OHIO, *ex rel.*
RAYCOM MEDIA D/B/A WXIX-TV
635 West Seventh Street
Cincinnati, Ohio 45203

STATE OF OHIO, *ex rel.*
HEARST CORPORATION D/B/A WLWT-TV
1700 Young Street
Cincinnati, Ohio 45202

STATE OF OHIO, *ex rel.*
SINCLAIR MEDIA III, INC. D/B/A WKRC-TV
1906 Highland Avenue
Cincinnati, Ohio 45219

Relators,

vs.

JOSEPH T. DETERS
HAMILTON COUNTY
PROSECUTING ATTORNEY
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202

Respondent.

JOHN C. GREINER (0005551)*

**Counsel of Record*

GRAYDON HEAD & RITCHEY LLP

1900 Fifth Third Center

511 Walnut Street

Cincinnati, OH 45202-3157

Phone: (513) 629-2734

Fax: (513) 651-3836

E-mail: jgreiner@graydon.com

*COUNSEL FOR RELATORS CINCINNATI ENQUIRER, SCRIPPS MEDIA INC d/b/a WCPO-TV,
THE ASSOCIATED PRESS, RAYCOM MEDIA D/B/A WXIX-TV, HEARST CORPORATION D/B/A
WLWT-TV, SINCLAIR MEDIA III, INC. D/B/A WKRC-TV*

For its Complaint for Writ of Mandamus, Relator The Cincinnati Enquirer, a Division of Gannett GP Media, Inc. (the “Enquirer”), Scripps Media Inc. D/B/A/ WCPO-TV (“WCPO”), The Associated Press (“AP”), Raycom Media D/B/A WXIX-TV (“WXIX”), Hearst Corporation D/B/A/ WLWT-TV (“WLWT”), and Sinclair Media, III, Inc. D/B/A WKRC-TV (“WKRC”) state as follows:

1. The Enquirer operates and does business as The Cincinnati Enquirer, a newspaper of general circulation in Cincinnati, Ohio.

2. WCPO-TV operates and does business as Channel 9, a television station broadcasting in Greater Cincinnati, Ohio.

3. The Associated Press is a new organization that does business in Greater Cincinnati, Ohio.

4. WXIX-TV operates and does business as Channel 19, a television station broadcasting in Greater Cincinnati, Ohio.

5. WLWT-TV operates and does business as Channel 5, a television station broadcasting in Greater Cincinnati, Ohio.

6. WKRC operates and does business as Channel 12, a television station broadcasting in Greater Cincinnati, Ohio.

7. Respondent Joseph T. Deters (“Deters”) is the Hamilton County Prosecuting Attorney. The Hamilton County Prosecuting Attorney’s Office (“HCPRO”) is the public office for the Hamilton County prosecuting attorney as authorized by Chapter 309 of the Ohio Revised Code.

8. The HCPRO is a “public office” as defined at R.C. 149.011(A). Records maintained by Respondent at the HCPRO are “public records” pursuant to R.C. 149.43(A)(1).

9. On July 20, 2015, Rebecca Butts (“Butts”) an Enquirer reporter, contacted the University of Cincinnati (“UC”) and the Cincinnati Police Department (“CPD”) and requested a copy of the incident report, all related security/surveillance camera footage, and the personnel file for the UC officer that shot and killed a man during a traffic stop on July 19, 2015 at approximately 6:30 pm at the intersection of Rice and Valencia streets in the Cincinnati neighborhood of Mount Auburn (“the Records”). (A true and correct copy of Ms. Butts’ requests for the Records are attached as Exhibit 1 to the Affidavit of Rebecca Butts.)

10. The next morning, on July 21, 2015, Stephanie McKenzie, an employee of the Cincinnati Police Department, contacted Ms. Butts on behalf of CPD and denied Ms. Butts’ Records request. Ms. McKenzie stated “This is a UC Police incident. Please send your request to their public records office.” (A true and correct copy of Ms. McKenzie’s response is attached as Exhibit 2 to the Affidavit of Rebecca Butts.)

11. That afternoon, Katherine Miefert, an employee of the Office of General Counsel at UC, contacted Ms. Butts on behalf of UC and also denied, in part, Ms. Butts’ Records request. Ms. Miefert denied Ms. Butt’s request for a copy of the incident report and all related security/surveillance camera footage, stating “[a]s to the remainder of your public records request, the University is collecting the information and working cooperatively with the Cincinnati Police Department and the Hamilton County Prosecutor’s Office to make certain that release of information does not hinder any part of their investigation.” (A true and correct copy of Ms. Miefert’s July 21, 2015 response is attached as Exhibit 3 to the Affidavit of Rebecca Butts.)

12. Julie Wilson, Chief Assistant Prosecutor and Public Information Office of the HCPRO, responded that afternoon to Ms. Butts' Records request, stating that it has ordered both public offices to not release the "body cam video" as included in Ms. Butts' request pursuant to:

"1. Sixth Amendment to the United States Constitution and ORC Section 149.43 (A) (1) (v) as release could jeopardize a possible future fair trial; and

2. ORC Section 149.43 (A) (1) (h) Confidential law enforcement investigatory records. See specifically ORC Section 149.43 (A) (2) (c), Specific confidential investigatory techniques or procedures or specific investigatory work product, and State of Ohio ex rel. Mark W. Miller vs. Ohio State Highway Patrol, 2014-Ohio-2244."

Ms. Wilson's response did not address UC's or CPD's denial of the balance of the requested Records, including, but not limited to, the related surveillance footage. (A true and correct copy of the HCPRO response to Ms. Butts' Records request is attached as Exhibit 4 to the Affidavit of Rebecca Butts.)

13. On July 21, 2015, Jill Parrish, an assignment editor for WCPO, contacted and requested a copy of the police body camera video that recorded the incident that occurred on Sunday, July 19, 2015 at approximately 6:30 p.m. at Vine Street and Thrill Street. (See Affidavit of Jill Parrish, Ex. 1)

14. On July 23, 2015, Julie Wilson denied Jill Parrish's request for the Records and stated that HCPRO in refusing to turn over the video saying "The law supports our position to not release the video. If you do not want to look at the law and just use your common sense, it should be clear why we are not releasing the video only a few days after the incident occurred. We need time to look at everything and do a complete investigation so that the community is satisfied that we did a thorough job. The Grand Jury has not seen the video yet and we do not want to taint the Grand Jury process. The video will be released at some point - - just not right now." (See Parrish Affidavit, Ex. 2)

15. On July 20, 2015, John London of WLWT-TV contacted Julie Wilson and requested a copy of the body camera video in regards to the incident involving a University of Cincinnati police officer's fatal shooting of a suspect in a traffic stop on July 19, 2015. (See Affidavit of John London)

16. On July 23, 2015, Julie Wilson denied his request for the Records and stated that Hamilton County Prosecutor Joseph Deters responded, "The law supports our position to not release the video. If you do not want to look at the law and just use your common sense, it should be clear why we are not releasing the video only a few days after the incident occurred. We need time to look at everything and do a complete investigation so that the community is satisfied that we did a thorough job. The Grand Jury has not seen the video yet and we do not want to taint the Grand Jury process . . ." (See London Affidavit, Ex. 1)

17. On July 23, 2015, Dan Sewell of the Associated Press contacted the Hamilton County Prosecutor's Office and requested any and all videos related to the July 19 incident involving Sam Dubose and University of Cincinnati police officers, including Ray Tensing. This was a renewed and direct request for the videos, once that material had been turned over to the prosecutor's office by the University of Cincinnati. (See Affidavit of Debra Martin, Ex. 1)

18. On July 22 and 23, 2015, Julie K. Wilson, denied his request for the Records and stated that HCPRO would not release the video. (See Martin Affidavit, Ex. 1)

19. On July 22, 2015, Teresa Weaver, Assignment Manager for WXIX, contacted University of Cincinnati Office of General Counsel and requested a copy of bodycam video of the U.C. officer involved shooting, occurring July 19, 2015. (See Affidavit of Teresa Weaver, Ex. 1)

20. On July 22, 2015, Julie Wilson denied her request for the Records and stated that HCPRO – the body cam video in the July 19th UC officer involved shooting will not be released pursuant to:

- a. Sixth Amendment to the United States Constitution and ORC Section 149.43(A)(1)(v) as release could jeopardize a possible future fair trial; and
- b. ORC Section 149.43(A)(1)(h) confidential law enforcement investigatory records. See specifically ORC Section 149.43(A)(2)(c). Specific confidential investigator techniques or procedures or specific investigatory work product, and State of Ohio ex rel. Mark W. Miller vs. Ohio State Highway Patrol, 2014-Ohio-2244. (See Affidavit of Teresa Weaver, Ex. 2)

21. On July 24, 2015, Timothy P. Meredith, News Assignment Manager for WKRC, contacted the Hamilton County Prosecutor’s Office and requested a copy of all video from the scene of a University of Cincinnati police officer involved fatality shooting on July 19, 2015. (See Affidavit of Timothy Meredith, Ex. 1)

22. On July 24, 2015, Julie Wilson denied his request for the Records and stated that HCPRO “stand by our previous statements for not releasing the video at this time.” (See Meredith Affidavit, Ex. 2)

23. On July 23, 2015, Ms. Miefert released the balance of the requested Records with exception to the related security/surveillance camera footage and the “body cam video.” (A true and correct copy of Ms. Miefert’s July 23, 2015 response is attached as Exhibit 5 to the Affidavit of Rebecca Butts.)

24. Respondent violated ORC 149.43 by failing to allege that the requested Records are exempt from public disclosure under the Ohio Public Records Act or prove that the “body camera video” squarely fits within the Confidential Law Enforcement Investigatory Record “Specific Confidential Investigatory Techniques or Procedures or Specific Investigatory Work Product” exception from public disclosure. Respondent also violated ORC 149.43 by refusing to make the requested Records available for inspection and copying.

25. Relators have a legal right to inspect and copy the Records and Respondent has a legal duty to promptly make the Records available to the Enquirer for inspection and copying.

26. Relators have no adequate alternative remedy in the ordinary course of the law.

27. Respondent has no valid excuse for refusing to permit the Enquirer and the public to inspect and copy the records in their entirety, and no valid excuse for failing to comply with Ohio law when identifying the alleged exemption from disclosure or promptly making the Records available for inspection.

28. For instituting this Mandamus action commanding Respondent to comply with his obligations under R.C. 149.43(B), Relators request that the Court award them all court costs, reasonable attorneys’ fees, and, if applicable, statutory damages as provided in R.C. 149.43(C). Based on the ordinary application of the statutory law and case law as it existed at the time the Relators requested access to the Records, Respondent could not have reasonably believed that his refusal to grant access to the Records complied with R.C. 149.43(B), nor could he have reasonably believed that his refusal would serve the public policy underlying the Ohio Public Records Act.

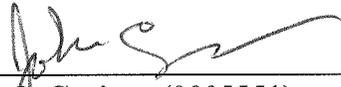
WHEREFORE, Relators seek a Peremptory Writ of Mandamus or, in the alternative, an Alternative Writ of Mandamus commanding Respondent to make available the Records for

inspection and copying in accordance with R.C. 149.43(B), for statutory damages as provided by R.C. 149.43(C)(1), and for any other relief deemed just and proper by the Court, including but not limited to an award of attorneys' fees.

Respectfully submitted,

Of Counsel:

GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157
Phone: (513) 621-6464
Fax: (513) 651-3836



John C. Greiner (0005551)
Counsel for Relators
GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157
Phone: (513) 629-2734
Fax: (513) 651-3836
E-mail: jgreiner@graydon.com

PRAECIPE FOR SERVICE

TO THE CLERK:

Please issue a Summons along with a copy of this *COMPLAINT* to the Respondent identified in the caption on page one via Certified Mail, return receipt requested.



John C. Greiner (0005551)

**In the
Supreme Court of Ohio**

**STATE OF OHIO, *ex rel.*
THE CINCINNATI ENQUIRER
A Division of Gannett GP Media, Inc.
312 Elm Street
Cincinnati, Ohio 45202**

Case No.

Relator,

vs.

**JOSEPH T. DETERS
HAMILTON COUNTY
PROSECUTING ATTORNEY
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202**

**AFFIDAVIT OF
REBECCA BUTTS
IN SUPPORT OF COMPLAINT
FOR WRIT OF MANDAMUS**

Respondent.

Respondent.

AFFIANT, after being duly cautioned and sworn, states as follows:

My name is Rebecca Butts. I am a reporter for Relator (the "Enquirer"). I have personal knowledge of the matters recounted in this Affidavit.

1. On July 20, 2015, I contacted the University of Cincinnati ("UC") and the Cincinnati Police Department ("CPD") and requested a copy of the incident report, all related security/surveillance camera footage, and the personnel file for the UC officer that shot and killed a man during a traffic stop on July 19, 2015 at approximately 6:30 pm at the intersection of Rice and Valencia streets in the Cincinnati neighborhood of Mount Auburn ("the Records"). A true and correct copy of my requests for the Records are attached hereto as Exhibit 1.

2. The next morning, on July 21, 2015, Stephanie McKenzie, an employee of the Cincinnati Police Department, contacted me on behalf of CPD and denied my Records request. Ms. McKenzie stated "This is a UC Police incident. Please send your request to their public records office." Ms. McKenzie failed to cite any legal authority justifying CPD's denial of my Records request. A true and correct copy of Ms. McKenzie's response is attached hereto as Exhibit 2.

3. That afternoon, Katherine Miefert, an employee of the Office of General Counsel at UC, contacted me on behalf of UC and also denied, in part, my Records request. Ms. Miefert denied my request for a copy of the incident report and all related security/surveillance camera footage, stating "[a]s to the remainder of your public records request, the University is collecting the information and working cooperatively with the Cincinnati Police Department and the Hamilton County Prosecutor's Office to make certain that release of information does not hinder any part of their investigation." Ms. Miefert failed to cite any legal authority justifying UC's denial of the Records request. A true and correct copy of Ms. Miefert's response is attached hereto as Exhibit 3.

4. Julie Wilson, Chief Assistant Prosecutor and Public Information Office of the Hamilton County Prosecuting Attorney's Office ("HCPRO"), responded that afternoon to my Records request, stating that HCPRO has ordered both public offices to not release the "body cam video" as included in Ms. Butts' request pursuant to:

"1. Sixth Amendment to the United States Constitution and ORC Section 149.43 (A) (1) (v) as release could jeopardize a possible future fair trial; and

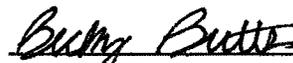
2. ORC Section 149.43 (A) (1) (h) Confidential law enforcement investigatory records. See specifically ORC Section 149.43 (A) (2) (c), Specific confidential investigatory techniques or procedures or specific investigatory work product, and State of Ohio ex rel. Mark W. Miller vs. Ohio State Highway Patrol, 2014-Ohio-2244."

Ms. Wilson's response did not address UC's or CPD's denial of the balance of the requested Records, including, but not limited to, the related surveillance footage. A true and correct copy of Ms. Wilson's response to my Records request is attached hereto as Exhibit 4.

5. On July 23, 2015, Ms. Miefert released the balance of the requested Records with exception to the related security/surveillance camera footage and the "body cam video." A true and correct copy of Ms. Miefert's July 23, 2015 response is attached hereto as Exhibit 5.

6. To date, Respondent has refused to provide the balance of the Records -- notably the related security/surveillance camera footage and the "body cam video."

FURTHER AFFIANT SAITH NAUGHT.



Rebecca Butts



NICOLLE L. STIEB
Notary Public, State of Ohio
My Commission Expires
May 19, 2018

STATE OF OHIO)
COUNTY OF Butler) ss.

BE IT REMEMBERED, that on July 23, 2015, before me, the subscriber, a Notary Public in and for said State, personally came **Rebecca Butts**, the Affiant in the foregoing instrument, who acknowledged the signing thereof to be her voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the date last aforesaid.

May 19, 2018
My Commission Expires

Nicolle Stieb
Notary Public

PRAECIPE FOR SERVICE

TO THE CLERK:

Please issue a copy of this *AFFIDAVIT OF REBECCA BUTTS* along with the Summons and Complaint to the Respondent identified in the caption on page one via Certified Mail, return receipt requested.

John C. Greiner
John C. Greiner (0005551)

From: Butts, Rebecca
Sent: Monday, July 20, 2015 8:03 AM
To: kimberly.napier@uc.edu
Cc: michele.ralston@uc.edu
Subject: Public Records Request

Good morning,

Please let the following email serve as an official records request from The Cincinnati Enquirer.

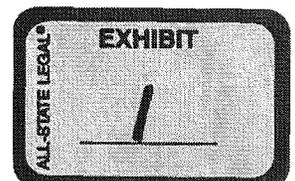
Incident: July 19 around 6:30 p.m. at the intersection of Rice and Valencia streets in Mt. Auburn – A UC police officer shot and killed a man during a traffic stop

Requested documents:

- Incident Report
- All related security/surveillance camera footage
- Personnel file for the officer involved in the shooting.

Thank you,

Rebecca Butts
ENQUIRER MEDIA
Breaking News Reporter
Mobile: 513-478-4021
Office: 513-768-8392
Twitter: @Rebelee_92



From: Butts, Rebecca
Sent: Monday, July 20, 2015 7:40 AM
To: Browder, Stephanie; amanda.soldano@cincinnati-oh.gov; Brackett, Kathleen
Cc: Tiffaney.Hardy@cincinnati-oh.gov
Subject: Public Records Request

Good morning,

Please consider this email as an official records request.

Incident: July 19 around 6:30 p.m. at the intersection of Rice and Valencia streets in Mt. Auburn – A UC police officer shot and killed a man during a traffic stop

Requested documents:

- 911 calls
- Incident Report
- All related security/surveillance camera footage

Rebecca Butts
ENQUIRER MEDIA
Breaking News Reporter
Mobile: 513-478-4021
Twitter: @Rebelee_92

From: Browder, Stephanie <Stephanie.Browder@cincinnati-oh.gov>
Sent: Tuesday, July 21, 2015 7:31 AM
To: Butts, Rebecca; Soldano, Amanda; Brackett, Kathleen
Cc: Hardy, Tiffany
Subject: RE: Public Records Request

Good morning, Rebecca! This is a UC Police incident. Please send your request to their public records office. Also, please send all request for Cincinnati Police Records to cpdrecords@cincinnati-oh.gov. Thank you!

Stephanie McKenzie
Cincinnati Police Records
(513) 352-6458





From: Miefert, Katherine (mieferke) [<mailto:mieferke@ucmail.uc.edu>]

Sent: Tuesday, July 21, 2015 3:15 PM

To: Butts, Rebecca

Cc: Ralston, Michele (ralstomt)

Subject: Public Records Request - The Enquirer

Good Afternoon Rebecca,

Your public records request was forwarded to me because the Office of General Counsel handles all public records request for the University of Cincinnati. This email will serve as receipt of request for the following:

- 1) Memorandum of Understanding with the City of Cincinnati (explains the police officer's jurisdiction);
- 2) Officer Tensing's personnel file;
- 3) Body Camera footage; and
- 4) Incident Report.

Attached please find a copy of the, "Mutual Assistance In-Progress Crime Assistance Agreement Between the City of Cincinnati and the University of Cincinnati" (hereinafter, "MOU"). This MOU, in particular Section 1(B), second paragraph, states, "Whenever an on-duty law enforcement officer from UC who views or otherwise has probable cause

to believe that a traffic offense has occurred beyond the boundaries of the UC Campus that does not involve: (1) an OVI violation; (2) a serious traffic offense causing serious physical harm to any person as defined in R.C. 2901.01; or (3) a serious traffic offense causing death to any person, UC shall have the full authority and responsibility for the traffic offense." (emphasis added) Therefore, pursuant to this Section, UCPD has the full authority to investigate all traffic offenses, including minor traffic offenses, that occur outside of the boundaries of UC's campus.

Officer Tensing's personnel file is also attached. Pursuant to Ohio Revised Code Section 149.43(A)(7), the officer's address, telephone number, social security number, and other personal information were redacted. As to the remainder of your public records request, the University is collecting the information and working cooperatively with the Cincinnati Police Department and the Hamilton County Prosecutor's Office to make certain that release of information does not hinder any part of their investigation.

If you have any questions, please feel free to contact Michele Ralston directly at Michele.ralston@uc.edu.

Thank you,
Katherine

Katherine Miefert
Assistant General Counsel
Office of General Counsel
University of Cincinnati
246 University Hall
PO Box 210661
Cincinnati, Ohio 45221-0661
513-558-5638
513-558-4498 (fax)
Katherine.miefert@uc.edu

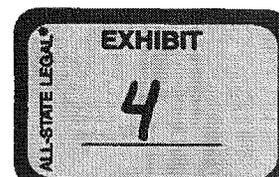
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From: Julie Wilson [<mailto:Julie.Wilson@hcpros.org>]
Sent: Wednesday, July 22, 2015 2:57 PM
To: Media
Cc: Julie Wilson; Mark Piepmeier; Rick Gibson; Michael Friedmann
Subject: Public Records Request

The body cam video in the July 19th UC officer involved shooting will not be released pursuant to:

1. Sixth Amendment to the United States Constitution and ORC Section 149.43 (A) (1) (v) as release could jeopardize a possible future fair trial; and
2. ORC Section 149.43 (A) (1) (h) Confidential law enforcement investigatory records. See specifically ORC Section 149.43 (A) (2) (c), Specific confidential investigatory techniques or procedures or specific investigatory work product, and State of Ohio ex rel. Mark W. Miller vs. Ohio State Highway Patrol, 2014-Ohio-2244.

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org



Greiner, John C.

From: Miefert, Katherine (mieferke) <mieferke@ucmail.uc.edu>
Sent: Friday, July 24, 2015 1:49 PM
To: Williams, Jason (David)
Cc: Greiner, John C.; Ralston, Michele (ralstomt)
Subject: RE: Enquirer public records request
Attachments: 1 3 400 Use of Less Lethal Force_1 3.pdf

Good Afternoon Jason,

I am supplementing the University's response to your request for the UCPD Use of Force Policy with the attached, "Use of Less Lethal Force," policy. As stated in the below email, I believe this concludes the University's response to your request.

Thank you,
Katherine
Sent on behalf of Kenya Faulkner, Vice President of Legal Affairs & General Counsel

Katherine Miefert
Assistant General Counsel
Office of General Counsel
University of Cincinnati
246 University Hall
PO Box 210661
Cincinnati, Ohio 45221-0661
513-558-5638
513-558-4498 (fax)
Katherine.miefert@uc.edu

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From: Williams, Jason (David) [<mailto:dwilliam7@CINCINNA.GANNETT.COM>]
Sent: Thursday, July 23, 2015 4:16 PM
To: Miefert, Katherine (mieferke) <mieferke@ucmail.uc.edu>
Cc: Greiner, John C. <JGreiner@Graydon.com>; Ralston, Michele (ralstomt) <ralstomt@ucmail.uc.edu>
Subject: RE: Enquirer public records request

Hey Katherine:

Thank you so much for this information. We really appreciate it.

Thanks,
Jason



From: Miefert, Katherine (mieferke) [<mailto:mieferke@ucmail.uc.edu>]
Sent: Thursday, July 23, 2015 3:54 PM
To: Williams, Jason (David) <dwilliam7@CINCINNA.GANNETT.COM>
Cc: Greiner, John C. <JGreiner@Graydon.com>; Ralston, Michele (ralstomt) <ralstomt@ucmail.uc.edu>
Subject: RE: Enquirer public records request

Good Afternoon Jason,

This email is to serve as receipt of your below public records request for audio dispatch, CAD, 911 calls, the incident report and the use of force policy. Attached, please find all of those documents, except for 911 calls, because the University does not have any records responsive to that request. If you have any trouble with the attachments, please let me know. To the best of my knowledge, this concludes the University's response to your request.

Thank you,
Katherine
Sent on behalf of Kenya Faulkner, Vice President of Legal Affairs and General Counsel
Katherine Miefert
Assistant General Counsel
Office of General Counsel
University of Cincinnati
246 University Hall
PO Box 210661
Cincinnati, Ohio 45221-0661
513-558-5638
513-558-4498 (fax)
Katherine.miefert@uc.edu

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M15PASS

From: Williams, Jason (David) [<mailto:dwilliam7@CINCINNA.GANNETT.COM>]
Sent: Wednesday, July 22, 2015 12:21 PM
To: Miefert, Katherine (mieferke) <mieferke@ucmail.uc.edu>
Cc: Greiner, John C. <JGreiner@Graydon.com>; Ralston, Michele (ralstomt) <ralstomt@ucmail.uc.edu>
Subject: Enquirer public records request

Hi Katherine:

I hope all is well. I believe we chatted a while back when you were with the city solicitor's office. I am helping with The Enquirer's coverage of this week's UC officer-involved shooting. Pursuant to the Ohio Public Records Act, R.C. 149.43, I am writing to request the following:

*All audio recordings and transcripts of the dispatch call (or calls) made by University of Cincinnati P.O. Raymond Tensing during and/or after the shooting incident of which he was involved Sunday evening, July 19, 2015. This includes any dispatch call (or calls) made to Cincinnati Police and UC Police.

Please let me know if you have questions or would prefer to talk through this request over the phone.

Thank you for your time and help.

Jason Williams
Staff Reporter/Transportation

CINCINNATI!.com
A GANNETT COMPANY

Email: jwilliams@enquirer.com

Office: 513-768-8405 ▪ Mobile: 513-257-5420

Twitter: [@jwilliamscincy](https://twitter.com/jwilliamscincy)

In the
Supreme Court of Ohio

STATE OF OHIO, *ex rel.*
THE CINCINNATI ENQUIRER
A Division of Gannett GP Media, Inc.
312 Elm Street
Cincinnati, Ohio 45202

Relator,

vs.

JOSEPH T. DETERS
HAMILTON COUNTY
PROSECUTING ATTORNEY
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202

Respondent.

Respondent.

Case No.

AFFIDAVIT OF
JILLIAN PARRISH
IN SUPPORT OF COMPLAINT
FOR WRIT OF MANDAMUS

AFFIANT, after being duly cautioned and sworn, states as follows:

My name is Jill Parrish. I am an assignment editor for Scripps Media Inc. D/B/A WCPO. I have personal knowledge of the matters recounted in this Affidavit.

1. On , July 21st I contacted and requested a copy of the police body camera video that recorded the incident that occurred on Sunday, July 19, 2015 at approximately 6:30 pm at Vine St. and Thrill St. Officer Ray Tensing was the responding officer ("the Records"). A true and correct copy of my request for the Records is attached hereto as Exhibit 1.

2. On July 23rd, Julie Wilson, an employee of the Hamilton County Prosecuting Attorney's Office ("HCPRO"), responded to my Records request. Ms. Wilson denied my request for the Records and stated that HCPRO is refusing to turn over the video saying "The

law supports our position to not release the video. If you do not want to look at the law and just use your common sense, it should be clear why we are not releasing the video only a few days after the incident occurred. We need time to look at everything and do a complete investigation so that the community is satisfied that we did a thorough job. The Grand Jury has not seen the video yet and we do not want to taint the Grand Jury process. The video will be released at some point - - just not right now." A true and correct copy of Julie Wilson's response to WCPO's Records request is attached hereto as Exhibit 2.

6. To date, Respondent has refused to provide the Records.

FURTHER AFFIANT SAITH NAUGHT.

Jill Parrish
Jill Parrish

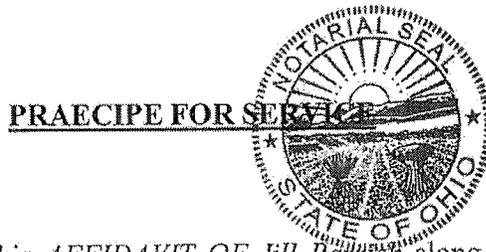
STATE OF OHIO)
COUNTY OF Hamilton) ss.

BE IT REMEMBERED, that on July 23rd, 2015, before me, the subscriber, a Notary Public in and for said State, personally came to **Jill Parrish**, the Affiant in the foregoing instrument, who acknowledged the signing thereof to be his voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the date last aforesaid.

1/11/16
My Commission Expires

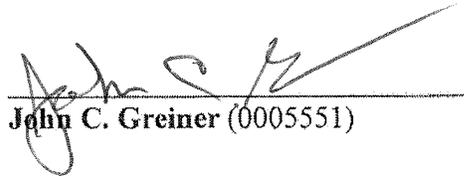
Richard A. Hage
Notary Public



RICHARD A. HAGE
Notary Public, State of Ohio
My Commission Expires 01/11/2016

TO THE CLERK:

Please issue a copy of this *AFFIDAVIT OF Jill Parrish* along with the Summons and Complaint to the Respondent identified in the caption on page one via Certified Mail, return receipt requested.


John C. Greiner (0005551)

5779087.1

Bongiorno, Alex

From: Parrish, Jillian
Sent: Thursday, July 23, 2015 4:15 PM
To: Bongiorno, Alex
Subject: FW: re: WCPO Request for UC Officer Involved Shooting Body Camera

From: Parrish, Jillian
Sent: Tuesday, July 21, 2015 11:39 AM
To: 'cpdrecords@cincinnati-oh.gov'
Subject: re: WCPO Request for UC Officer Involved Shooting Body Camera

Good Morning

My name is Jillian Parrish, I am the Assignment Editor for WCPO, I would like to request the body camera video that was recorded in the incident that occurred on Sunday, July 19, 2015 at approximately 6:30 pm. The incident occurred at Vine Street and Thrill Street. University of Cincinnati Police Officer Ray Tensing was the responding Officer, that was involved in the incident.

I would also like to request any and all 911 tapes, as well as police radio transmission calls, available to the media.

I appreciate your time and consideration in this matter I can be reached at 513-852-4071 or by email at jillian.parrish@wcpo.com.

Sincerely,

Jillian Parrish
WCPO, ABC 9
513-852-4071



Bongiorno, Alex

From: Julie Wilson <Julie.Wilson@hcpros.org>
Sent: Thursday, July 23, 2015 12:57 PM
To: Media
Cc: Julie Wilson; Mark Piepmeier; Rick Gibson; Michael Friedmann; Chris Schaefer
Subject: Additional Statement regarding video in UC case

Many of you have asked for additional comment from Mr. Deters about the refusal to turn over the UC video. You may quote him as saying, "The law supports our position to not release the video. If you do not want to look at the law and just use your common sense, it should be clear why we are not releasing the video only a few days after the incident occurred. We need time to look at everything and do a complete investigation so that the community is satisfied that we did a thorough job. The Grand Jury has not seen the video yet and we do not want to taint the Grand Jury process. The video will be released at some point - - just not right now."

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org



In the
Supreme Court of Ohio

STATE OF OHIO, *ex rel.*
THE CINCINNATI ENQUIRER
A Division of Gannett GP Media, Inc.
312 Elm Street
Cincinnati, Ohio 45202

Relator,

vs.

JOSEPH T. DETERS
HAMILTON COUNTY
PROSECUTING ATTORNEY
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202

Respondent.

Respondent.

Case No.

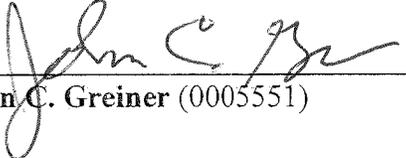
AFFIDAVIT OF
JOHN LONDON
IN SUPPORT OF COMPLAINT
FOR WRIT OF MANDAMUS

AFFIANT, after being duly cautioned and sworn, states as follows:

My name is John London. I am a reporter for WLWT-TV. I have personal knowledge of the matters recounted in this Affidavit.

1. On July 20, 2015, I contacted Julie Wilson with the Hamilton County Prosecutor's Office and requested a copy of the body camera video in regards to the incident involving a University of Cincinnati police officer's fatal shooting of a suspect in a traffic stop on July 19, 2015 ("the Records").

2. On July 23, 2015, Julie Wilson, an employee of the Hamilton County Prosecuting Attorney's Office ("HCPRO"), responded to my Records request. Julie Wilson denied my request for the Records and stated that Hamilton County Prosecutor Joseph Deters responded, "The law


John C. Greiner (0005551)

5779087.1

From: Julie Wilson <Julie.Wilson@hcpros.org>
Sent: Thursday, July 23, 2015 12:57 PM
To: Media
Cc: Julie Wilson; Mark Piepmeyer; Rick Gibson; Michael Friedmann; Chris Schaefer
Subject: Additional Statement regarding video in UC case

Many of you have asked for additional comment from Mr. Deters about the refusal to turn over the UC video. You may quote him as saying, "The law supports our position to not release the video. If you do not want to look at the law and just use your common sense, it should be clear why we are not releasing the video only a few days after the incident occurred. We need time to look at everything and do a complete investigation so that the community is satisfied that we did a thorough job. The Grand Jury has not seen the video yet and we do not want to taint the Grand Jury process. The video will be released at some point - - just not right now."

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org



In the
Supreme Court of Ohio

STATE OF OHIO, *ex rel.*
THE CINCINNATI ENQUIRER
A Division of Gannett GP Media, Inc.
312 Elm Street
Cincinnati, Ohio 45202

Relator,

vs.

JOSEPH T. DETERS
HAMILTON COUNTY
PROSECUTING ATTORNEY
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202

Respondent.

Respondent.

Case No.

AFFIDAVIT OF
Debra L. Martin
IN SUPPORT OF COMPLAINT
FOR WRIT OF MANDAMUS

AFFIANT, after being duly cautioned and sworn, states as follows:

My name is Debra L. Martin, an editor at The Associated Press for Cincinnati correspondent Dan Sewell with knowledge of his coverage. I have personal knowledge of the matters recounted in this Affidavit.

1. On July 23, 2015, Dan Sewell contacted the Hamilton County prosecutor's office and requested any and all videos related to the July 19 incident involving Sam Dubose and University of Cincinnati police officers including Ray Tensing. ("the Records"). This was a renewed and direct request for the videos, once that material had been turned over to the prosecutor's office by the University of Cincinnati. A true and correct copy of his request for the Records is attached hereto as Exhibit 1.

2. On July 22 and 23, 2015, Julie K. Wilson, Chief Assistant Prosecutor/Public Information Office, an employee of the Hamilton County Prosecuting Attorney's Office ("HCPRO"), responded to his Records request. Wilson denied his request for the Records and stated that HCPRO would not release the video. A true and correct copy of Wilson's response to Sewell's Records request is attached hereto as Exhibit 2.
6. To date, Respondent has refused to provide the Records.

FURTHER AFFIANT SAITH NAUGHT.

Debra L. Martin
Debra L. Martin

STATE OF OHIO)
) ss.
COUNTY OF Franklin)

BE IT REMEMBERED, that on July 24th, 2015, before me, the subscriber, a Notary Public in and for said State, personally came Debra L. Martin, the Affiant in the foregoing instrument, who acknowledged the signing thereof to be her voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the date last aforesaid.

Sept. 7, 2019
My Commission Expires

Michelle A. Kern

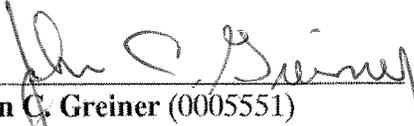


MICHELLE A. KERN
Notary Public, State of Ohio
My Comm. Expires Sept 7, 2019

PRAECIPE FOR SERVICE

TO THE CLERK:

Please issue a copy of this *AFFIDAVIT OF Debra L. Martin* along with the Summons and Complaint to the Respondent identified in the caption on page one via Certified Mail, return receipt requested.


John C. Greiner (0005551)

5779087.1

From: Julie Wilson [mailto:Julie.Wilson@hcpros.org]
Sent: Thursday, July 23, 2015 9:00 AM
To: Sewell, Daniel
Cc: Julie Wilson
Subject: RE: Public Records Request

I will add your request to my list. We stand by our statement from yesterday.

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org

From: Sewell, Daniel [mailto:DSewell@ap.org]
Sent: Thursday, July 23, 2015 8:25 AM
To: Julie Wilson
Cc: Associated Press3
Subject: RE: Public Records Request

Hello, Julie:

Since the Prosecutor's Office now has custody, I wanted to make sure you have a direct request from us: The Associated Press is requesting any and all videos related to the July 19 incident involving Sam Dubose and University of Cincinnati police officers including Ray Tensing. We are making this request under Ohio Public Records Law. Please respond promptly, and contact me with any questions or issues with this request.

Sincerely,
Dan Sewell/AP

AP

ASSOCIATED PRESS

Dan Sewell/Cincinnati Correspondent

312 Elm Street; Cincinnati, OH 45202

513-241-2386

www.twitter.com/dansewell

From: Julie Wilson [mailto:Julie.Wilson@hcpros.org]
Sent: Wednesday, July 22, 2015 2:57 PM
To: Media
Cc: Julie Wilson; Mark Piepmeier; Rick Gibson; Michael Friedmann
Subject: Public Records Request

The body cam video in the July 19th UC officer involved shooting will not be released pursuant to:



1. Sixth Amendment to the United States Constitution and ORC Section 149.43 (A) (1) (v) as release could jeopardize a possible future fair trial; and
2. ORC Section 149.43 (A) (1) (h) Confidential law enforcement investigatory records. See specifically ORC Section 149.43 (A) (2) (c), Specific confidential investigatory techniques or procedures or specific investigatory work product, and State of Ohio ex rel. Mark W. Miller vs. Ohio State Highway Patrol, 2014-Ohio-2244.

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org

The information contained in this communication is intended for the use of the designated recipients named above. If the reader of this communication is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify The Associated Press immediately by telephone at +1-212-621-1898 and delete this email. Thank you.

[IP_US_DISC]

**In the
Supreme Court of Ohio**

STATE OF OHIO, *ex rel.*
THE CINCINNATI ENQUIRER
A Division of Gannett GP Media, Inc.
312 Elm Street
Cincinnati, Ohio 45202

Relator,

vs.

JOSEPH T. DETERS
HAMILTON COUNTY
PROSECUTING ATTORNEY
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202

Respondent.

Respondent.

Case No.

AFFIDAVIT OF
TERESA WEAVER
IN SUPPORT OF COMPLAINT
FOR WRIT OF MANDAMUS

AFFIANT, after being duly cautioned and sworn, states as follows:

My name is Teresa Weaver. I am the Assignment Manager for WXIX-LLC. I have personal knowledge of the matters recounted in this Affidavit.

1. On 7/22/15, I contacted University of Cincinnati Office of General Counsel and requested a copy of Bodycam video of the U.C. Officer Involved Shooting, occurring 7/19/15 ("the Records"). A true and correct copy of my requests for the Records are attached hereto as Exhibit 1.

On 7/22/15, Julie Wilson, an employee of the Hamilton County Prosecuting Attorney's Office ("HCPRO"), responded to my Records request. Julie Wilson denied my request for the Records

and stated that HCPRO [The body cam video in the July 19th UC officer involved shooting will not be released pursuant to:

- 1. Sixth Amendment to the United States Constitution and ORC Section 149.43 (A) (1) (v) as release could jeopardize a possible future fair trial; and
 - 2. ORC Section 149.43 (A) (1) (h) Confidential law enforcement investigatory records. See specifically ORC Section 149.43 (A) (2) (c), Specific confidential investigatory techniques or procedures or specific investigatory work product, and State of Ohio ex rel. Mark W. Miller vs. Ohio State Highway Patrol, 2014-Ohio-2244.
2. A true and correct copy of Julie Wilson's response to my Records request is attached hereto as Exhibit 2.
6. To date, Respondent has refused to provide the Records.

FURTHER AFFIANT SAITH NAUGHT.

Teresa Weaver 7/24/15

 Teresa Weaver

STATE OF OHIO)
) ss.
 COUNTY OF Hamilton)

BE IT REMEMBERED, that on July 24, 2015, before me, the subscriber, a Notary Public in and for said State, personally came **Teresa Weaver**, the Affiant in the foregoing instrument, who acknowledged the signing thereof to be her voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the date last aforesaid.

LISA SLATTERY
 Notary Public, State of Ohio
 My Commission Expires Apr. 11, 2020

Lisa Slattery

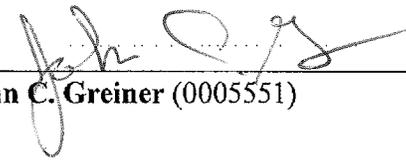
 Notary Public

My Commission Expires

PRAECIPE FOR SERVICE

TO THE CLERK:

Please issue a copy of this *AFFIDAVIT OF Teresa Weaver* along with the Summons and Complaint to the Respondent identified in the caption on page one via Certified Mail, return receipt requested.



John C. Greiner (0005551)

5779087.1

Greiner, John C.

To: Greiner, John C.
Subject: RE: Good Morning

From: Weaver, Teresa
Sent: Wednesday, July 22, 2015 9:36 AM
To: 'Ralston, Michele (ralstomt)' <ralstomt@ucmail.uc.edu>
Subject: RE: Good Morning

Thanks. I guess I have a few other requests.

Pursuant to Ohio open records law, FOX19 NOW requests the body camera video of the July 19, 2015 incident involving Officer Tensing and Sam Dubose.

Also, pursuant to Ohio open records law, WXIX requests a copy of any and all UC policy, procedure and/or training manuals regarding police use of body cameras.

Can you also tell us how long the agency has been using body cams, how many officers are currently wearing them?

From: Ralston, Michele (ralstomt) [<mailto:ralstomt@ucmail.uc.edu>]
Sent: Wednesday, July 22, 2015 9:17 AM
To: Weaver, Teresa
Cc: Miefert, Katherine (mieferke)
Subject: RE: Good Morning

Hello Teresa,
I have copied Assistant General Counsel Katherine Miefert above. She can fulfill your request.

Michele Ralston

From: Weaver, Teresa [<mailto:tweaver@fox19now.com>]
Sent: Wednesday, July 22, 2015 9:16 AM
To: Ralston, Michele (ralstomt)
Subject: Good Morning

Michele: We are following up on requests made yesterday for the UC Officer Tensing personnel file? Could you forward that information to us?

Teresa Weaver
Assignment Manager
tweaver@fox19now.com
513.421.0119





Greiner, John C.

To: Tyndall, Robyn
Subject: RE: Public Records Request

From: Julie Wilson [<mailto:Julie.Wilson@hcpros.org>]
Sent: Wednesday, July 22, 2015 2:57 PM
To: Media <Media@hcpros.org>
Cc: Julie Wilson <Julie.Wilson@hcpros.org>; Mark Piepmeier <Mark.Piepmeier@hcpros.org>; Rick Gibson <Rick.Gibson@hcpros.org>; Michael Friedmann <Michael.Friedmann@hcpros.org>
Subject: Public Records Request

The body cam video in the July 19th UC officer involved shooting will not be released pursuant to:

1. Sixth Amendment to the United States Constitution and ORC Section 149.43 (A) (1) (v) as release could jeopardize a possible future fair trial; and
2. ORC Section 149.43 (A) (1) (h) Confidential law enforcement investigatory records. See specifically ORC Section 149.43 (A) (2) (c), Specific confidential investigatory techniques or procedures or specific investigatory work product, and State of Ohio ex rel. Mark W. Miller vs. Ohio State Highway Patrol, 2014-Ohio-2244.

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org



In the
Supreme Court of Ohio

STATE OF OHIO, *ex rel.*
THE CINCINNATI ENQUIRER
A Division of Gannett GP Media, Inc.
312 Elm Street
Cincinnati, Ohio 45202

Relator,

vs.

JOSEPH T. DETERS
HAMILTON COUNTY
PROSECUTING ATTORNEY
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202

Respondent.

Respondent.

Case No.

AFFIDAVIT OF
TIMOTHY P. MEREDITH
IN SUPPORT OF COMPLAINT
FOR WRIT OF MANDAMUS

AFFIANT, after being duly cautioned and sworn, states as follows:

My name is Timothy P. Meredith. I am News Assignment Manager for WKRC-TV Local 12 News. I have personal knowledge of the matters recounted in this Affidavit.

1. On July 24, 2015, I contacted the Hamilton County Prosecutor's Office and requested a copy of all video from the scene of a University of Cincinnati Police officer involved fatality shooting on July 19, 2015 ("the Records"). A true and correct copy of my requests for the Records are attached hereto as Exhibit 1.

2. On July 24, 2015, Julie Wilson, an employee of the Hamilton County Prosecuting Attorney's Office ("HCPRO"), responded to my Records request. Julie Wilson denied my request for the Records and stated that HCPRO "stand by our previous statements for not releasing the

video at this time.” A true and correct copy of Julie Wilson’s response to my Records request is attached hereto as Exhibit 2.

6. To date, Respondent has refused to provide the Records.

FURTHER AFFIANT SAITH NAUGHT.


TIMOTHY P. MEREDITH

STATE OF OHIO)
) ss.
COUNTY OF HAMILTON

BE IT REMEMBERED, that on July 24, 2015, before me, the subscriber, a Notary Public in and for said State, personally came **TIMOTHY P. MEREDITH** the Affiant in the foregoing instrument, who acknowledged the signing thereof to be her voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the date last aforesaid.

12/08/2015
My Commission Expires


Notary Public

LINDA S. O'BRIEN
Notary Public, State of Ohio
No. 71769
Qualified in Clermont County
Commission Expires December 8, 2015

PRAECIPE FOR SERVICE

TO THE CLERK:

Please issue a copy of this *AFFIDAVIT OF TIMOTHY P. MEREDITH* along with the Summons and Complaint to the Respondent identified in the caption on page one via Certified Mail, return receipt requested.


John C. Greiner (0005551)

David McMullen

Subject: FW: Open Records Request -- Video from scene of officer involved shooting JUL 19, 2015

From: Timothy Meredith
Sent: Friday, July 24, 2015 1:54 PM
To: Julie Wilson (Julie.Wilson@hcpros.org); Triffon Callos
Cc: Timothy Meredith
Subject: Open Records Request -- Video from scene of officer involved shooting JUL 19, 2015

Hi Julie –

Under the provisions of the Ohio Revised Code 149.43, I am requesting access to a copy of all video from the scene of a University of Cincinnati Police officer involved fatality shooting on July 19, 2015.

This request includes dash cam/MVR from any UC PD and Cincinnati Police Department vehicles that responded to the scene, as well as so called “body cam” video from any officers from either department who worked the scene and specifically UC Police officer Ray Tensing.

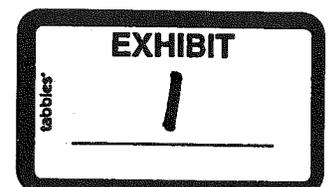
Please notify me in advance of any costs associated with the request.

If all or any part of this request is denied, please cite the specific exemption(s) which you think justifies your refusal to release the information and inform me of your agency’s administrative appeal procedures available to me under the law.

I would appreciate your handling this request as quickly as possible.

Sincerely,

Tim Meredith
News Assignment Manager
Local 12 News WKRC-TV
Cincinnati, Ohio
(513) 763-5423



David McMullen

Subject: FW: Open Records Request -- Video from scene of officer involved shooting JUL 19, 2015

From: Julie Wilson [<mailto:Julie.Wilson@hcpros.org>]
Sent: Friday, July 24, 2015 2:00 PM
To: Timothy Meredith; Triffon Callos
Cc: Julie Wilson
Subject: RE: Open Records Request -- Video from scene of officer involved shooting JUL 19, 2015

Just for clarification....we stand by our previous statements for not releasing the video at this time.

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org

From: Julie Wilson
Sent: Friday, July 24, 2015 1:59 PM
To: 'Timothy Meredith'; Triffon Callos
Cc: Julie Wilson
Subject: RE: Open Records Request -- Video from scene of officer involved shooting JUL 19, 2015

You are on our list.

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org

From: Timothy Meredith [<mailto:TMeredith@sbgstv.com>]
Sent: Friday, July 24, 2015 1:54 PM
To: Julie Wilson; Triffon Callos
Cc: Timothy Meredith
Subject: Open Records Request -- Video from scene of officer involved shooting JUL 19, 2015

Hi Julie --

Under the provisions of the Ohio Revised Code 149.43, I am requesting access to a copy of all video from the scene of a University of Cincinnati Police officer involved fatality shooting on July 19, 2015.

This request includes dash cam/MVR from any UC PD and Cincinnati Police Department vehicles that responded to the scene, as well as so called "body cam" video from any officers from either department who worked the scene and specifically UC Police officer Ray Tensing.

Please notify me in advance of any costs associated with the request.

If all or any part of this request is denied, please cite the specific exemption(s) which you think justifies your refusal to release the information and inform me of your agency's administrative appeal procedures available to me under the law.

I would appreciate your handling this request as quickly as possible.



Sincerely,

Tim Meredith

News Assignment Manager

Local 12 News WKRC-TV

Cincinnati, Ohio

(513) 763-5423

**In the
Supreme Court of Ohio**

STATE OF OHIO, *ex rel.*
THE CINCINNATI ENQUIRER
A Division of Gannett GP Media, Inc.
312 Elm Street
Cincinnati, Ohio 45202

Case No.

STATE OF OHIO, *ex rel.*
SCRIPPS MEDIA INC. D/B/A WCPO
1720 Gilbert Avenue
Cincinnati, Ohio 45202

**MEMORANDUM IN SUPPORT
OF COMPLAINT
FOR WRIT OF MANDAMUS**

STATE OF OHIO, *ex rel.*
THE ASSOCIATED PRESS
312 Elm Street
Cincinnati, Ohio 45202

STATE OF OHIO, *ex rel.*
RAYCOM MEDIA D/B/A WXIX-TV
635 West Seventh Street
Cincinnati, Ohio 45203

STATE OF OHIO, *ex rel.*
HEARST CORPORATION D/B/A
WLWT-TV
1700 Young Street
Cincinnati, Ohio 45202

STATE OF OHIO, *ex rel.*
SINCLAIR MEDIA III, INC. D/B/A
WKRC-TV
1906 Highland Avenue
Cincinnati, Ohio 45219

Relators,

vs.

JOSEPH T. DETERS
HAMILTON COUNTY
PROSECUTING ATTORNEY
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202

Respondent.

JOHN C. GREINER (0005551)*

**Counsel of Record*

GRAYDON HEAD & RITCHEY LLP

1900 Fifth Third Center

511 Walnut Street

Cincinnati, OH 45202-3157

Phone: (513) 629-2734

Fax: (513) 651-3836

E-mail: jgreiner@graydon.com

COUNSEL FOR RELATOR CINCINNATI ENQUIRER

Relators The Cincinnati Enquirer, a Division of Gannett GP Media, Inc. (the “Enquirer”), Scripps Media Inc. D/B/A/ WCPO-TV (“WCPO”), The Associated Press (“AP”), Raycom Media D/B/A WXIX-TV (“WXIX”), Hearst Corporation D/B/A/ WLWT-TV (“WLWT”) and Sinclair Media III, Inc. D/B/A WKRC (“WKRC”) submit this as its Memorandum in Support of its Complaint for Writ of Mandamus.

I. STATEMENT OF FACTS.

On July 20, 2015, Rebecca Butts (“Butts”) an Enquirer reporter, contacted UC and the Cincinnati Police Department (“CPD”) and requested a copy of the incident report, all related security/surveillance camera footage, and the personnel file for the UC officer that shot and killed a man during a traffic stop on July 19, 2015 at approximately 6:30 pm at the intersection of Rice and Valencia streets in the Cincinnati neighborhood of Mount Auburn (“the Records”).¹

The next morning, on July 21, 2015, Stephanie McKenzie, an employee of the Cincinnati Police Department, contacted Ms. Butts on behalf of CPD and denied Ms. Butts’ Records request. Ms. McKenzie stated “This is a UC Police incident. Please send your request to their public records office.” Ms. McKenzie failed to cite any legal authority justifying CPD’s denial of the Records request.²

That afternoon, Katherine Miefert, an employee of the Office of General Counsel at UC, contacted Ms. Butts on behalf of UC and also denied, in part, Ms. Butts’ Records request. Ms. Miefert denied Ms. Butt’s request for a copy of the incident report and all related security/surveillance camera footage, stating “[a]s to the remainder of your public records request, the University is collecting the information and working cooperatively with the

¹ July 23, 2015 Affidavit of Rebecca Butts (“Butts Affidavit”), ¶1. A true and correct copy of Ms. Butts’ request for the Records is attached as Exhibit 1 to the Butts Affidavit.

² Butts Affidavit, ¶2. A true and correct copy of Ms. McKenzie’s response is attached as Exhibit 2 to the Butts Affidavit.

Cincinnati Police Department and the Hamilton County Prosecutor's Office to make certain that release of information does not hinder any part of their investigation." Ms. Miefert failed to cite any legal authority justifying UC's denial of the Records request.³

Julie Wilson, Chief Assistant Prosecutor and Public Information Office of the HCPRO, responded that afternoon to Ms. Butts' Records request, stating that it has ordered both public offices to not release the "Body Camera Video" as included in Ms. Butts' request pursuant to:

1. Sixth Amendment to the United States Constitution and ORC Section 149.43 (A) (1) (v) as release could jeopardize a possible future fair trial; and
2. ORC Section 149.43 (A) (1) (h) Confidential law enforcement investigatory records. See specifically ORC Section 149.43 (A) (2) (c), Specific confidential investigatory techniques or procedures or specific investigatory work product, and State of Ohio ex rel. Mark W. Miller vs. Ohio State Highway Patrol, 2014-Ohio-2244."

Ms. Wilson's response did not address UC's or CPD's denial of the balance of the requested Records, including, but not limited to, the related surveillance footage.⁴

On July 21, 2015, Jill Parrish, a WCPO assignment editor, contacted and requested a copy of the police body camera video that recorded the incident that occurred on Sunday, July 19, 2015 at approximately 6:30 p.m. at Vine Street and Thrill Street. Officer Ray Tensing was the responding officer (the "Records"). A true and correct copy of my request for the Records is attached hereto as Exhibit 1.

On July 23, 2015, Julie Wilson denied Jill Parrish's request for the Records and stated that HCPRO in refusing to turn over the video saying "The law supports our position to not release the video. If you do not want to look at the law and just use your common sense, it should be clear why we are not releasing the video only a few days after the incident occurred.

³ Butts Affidavit, ¶3. A true and correct copy of Ms. Miefert's response is attached as Exhibit 3 to the Butts Affidavit.

⁴ Butts Affidavit, ¶4. A true and correct copy of Ms. Wilson's response is attached as Exhibit 4 to the Butts Affidavit.

We need time to look at everything and do a complete investigation so that the community is satisfied that we did a thorough job. The Grand Jury has not seen the video yet and we do not want to taint the Grand Jury process. The video will be released at some point - - just not right now.”

On July 20, 2015, John London of WLWT-TV contacted Julie Wilson with the Hamilton County Prosecutor’s Office and requested a copy of the body camera video in regards to the incident involving a University of Cincinnati police officer’s fatal shooting of a suspect in a traffic stop on July 19, 2015 (the “Records”).

On July 23, 2015, Julie Wilson denied his request for the Records and stated that Hamilton County Prosecutor Joseph Deters responded, “The law supports our position to not release the video. If you do not want to look at the law and just use your common sense, it should be clear why we are not releasing the video only a few days after the incident occurred. We need time to look at everything and do a complete investigation so that the community is satisfied that we did a thorough job. The Grand Jury has not seen the video yet and we do not want to taint the Grand Jury process . . .”

On July 23, 2015, Dan Sewell of the Associated Press contacted the Hamilton County Prosecutor’s Office and requested any and all videos related to the July 19 incident involving Sam Dubose and University of Cincinnati police officers, including Ray Tensing (the “Records”). This was a renewed and direct request for the videos, once that material had been turned over to the prosecutor’s office by the University of Cincinnati.

On July 22 and 23, 2015, Julie K. Wilson denied his request for the Records and stated that HCPRO would not release the video.

On July 22, 2015, Teresa Weaver, Assignment Manager for WXIX, contacted University of Cincinnati Office of General Counsel and requested a copy of bodycam video of the U.C. officer involved shooting, occurring July 19, 2015.

On July 22, 2015, Julie Wilson denied her request for the Records and stated that HCPRO – the body cam video in the July 19th UC officer involved shooting will not be released pursuant to:

- a. Sixth Amendment to the United States Constitution and ORC Section 149.43(A)(1)(v) as release could jeopardize a possible future fair trial; and
- b. ORC Section 149.43(A)(1)(h) confidential law enforcement investigatory records. See specifically ORC Section 149.43(A)(2)(c). Specific confidential investigator techniques or procedures or specific investigatory work product, and State of Ohio ex rel. Mark W. Miller vs. Ohio State Highway Patrol, 2014-Ohio-2244.

On July 24, 2015, Timothy P. Meredith, News Assignment Manager for WKRC, contacted the Hamilton County Prosecutor's Office and requested a copy of all video from the scene of a University of Cincinnati police officer involved fatality shooting on July 19, 2015.

On July 24, 2015, Julie Wilson denied Mr. Meredith's request for the Records and stated that HCPRO "stand by our previous statements for not releasing the video at this time."

On July 23, 2015, Ms. Miefert released the balance of the requested Records with exception to the related security/surveillance camera footage and the "body cam video."⁵

⁵ Butts Affidavit, ¶5. A true and correct copy of Ms. Wilson's response is attached as Exhibit 5 to the Butts Affidavit.

Despite having a clear legal duty to do so, Respondent has failed to promptly make the requested incident report and security/surveillance camera footage available to the Enquirer for inspection and copying.

II. ARGUMENT.

A. **Respondent Violated Ohio Law When He Denied Access to the Requested Records Without Supporting Authority.**

The Ohio Public Records Act proscribes and prohibits certain conduct by public bodies. The provisions contained in R.C. 149.43 are not guidelines, they are hard and fast rules. R.C. 149.43(B) contains the following mandatory provisions:

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied.

Respondent's denial of Relators' Records request lacks any responsive statement to her request for the related security/surveillance camera footage. Respondent only refers to the "body camera video" related to the July 19, 2015 incident.⁶ Respondent's denial of these Records without explanation is a violation of R.C. 149.43(B)(3).

B. **Respondent Failed to Prove that the Body Camera Video Falls Squarely within the "Specific Investigatory Work Product" CLEIR Exemption.**

When refusing to provide the Body Camera Video, Respondent must show that the Body Camera Video falls squarely within a statutory exception.⁷ Exceptions to disclosure under the Ohio Public Records Act are strictly construed against the public-records custodian, and the custodian has the burden to establish the applicability of an exception.⁸ *A custodian does not*

⁶ Butts Affidavit, Ex. 4.

⁷ *State ex rel. Miller v. Ohio State Highway Patrol*, 136 Ohio St.3d 350, 2013-Ohio-3720, 995 N.E.2d 1175, ¶23.

⁸ *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St.3d 81, 2008-Ohio-1770, 886 N.E.2d 206, paragraph two of the syllabus, citing *State ex rel. Carr v. Akron*, 112 Ohio St.3d 351, 2006-Ohio-6714, 859 N.E.2d 948, ¶ 30; *State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, 819 N.E.2d 1087, ¶ 25.

meet this burden if it has not proven that the requested records fall squarely within the exception.⁹

One of the exceptions Respondent invokes in the July 22 correspondence is the "specific confidential investigatory techniques or procedures or specific investigatory work product," exception, which is not in and of itself an exception, but an element of a larger exception.¹⁰ That exception is codified at R.C. 149.43(A)(1)(h), which excludes "confidential law enforcement investigatory records" from the definition of "public record." A "confidential law enforcement investigatory record" is defined in R.C. 149.43(A)(2) as

any record that pertains to a law enforcement matter of a *criminal, quasi-criminal, civil, or administrative nature*, but only to the extent that the release of the record would *create a high probability of disclosure* of any of the following:

* * *

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product.

(Emphasis added.)¹¹

Whether a particular record is a "confidential law enforcement investigatory record" is determined by a two-part test. "First, is the record a confidential law enforcement record? Second, would release of the record 'create a high probability of disclosure' of any one of the four kinds of information specified in R.C. 149.43(A)(2)?"¹² Thus, Respondent must establish that the Body Camera Video pertains to a "law enforcement matter of a criminal, quasi-criminal,

⁹ *Cincinnati Enquirer* at ¶ 7. (Emphasis added).

¹⁰ *Miller* at ¶24

¹¹ Subsections (a),(b), and (d) of R.C. 149.43(A)(2), which respectively deal with the identity of an uncharged suspect, the identity of a confidential source, and the information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source, are clearly inapplicable to the facts of the case at bar.

¹² *Miller* at ¶25, citing *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 2005-Ohio-5521, 835 N.E.2d 1243, ¶ 19, quoting *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St.3d 54, 56, 2001-Ohio-282, 741 N.E.2d 511 (2001), quoting *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 52, 552 N.E.2d 635 (1990).

civil, or administrative nature" whose release would create a "high probability of disclosure" of "specific investigatory work product.

Respondent denied Relators' Records request for the Body Camera Video and incompletely referenced a portion of the two-part test it has the burden to prove. Respondent's failure to affirmatively prove that the Body Camera Video falls squarely within the two-part "confidential law enforcement investigatory record" test, let alone (1) describe with any specificity what "specific investigatory work product" is revealed in the Body Camera Video, or (2) consider whether a redaction would eliminate the risk of disclosing "specific investigatory work product," is a per se violation of R.C. 149.43(B).¹³

C. The Body Camera Video is a Public Record Not Exempt from Disclosure Under R.C. 149.43.

The Body Camera Video is not "specific investigatory work product" exempt from public disclosure under R.C. 149.43(a)(2)(c), nor does it qualify for any other exception listed in R.C. 149.43.

"Specific investigatory work product" is defined as "information assembled by law enforcement officials in connection with a pending or highly probable criminal proceeding."¹⁴ It consists of "information, including notes, working papers, memoranda, or similar materials, assembled by law enforcement officials in connection with a probable or pending criminal proceeding."¹⁵

¹³ Even if a public record contains some material that is excepted from disclosure, the governmental body is obligated to disclose the nonexcepted material, after redacting the excepted material. *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc. 2d 1, 552 N.E.2d 243, 1990 Ohio Misc. LEXIS 1 (1990).

¹⁴ *State ex rel. Gannett Satellite Info. Network, Inc. v. Petro*, 80 Ohio St.3d 261, 266-267, 1997 Ohio 319, 685 N.E.2d 1223 (1997).

¹⁵ *Maurer*, 91 Ohio St.3d at 56, citing *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 434, 639 N.E.2d 83 (1994).

However, "specific investigatory work product" does *not* include "ongoing routine offense and incident reports."¹⁶ 9-1-1 recordings are also public records "because 911 calls generally precede offense or incident reports completed by the police" and are therefore "even further removed from the initiation of the criminal investigation than the form reports themselves," such as 9-1-1 recordings, are also public records.¹⁷

The Body Camera Video, which upon information and belief includes a recording by a continuously-recording body camera worn by UC officer Ray Tensing, is no different from a 9-1-1 recording and therefore a public record subject to immediate disclosure under the Ohio Supreme Court's reasoning in the above case law. Relators have a clear legal right of access to the Security Video and Respondents have a clear legal duty to promptly make said Video available to the Relators for inspection and copying. Respondent's failure to do so, and Respondent's generic refusal to Relators' Records request without sufficient proof, violates R.C. 149.43.

D. Release of the Body Camera Video Would Not Jeopardize a Possible Future Fair Trial.

Respondent further alleges that release of the Body Camera Video would violate the "Sixth Amendment to the United States Constitution and ORC Section 149.43 (A) (1) (v) as release could jeopardize a possible future fair trial."¹⁸

Sixth Amendment concerns are not even implicated by the release of routine incident reports, which the Ohio Supreme Court's decisions in *State ex rel. Cincinnati Enquirer v. Hamilton County*, 75 Ohio St.3d 374, 1996-Ohio-214. and *Beacon* make clear are not exempt

¹⁶ *Id.*, paragraph five of the syllabus. See also *Beacon Journal* at 57; *State ex rel. Logan Daily News v. Jones*, 78 Ohio St.3d 322, 323, 1997-Ohio-32, 677 N.E.2d 1195 (1997).

¹⁷ *Beacon Journal*, *id.*, quoting *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378, 1996-Ohio-214, 662 N.E.2d 334 (1996).

¹⁸ See Butts' Affidavit, Ex. 5.

from disclosure under any circumstances. Quoting its *Enquirer* decision, the Ohio Supreme Court held in *Beacon* that “[i]t does not matter that release of [911] tapes might reveal the identity of an uncharged suspect of contain information which, if disclosed, would endanger the life or physical safety of a witness.”¹⁹ The Court’s rationale was based on the principle that once a public record is subject to disclosure, no subsequent event may “defrock” it of its status.²⁰ And, as noted above, the Body Camera Video is no different than 911 tapes or incident reports for public disclosure purposes under R.C. 149.43. Thus, under the rationale of *Enquirer* and *Beacon*, a subsequent criminal indictment can have no bearing on the status of the Body Camera Video, which became a non-exempt public record the moment it was created.

Even if public records requests were subject to a Sixth Amendment balancing test, Respondent has not met his burden. Precedent from the Ohio and United States Supreme Courts is clear that courts may not rely on conclusory or speculative assertions to support a finding that pre-trial publicity would deprive a criminal defendant of his right to a fair trial.²¹ The Ohio Supreme Court has held that “[p]retrial publicity – even pervasive, adverse publicity – does not inevitably lead to an unfair trial. Respondent cites *no reasoning* as to why the officer’s fair trial right might be violated by the release of the Body Camera Video. Further, the officer’s fair trial right under the Sixth Amendment does not take priority over the *Enquirer*’s right of free speech and press under the First Amendment.²² The risk of adverse pretrial publicity should not be combatted with total denial of access, but rather via less restrictive means, like a change of venue

¹⁹ 91 Ohio St. 3d at 57.

²⁰ *Id.*

²¹ *State ex rel. Toledo Blade Co. v. Henry County Court of Common Pleas*, 125 Ohio St. 3d 149, 158, 2012-Ohio-1533 (holding that the absence of evidence submitted to the court showing that pretrial publicity would lead to an unfair trial demonstrated that trial judge impermissibly relied on conclusory, speculative assertions in violation of the U.S. Constitution) (citing *Presley v. Georgia* (2010), 558 U.S. 209, 130 S.Ct. 721, 725).

²² *Id.* at 157 (holding that trial court erred when it “proceeded from the erroneous premise that a criminal defendant’s constitutional right to a fair trial should be accorded priority over the media’s constitutional rights of free speech and press”).

where warranted.²³ Respondent's allegation of a violation of the Sixth Amendment falls well short of justifying his unilateral decision to deny public access to the Records.

E. Relators Are Entitled To Recover Their Attorneys' Fees.

Relators are entitled to their attorneys' fees for enforcing its statutory right of access to the Records by way of this mandamus action. Respondent's refusal to grant access to the Records was contrary to R.C. 149.43(A)(2)(c) as delineated by precedential case law, and in no way did their conduct serve the public policy that public records are freely available. If this Court orders Respondent to grant access to the Records it may award reasonable attorneys' fees, subject to reduction *only* if the court determines *both* of the following²⁴:

“(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct ... a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(ii) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records... would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.”²⁵

As to criteria (i), a well-informed public office could not have believed that his conduct did not violate Ohio's Public Records Act or supporting case law. Body Camera Video is equivalent to a 9-1-1 recording, which the supporting case law clearly identifies as a public record subject to immediate release. Respondent's reliance on the Sixth Amendment as justification for withholding the Body Camera Video runs afoul of the United States Supreme Court's guidance in *Rideau*.

²³ *Rideau v. State of Louisiana* (1963), 373 U.S. 723.

²⁴ R.C. 149.43(C)(2)(b), (c)(emphasis added).

²⁵ R.C. 149.43(C)(2)(c)(i) & (ii).

As to criteria (ii), there is, similarly, no way that Respondents reasonably believed that their conduct served the public policy of the Ohio Public Records Act. The lack of a response to portions of Relators' Records request violates the plain language of R.C. 149.43(B)(3). Further, Ohio Supreme Court case law affords the Relators a clear right to public records, including the Body Camera Video Respondent has withheld. Respondent's interpretation of R.C. 149.43(A)(2)(c) essentially affords his office unfettered discretion to determine which records it possess should be released to the public— a far cry from the Ohio Supreme Court's narrow stance on withholding public records:

“The Rule in Ohio is that public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people; therefore anyone may inspect such records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same.”²⁶

Respondent's actions ignore the plain letter and spirit of the Ohio Public Records Act. His refusal to acknowledge Relators' request for the other security/surveillance camera footage and his refusal to grant access to the Body Camera Video contradicts Ohio. This Court should award attorneys' fees to the Relators as a remedial measure for this mandamus action to compel Respondent to obey the law and to grant the public access to records not otherwise exempt under R.C. 149.43.

III. CONCLUSION.

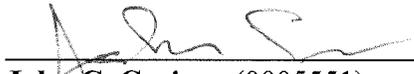
For the reasons set forth herein, the Court should issue a writ of mandamus compelling Respondent to produce the security/surveillance camera footage, including the Body Camera Video, as requested in accordance with R.C. 149.43.

²⁶ See *Ohio Sunshine Laws, An Open Government Resource Manual*, at page iv, citing *Patterson v. Ayers*, 171 Ohio St. 369 (1960).

Respectfully submitted,

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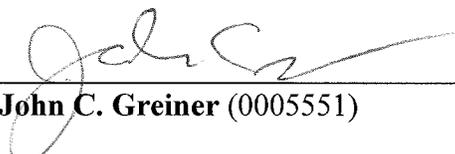


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PRAECIPE FOR SERVICE

TO THE CLERK:

Please issue a copy of this *MEMORANDUM IN SUPPORT OF COMPLAINT FOR WRIT OF MANDAMUS* along with the Summons and Complaint to the Respondents identified in the caption on page one via Certified Mail, return receipt requested.



John C. Greiner (0005551)