

**In the
Supreme Court of Ohio**

**STATE OF OHIO, *ex rel.*
THE CINCINNATI ENQUIRER, et al.**

: Case No. 2015-1222

Relators,

: Original Action in Mandamus

vs.

**JOSEPH T. DETERS, HAMILTON
COUNTY PROSECUTING ATTORNEY,**

Respondent.

**RELATORS' SUBMISSION OF EVIDENCE AND REQUEST THAT COURT TAKE
JUDICIAL NOTICE**

JOHN C. GREINER (0005551)*

**Counsel of Record*

Darren W. Ford (0086449)

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

dford@graydon.com

Counsel for Relators

Joseph T. Deters

Prosecuting Attorney

Hamilton County, Ohio

Andy Douglas (0000006)

Roger E. Friedmann (0009874)

Christian J. Schaefer (0015494)

Michael J. Friedmann (0090999)

230 East Ninth Street, Suite 4000

Cincinnati, OH 45202

DDN: (513) 946-3279 (Douglas)

DDN: (513) 946-3025 (Roger Friedmann)

DDN: (513) 946-3041 (Schaefer)

DDN: (513) 946-3197 (Michael Friedmann)

Fax: (513) 946-3018

E-mail: andy.douglas@hcpros.org

roger.friedmann@hcpros.org

chris.schaefer@hcpros.org

michael.friedmann@hcpros.org

*Counsel for Respondent, Joseph T. Deters,
Prosecuting Attorney for Hamilton County, Ohio*

Pursuant to S.Ct.Prac.R. 12.06 and the Court's Orders of December 30, 2015 and January 14, 2016, Relators submit the following evidence in this original action pursuant to S.Ct.Prac.R. 12.06:

1. **Relators' Exhibit A** – Affidavit of Jason Williams and Exhibit.
2. **Relators' Exhibit B** – Affidavit of Rebecca Butts in Support of Complaint for Writ of Mandamus and Exhibits (originally filed on July 27, 2015).
3. **Relators' Exhibit C** – Affidavit of Jillian Parrish in Support of Complaint for Writ of Mandamus and Exhibits (originally filed on July 27, 2015).
4. **Relators' Exhibit D** – Affidavit of John London in Support of Complaint for Writ of Mandamus and Exhibit (originally filed on July 27, 2015).
5. **Relators' Exhibit E** – Affidavit of Debra L. Martin in Support of Complaint for Writ of Mandamus and Exhibits (originally filed on July 27, 2015).
6. **Relators' Exhibit F** – Affidavit of Teresa Weaver in Support of Complaint for Writ of Mandamus and Exhibits (originally filed on July 27, 2015).
7. **Relators' Exhibit G** – Affidavit of Timothy P. Meredith in Support of Complaint for Writ of Mandamus and Exhibits (originally filed on July 27, 2015).

8. **Relators' Exhibit H** – Respondent's Answers to Relators' Interrogatories and Requests for Production of Documents Propounded upon Respondent Joseph T. Deters.
9. **Relators' Exhibit I** – Affidavit of Jeff Brogan and Exhibit.
10. **Relators' Exhibit J** – Affidavit of Darren W. Ford and Exhibits.

REQUEST FOR COURT TO TAKE JUDICIAL NOTICE

Relators also request, pursuant to Evid.R. 201(D), that the Court take judicial notice of: (1) the fact of that a Chicago Police Department ("CPD") officer shot and killed a teenage boy named Laquan McDonald on October 20, 2014; (2) the fact that the shooting was recorded by a camera mounted on a CPD police cruiser; (3) the fact that a copy of the recording was not released to the public for over 1 year, despite requests; and (4) the fact of protests by members of the public after the video's release.

Evid.R. 201(D) provides that "[a] court shall take judicial notice if requested by a party and supplied with the necessary information." To take judicial notice, the fact

must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Evid.R. 201(B).

The fact that a CPD police officer shot and killed Laquan McDonald is not subject to reasonable dispute. Nor are the facts that a camera mounted on the dashboard of a

CPD cruiser recorded the shooting, and that the video was not released to the public for over a year, despite requests.

A court may take judicial notice of matters of history if sufficiently notorious to be the subject of general knowledge. *See* 43 Ohio Jur. *Evidence & Witnesses* § 53 (3rd ed. 2014). *See also City of Englewood v. Clayton*, 2d Dist. Montgomery No. 16219, 1997 Ohio App. LEXIS 578, at *10 (Feb. 21, 1997) (taking judicial notice of fact “widely reported in the news media”).

All of the historical facts are generally known within the State of Ohio, having been widely covered by news organizations in the state. (*See* Affidavit of Darren W. Ford in Support of Request that Court Take Judicial Notice, Exs. 1 through 6.) Thus, the Court may properly take judicial notice of them.

Relators ask that the Court consider these judicially noticed facts only for the limited purpose of evaluating the public policy issues raised by the facts of this case. Accordingly, Relators respectfully request that the Court grant their request for judicial notice.

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

Respectfully submitted,

/s John C. Greiner

John C. Greiner (0005551)*

**Counsel of Record*

Darren W. Ford (0086449)
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
dford@graydon.com

COUNSEL FOR RELATORS

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing *Relators' Submission of Evidence* was served upon all counsel of record via Regular U.S. Mail, postage prepaid, pursuant to Ohio R. Civ. P. 5(B)(2)(c), on this 29th day of January, 2016.

Jeffrey W. Clark, Esq.
Hilary R. Damaser, Esq.
Morgan Linn
Assistant Attorneys General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, OH 43215

/s/ John C. Greiner

John C. Greiner (0005551)

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Respectfully submitted,

Of Counsel:

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

/s/ John C. Greiner

John C. Greiner (0005551)*

**Counsel of Record*

Darren W. Ford (0086449)
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
dford@graydon.com

COUNSEL FOR RELATORS

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing *Relators' Submission of Evidence* was served upon all counsel of record via Regular U.S. Mail, postage prepaid, pursuant to Ohio R. Civ. P. 5(B)(2)(c), on this 29th day of January, 2016.

Jeffrey W. Clark, Esq.
Hilary R. Damaser, Esq.
Morgan Linn
Assistant Attorneys General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, OH 43215

/s/ John C. Greiner

John C. Greiner (0005551)

RELATORS' EXHIBIT A

In the
Supreme Court of Ohio

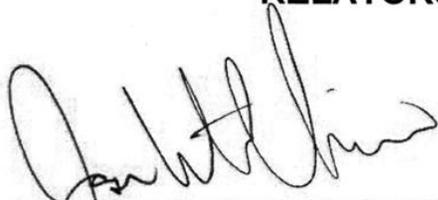
STATE OF OHIO, <i>ex rel.</i>	:	Case No. 2015-1222
THE CINCINNATI ENQUIRER, et al.	:	
	:	Original Action in Mandamus
Relators,	:	
	:	
vs.	:	
	:	<u>AFFIDAVIT OF JASON WILLIAMS</u>
JOSEPH T. DETERS, HAMILTON	:	
COUNTY PROSECUTING ATTORNEY,	:	
	:	
Respondent.	:	

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

1. My name is Jason Williams. I am a reporter for The Cincinnati Enquirer. I am over the age of 18, and have personal knowledge of the matters recounted in this Affidavit.
2. On July 23, 2015, in response to The Enquirer's request, I received an email from Katherine Miefert of the University of Cincinnati ("UC") attaching a copy of an "Information Report" prepared by UC police officer Eric Weibel after the shooting of Samuel DuBose on July 19, 2015. A true and correct copy of the UC "Information Report" I received from Ms. Miefert is attached hereto as Exhibit 1.

FURTHER AFFIANT SAITH NAUGHT.

[SIGNATURE AND ACKNOWLEDGEMENT ON FOLLOWING PAGE]



Jason Williams

STATE OF OHIO)
) ss.
COUNTY OF HAMILTON)

BE IT REMEMBERED, that on January 28, 2016, before me, the subscriber, a Notary Public in and for said State, personally came **Jason Williams**, 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.



Notary Public

12/25/2016

My Commission Expires



M. Judith Galligan
Notary Public, State of Ohio
My Commission Expires 12-25-2016

6135835.1

RELATORS' EX. A



University of Cincinnati
Police Division
INFORMATION REPORT
51 W. Corry Blvd., Cincinnati, OH, 45221-0215
PHONE: (513)556-4900 FAX: (513)556-4940 UCPD@UC.EDU

EXHIBIT 1 (Williams Aff.)

LOCATION OF OCCURRENCE / ADDRESS ALL CITY STREETS (Off Campus) / 22 THILL						DATE / TIME REPORTED 07/20/2015 00:45	CASE NO. 201502732					
CODE SECTION Information	CRIME INFORMATION REPORT				CLASSIFICATION INFORMATION	LOSS 0	RECOVERY 0					
FROM: DATE/TIME 07/19/2015 18:29	TO: DATE/TIME 07/19/2015 18:32	APPROVED YES	CASE STATUS Active									
ADDITIONAL CATEGORIES				ITEMS IN REPORT								
<input type="checkbox"/> ALCOHOL RELATED	<input type="checkbox"/> DRUGS INVOLVED	<input type="checkbox"/> SENIOR CITIZEN	<input type="checkbox"/> ARREST OCCURED	<input type="checkbox"/> SUPPLEMENT	<input type="checkbox"/> PICTURE/IMAGES							
<input checked="" type="checkbox"/> TRAFFIC RELATED	<input type="checkbox"/> GROUP/GANG INVOLVED	<input checked="" type="checkbox"/> WEAPONS INVOLVED	<input type="checkbox"/> DOMESTIC VIOLENCE	<input type="checkbox"/> FOLLOW UP	<input type="checkbox"/> PROPERTY/EVIDENCE							
COPIES TO												
<input checked="" type="checkbox"/> INVESTIGATIONS	<input type="checkbox"/> PARKING	<input type="checkbox"/> RISK MANAGEMENT	<input type="checkbox"/> KEYS AND ID'S	<input type="checkbox"/> FIRE INCIDENT REVIEW								
<input type="checkbox"/> RESIDENCE LIFE	<input type="checkbox"/> FACILITY MANAGE	<input type="checkbox"/> UNIVERSITY HOSPITAL	<input checked="" type="checkbox"/> ADMINISTRATIVE REVIEW	<input type="checkbox"/> TITLE IX VIOLATIONS								
<input type="checkbox"/> PUBLIC INFO	<input type="checkbox"/> STUDENT CONDUCT											
INV WIT	NAME: KIDD, PHILLIP	SUFFIX	RACE W	ETHNICITY NH	SEX M	AGE	DOB	HT	WT	HAIR	EYE	
SSN	DRIVER'S LIC. NO.			STUDENT ID			TYPE Police Officer					
ADDRESS TYPE Work	STREET NUMBER 51	STREET NAME West Corry Blvd.		SUITE NUMBER	CITY Cincinnati	STATE OH	ZIP 45221					
PHONES Work: 513-556-4900;												
INV WIT	NAME: LINDENSCHMIDT, DAVID	SUFFIX	RACE W	ETHNICITY NH	SEX F	AGE	DOB	HT	WT	HAIR	EYE	
SSN	DRIVER'S LIC. NO.			STUDENT ID			TYPE Police Officer					
ADDRESS TYPE Work	STREET NUMBER 51	STREET NAME Wst Corry Blvd.		SUITE NUMBER	CITY Cincinnati	STATE OH	ZIP 45221					
PHONES Work: 513-556-4900;												
INV OFC	NAME: TENSING, RAY	SUFFIX	RACE W	ETHNICITY NH	SEX M	AGE	DOB	HT	WT	HAIR	EYE	
SSN	DRIVER'S LIC. NO.			STUDENT ID			TYPE Police Officer					
ADDRESS TYPE Work	STREET NUMBER 51	STREET NAME West Corry Street		SUITE NUMBER	CITY Cincinnati	STATE OH	ZIP 45221					
PHONES Work: 513-556-4900;												
VEHICLE INVOLVEMENT												
YR	MAKE	MODEL	STYLE	COLOR	LICENSE 80106	ST OH	EXPIRES					
ADDITIONAL University of Cincinnati Police Vehicle					VIN							
INCIC INFORMATION												
DATE ENTERED 07/20/2015	ENTERED BY			DATE CLEARED	CLEARED BY			DISPOSITION				
SYNOPSIS												
University Of Cincinnati Police Officer shooting												
NARRATIVE												
<p>On 7-19-2015 at approximately 1829 hrs., I was patrolling East Campus when Officer Van Pelt called my cell phone to ask me a question regarding a traffic stop he was on. Shortly after the phone conversation began, at about 1832 Hrs. Officer Tensing began screaming over his radio "Shots fired shots fired!!" I immediately responded with lights and sirens to the location of Thill Street and Vine Street. During this response, I advised CPD that UCPD had a shots fired run. At 1834 Hrs. I arrived on scene. Specifically, I responded to Rice Street and Valencia Street. Upon arrival, I saw Officer Tensing. Officer Tensing stated that he was attempting a traffic stop (No front license plate) when, at some point, he began to be dragged by a male black driver who was operating a 1998 Green Honda Accord (OH.GLN6917). Officer Tensing stated that he almost was run over by the driver of the Honda Accord and was forced to shoot the driver with his duty weapon (Sig Sauer P320). Officer Tensing stated that he fired a single shot. Officer Tensing repeated that</p>												
REPORTING OFFICER WEIBEL, ERIC				REVIEWED BY YOUNG, HUGH				APPROVAL DATE 07/21/2015				
SIGNATURES				PRINT DATE AND TIME 07/21/2015 08:33	PRINTED BY YOUNG, HUGH				PAGE NO. 1 of 3			

RELATORS' EX. A



University of Cincinnati
 Police Division
 INFORMATION REPORT
 51 W. Corry Blvd., Cincinnati, OH, 45221-0215
 PHONE: (513)556-4900 FAX: (513)556-4940 UCPD@UC.EDU

EXHIBIT 1 (Williams Aff.)

LOCATION OF OCCURRENCE / ADDRESS ALL CITY STREETS (Off Campus) / 22 THILL	DATE / TIME REPORTED 07/20/2015 00:45	CASE NO. 201502732
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he was being dragged by the vehicle and had to fire his weapon. The vehicle came to a final stop at the corner of Rice Street and Valencia Street. From outside the vehicle, I could see a Male Black slumped over motionless with a gunshot wound to his head.

Officer Kidd was on scene with OIT Lindenschmidt. Officer Kidd told me that he witnessed the Honda Accord drag Officer Tensing, and that he witnessed Officer Tensing fire a single shot. It is unclear how much of this incident OIT Lindenschmidt witnessed.

Based on what I was observing, I called UC Dispatch and advised them an administrative page needed to be sent out and that the driver of the vehicle was deceased.

After speaking with Officer Tensing, he complained of pain to his left arm. Officer Maxwell was on scene and was instructed to stay with Officer Tensing until CFD could evaluate his injury. Looking at Officer Tensing's uniform, I could see that the back of his pants and shirt looked as if it had been dragged over a rough surface. CFD arrived and examined Officer Tensing. I suggested to Officer Tensing that he should go to the hospital for an examination. CFD eventually transported Officer Tensing to University Hospital Medical Center.

Prior to CFD's arrival, Cincinnati Police Sergeant Carder and Sergeant Asbury arrived on scene. Sergeant Carder took control of the scene and began assigning officer's job assignments. A perimeter was set using UC and CPD Officers. Officer Van Pelt took a perimeter position at 2263 Rice Street and Officer Noland took a perimeter post at 108 Valencia Street. Both officers remained on post until approximately 2am. Sergeant Asbury accompanied Officer Tensing to UCMC. Sergeant Carder supervised the notification of CIS, homicide, CPD criminalist, the Hamilton County Prosecutor's Office, the county coroner as well as community outreach and engagement personnel. A crime scene log was maintained by CPD Officer Hoskins and Officer Corry Jones. Officer Fussleman assisted as a "Go between" for UCPD and CPD. Additionally, Officers Kidd and Lindenschmidt responded to CIS for interviews.

CFD pronounced the male black dead at the crash scene.

Once the crime scene was established, Sergeant Carder asked me if we had a public information officer. I stated we did and that I believed that she was aware and was en route to the station. I confirmed this by calling Michelle's Ralston's cell phone. She stated that she was in the process of driving to the scene.

Lieutenant Gutierrez called my phone and I told him what I knew. I told him that I did not think he needed to respond because Captain Chatman was on scene and that the Chief, as well as Lt. Col. Corcoran, Captains Thompson and Smith were en route. Detective Doherty and Lieutenant Elliott responded. Cincinnati Police Command staff including Colonel Whalen and Captain Howard from district four responded. It was mutually agreed that Cincinnati Police would handle the investigation. Shortly thereafter, Cincinnati Police investigative resources began to arrive. CPD began their investigation and eventually cleared the scene at approximately 2am. I left the crime scene at approximately 2245 hrs. Officers Noland and Van Pelt remained.

At the time of this report, I do not know, with certainty, the name of the deceased. It is suspected that the last name may be "Dubose."

REPORTING OFFICER WEIBEL, ERIC	REVIEWED BY YOUNG, HUGH	APPROVAL DATE 07/21/2015
SIGNATURES	PRINT DATE AND TIME 07/21/2015 08:33	PRINTED BY YOUNG, HUGH
		PAGE NO. 2 of 3

RELATORS' EX. A



University of Cincinnati
Police Division
INFORMATION REPORT
51 W. Corry Blvd., Cincinnati, OH, 45221-0215
PHONE: (513)556-4900 FAX: (513)556-4940 UCPD@UC.EDU

EXHIBIT 1 (Williams Aff.)

LOCATION OF OCCURRENCE / ADDRESS ALL CITY STREETS (Off Campus) / 22 THILL	DATE / TIME REPORTED 07/20/2015 00:45	CASE NO. 201502732
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In summary, it is my understanding that Officer Tensing observed a Honda Accord being operated without a front license plate. This initial observation occurred on West McMillan Street. In the time it took Officer Tensing to run the plate and receive information regarding the registered owner, the Honda had traveled to Vine and Thill streets. Officer Tensing stated that the incident was caught on his University issued body camera.

REPORTING OFFICER WEIBEL, ERIC	REVIEWED BY YOUNG, HUGH	APPROVAL DATE 07/21/2015
SIGNATURES	PRINT DATE AND TIME 07/21/2015 08:33	PRINTED BY YOUNG, HUGH
		PAGE NO. 3 of 3

RELATORS' EXHIBIT B

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

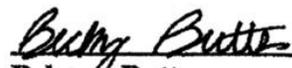
2. ORC Section 149.43 (A) (1) (h) Confidential law enforcement investigatory records. See specifically ORC Section 149.43 (A) (2) (c), Specific confidential investigatory techniques or procedures or specific investigatory work product, and State of Ohio ex rel. Mark W. Miller vs. Ohio State Highway Patrol,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

RELATORS' EX. B

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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RELATORS' EX. B

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



RELATORS' EX. B

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

CONFIDENTIAL COMMUNICATION: The foregoing message and/or the attachments hereto may contain or constitute confidential attorney-client communications. You should not copy, forward, or distribute this message to others without the permission of the sender. If you believe that you are not the intended recipient of this message, you should delete it without retaining a copy and inform the sender of your action. Your cooperation will be appreciated
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.

RELATORS' EX. B

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)

RELATORS' EXHIBIT C

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
JILLIAN PARRISH
IN SUPPORT OF COMPLAINT
FOR WRIT OF MANDAMUS

Respondent.

Respondent.

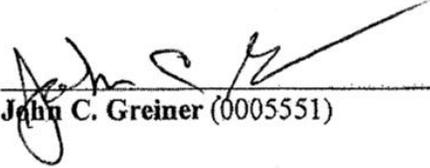
AFFIANT, after being duly cautioned and sworn, states as follows:

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

RELATORS' EX. C


John C. Greiner (0005551)

5779087.1

RELATORS' EX. C

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



RELATORS' EX. C

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



RELATORS' EXHIBIT D

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
JOHN LONDON
IN SUPPORT OF COMPLAINT
FOR WRIT OF MANDAMUS

Respondent.

Respondent.

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

RELATORS' EX. D

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...." 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.

John London
JOHN LONDON

STATE OF OHIO)
) ss.
COUNTY OF Dei)

BE IT REMEMBERED, that on July __, 2015, before me, the subscriber, a Notary Public in and for said State, personally came JOHN LONDON, 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.

12-25-16
My Commission Expires

M. Judith Galligan
Notary Public



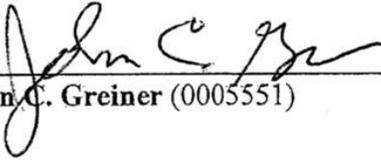
M. Judith Galligan
Notary Public, State of Ohio
My Commission Expires 12-25-2016

PRAECIPE FOR SERVICE

TO THE CLERK:

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

RELATORS' EX. D



John C. Greiner (0005551)

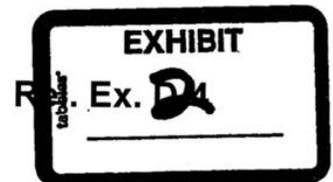
5779087.1

RELATORS' EX. D

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



RELATORS' EXHIBIT E

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.

RELATORS' EX. E

- 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)
)
 COUNTY OF Franklin) ss.

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



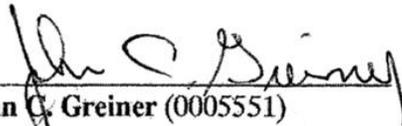
MICHELLE A. KERN
 Notary Public, State of Ohio
 My Comm. Expires Sept. 7, 2019

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.

RELATORS' EX. E


John C. Greiner (0005551)

5779087.1

RELATORS' EX. E

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:



RELATORS' EX. E

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

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[IP_US_DISC]

RELATORS' EXHIBIT F

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
TERESA WEAVER
IN SUPPORT OF COMPLAINT
FOR WRIT OF MANDAMUS

Respondent.

Respondent.

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.

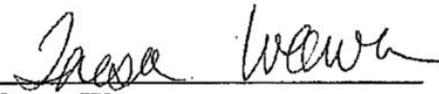
On 7/22/15, Julie Wilson, an employee of the Hamilton County Prosecuting Attorney's Office ("HCPRO"), responded to my Records request. Julie Wilson denied my request for the Records

RELATORS' EX. F

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.

 7/24/15

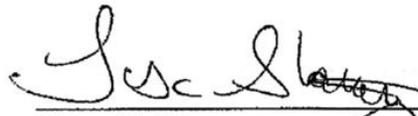
 Teresa Weaver

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



 Notary Public

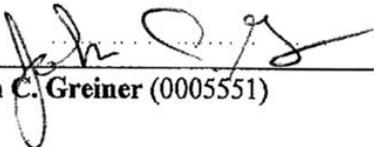
 My Commission Expires

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.

RELATORS' EX. F



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



RELATORS' EXHIBIT G

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

Respondent.

Respondent.

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

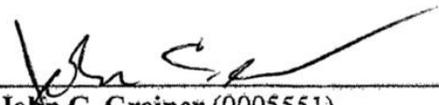

Notary Public

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.

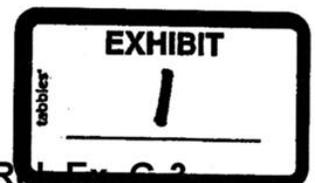
Please notify me in advance of any costs associated with the request.

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:TMeredit@sbgtv.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

RELATORS' EXHIBIT H

In the
Supreme Court of Ohio

STATE OF OHIO, *ex rel.*
THE CINCINNATI ENQUIRER, *et al.*

Case No. 2015- 1222

Relators,

vs.

Original Action in Mandamus

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

Respondent.

RESPONDENT'S ANSWERS TO
RELATORS' INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS PROPOUNDED UPON RESPONDENT JOSEPH T. DETERS

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

DISCOVERY REQUESTS

Relators, by and through counsel, requests that Respondent Joseph T. Deters ("Deters") serve answers, under oath, to each of the Interrogatories in accordance with Ohio R. Civ. P. 33 and respond to each of the following Requests for Production of Documents and produce the requested documents, in accordance with accordance with Ohio R. Civ. P. 34 (collectively, "Requests"). These Requests shall continue in force until after the completion of all hearings or trial in this matter, pursuant to Ohio R. Civ. P. 26(E).

I. GENERAL PROVISIONS

1. These Requests are directed to Respondent Deters, and seek information known personally to him and his agents and information in the possession, custody or control of him or his counsel or representatives.
2. These Requests shall be deemed continuing so as to require additional answers and responses if further information or documents are obtained between the time the answers and responses are served and the time of all hearings or trial. Such additional answers and responses shall be served from time to time, but no later than twenty-eight (28) days after such additional information or documents are received.
3. In answer and response to these Requests, you are requested to furnish all information that is available to you or your attorneys, including but not limited to, information in the possession of any attorneys, agents, investigators, representatives, or anyone acting in cooperation or concert with the case to be presented by you.
4. If any Request cannot be answered or responded to in full, after exercising due diligence to secure the information to do so, please state and answer or respond to the Request, stating whatever information or knowledge presently is available concerning the portion of said Request that assertedly could not be answered or responded to.
5. If you object to the whole or any part of any Request, for any reason, separately state the grounds for the objection.
6. If you claim any form of privilege, whether based on a statute or otherwise, as a ground for not answering a Request or any portion thereof, set forth in complete detail each and every fact upon which the privilege is based, including sufficient facts for the Court to make a full determination whether the claim of privilege is valid.

7. If you claim any form of privilege, whether based on a statute or otherwise, as a ground for not describing a requested oral communication, state the following with respect to each such communication;

- a. The date thereof;
- b. The name, present or last known home and business addresses and telephone numbers, title (or position) and occupation of each of the participants in the oral communication;
- c. The name, present or last known home and business addresses and telephone numbers, title (or position) and occupation of each person present during all or any part of the oral communication;
- d. A description of the oral communication which is sufficient to identify the particular communication without revealing the information for which a privilege is claimed; and
- e. With sufficient specificity to permit the Court to make a full determination whether the claim of privilege is valid, state each and every fact or basis on which you claim any such privilege.

8. Where Request calls for the description of a writing as to which you would claim a privilege, whether based on a statute or otherwise, as a ground for non-production, you shall set forth with respect to the writing, in addition to any other information requested, its:

- a. Date;
- b. Author;
- c. Addresses, if any;
- d. Title;
- e. Type of tangible thing (i.e., letter, memorandum, telegram, chart, report, recording disc);
- f. Subject matter (without revealing the information as to which privilege is claimed); and
- g. With sufficient specificity to permit the Court to make a full determination whether the claim of privilege is valid, each and every fact or basis on which you claim such privilege.

9. In lieu of identifying any document where requested by these Requests, you may attach a legible, complete copy of such document.

10. If any document cannot be produced because it is no longer in your possession or control or in existence, then for each such document, state whether it is missing or lost, has been destroyed, has been transferred to others, or has otherwise been disposed of, and in each instance, explain the circumstances surrounding the disposition thereof and state the approximate date of such disposition.

11. In construing these discovery requests, the singular shall include the plural, and the plural shall include the singular. A masculine, feminine, or neuter pronoun shall include all genders.

II. DEFINITIONS

1. The words "you" or "your" mean Respondent Joseph T. Deters ("Deters"), and each agent or representative, including attorneys and all other persons acting or purporting to act on behalf of Deters.

2. The words "document" or "documents" as used herein shall be deemed to include any written, printed, typed or other graphic matter of any kind or nature, drafts and copies bearing notations or marks not found on the original, including reports, notes, letters, envelopes, telegrams, messages (including references), studies, analyses, comparisons, books, articles, magazines, newspapers, booklets, circulars, bulletins, notices, instructions, minutes of all other communications of any type, including inter- and intra-office communications, purchase orders, questionnaires and surveys, charts, graphs, photographs, microfilms, phonograph, tape or other recordings, punch cards, magnetic tapes, discs, data cells, drums, printouts, and other data compilations from which information can be obtained.

3. The words "identify," "identity" or "identification":

- a. When used herein in reference to a natural person, shall require you to state (1) his/her full name and the present or last known address of his/her residence, (2) his/her present or last known business affiliation and position therewith, and (3) each of his/her business affiliations and positions in respect thereto;
- b. When used in reference to an entity other than an individual, shall require you to state (1) its full name, (2) nature of organization including the name of the state under which same was organized, (3) each of its business affiliations and positions in respect thereto;
- c. When used in reference to a document, shall require you to state (1) its date, (2) its author, (3) the type of document (e.g., letter, memorandum, receipt, invoice, schedule, report, telegraph, chart, photograph, sound reproduction, note), (4) its source, (*i.e.*, from whom it was obtained), and (5) its present location and the name of the present custodian or each

custodian if there is more than one copy thereof. If any such document was, but is no longer in the possession of Deters or subject to his control, or it is no longer in existence, state whether it is (1) missing or lost, (2) destroyed, (3) transmitted or transferred, voluntarily or involuntarily to others, identifying such others or (4) otherwise disposed of, and in each instance, explain the circumstances surrounding and authorization for such disposition and state the date or approximate date thereof.

4. The word "person" or "persons" as used herein shall be deemed to include natural persons, firms, partnerships, associations, joint ventures, trustees, and corporations.

5. "Relating to" or "regarding" shall mean directly or indirectly mentioning or describing, pertaining to, connected with, or reflecting upon a matter identified in the Requests.

6. As used herein "all facts" or "any facts" means each and every event, act, omission, incident, condition, or circumstance related to the subject matter of the Request where used (collectively "the event"), including the dates of the event, the identification of all persons who witnessed the event, and the identification of all persons who, although not a witness to the event, have personal knowledge of the event or some aspect of the event.

7. The word "or" appearing in a Request should not be read so as to eliminate any part of the Request but, whenever applicable, it should have the same meaning as the word "and."

8. The word "any" shall be construed to include the word "all" and "all" shall be construed to include the word "any" as necessary to bring within the scope of a Request all answers or responses which might otherwise be construed to be outside its scope.

9. The term "between" shall be construed to include the word "among" and "among" shall be construed to include the word "between" as necessary to bring within the scope of a Request all answers or responses which might otherwise be construed to be outside its scope.

10. Definitions provided herein apply to any grammatical variant of the term or phrase definition.

INTERROGATORIES

INTERROGATORY NO. 1. Who created the "body cam video" withheld from public disclosure, as identified in Exhibit 4 of the Affidavit of Rebecca Butts (hereinafter the "Body Camera Video") filed in this action?

ANSWER: The camera video was created by a device marketed by Taser International. It is downloaded into a server controlled by Taser International. The video can be accessed by the University of Cincinnati.

INTERROGATORY NO. 2. What entities maintain the Body Camera Video and similar body camera videos created by University of Cincinnati Police Department ("UCPD") officers?

ANSWER: See answer to Interrogatory #1

INTERROGATORY NO. 3. Did you and/or the Hamilton County Prosecuting Attorney's Office ("HCPRO") possess either the original version of the Body Camera Video or a copy on July 21, 2015, and/or July 22, 2015?

ANSWER: Chief Assistant Prosecuting Attorney Mark Piepmeier received the Body Camera Video recording from Cincinnati Police for preparation of a case to be presented to the Grand Jury of Hamilton County, Ohio on July 21, 2015.

INTERROGATORY NO. 4. Does the HCPRO maintain a policy or procedure regarding the use, recording, or custody of body camera videos? If so, please describe and produce such policy.

ANSWER: All video evidence of criminal activity is provided to the defendants' attorney in criminal cases as required by Criminal Rule 16.

INTERROGATORY NO. 5. Does the UCPD maintain a policy or procedure regarding the use, recording, or custody of body camera videos? If so, please describe and produce such policy.

ANSWER: Objection. This question requests information held by third parties or attorney work product – evidence gathered for use in litigation.

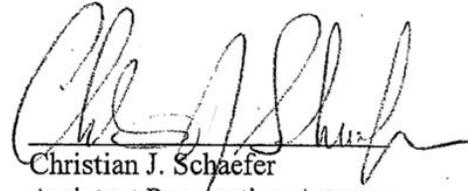

Christian J. Schaefer
Assistant Prosecuting Attorney

As a matter of courtesy we are attaching a copy of the University of Cincinnati "Body Worn Digital Recording Systems" policy.

INTERROGATORY NO. 6. Please describe all training employees of the HCPRO and/or the UCPD receive with regard to the creation, maintenance, use, and custody of body camera videos similar to the Body Camera Video identified in Exhibit 4 of the Affidavit of Rebecca Butts.

ANSWER: Employees of the Hamilton County Prosecutor's Office received no training regarding body camera video.

Objection. This question requests information held by third parties or attorney work product – evidence gathered for use in litigation.



Christian J. Schaefer
Assistant Prosecuting Attorney

**As a matter of courtesy we are attaching a copy of the University of Cincinnati
"Body Worn Digital Recording Systems" policy.**

INTERROGATORY NO. 7. Please identify all evidence in your possession as of July 22, 2015, that supports your contention that the release of the Body Camera Video could jeopardize a possible future fair trial, as alleged in Exhibit 4 of the Affidavit of Rebecca Butts filed in this action.

ANSWER: Chief Assistant Prosecuting Attorney Mark Piepmeier's 35 years of experience as an assistant prosecuting attorney prosecuting criminal cases and Joseph T. Deters 6 years as an Assistant Prosecuting Attorney and 18 years as the Prosecuting Attorney of Hamilton County, Ohio. Additionally Jeff Clark of the Ohio Attorney General's Office was consulted and provided a copy of *State ex rel. Community Journal of North Clermont v. Erin C. Reed* (12th Dist. 2014) case number CA2014-01-010 which is attached hereto.

INTERROGATORY NO. 8. Please identify all evidence in your possession as of July 22, 2015, that supports a finding that reasonable alternatives to non-release of the Body Camera Video could not have been utilized to prevent an unfair trial related to the incident depicted on the Body Camera Video footage.

ANSWER: See Answer to Interrogatory 7.

INTERROGATORY NO. 9. Please describe how each reasonable alternative identified in your response to Interrogatory No. 8 could not prevent an unfair trial related to the incident depicted on the Body Camera Video footage.

ANSWER: See Answer to Interrogatory 7.

INTERROGATORY NO. 10. Please identify and describe in general terms any specific investigatory work product contained in the Body Camera Video.

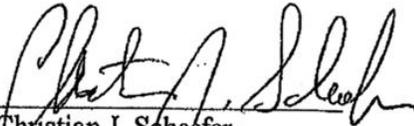
ANSWER: A. If witnesses view the body camera before giving testimony, it becomes impossible to differentiate whether the witness's testimony is actually what the witness is able to perceive, remember and relate, or merely an interpretation of the portions of the body camera video the various media choose to broadcast or the witness chooses to view.

B. Where there is great public interest in a case, such as this one, it is likely that the media outlets will consult "experts" to render opinions about the contents of the body camera video, and witnesses may consciously or unconsciously alter their testimony based upon the "expert" opinions broadcast about the video.

C. Where there is great public interest in a case and the body camera video is broadcast to the public at large before presentation to a Grand Jury, persons seeking publicity or with political motives may come forward claiming to be witnesses and fabricating firsthand knowledge of the events, when in fact they are merely rendering an opinion about the content of the video. If the body camera video is not broadcast, it is unlikely that such persons will have sufficient detailed information to fabricate testimony.

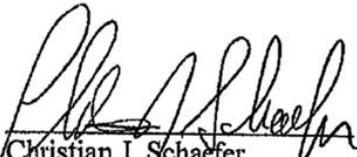
INTERROGATORY NO. 11. Does the UCPD provide training to its officers regarding the proper procedure for conducting a motor vehicle stop and approach?

ANSWER: Objection. This question requests information held by third parties or attorney work product – evidence gathered for use in litigation.


Christian J. Schaefer
Assistant Prosecuting Attorney

INTERROGATORY NO. 12. With respect to the training described in Interrogatory No. 11, describe all efforts undertaken by the UCPD to maintain the confidentiality of that training.

ANSWER: Objection. This question requests information held by third parties.


Christian J. Schaefer
Assistant Prosecuting Attorney

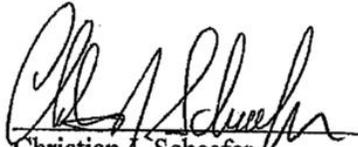
INTERROGATORY NO. 13. Please identify all evidence detailing any training UCPD officers receive concerning suspect vehicle stops and approaches.

ANSWER: Objection. This question requests information held by third parties or attorney work product – evidence gathered for use in litigation.


Christian J. Schaefer
Assistant Prosecuting Attorney

INTERROGATORY NO. 14. With respect to the training described in Interrogatory No. 13, describe all efforts undertaken by the UCPD to maintain the confidentiality of that training.

ANSWER: Objection. This question requests information held by third parties.


Christian J. Schaefer
Assistant Prosecuting Attorney

INTERROGATORY NO. 15. Please identify all communications between you, or any employee or representative of the HCPRO, and the University of Cincinnati and/or UCPD regarding production of the Body Camera Video pursuant to any public records request seeking its production.

ANSWER: The days following the shooting of Samuel Dubose were a chaotic and busy time. To the best of the knowledge of those involved, on July 19, 2015, in the early evening Mark Pieipmeier responded to an incident and investigation wherein University of Cincinnati Police Officer Raymond M. Tensing shot and killed Samuel Dubose during a traffic stop in Hamilton County, Ohio. His purpose in responding to the incident was to act as a legal advisor to the investigating agency, to receive evidence from the investigating agency for presentation to the Grand Jury, and to prepare a case for presentation to the Grand Jury. On that evening he requested both University of Cincinnati and City of Cincinnati not to release the body cam video until the case was presented to the grand jury.

INTERROGATORY NO. 16. Please identify all communications between you, or any employee or representative of the HCPRO, and the Cincinnati Police Department regarding production of the Body Camera Video pursuant to any public records request seeking its production.

ANSWER: See answer to interrogatory 15.

REQUESTS FOR PRODUCTION

REQUEST NO. 1. Please produce all documents referenced in or used to support the Interrogatory answers.

RESPONSE: *State ex rel. Community Journal of North Clermont v. Erin C. Reed* (12th Dist. 2014) case number CA2014-01-010 which is attached hereto.

REQUEST NO. 2. Please produce all training materials with regard to UCPD officer training for the creation, maintenance, and custody of body camera videos.

RESPONSE:

Objection. This question requests information held by third parties or attorney work product – evidence gathered for use in litigation


Christian J. Schaefer
Assistant Prosecuting Attorney

As a matter of courtesy we are attaching a copy of the University of Cincinnati "Body Worn Digital Recording Systems" policy.

REQUEST NO. 3. Please produce any policies or procedures used to determine whether the Confidential Law Enforcement Investigatory Records exemption applies to particular body camera videos.

RESPONSE: See the Ohio Revised Code.

REQUEST NO. 4. Please produce any materials created or maintained by the UCPD and/or HCPRO that describe the proper procedures for conducting suspect vehicle stops and approaches and all other documents identified in response to Interrogatory No. 13.

RESPONSE: Hamilton County Prosecutors Office maintains no materials concerning procedures for stopping and approaching vehicles other than the library of West Law concerning search and seizure and the Fourth Amendment.

RESPONSE: Objection. This question requests information held by third parties or attorney work product – evidence gathered for use in litigation.


Christian J. Schaefer
Assistant Prosecuting Attorney

REQUEST NO. 5. Please produce copies of any communications between you, or any employee or representative of the HCPRO, and the Cincinnati Police Department regarding production of the Body Camera Video pursuant to any public records request seeking its production.

RESPONSE: All communications regarding the production of the body cam video were oral. No copies available.

REQUEST NO. 6. Please produce copies of any communications between you, or any employee or representative of the HCPRO, and the University of Cincinnati and/or UCPD regarding production of the Body Camera Video pursuant to any public records request seeking its production.

RESPONSE: All communications regarding the production of the body cam video were oral. No copies available.

5784785.1

5784785.1

AS TO THE ANSWERS TO THE INTERROGATORIES:

STATE OF OHIO)
) ss.
COUNTY OF HAMILTON)

VERIFICATION

I hereby acknowledge that the foregoing Answers to Interrogatories are true to the best of my knowledge and belief.

J. T. Deters
JOSEPH T. DETERS

The foregoing Answers to Interrogatories were acknowledged before me this 20th day of January, 2015, by Joseph T. Deters

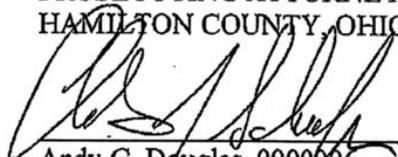
Kathleen R. Merkt
Notary Public

2-16-2019
My Commission Expires



Kathleen R. Merkt
Notary Public, State of Ohio
My Commission Expires 2-16-2019

JOSEPH T. DETERS
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

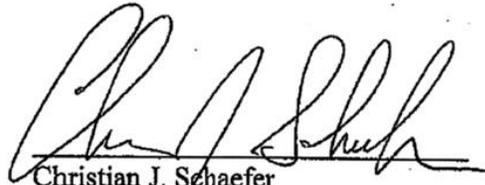


Andy G. Douglas, 0000006
Roger E. Friedmann, 0009874
Christian J. Schaefer, 0015494
Michael J. Friedmann, 0090999
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946- 3279 (Douglas)
(513) 946-3025 (R. Friedmann)
(513) 946-3041(Schaefer)
(513) 946-3197 (M. Friedmann)
FAX (513) 946-3018
andy.douglas@hcpros.org
roger.friedmann@hcpros.org
chris.schaefer@hcpros.org
michael.friedmann@hcpros.org

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon each party of record in this case by hand delivery on the 22nd day of January, 2016 to:

John C. Greiner
Darren W. Ford
Graydon Head & Ritchey LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202-3157



Christian J. Schaefer
Assistant Prosecuting Attorney



<u>Title</u> Body Worn Digital Recording Systems		<u>SOP Number</u> PU50	
Approval Signature			
Chief Jason Goodrich			
Reviewed/Revised by			Pages
			1 of 5
<u>Last Revision Date</u>		<u>Effective Date</u>	
10/12/14 JRC 1/29/15		10/13/14	

1. PURPOSE AND SCOPE

The use of the Body Worn Digital Recording (BWDR) system provides an unbiased audio/video recording of events that officers encounter. These recordings can be useful for the documentation of evidence, the preparation of offense reports, and future court testimony. These recordings can also protect officers from false allegations of misconduct and be of use when debriefing incidents or evaluating performance. This policy covers the use of the Department issued BWDR systems.

A. GENERAL INFORMATION

DEPARTMENT ISSUED BODY WORN DIGITAL RECORDING SYSTEM

- (a) All police officers will be issued a BWDR system and will be trained in the operation of the equipment prior to its use. BWDR equipment will be used in accordance with Ohio law and this procedure. All uniformed patrol officers will wear their issued BWDR while on duty. Special assignment and plainclothes officers will wear their BWDR when engaged in activities where the use is reasonably foreseeable. **Officers will notify and try to obtain consent prior to recording interviews with crime victims and witnesses. Officers will note in their ARMs report their reasoning if they fail to record an activity that is required by department policy.** Officers will not use any personally owned recording equipment or devices while on duty without approval from the Chief or Assistant Chief. **Data images, video, and metadata captured, recorded, or otherwise produced by the BWDR is the sole property of the University of Cincinnati Police Department.**
- (b) Officers who discover an operational defect with the BWDR system will attempt to correct the problem according to the training provided (I.E.: Reseating cables, Cycling the power, etc.). If the BWDR is found to have a physical defect or malfunction, the employee will notify the supervisor, and write up the device for service describing the events leading up to failure. The supervisor will issue the officer a spare BWDR.
- (c) Officers shall not:
 - a. Bypass or attempt to override the equipment.
 - b. Erase, alter, or delete any recording produced by the BWDR.

B. WHEN DEPARTMENT ISSUED BWDR SYSTEM USE IS REQUIRED

This section is not intended to describe every possible situation where the system may be used. In general, the BWDR should be used to record activities where law enforcement

action is being taken, or where other circumstances could result in an officers actions being questioned. In some circumstances it may not be possible to capture images of an incident due to conditions or location of the camera, however the audio portion can be valuable evidence and is subject to the same activation requirements.

- (a) Officers responding to a scene shall activate their department issued BWDR:
 - 1. Prior to arriving on-scene when dispatched on a call where they are likely to detain or arrest a person; or
 - 2. Have detained or arrested a person; or
 - 3. Are attempting to detain or arrest a person; or
 - 4. Are confronting disorderly or hostile subjects; or
 - 5. Are searching for or collecting evidence, especially where drugs or money are involved; or
 - 6. Any other situation where the officer believes that documentation of their activities is desirable.

- (b) Examples of when the department issued BWDR system must be activated include, but are not limited to:
 - 1: Traffic stops, from the initiation to the completion of the enforcement action.
 - 2. DWI investigations including field sobriety tests
 - 3. Warrant service
 - 4. Investigatory stops
 - 5. Any contact that becomes adversarial in an incident that would not otherwise require recording. In those situations, it may be impractical or unreasonable for officers to activate their BWDR system before taking police action. In that case, officers will activate their BWDR as soon as possible to record the remainder of the incident.

- (c) In addition to the required situations, officers may activate the system anytime they believe its use would be appropriate and/or valuable to document an incident.

- (d) There may be instances in which an officer is required to take immediate action to an event that occurs directly in front of them which may not allow time to activate their BWRD. In these circumstances, the officer shall activate their BWDR as soon as practical.

C. WHEN DEPARTMENT ISSUED BWDR SYSTEM DEACTIVATION

IS AUTHORIZED

Once the BWDR system is activated it shall remain on until the incident has concluded.

- (a) For purposes of this section, conclusion of an incident has occurred when:
 - 1. After an arrested suspect has been transported to the station.
 - 2. All witnesses and victims have been interviewed.
- (b) Recording may cease if no further law enforcement action is likely to occur (e.g., after a field stop has concluded and the subject is sent on their way)

D. WHEN DEPARTMENT ISSUED BWDR SYSTEM USE IS NOT REQUIRED

Activation of the BWDR systems is not required during routine patrol, or while the officer is engaged in non-enforcement activity, such as meal breaks or routine conversation with the general public.

E. BODY WORN DIGITAL RECORDINGS AS EVIDENCE

- (a) Officers will securely upload all recordings captured on any BWDR system they are carrying by the end of their tour of duty to the www.evidence.com.
- (b) Recordings not needed as evidence or other official UCPD business may be erased after 15 days from the date of the recording.
- (c) Recordings will be preserved for the duration of any court proceedings or internal investigations.

F. REVIEW OF ALL BWDR SYSTEM RECORDINGS

This section outlines the review of department issued BWDR system recordings.

- (a) Recordings may be reviewed:
 - 1. By an officer to make sure the BWDR system is working
 - 2. By an officer to assist with the writing of a report, supplement, or memorandum.
 - 3. By authorized persons for the purpose of reviewing evidence
 - 4. By a supervisor investigating a specific act of employee conduct

5. By authorized Department personnel participating in an official capacity such as a personnel complaint, administrative inquiry, criminal investigation, or use of force review.
 - (b) Recordings may be reviewed for the purpose of training. If an involved employee objects to showing a recording, their objection will be submitted to their supervisor to determine if the training value outweighs the employee's objection.
 - (c) Recordings will not be used or shown with the intent to ridicule or embarrass any employee.
 - (d) Employees shall not obtain, attempt to obtain, or convert for their personal use or for the unauthorized use of another person, any information obtained by a BWDR system. Employees shall not make personal copies or attempt to upload recordings to social networking sites (e.g., You-Tube, Facebook).
 - (e) Recordings may be released to the Prosecutor through the normal evidentiary process. Any other release of a recording must be approved through the normal records release process.

G. STORAGE and CHARGING

- (a) All officers will only upload, charge and store their BWDR in the docking stations located in the squad room.

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STATE OF OHIO EX REL.
THE COMMUNITY JOURNAL,
NORTH CLERMONT,

CASE NO. CA2014-01-010

Relator,

DECISION
12/30/2014

- vs -

ERIN C. REED,

Respondent.

ORIGINAL ACTION IN MANDAMUS

Graydon Head & Ritchey LLP, John C. Greiner, 1900 Fifth Third Center, 511 Walnut Street, Cincinnati, Ohio 45202, for relator

R. Michael DeWine, Ohio Attorney General, Jeffery W. Clark, 30 West Broad Street, 16th Floor, Columbus, Ohio 43215-3400, for respondent

S. POWELL, J.

{¶ 1} The current case is before this court pursuant to a complaint brought by relator, The Community Journal, North Clermont (Journal), seeking a writ of mandamus to compel respondent, Erin C. Reed, Director of Administration for Ohio Bureau of Criminal Identification and Investigation (BCI), to produce records it has in its possession regarding missing property from the Goshen Township Police Department (Police Department).

I. Statement of Facts

{¶ 2} On August 13, 2013, the Clermont County Sherriff's Office sent a letter to BCI requesting that BCI investigate "current criminal activity" occurring in Clermont County. The letter stated that "approximately \$8,000 in various money orders from a drug bust are missing" and that the "criminal activity may involve local law enforcement officers and fraud involving the evidence locker" at the Police Department. On August 19, 2013, the Goshen Township Chief of Police separately e-mailed BCI to request its assistance in investigating the missing property.

{¶ 3} BCI opened an investigation into the allegations of criminal activity occurring at the Police Department and assigned Special Agent Karen Rebori to investigate. Agent Rebori received two sets of documents from the Police Department in connection with her investigation, one on August 28, 2013 and another on August 30, 2013. The two sets of documents contained over 700 records and Agent Rebori "assembled, compiled, and maintained" the records for her investigation into the missing property.

{¶ 4} On August 30, 2013, Keith BieryGolick, a reporter for the Journal, contacted BCI and requested permission to inspect "all records and documents, including any electronic mail and electronic files and text messages, created, received, or sent by representatives of Goshen Township in Clermont County between Jan. 1, 2013 and Aug. 20, 2013 concerning missing evidence and/or missing property from the Goshen Police Department" that were currently in the possession of BCI. BCI denied the request in its entirety stating that pursuant to R.C. 149.43(A)(1)(h), all the records received from the Police Department are confidential law enforcement investigatory records of an ongoing investigation and the release of those records would create a high probability of disclosure of specific investigatory work product.

{¶ 5} Over the next several weeks, counsel for the Journal and BCI engaged in

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further correspondence regarding the production of the records. Eventually, BCI sent the Journal copies of the Clermont County Sherriff's Office letter requesting BCI initiate an investigation and the similar request from the Goshen police chief. Later, BCI also released a copy of an article written by BieryGolick concerning the missing property and the Police Department's Evidence Room Manager Policy.

{¶ 6} On January 22, 2014, the Journal subsequently filed the present action, a complaint in this court for a writ of mandamus against BCI. The Journal seeks an order requiring BCI to make all records it received concerning the missing property at the Police Department available to the Journal for inspection and copying. The Journal also requests BCI to pay statutory damages, court costs and attorney fees for its failure to comply with R.C. 149.43.

{¶ 7} While this action was pending, the Journal served BCI with a set of interrogatories that included questions asking BCI to describe the type of documents contained within the records, the date the documents were created and to identify the person that created each document. BCI objected to these interrogatories and did not respond. The Journal filed a motion to compel BCI to respond to these interrogatories. The matter came before a magistrate, who denied the Journal's motion. The Journal has filed an objection to magistrate's decision denying its motion to compel.

{¶ 8} Both the Journal and BCI have filed cross-motions for summary judgment. The Journal maintains that the records are "public records" pursuant to R.C. 149.43 and that the confidential law enforcement investigatory records exception as asserted by BCI does not apply because it does not cover an entire investigative file. Further, the Journal argues BCI is unable to show the documents were created in connection with a criminal proceeding. BCI counters that all the records it received in regards to the missing property fall under the confidential law enforcement investigatory records exception.

{¶ 9} On August 7, 2014, BCI filed a "notice to court and suggestion of mootness" notifying this court that its investigation regarding the missing property had concluded and therefore it was releasing to the Journal most of the requested records, subject to some redactions. BCI argues that this action is now rendered moot since it has provided the records to the Journal. The Journal disputes the mootness argument and maintains this issue is "capable of repetition, yet evading review" and that BCI improperly redacted the information contained in the records.

{¶ 10} Accordingly, the following motions are before this court: 1) the Journal's objections to the magistrate's decision denying its motion to compel discovery; 2) BCI's and the Journal's cross-motions for summary judgment; and 3) BCI's notice to the court and suggestion of mootness and the Journal's memorandum challenging mootness and the redaction of the records.

II. Analysis

A. Ohio Public Records Act

{¶ 11} As an initial matter, we note the resolution of the instant dispute is governed by the Ohio Public Records Act. Ohio's Public Records Act, codified at R.C. 149.43, mandates full access to public records upon request, unless the requested records fall within one of the exceptions specifically enumerated in the Act. *State ex rel. Lucas Cty. Bd. of Commrs. v. Ohio Environmental Protection Agency*, 88 Ohio St.3d 166, 170 (2000). The Act requires that "upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person ** * [and] upon request a public office or person responsible for public records shall make copies of the requested public record * * *." R.C. 149.43(B)(1).

{¶ 12} A "public record" is a record kept by any public office. R.C. 149.43(A)(1). The Act exempts "confidential law enforcement investigatory records" from its application. R.C.

149.43(A)(1)(h). A "confidential law enforcement investigatory record" is defined as:

[A]ny record that pertains to a law enforcement matter of a criminal, quasi-criminal, or 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:

(a) The *identity of a suspect who has not been charged* with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

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

(Emphasis added.) R.C. 149.43(A)(2).

{¶ 13} The Public Records Act "must be construed liberally in favor of broad access, and any doubt should be resolved in favor of disclosure of public records." *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, ¶ 8. "[I]nherent in R.C. 149.43 is the fundamental policy of promoting open government, not restricting it." *State ex rel. The Miami Student v. Miami Univ.*, 79 Ohio St.3d 168, 171 (1997). The government "bears the burden of establishing that the requested information is exempt from disclosure." *Bond* at ¶ 8.

B. Discovery

{¶ 14} During discovery, BCI refused to answer interrogatories requesting it to describe the type of documents contained within the records, the date the documents were created and the identity of the person who created each document. The Journal filed a motion to compel BCI to answer the interrogatories, which the magistrate denied. The Journal argues the answers in response to the interrogatories would support its argument that documents created prior to the investigation or not prepared by BCI do not fall within the confidential law enforcement records exception.

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{¶ 15} In addressing this matter, we note that BCI and the Journal have disagreed over the proper characterization of the magistrate's "entry denying [the Journal's] motion to compel discovery." After the magistrate denied the Journal's motion, the Journal filed an "objection to magistrate's decision." BCI maintains that the Journal's motion is not an objection but is more of the nature of a motion to set aside a magistrate's order. We agree that the Journal's motion is better characterized as a motion to set aside the magistrate's order. Civ.R. 53(D)(2)(b). The magistrate's entry was an order necessary to regulate the proceedings and not dispositive of a claim or defense of a party. Civ.R. 53(D)(2)(a)(i). See *In re H.R.K.*, 8th Dist. Cuyahoga No. 97780, 2012-Ohio-4054, ¶ 8; *J & B Fleet Indus. Supply, Inc. v. Miller*, 7th Dist. Mahoning No. 09 MA 173, 2011-Ohio-3165, ¶ 30. However, regardless of whether the magistrate's entry is better characterized as a "decision" or an "order," neither party has cited any authority regarding how this affects our review of the magistrate's decision, and therefore, for purposes of this opinion, we will treat the Journal's motion as objections to the magistrate's decision. Accordingly, we will undertake an independent review of the magistrate's decision. Civ.R. 53(D)(4)(d).

{¶ 16} Civ.R. 26 establishes the scope of discovery and states that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Parties generally should be granted broad leeway in discovering material that may be useful to them in preparing for litigation. *Grantz v. Discovery For Youth*, 12th Dist. Butler Nos. CA2004-09-216 and CA2004-09-217, 2005-Ohio-680, ¶ 11, citing *Stegawski v. Cleveland Anesthesia Group, Inc.*, 37 Ohio App.3d 78, 85 (8th Dist. 1987). The concept of relevancy as it applies to discovery is not limited to the issues in the case, but to the subject matter of the action, which is a broader concept. *Nilavar v. Osborn*, 137 Ohio App.3d 469, 499 (2d Dist. 2000). The Civil Rules permit discovery of information so long as it is "reasonably calculated to lead to the discovery of admissible

evidence." Civ.R. 26(B)(1).

{¶ 17} Although not specifically addressed by either party, the Ohio Supreme Court's decision in *Henneman v. City of Toledo*, 35 Ohio St.3d 241(1988), is helpful in our analysis in determining whether records that might reveal aspects of a confidential law enforcement investigation are discoverable. In *Henneman*, the Court recognized a qualified common law privilege in discovery for law enforcement investigatory files. *Id.* at 245. When deciding whether confidential law enforcement records are discoverable, courts are to apply a balancing test and rule that such records are subject to discovery if "upon an *in camera* inspection, the trial court determines that the requesting party's need for the material outweighs the public interest in the confidentiality of such information." *Id.* at 246.

{¶ 18} In the case at bar, BCI stated in its response to request for admissions that there were "over 700 pages of records contained in the Records;" the records will be submitted to the Court for an *in camera* review; at least 35 pages of the records contain handwritten notations; all records "were assembled" by a BCI agent in connection with a "probable criminal proceeding;" none of the records were created by BCI; all of the documents constitute working papers assembled by a BCI agent; at least four of the documents may be described as "memorandum;" 53 of the records are labeled as "incident reports;" and the criminal investigation is ongoing but no criminal charges have been filed.

{¶ 19} In denying the Journal's motion to compel discovery, the magistrate reasoned that requiring BCI "to parse which withheld records constitute notes assembled by law enforcement officials, determine who created each record, and when each record was created will not help [the Journal] or this court determine whether or not the records were improperly withheld." Additionally, the magistrate reasoned that revealing this information might disclose the identity of an uncharged suspect or the identity of a confidential source.

{¶ 20} We have conducted a thorough *in camera* review of the withheld records to

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determine whether the asserted public records exceptions are applicable. We overrule and deny the Journal's objection to the magistrate's decision because the Journal's need for answers to the interrogatories does not outweigh the interest in the confidentiality of this information. In light of the information already provided to the Journal, requiring BCI to identify the type of documents withheld, the creator of those documents, and the date the documents were created is not reasonably calculated to lead to admissible material. The legal question in this case is whether all documents contained in a criminal investigation file are covered by the confidential law enforcement exception. BCI's responses already gave the Journal information that none of the documents were created by BCI and several of the documents were labeled as incident reports. Further identification of the documents would not assist the Journal in its argument because BCI already admitted that these documents were not created by BCI. Therefore, the information already provided in the interrogatories was sufficient for the Journal to contest the applicability of the confidential law enforcement exception. *State ex rel. Lanham v. DeWine*, 135 Ohio St.3d 191, 197, 2013-Ohio-199.

{¶ 21} Additionally, requiring BCI to reveal this information about the documents may reveal the identity of the uncharged suspect, the identity of a confidential source or specific confidential investigatory techniques or procedures. As stated above, we have reviewed the withheld records *in camera* to determine whether the records fit under the public records exceptions. See *State ex rel. WLWT-TV5 v. Leis*, 77 Ohio St.3d 357, fn 1 (1997) (relator not entitled to an inventory of withheld law enforcement investigatory records to assure "full submission of documents" when documents were filed for *in camera* review); *State ex rel. Toledo Blade Co. v. Toledo-Lucas Cty. Port Auth.*, 121 Ohio St.3d 537, 2009-Ohio-1767, ¶ 14 ("[i]f the court were to require the disclosure of the subject records in discovery to permit relator to contest the applicability of a claim exception, it would render the case moot").

{¶ 22} The Journal's motion to compel discovery is therefore denied.

C. Summary Judgment

{¶ 23} Both parties also argue summary judgment should be granted in their favor. Before the records were produced, the Journal and BCI filed summary judgment motions regarding whether the records fit under the confidential law enforcement records exception and whether a common law privilege prohibited their release. Specifically, BCI argued the entire investigative file qualifies as "specific investigatory work product" under the confidential law enforcement exception. After the records were released, BCI argued this action has been rendered moot. However, the Journal claims the action is not moot and further asserts BCI's redaction of certain information was improper. We will address these arguments in three parts: 1) mootness; 2) whether the entire investigative file qualified as "specific investigatory work product" prior to the release of the redacted records; 3) and whether BCI's redaction of the information was proper.

{¶ 24} Civ.R. 56(C) sets forth the conditions under which it is appropriate to grant summary judgment: 1) there are no genuine issues of material fact to be litigated; 2) the moving party is entitled to judgment as a matter of law; and, 3) when all evidence is construed most strongly in favor of the nonmoving party, reasonable minds can come to only one conclusion, and that conclusion is adverse to the nonmoving party. *Zivich v. Mentor Soccer Club, Inc.*, 82 Ohio St.3d 367, 369-70 (1998). The party moving for summary judgment has the initial burden of producing evidence that affirmatively demonstrates the absence of a genuine issue of material fact. *First Horizon Home Loans v. Sims*, 12th Dist. Warren No. CA2009-08-117, 2010-Ohio-847, ¶ 19, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 292-93 (1996). If the moving party meets its burden, the nonmoving party may not rest on the allegations or denials of its pleadings, but instead must meet its reciprocal burden under Crim.R. 56(E) to set forth specific facts showing that there is a genuine issue of material fact for trial. *Id.*

{¶ 25} To prevail on a petition for a writ of mandamus, "relator must establish (1) a clear legal right to the relief requested, (2) that respondents have a clear legal duty to perform the act or acts requested, and (3) that relator has no plain and adequate remedy [at law]." *State ex rel. Cincinnati Enquirer v. Heath*, 183 Ohio App.3d 274, 2009-Ohio-3415, ¶ 11 (12th Dist.), citing *State ex rel. Seikbert v. Wilkinson*, 69 Ohio St.3d 489, 490 (1994). Mandamus is the appropriate remedy to seek compliance with R.C. 149.43. *State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, ¶ 23.

1. Mootness

{¶ 26} BCI asserts this action has been rendered moot because the investigation has concluded and it has released the requested records to the Journal with some information redacted. In response, the Journal argues the action is not moot because the issue is "capable of repetition yet evading review."

{¶ 27} "[I]n general, providing the requested records to the relator in a public-records mandamus case renders the mandamus claim moot." *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶ 43. But a claim "is not moot if it is capable of repetition, yet evading review." *State ex rel. Dispatch Printing Co. v. Geer*, 114 Ohio St.3d 511, 2007-Ohio-4643, ¶ 10. This exception "applies only in exceptional circumstances in which the following two factors are both present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 231 (2000). See also *State ex rel. Am. Legion Post 25 v. Ohio Civ. Rights Comm.*, 171 Ohio App.3d 476, 2006-Ohio-5509 (12th Dist.).

{¶ 28} To the extent BCI withheld the records on the basis of the "specific investigatory work product" branch of the confidential law enforcement exception because the records

pertained to a current criminal investigation, we find the Journal's mandamus action is moot. BCI has produced the requested records, subject to redactions predicated on other claimed exemptions. In producing the records, BCI has conceded that the requested documents are no longer part of a current criminal investigation, and therefore, the exception under R.C. 149.43(A)(2)(c) is no longer applicable. See *State ex rel. Miller v. Ohio State Hwy. Patrol*, 12th Dist. Clermont No. CA2012-05-034, 2014-Ohio-2244, ¶ 9. Moreover, although a records custodian's reliance on the confidential law enforcement exception is an issue capable of repetition, the Journal has not shown that this particular issue, – i.e., a law enforcement agency's investigatory review and corresponding reliance on the exception – will always be too short in duration to be fully litigated or that a review of this issue will be evaded in future cases. See *Ohio Patrolmen's Benevolent Assn. v. McFaul*, 144 Ohio App.3d 311 (8th Dist.2001). Accordingly, the limited exception to the mootness doctrine does not apply in this case.

{¶ 29} However, the production of requested documents does not, according to the Public Records Act, moot a claim for damages. *Miller* at ¶ 12. R.C. 149.43(C)(1) provides that an aggrieved party may pursue a mandamus action and be entitled to statutory damages upon a public entity's failure to provide public records in accordance with the statute. One is only entitled to damages if the relator first demonstrates the respondent failed to provide the records in accordance with R.C. 149.43(B)(1). *State ex rel. Patton v. Rhodes*, 129 Ohio St.3d 182, 2011-Ohio-3093, ¶ 21. Nonetheless, the Journal is not entitled to attorney fees in regards to the arguments that have been rendered moot. *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d 367, 2014-Ohio-538, ¶ 32. Therefore, for purposes of awarding statutory damages, we must determine whether BCI violated the Public Records Act when it initially refused to provide the information under the specific investigatory work product branch of the confidential law enforcement records exception.

2. Specific Investigatory Work Product

{¶ 30} BCI maintains the records it received from the Police Department, its entire investigative file, qualifies as "specific investigatory work product" under the confidential law enforcement exception because BCI gathered all the records for its investigation. The Journal disputes this assertion arguing: 1) BCI cannot identify the author of each record and when the records were created therefore BCI cannot establish that each record was created by law enforcement for a criminal case; and 2) the records that were "public records" at the Police Department are always "public records" even in the hands of BCI.

{¶ 31} As stated above, confidential law enforcement investigatory records are defined as "any record that pertains to a law enforcement matter of a criminal, quasi-criminal, or civil, or administrative nature." R.C. 149.43(A)(2). This exception covers records to the extent that "the release of the record would create a high probability of disclosure of * * * specific confidential investigatory techniques or procedures or *specific investigatory work product*." (Emphasis added.) R.C. 149.43(A)(2)(c).

{¶ 32} The Ohio Supreme Court has established a two-part test to determine whether a particular record is a confidential law enforcement investigatory record as contemplated within the Public Records Act. "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)?" *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 2005-Ohio-5521, ¶ 19, quoting *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St.3d 54, 56 (2001).

{¶ 33} Specific investigatory work product is one of the four types of information enumerated in R.C. 149.43(A)(2). Specific investigatory work product consists of any "notes, working papers, memoranda or similar materials, prepared by attorneys [here, by law enforcement officials] in anticipation of litigation." *State ex rel. Steckman v. Jackson*, 70 Ohio

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St.3d 420, 434 (1994). This definition "is broad enough to bring under its umbrella any records *compiled* by law enforcement officials" and "information *assembled* by law enforcement officials in connection with a probable or pending criminal proceeding." (Emphasis added.) *Id.* at 435.

{¶ 34} However, specific investigatory work product does not include "ongoing routine offense and incident reports" and these papers are "subject to immediate release upon request." *Id.* Additionally, recordings of 911 calls are public records and do not fall under the confidential law enforcement exception and "the fact that the tapes in question subsequently came into the possession and/or control of a prosecutor, other law enforcement officials, or even the grand jury has no significance." *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378 (1996). "Once clothed with the public records cloak, the records cannot be defrocked of their status." *Id.*

{¶ 35} The Journal's first contention is that the documents are not "specific investigatory work product" because BCI did not create the documents and does not know when the documents were created. However, *Steckman* made clear that "specific investigatory work product" includes documents "compiled" and "assembled" by law enforcement in connection with a probable criminal proceeding. In this case, Agent Rebori averred that she received numerous documents from the Police Department and all of these documents have been compiled, assembled, and maintained by BCI for the investigation of possible criminal activity at the Police Department. Consequently, the fact that BCI compiled and assembled the documents is a sufficient basis to conclude the documents are "specific investigatory work product."

{¶ 36} The Journal's second contention is that BCI's entire investigative file does not qualify as "specific investigatory work product" because any records that were "public records" at the Police Department cannot subsequently become specific investigative work

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product simply because the records are in BCI's possession. Therefore, the Journal asserts that BCI must go through its investigative file and release those records that were "public records" at the Police Department. We are unpersuaded by the Journal's argument as the records BCI received from the Police Department are not the "public records" of BCI as defined under R.C. 149.43(A)(1).

{¶ 37} R.C. 149.43(A)(1) defines "public records" as "records kept by any public office." (Emphasis added.) "Records" is defined earlier in the Chapter as,

any document, device, or item, regardless of physical form or characteristic, including an electronic record * * *, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, *which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.*

(Emphasis added.) R.C. 149.011(G).

{¶ 38} In this case, the precise question before this court is whether the records held by BCI are "public records" subject to disclosure or if the records fall under the confidential law enforcement exception under the Public Records Act. Importantly, this court is not deciding whether the records fall into a public records exclusion while held at the Police Department.¹ The documents BCI received from the Police Department were not BCI's "public records" as the documents were not kept by BCI to "document the organization, functions, policies, decisions, procedures, operations, or other activities" of BCI. Instead, the documents served only to further BCI's criminal investigation of illicit activity occurring at the Police Department. Therefore, because the documents were never BCI's "records," we find the documents do not fall under the ambit of the Public Records Act and do not need to be disclosed.

1. The Journal filed a writ of mandamus only against BCI and therefore this opinion is limited to whether the requested documents were "public records" at BCI and subject to disclosure under the Public Records Act. Moreover, although the Goshen police chief indicated that BCI advised him not to release the records to the

{¶ 39} In reaching this conclusion, we recognize the Ohio Supreme Court has found that records which were "made in the routine course of public employment" that supported a disciplinary charge against an employee but were made before a criminal investigation began, were public records and therefore did not fall under the confidential law enforcement exception. *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶ 51. In *Morgan*, a city employee was fired after the city conducted an investigation into her behavior, filed disciplinary charges against her and then sent its investigation to BCI. *Id.* at ¶ 5. The employee requested records from the city that supported the disciplinary charges, but specifically exempted any record compiled in anticipation of litigation or investigation. *Id.* at ¶ 15. The city denied the request reasoning that all the requested documents were confidential law enforcement records. *Id.* at ¶ 14. The employee filed a mandamus action to seek production of the records.

{¶ 40} The court found that the requested records did not fall under the confidential law enforcement exception because they were "related to general employment e.g., timesheets, mayoral directives, and personnel records and policies, which preceded any investigation commenced" by BCI. *Id.* at ¶ 50. Accordingly, the court concluded these records should have been released because they "were not generated by the various investigations concerning [the employee.] Instead, they were records made in the routine course of public employment before those investigations began." *Id.* at ¶ 51.

{¶ 41} Like *Morgan*, some of the records requested in this case were created before a criminal investigation began into the missing property. However, while similar, there is one crucial fact of *Morgan* that separates the Ohio Supreme Court's decision from the case at bar. In *Morgan* the employee requested the records from the city and in our case the Journal

Journal, the evidence before us indicates BCI informed the chief to contact the Clermont County Prosecutor's Office for legal advice. We find no improper actions by BCI and the Police Department in this regard.

requested the records from BCI. Therefore, in *Morgan*, there was never any doubt that the requested records were "public records" of the city as the records documented the "organization, functions, policies" of the city. However, in this case, the records held by BCI did not satisfy this definition as the records only served to document the organization, functions, policies of the Police Department and not BCI.

{¶ 42} Consequently, we find all of the requested records held by BCI prior to the conclusion of its criminal investigation were properly withheld from the Journal as the documents were not "public records" subject to disclosure under the Public Records Act.²

3. Redacted Records

{¶ 43} As previously mentioned, while this action was pending, BCI's investigation concluded and BCI conceded this terminated "the application of the 'investigative work product' branch of the [confidential law enforcement] exemption." Therefore, BCI released the requested records to the Journal with some information redacted. BCI argues the redaction is justified because of the: 1) grand jury subpoena exception pursuant to Crim.R. 6(E) and R.C. 149.43(A)(1)(v); and 2) uncharged suspect exception under the confidential law enforcement exception pursuant to R.C. 149.43(A)(2)(a).

{¶ 44} In our earlier discussion, we found that the documents were not BCI's "public records," and therefore, the Journal was never entitled to the records under the Public Records Act. We find the same rationale applies to the Journal's redaction arguments. While BCI treated the documents as "public records" in an abundance of caution and released most of the documents to the Journal once the criminal investigation concluded, the

2. In the Journal's initial public records request and the subsequent correspondence, the Journal requested BCI's entire investigative file. The Journal did not request the individual records contained in that file. Therefore, this court is not presented with the question of whether the Journal would be entitled to individual documents contained in that file if specifically requested. See *Conley v. Correctional Reception Ct.*, 141 Ohio App.3d 412, 416-417 (4th Dist.2001)(analysis limited to relator's public records request); *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 17 ("it is the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue").

documents were never BCI's "public records." BCI was not compelled to produce the records under the Public Records Act, thereby rendering any redaction of information and release of the documents to BCI's own choosing. Accordingly, we do not find the redaction of information to be improper.

III. Conclusion

{¶ 45} Finding no merit to the Journal's objection to the magistrate's entry denying the Journal's motion to compel discovery, that entry is hereby approved and adopted as the order of the court. Additionally, the Journal is not entitled to a writ of mandamus since the documents were not BCI's "public records" under the Public Records Act. Consequently, the Journal is not entitled to statutory damages, court costs or attorney fees. Moreover, because BCI was not compelled to produce the documents under the Public Records Act, we need not discuss whether a common law privilege for investigatory files prevented the release of the documents. Therefore, BCI's motion for summary judgment is granted and the Journal's motion for summary judgment is denied.

{¶ 46} Writ denied.

M. POWELL, J. concurs.

HENDRICKSON, P.J. concurs in part and dissents in part.

HENDRICKSON, P.J., concurring in part and dissenting in part.

{¶ 47} For the reasons set forth below, I respectfully concur in part and dissent in part. I concur with the majority's decision with respect to the Journal's motion to compel albeit for different reasons. I also concur with the majority's finding that the issue of damages is not moot; however, I dissent from the finding that the mandamus action is moot. Moreover, as explained below, I respectfully dissent from the majority's decision finding BCI is entitled to summary judgment because I find that all of the records or documents received by BCI from

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Goshen Township Police Department (Goshen Police Department) do in fact fall within the meaning of "records" as defined by R.C. 149.011(G). Based upon case law established over the years in determining whether certain records are protected by the confidential law enforcement investigatory records (CLEIR) exception, I find that summary judgment is inappropriate at this stage and additional proceedings are necessary to determine whether the records fall within this exception.

Discovery

{¶ 48} After an independent review of the magistrate's decision, I agree with the majority and would affirm the magistrate's decision to deny the Journal's motion to compel. However, I write separately as I believe the motion to compel should have been denied for reasons different than those cited by the majority.

{¶ 49} In the present case, BCI objected to eight of thirteen written interrogatories presented by the Journal. Essentially, the Journal inquired which documents in the records constituted "notes," "working papers," or "memoranda" assembled by "law enforcement officials in connection with a probably [sic] or pending criminal investigation." The Journal also inquired and requested BCI to describe any other record not previously identified in the prior interrogatories. In each instance, BCI initially stated its objection to the interrogatory and its reasoning for the objection; however it then proceeded to supply specific answers to each inquiry. Although I find that BCI made improper objections to certain interrogatories, I would find BCI acted appropriately by actually providing proper answers in each of its responses.

{¶ 50} More specifically, while BCI initially objected to Interrogatory No. 2 inquiring how many different records are contained in the "Record," BCI actually answered the discovery by stating "there are over 700 pages of records contained in the Records." This was appropriate since R.C. 149.011(G) defines "record" as "any document." Moreover, it is clear that the

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Journal's request for BCI to identify the number of records that would be classified as "notes," "working papers," or "memoranda" in Interrogatories Nos. 3, 5, and 7, was fulfilled by BCI's responses. Like Interrogatory No. 2, BCI first objected to each of these three interrogatories and then provided a proper response, i.e., BCI identified 35 of the documents as containing handwritten notes, stated that all of the Records were "working papers," and at least 4 of the documents could be classified as a "memorandum."

{¶ 51} As to Interrogatories Nos. 4, 6, and 8, I would agree with the majority that the identity of the person who created each document is arguably not relevant, but more importantly, the disclosure of the document's author may reveal protected information under the Public Records Act. Finally, in regards to Interrogatory No. 9, the Journal requested BCI to identify any records not yet identified. As BCI had previously identified in Interrogatory No. 5 that all Records were "working papers," there were no records left to be identified by BCI. Therefore, no response was required by BCI to Interrogatory No. 9.

{¶ 52} In light of BCI's responses after making specific objections to the interrogatories and that the disclosure of any remaining information might reveal information protected under the Public Records Act, I would affirm the magistrate's entry denying the Journal's motion to compel.

Mootness

{¶ 53} As to BCI's notice to the court and suggestion of mootness, I agree with the majority's rationale and finding that the issue of damages is not moot. Moreover, as asserted by the majority, the case law is clear, once a relator has been provided with the requested records in a public-records mandamus case, the mandamus claim is moot. However, whether BCI properly redacted portions of the records must still be determined and has not been rendered moot. Accordingly, this court, as a whole if a remand is ordered, still needs to decide if BCI properly redacted information from the Records.

Summary Judgment**1. Definition of "Record" Under R.C. 149.011(G)**

{¶ 54} In reaching its conclusion in this case, the majority narrowly construes the definition of "record" under R.C. 149.011(G) and ignores both the fundamental principles of the Public Records Act and the Ohio Supreme Court's position on records received by a governmental agency created by third parties that are then incorporated into the agency's office in order to document its functions, decisions, operations, or other activities of the office. As recognized by the supreme court, "[p]ublic records are one portal through which the people observe their government, ensuring its accountability, integrity, and equity while minimizing sovereign mischief and malfeasance." *Kish v. Akron*, 109 Ohio St. 3d 162, 2006-Ohio-1244, ¶ 16. With this principle in mind, "our legislators, executives, and judges [have] mandated and monitored the careful creation and preservation of public records and codified the people's right to access those records." (Citations Omitted.) *Id.* at ¶ 17. R.C. Chapter 149 and other similar statutes, "reinforce the understanding that open access to government papers is an integral entitlement of the people, to be preserved with vigilance and vigor." *Id.* Therefore, the Public Records Act "must be construed *liberally* in favor of *broad access*; and *any doubt* should be *resolved in favor of disclosure* of public records." (Emphasis added.) *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, ¶ 8.

{¶ 55} From the outset, it is important to note that the majority's ultimate holding that all 700 records are not records under R.C. 149.011(G), was never raised by the parties in any of their pleadings. In fact, it speaks volumes that the party most affected in this case, BCI, never once challenged whether the records it received from Goshen Police Department met the statutory definition of "records" under the act. Ironically, the only argument BCI raised in its pleadings was that the records fell within the CLEIR exception, and qualified as

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"specific investigatory work product." Accordingly, I would find that BCI has conceded that the documents at issue in this case are records under R.C. 149.011(G), and therefore has waived any argument to the contrary.

{¶ 56} Furthermore, I would find, based upon the Supreme Court of Ohio's more recent interpretation of 149.011(G), that the records received by BCI from Goshen Police Department indeed fall within the definition of "records" under the statute. R.C. 149.011(G) defines a "record" as:

*Any document, device, or item, regardless of physical form or characteristic, * * * created or received by or coming under the jurisdiction of any public office of the state * * * which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.*

(Emphasis added.)

{¶ 57} The supreme court has recognized the expansive scope of the definition of "records" under R.C.149.011(G), stating:

We previously have held that the General Assembly's use of "includes" in R.C. 149.011(G) as the preface to the definition of "records" is an indication of expansion rather than constriction, restriction, or limitation and that the statute's use of the phrase "any document" is one encompassing all documents that fit within the statute's definition, regardless of "form or characteristic."

State ex rel. Data Trace Info. Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer, 131 Ohio St.3d 25, 2012-Ohio-753, ¶ 30-31. In addition, it has been said that the definition of records under R.C. 149.011(G) includes "anything a governmental unit utilizes to carry out its duties and responsibilities." *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St.3d 37, 39 (1990). See *Kish*, 2006-Ohio-1244 at ¶ 20 ("there is a great breadth in the definition of 'records' * * *. Unless otherwise exempted or excepted, almost all documents memorializing the activities of a public office can satisfy the definition of 'record'").

{¶ 58} As to the determination of when documents become "records" for purposes of

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the Public Records Act, the Supreme Court of Ohio has previously determined that it depends upon when those documents were retrieved and relied upon. *State ex rel. Cincinnati Enquirer v. Ronan*, 127 Ohio St.3d 236, 2010-Ohio-5680. In *Ronan*, the court held that job application materials sent to a school district's post office box were not "records" based on the "mere receipt" of the material by the district. *Id.* at ¶ 15. However, the court determined the documents became "records" when the "school district retrieved the documents from its post office box and reviewed them or otherwise relied on them." *Id.* at ¶ 16; see also *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61, 63 (1998) (finding letters not "records" when received but not relied upon by Judge in sentencing decision); *Kisch* at ¶ 23.

{¶ 59} Under *Ronan*, the materials received by BCI were public records once BCI obtained, reviewed, and relied upon the documents in its investigation of the Goshen Police Department. Special Agent Karen Rebori averred in her affidavit that the Records received by BCI from the Goshen Police Department were "assembled, compiled, and maintained by me for use in my investigation of the missing property." The fact that BCI did not create the documents is not dispositive because the definition of "records" under R.C. 149.011(G) includes *anything* a government unit utilizes to carry out its duties and responsibilities, even records *received* by it.

{¶ 60} In addition to *Ronan*, the supreme court has also found that documents submitted to a public office by a third party are "records" within the meaning of R.C.149.011(G) when the public office uses the documents in order to comply with a statutory mandate. *Data Trace*, 2012-Ohio-753. In *Data Trace*, the fiscal officer for the county argued "that documents recorded in a county recorder's office are not records subject to R.C. 149.43 because they do not document the organization, functions, policies, decisions, operations, or other activities of the recorder's office. Instead, * * * they document the

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independent acts of third parties who present the instruments to the officer for recording." The supreme court rejected the fiscal officer's argument finding it lacked merit. In so finding, the high court recognized that the county recorder had discretion in whether to "refuse to record an instrument of writing presented to the recorder for recording if [1] the instrument is not required or authorized by the Revised Code to be recorded or [2] the recorder has reasonable cause to believe the instrument is materially false or fraudulent." *Id.* at ¶ 37, citing R.C. 317.13(B). The Supreme Court went on to note:

The instruments that the county recorder's office electronically records and places into the office's computer system reflect the office's compliance with its many statutory duties and its exercise of discretion over the recording process. The electronic records thus manifestly document the organization, functions, policies, decisions, operations, or other activities of the recorder's office. Without these recorded instruments, the recorder's office could not perform its preeminent functions. In fact, the chief of staff of the recorder's office acknowledged that providing copies of recorded instruments to the public is a primary function of the office.

(Emphasis added.)

¶ 61 Like the recorder's office, BCI has statutory duties which are discretionary. Pursuant to R.C. 109.51, the bureau of criminal identification and investigation was created within the office of the attorney general. R.C. 109.54(A) states:

The bureau of criminal identification and investigation may investigate any criminal activity in this state that is of statewide or intercounty concern when requested by local authorities.

(Emphasis added.)

The records BCI received from Goshen Police Department were not only "received by" BCI but it was also "relied" upon them. BCI's actions were in conformity with its discretionary authority under R.C. 109.51 to investigate possible criminal activity at a local police department. Once BCI accepted the request from the Clermont County Sheriff's Office and the Goshen Township Chief of Police to investigate the missing property from the Goshen

Police Department by receiving and reviewing the records, all of the records fell within the definition of "records" under R.C. 149.011(G). Also, without the records provided by Goshen Police Department, BCI *could not perform its preeminent or primary function* of investigating criminal activity of intercounty concern. Accordingly, contrary to the majority's position, all the records provided by Goshen Police Department to BCI were "records" under R.C. 149.011(G).

2. "Specific Investigatory Work Product" Exception

{¶ 62} Having found that the records BCI received from Goshen Police Department are records within the meaning of 149.43(G), the next step is to determine whether the Journal is entitled to the requested extraordinary relief by clear and convincing evidence. *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, paragraph three of the syllabus. Here, it is undisputed that: (1) the Journal made a public records request to BCI seeking records involving missing property from the Goshen Police Department and; (2) BCI refused to provide the records in their possession claiming they were protected by the CLEIR's "specific investigatory work product exception." As the Ohio Supreme Court noted in *State ex rel. Miller v. Ohio State Highway Patrol, et al.*, "[e]xceptions to disclosure under the Public Records Act are strictly construed against the public-records custodian, and the custodian has the burden to establish the applicability of an exception." *Id.*, 136 Ohio St.3d 350, 2013-Ohio-3720, ¶ 23, citing *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St.3d 81, 2008-Ohio-1770, paragraph two of the syllabus, citing *State ex re. Beacon Journal Publishing Co. v. Akron*, 112 Ohio St.3d 351, 2006-Ohio-6174, ¶ 30. Accordingly, as BCI refused to provide the requested records, BCI must demonstrate that the withheld records fall within the claimed statutory exception.

{¶ 63} As noted by the majority, "whether a particular record is a 'confidential law enforcement investigatory record' is determined by a two-part test." *Miller* at ¶ 25. "First, is

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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)?" *Id.*, quoting *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 2005-Ohio-5521, ¶ 19. Specific investigatory work product as well as the identity of a suspect who has not been charged with the offense to which the record pertains are two of the four types of information listed in R.C. 149.43(A)(2).

{¶ 64} It is undisputed that the records are confidential law enforcement records as they are records which pertain to a law enforcement matter of a criminal or at least a quasi-criminal nature. See R.C. 149.43(A)(2). Accordingly, the question becomes whether BCI presented evidence that the release of the records would create a high probability of disclosure of specific investigatory work product or the identity of the targeted suspects.

{¶ 65} In its motion for summary judgment, BCI attached the affidavit of Rebori who acknowledged receiving two sets of documents from Goshen Police Department which were attached as Exhibit B. Rebori went on to state these records were "assembled, compiled, and maintained by me for use in my investigation of the missing property." As to the specific investigatory work product, Rebori asserted:

10. The documents I received include incident reports from the Goshen Police Department. The release of these incident reports and other records that I compiled would reveal the targets and focus of my investigation into the missing property.

11. Certain of the documents I gathered contain identities of uncharged suspects, and I can specify the information within those documents which would have a high probability of revealing the identities of those suspects if necessary and if this information can be provided under seal.

{¶ 66} From this evidence, BCI, at the very least has created a genuine issue of material fact regarding whether the records at issue fall squarely within the specific investigatory work product exception. From Rebori's affidavit, it is clear that BCI has

acknowledged that incident reports, in general, are not protected records under the specific investigatory work product exception as set forth by *Steckman* and its progeny. See *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 434 (1994) ("The work product exception does not include ongoing routine offense and incident reports, including, but not limited to, records relating to a charge of driving while under the influence and records containing the results of intoxilyzer tests. Routine offense and incident reports are subject to immediate release upon request"). What is troubling about BCI's claim that releasing these compiled incident reports and other records would have a high probability of revealing the identities of the targeted suspects and the focus of its investigation into the missing property is the fact that upon completion of its investigation, BCI provided redacted versions of these same incident reports and other records. This begs the question of why could BCI not initially provide the Journal with the redacted version of these documents? Furthermore, without additional evidence, it is unclear how some of these documents would either reveal the targeted suspect or the focus of BCI's investigation. Based on the limited evidence before this court and after performing an *in camera* inspection of the records, I find that there is a genuine issue of material fact regarding whether BCI has established that the withheld records fall "squarely" within the specific investigatory work product exception, and therefore summary judgment is inappropriate at this time.

3. Common Law Privilege for Law Enforcement Investigative Records

{¶ 67} As an alternative justification for withholding its entire investigative file, BCI claims the common law privilege for law enforcement investigative files applies and protects the file from disclosure. BCI's argument is without merit. The common law privilege for law enforcement investigative records does not serve as an independent basis to prevent disclosure of the records; rather, the exception under R.C. 149.43(A)(2) serves as the only basis to preclude disclosure of records pertaining to an ongoing criminal investigation. *State*

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v. ex rel. Dann v. Taft, 109 Ohio St.3d 364, 2006-Ohio-1825, ¶ 28-29; *State v. Multimedia, Inc. v. Whalen*, 48 Ohio St.3d 41, 42 (1990).

Conclusion

{¶ 68} Based on the foregoing, I would deny both motions for summary judgment and continue the proceedings herein in order to give the parties an opportunity to submit additional evidence in support of their respective positions as to whether the withheld records or redacted information would create a high probability of disclosure of specific investigatory work product or the identity of targeted suspects.

RELATORS' EXHIBIT I

**EXHIBIT I – AFFIDAVIT OF JEFF BROGAN AND
EXHIBIT**

FILED MANUALLY WITH THE CLERK

RELATORS' EXHIBIT J

In the
Supreme Court of Ohio

STATE OF OHIO, *ex rel.* : Case No. 2015-1222
THE CINCINNATI ENQUIRER, et al. :
 : Original Action in Mandamus
Relators, :
 :
vs. : AFFIDAVIT OF DARREN W. FORD
 :
JOSEPH T. DETERS, HAMILTON :
COUNTY PROSECUTING ATTORNEY, :
 :
Respondent. :
 :

Darren W. Ford, being duly cautioned and sworn, states upon his personal knowledge:

1. I am an attorney licensed to practice law in Ohio and Kentucky.
2. Attached to my affidavit as Exhibit 1 is a true and correct copy of: Editorial Board, *Laquan McDonald's Death Exposes Chicago's Rotten System*, Wash. Post (Nov. 25, 2015), available at https://www.washingtonpost.com/opinions/chicagos-rotten-system/2015/11/25/500dcaa6-93b1-11e5-a2d6-f57908580b1f_story.html (accessed January 29, 2016).
3. Attached to my affidavit as Exhibit 2 is a true and correct copy of: Conor Friedersdorf, *The Corrupt System that Killed Laquan McDonald*, The Atlantic (Nov. 27, 2015), available at <http://www.theatlantic.com/politics/archive/2015/11/protesting-the-corrupt-system-that-killed-laquan-mcdonald/417723/> (accessed on January 29, 2016).
4. Attached to my affidavit as Exhibit 3 is a true and correct copy of: Bernard E. Harcourt, *Cover-Up in Chicago*, N.Y. Times (Nov. 30, 2015), available at

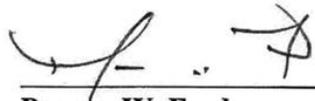
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http://www.nytimes.com/2015/11/30/opinion/cover-up-in-chicago.html?_r=0 (accessed January 11, 2016).

5. Attached to my affidavit as Exhibit 4 is a true and correct copy of: *Chicago Police: Protecting their Own*, Chi. Trib. (Dec. 6, 2015), available at <http://www.chicagotribune.com/news/opinion/editorials/ct-laquan-police-reports-edit-1207-20151206-story.html> (accessed January 28, 2016).

6. Attached to my affidavit as Exhibit 5 is a true and correct copy of: *A Video Is Worth a Thousand Words; Cops Should Release Them in Timely Manner*, Dallas Morning News (Dec. 4, 2015, updated Dec. 7, 2015), available at <http://www.dallasnews.com/opinion/editorials/20151204-editorial-uncovering-the-whole-truth.ece> (accessed on January 29, 2016).

FURTHER AFFIANT SAITH NAUGHT.



Darren W. Ford

STATE OF KENTUCKY)
) ss.
COUNTY OF KENTON)

Sworn to and subscribed before me, a Notary Public, on January 29, 2016.



Notary Public

October 20, 2018
My Commission Expires

6094906.1



CRYSTAL RIDGE
Notary Public, Kentucky
State At Large
My Commission Expires
October 20, 2018
Notary ID# 521542

The Post's View

Laquan McDonald's death exposes Chicago's rotten system

By Editorial Board November 25, 2015

THIS TIME in Chicago, the police coverup failed.

Until Officer Jason Van Dyke was charged Tuesday with first-degree murder for shooting a teenager, Laquan McDonald, 16 times last year, it was almost unheard of for a Chicago police officer to be held accountable in a shooting incident, whether or not a suspect died. Like Mr. McDonald, most of the victims are black.

The problem starts in the mayor's office; implicates the police department's top brass, the police union and rank-and-file officers; and runs through the city's nominally independent police review authority, which routinely dismisses allegations of police wrongdoing. Since 2007, the authority has reviewed nearly 400 police-involved shootings in Chicago, fatal and non-fatal — an average of about one per week — and judged just one of them to be unjustified. Just one officer was charged criminally in all those shootings, and he was acquitted.

Mr. Van Dyke's lawyer said he will show in court that the shooting was justified. That will be challenging, given the police dashcam video, which shows Mr. Van Dyke, who is white, opening fire even as Mr. McDonald veers away from him and then falls to the ground.

The video is stomach-turning. Its aftermath lays bare a system with an utter absence of accountability. It also raises disturbing questions about the Cook County prosecutor, Anita Alvarez, and federal prosecutors. They had the incriminating videotape for months; why were no charges brought until this week?

Mayor Rahm Emanuel (D) fought to withhold the video from public view for months until a judge ordered it released. Then, rather than calling for reform in the police department, which fatally shoots more people than any other force in the nation, Mr. Emanuel suggested the episode arose from one bad apple.

That's wrong. Chicago has many fine officers who do tough jobs. The city needs them; but it also needs a better department. It was the police who allegedly destroyed evidence by deleting videotape recorded by a nearby Burger King security camera — video that may have contained relevant footage — shortly after the McDonald shooting. It was the police who issued misleading information, saying Mr. McDonald was shot as he “continued to approach the officers.” It was the police who maintained a code of silence despite at least seven other officers who witnessed the shooting at close range. That's outrageous and should lead to further criminal inquiries and the immediate firing of the city's police superintendent, Garry McCarthy.

EXHIBIT 1 (Ford Aff.)

The problems are not about tactics and training; they're about a culture of impunity, including a police union that routinely covers for even the dirtiest cops. At least 15 misconduct complaints had been lodged against Mr. Van Dyke over the years, none of which resulted in disciplinary action. In the decade ending in 2014, the city is estimated to have spent \$500 million settling legal claims arising from police misconduct; that was before it paid \$5 million to Mr. McDonald's family this year.

Mr. Emanuel, appealing for calm, now says it is time for "healing" in Chicago. In fact, no real healing is possible without deep reforms in a rotten system.

Read more on this topic:

The Post's View: D.C. moves in the right direction on policing the police

The Post's View: Finally, a former officer is indicted in the shooting of John Geer

The Post's View: A better way to hold police officers accountable

The Atlantic

The Corrupt System That Killed Laquan McDonald

A Chicago cop now faces murder charges—but will anyone hold his colleagues, his superiors, and elected officials accountable for their failures?



Andrew Nelles / Reuters

CONOR FRIEDERSDORF
NOV 27, 2015 | POLITICS

Thanks to clear video evidence, Chicago police officer Jason Van Dyke was charged this week with first-degree murder for shooting 17-year-old Laquan McDonald. Nevertheless, thousands of people took to the city's streets on Friday in protest. And that is as it should be.

The needlessness of the killing is clear and unambiguous:

Dashcam Video of CPD Officer Jason Van Dyke Shooting Laq...  



Yet that dash-cam footage was suppressed for more than a year by authorities citing an investigation. “There was no mystery, no dead-end leads to pursue, no ambiguity about who fired the shots,” Eric Zorn wrote in *The Chicago Tribune*. “Who was pursuing justice and the truth? What were they doing? Who were they talking to? With whom were they meeting? What were they trying to figure out for 400 days?”

There is no doubt that Officer Van Dyke acted badly. As he faces murder charges, there remains a need to demand accountability for the Chicagoans complicit in the injustice he perpetrated.

Protestors want accountability for investigators whose inexplicable slowness allowed Van Dyke to remain on desk detail and to collect a paycheck from taxpayers. And the civic derelictions of duty run even deeper. They implicate Chicago Mayor Rahm Emanuel, the city council, Police Superintendent

Garry McCarthy, rank-and-file cops, Pat Camden, who speaks for Chicago's Fraternal Order of Police, and members of the press who credulously report police-union talking points.

All played a part in a corrupt status quo. Until it is reformed, more Chicagoans will die needlessly at the hands of police. The failures are especially inexcusable in the aftermath of both a relatively recent police torture scandal and an off-the-books holding facility scandal where rights to an attorney were willfully denied. Each scandal illustrated the importance of sunlight in the Chicago police department.

City leaders kept blocking it anyway.

A Failure to Punish Misbehaving Cops

The New York Times unearthed a stunning anecdote last week about one Chicago cop's record:

In 18 years with the Chicago Police Department, the nation's second-largest, Jerome Finnigan had never been disciplined — although 68 citizen complaints had been lodged against him, including accusations that he used excessive force and regularly conducted illegal searches.

Then, in 2011, he admitted to robbing criminal suspects while serving in an elite police unit and ordering a hit on a fellow police officer he thought intended to turn him in. He was sentenced to 12 years in prison. "My bosses knew what I was doing out there, and it went on and on," he said in court when he pleaded guilty. "And this wasn't the exception to the rule. This was the rule."

The newspaper then zoomed out, citing data on officer complaints liberated by several non-profit groups that had to fight for a decade to get it released. The full context is more stunning:

...the data for 2015 shows that in more than 99 percent of the thousands of misconduct complaints against Chicago police officers, there has been no discipline. From 2011 to 2015, 97 percent of more than 28,500 citizen complaints resulted in no officer being punished, according to the files.

Although very few officers were disciplined in the years covered by the data, African-American officers were punished at twice the rate of their white colleagues for the same offenses, the data shows. And although black civilians filed a majority of the complaints, white civilians were far more likely to have their complaints upheld, according to the records.

In short, Chicago does an atrocious job of identifying and disciplining bad cops. And this failure appears to have directly contributed to the wrongful death of McDonald—Van Dyke had 18 civil complaints filed against him, but had never been disciplined. “The Independent Police Review Authority, the civilian board that handles the most serious cases, doesn't take into account previous complaints against the same officer when investigating a new one,” according to a Tuesday editorial in the *Chicago Tribune*. “11 officers racked up a combined 253 complaints that resulted in a single five-day suspension. Come on. What does it take to flag a problem cop?”

The answer is actually clear: It takes video evidence that the public can

access. But Chicago leaders are loath to turn such information over to a public to whom it is owed.

“As someone who has spent years researching a book on the CPD’s relationship to black Chicago,” Simon Balto, a Ball State University history professor, recently wrote, “I can attest that the police department’s stultifying opacity on officer misconduct cases would be an almost impressive feat of obfuscation, were it not so maddening and socially harmful.”

He expounds on another example of almost unimaginable failure to purge a bad cop:

Once you begin digging through the records of individual officers, patterns of abuse on the part of certain men and women begin to emerge that should stun even the most determined denier of racism and police conduct. Officer Raymond Piwnicki, for instance, who works on the Southwest Side, has had sixty-eight different complaints lodged against him since the early 2000s. In one of only three instances in which institutional review found the charges to be sustained, an off-duty Piwnicki, who is white, was found to have instigated an altercation with a black man and his wife as all of them tried to board an elevator. Piwnicki swung at the man, pushed the woman in the chest, and told the man to “Shut up, you fucking coon, you fucking cluck, I do whatever the fuck I want to a fuckin’ nigger coon.” The following year, sustaining a second charge against Piwnicki for abusing a young man and calling him a nigger, a reporting investigator noted that “P[olice] O[fficer] Piwnicki has clearly exhibited a pattern of using profane and derogatory language in his contact with citizens.”

Over and over again, Piwnicki and other high-volume offenders have been brought before investigators because of citizen complaints of abuse. A year ago, an investigation into CPD “impunity” by Truthout found Piwnicki the highest offender in the department, with fifty-five misconduct complaints in just five years. Yet he received precisely *zero* disciplinary penalties for that misconduct. (Indeed, the Truthout investigators reported, Piwnicki was “awarded the Superintendent's Award of Valor in 2013, for a shooting in which he is now a defendant in a civil suit that cites his ‘deliberate indifference’ to a fellow officer's deadly force.”) Together, repeat offenders like Piwnicki comprise about 10 percent of the CPD’s personnel, but are responsible for roughly 30 percent of misconduct complaints. What this demonstrates more than anything is that citizen complaints – particularly those of black citizens – have no systematic value in the eyes of the police department.

Active Opposition to Transparency

Two figures instrumental in fighting for sunlight in the Laquan McDonald shooting, Craig Futterman of the University of Chicago Law School and Jamie Kalven of the Invisible Institute, wrote last December about an alarming pattern in Chicago:

A black man is shot by a Chicago police officer. Police sources at the scene say the shooting was justified. The Independent Police Review Authority says it is investigating the incident. Then silence. After a year or two, IPRA issues a report confirming that the

shooting was indeed justified. This is in sharp contrast to how the CPD handles high-profile cases of incidents of violence involving civilians. In such cases, the department recognizes and accommodates the public's interest in timely information. Surely, the public interest is at least as strong, if not stronger, when citizens are shot by the police.

They went on to explain that “in *Kalven v. Chicago*, the Illinois Appellate Court held that documents bearing on allegations of police abuse are public information,” and that the Emanuel administration adopted a new transparency policy as a result—but that the *Kalven* decision “is limited to closed police misconduct cases; it doesn’t cover ongoing investigations,” even though public interest in police-killing investigations “is far more intense at the time of the shooting than one or two years later when the case is closed and public attention has turned elsewhere.”

It is shameful that it took a court ruling to prompt Emanuel to be honest with the public about closed cases and doubly shameful that it took another lawsuit to force this week’s release. How much better would Chicago’s police department be if the resources spent fighting to hide bad behavior had been spent on making it less frequent?

As for other elected officials, “the City Council approved a \$5 million settlement with McDonald’s family, whose attorneys had obtained the video,” the *Chicago Reporter* notes. “They said it showed McDonald walking away from police at the time of the shooting, contradicting the police story that he was threatening or had ‘lunged at’ cops. The settlement included a provision keeping the video confidential.”

This is typical municipal behavior, but that doesn’t make it right. If a city is

going to spend \$5 million in taxpayer money to compensate someone for an employee's misconduct, the public has a right to see the evidence in question, both to judge whether such a staggering sum is justified and to be aware of whatever went so very wrong.

Cops Covering for Other Cops

It would be more difficult for Chicago police officers to get away with misbehavior if not for two enabling forces: the loyalty of fellow cops and backup from a powerful police union. Both factors appear to have played a role in the McDonald case.

- There is circumstantial evidence that Chicago police officers erased surveillance footage captured at a Burger King restaurant located near the shooting.
- Though multiple officers were on the scene when Van Dyke committed a homicide that looks like a murder to most everyone who views the footage, none of them has spoken out publicly to criticize their colleague. And Van Dyke evidently felt comfortable shooting as he did despite being surrounded by other cops.
- A Chicago police-union spokesman, Pat Camden, misled the public about what happened on the night of the shooting, as a comparison of his statement with other witnesses and the just-released dash-cam footage demonstrates.

Credulous Media Reports

Despite the fact that police union officials regularly defend cops regardless of whether they are at fault or not, media outlets frequently let them shape early coverage of police killings. In Chicago, Pat Camden has outsized media influence.

Zorn explains:

In breaking story after breaking story across all media platforms in the last several years, Pat Camden has served as the primary explainer of why the officer had to shoot. Employees of the Chicago Police Department's Office of News Affairs, the customary and preferred conduit for exculpatory accounts, are quoted far less often in these breaking stories even though they, too, are on the scene. Why? Because Camden, the union guy, is talkative and forthcoming in the hours when authorities are still polishing their formal statements and running them through channels.

Camden said that in 2011, those then leading Chicago's Fraternal Order of Police lodge contracted with him to fill those temporary info-vacuums with the officers' side of the story. Until that time, the FOP's president served as its spokesman and was seldom if ever quoted in breaking stories.

But now, whenever a Chicago police officer seriously wounds or kills someone in the line of duty, Camden rushes to the scene—he lives in Will County—and consults with the union representative who has spoken directly to the officer who fired his gun. He then relays this thirdhand account of the incident to the reporters itching to file their stories. And yes, sure, per Camden, every shooting is justified—he and I have tangled on this issue, most memorably in 2000 when he was on the city payroll and I wrote a column challenging the killing of a belligerent homeless man who menaced an officer, though the man was armed with nothing but a table fork. But in fairness to Camden and to the reporters and news

outlets who cite him, his versions of events are almost always identical in key respects to the versions later released by the department. So why quote a union mouthpiece on the details of something as fraught as a police shooting? The answer seems to be, why not?

The practice of quoting this man as the most definitive voice in stories on police shootings was always dubious. Now, every news outlet in Chicago is on notice: He led them egregiously astray on one of the highest profile killings in recent memory. Surely the local press won't continue behaving as if his credibility is undiminished?

Future stories will tell.

The Next Steps

In complementary quotes to *The Chicago Reporter*, Jamie Kalven of the Invisible Institute and Craig Futterman of the University of Chicago Law School sum things up aptly. "The real issue here is, this terrible thing happened, how did our governmental institutions respond?" Kalven said. "And from everything we've learned, compulsively at every level, from the cops on the scene to the highest levels of government, they responded by circling the wagons and by fabricating a narrative that they knew was completely false." Said Futterman, "This case shows the operation of the code of silence in the Chicago Police Department. From the very start you have officers and detectives conspiring to cover up the story."

Officer Van Dyke ought to be punished. But if he is alone in held accountable for this unjust killing, it will be a sure sign that many derelictions of duty that led to it persist. The elected officials, bureaucrats, and police union officials

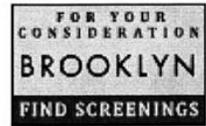
who've played a roll in abjectly failing to properly discipline and purge bad cops should be apologizing profusely for their role in this needless death, and most likely, many others. And until they implement sweeping reforms, whether by choice or to placate a federal civil-rights probe that is more than warranted, protests should continue.

ABOUT THE AUTHOR



CONOR FRIEDERSDORF is a staff writer at *The Atlantic*, where he focuses on politics and national affairs. He lives in Venice, California, and is the founding editor of The Best of Journalism, a newsletter devoted to exceptional nonfiction.

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Cover-Up in Chicago

By **BERNARD E. HARCOURT** NOV. 30, 2015

THERE'S been a cover-up in Chicago. The city's leaders have now brought charges against a police officer, Jason Van Dyke, for the first-degree murder of 17-year-old Laquan McDonald. But for more than a year, Chicago officials delayed the criminal process, and might well have postponed prosecution indefinitely, had it not been for a state court forcing their hand.

They prevented the public from viewing crucial incriminating evidence — first one police car's dashboard camera video; now, we learn, five such videos in total. And these senior officials turned a blind eye to the fact that 86 minutes of other video surveillance footage of the crime scene was unaccountably missing.

The Cook County prosecutor, Anita Alvarez, must have had probable cause to indict Officer Van Dyke for the Oct. 20, 2014, shooting death of Mr. McDonald the moment she viewed the police dash-cam video, after her office received it two weeks later. That video, in her own words, was “everything that it has been described to be by the news accounts. It is graphic. It is violent. It is chilling.”

Ms. Alvarez, and other city leaders, surely knew they would have to indict Mr. Van Dyke for murder as soon as the public saw that footage. “I have absolutely no doubt,” Ms. Alvarez finally said last week, “that this video will

EXHIBIT 3 (Ford Aff.)

tear at the hearts of all Chicagoans.”

But the timing, in late 2014, was not good.

Then up for re-election, the mayor of Chicago, Rahm Emanuel, was looking ahead to a contested election on Feb. 24, 2015, which would ultimately result in a runoff election on April 7. In Ferguson, Mo., a grand jury was hearing testimony on the police shooting of Michael Brown. The video of Eric Garner being choked to death during an arrest in New York had gone viral. The Black Lives Matter movement was gaining momentum across the country.

The video of a police shooting like this in Chicago could have buried Mr. Emanuel’s chances for re-election. And it would likely have ended the career of the police superintendent, Garry F. McCarthy.

And so the wheels of justice virtually ground to a halt. Mayor Emanuel refused to make the dash-cam video public, going to court to prevent its release. The city argued that releasing the video would taint the investigation of the case, but even the attorney general of Illinois urged the city to make it available.

Then the city waited until April 15 — one week after Mr. Emanuel was re-elected — to get final approval of a pre-emptive \$5 million settlement with Mr. McDonald’s family, a settlement that had been substantially agreed upon weeks earlier. Still, the city’s lawyers made sure to include a clause that kept the dash-cam video confidential.

Around the time the freelance journalist Brandon Smith filed suit for release of the dash-cam video, on Aug. 5, 2015, the Chicago Police Department told him that it had already received, and rejected, 14 other Freedom of Information Act requests for the evidence. The city spent thousands of dollars in legal expenses to keep the video under wraps. And it would probably have continued to do so, had Judge Franklin Valderrama of the Cook County Circuit Court not ordered its release.

EXHIBIT 3 (Ford Aff.)

Meanwhile, the state's prosecutor, Ms. Alvarez, concluded that there had been no evidence of tampering when police officers allegedly erased 86 minutes of video footage from Burger King surveillance cameras close to the location of Mr. McDonald's shooting by Officer Van Dyke. The missing footage was from 9:13 to 10:39 p.m. — bracketing the time when Mr. McDonald was shot (around 9:50 p.m.).

City leaders did everything in their power to keep the homicide from the public as long as possible. Indeed, Mr. Van Dyke was indicted only after the forced release of the videos.

We can surmise that each had particular reasons. Mayor Emanuel was fighting for re-election in a tight race. Superintendent McCarthy wanted to keep his job. Ms. Alvarez needed the good will of the police union for her coming re-election campaign and probably wished to shield the police officers who bring her cases and testify in court.

None of that alters the fact that these actions have impeded the criminal justice system and, in the process, Chicago's leaders allowed a first-degree murder suspect, now incarcerated pending bail, to remain free for over a year on the city's payroll.

There is good reason to appoint an independent commission to investigate the conduct of these public servants. But frankly, at this point, who would trust Chicago's political institutions or criminal justice system?

An investigation would create further delay in justice and distract our attention from the real issues at hand: the senseless death of a 17-year-old, and the systemic problems of excessive police violence and lack of accountability.

Rather than hold hearings, investigate and perhaps prosecute its leaders, the city of Chicago needs to restore trust. These officials no longer have the public's confidence. They should resign.

EXHIBIT 3 (Ford Aff.)

Bernard E. Harcourt, a professor at Columbia, was a professor of law and political science at the University of Chicago from 2003 to 2014. He is the author, most recently, of “Exposed: Desire and Disobedience in the Digital Age.”

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News / Opinion / Editorials

Editorial: Chicago police: Protecting their own



Jason Van Dyke, center, leaves the Cook County Jail on Nov. 30, 2015, after posting bond. (Michael Tercha / Chicago Tribune)

DECEMBER 6, 2015, 5:50 PM

You've seen it for yourself. Perhaps you wish you hadn't.

The dash-cam video shows Chicago police Officer Jason Van Dyke leaping from his police SUV and opening fire on Laquan McDonald, 17, who is walking away briskly on South Pulaski Road.

Van Dyke keeps shooting until his gun is empty, 16 shots in less than 15 seconds. For 13 of those seconds, McDonald lies crumpled in the street, mortally wounded.

The video does not show McDonald swinging the knife at Van Dyke and his partner in an "aggressive, exaggerated manner."

It doesn't show the cop backing off and McDonald advancing, raising the knife "across his chest and over his shoulder, pointing the knife at Van Dyke."

It doesn't show McDonald "attempting to get up, still holding knife, pointing at VD."

That's what other police officers at the scene say they witnessed on the night of Oct. 20, 2014.

Yet not one of those officers fired a shot.

Within hours, police supervisors had made a preliminary finding that the shooting was justified. The department's official ruling, weeks later, was the same.

"Criminal attacked officer," says the report. "That officer killed criminal."

The report and the video were forwarded to the Independent Police Review Authority, which investigates all shootings involving police. Van Dyke was placed on paid desk duty in the meantime.

He remained on the public payroll until Nov. 24, when prosecutors charged him with first-degree murder, hours before the video was made public.

The Police Department's report says investigators watched the video and found it consistent with the officers' statements.

That is a mind-blowing falsehood, we learned late Friday, when the department released the police statements under the state Freedom of Information Act.

The images captured by the dash cam do not match the events described by the officers. Not even close.

The police union president's explanation is that the video "does not show what the officers on the scene were able to see."

"You seem to think that everyone there had the exact view of the dash cam, and that isn't the case," FOP President Dean Angelo Sr. told reporters Friday.

Angelo would have you believe that from another angle, McDonald can be seen menacing the officers with a knife instead of walking hurriedly away from them. From another angle, he's struggling to his feet, knife raised, instead of writhing on the ground and falling still.

No way.

The video is so damning that Mayor Rahm Emanuel's top attorney negotiated a \$5 million settlement with McDonald's relatives before they even filed a lawsuit.

The city fought hard to keep the public from seeing it, until a judge ordered it released.

Cook County State's Attorney Anita Alvarez hurried to charge Van Dyke with first-degree murder before the video was made public.

A federal grand jury is investigating broader charges, including possible obstruction of justice by officers at the scene, sources have told the Tribune.

Alvarez has pointed to that investigation to explain why it took her 13 months to charge the cop with murder.

Van Dyke was drawing a paycheck the whole time. If you think that's an outrage, consider this: The other officers are still on the street.

On Sunday, Justice Department officials confirmed that the department will launch a civil rights investigation into the Chicago police. That's welcome. As is every layer of scrutiny to come.

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A version of this article appeared in print on December 07, 2015, in the News section of the Chicago Tribune with the headline "Chicago police: Protecting their own - Welcome the Justice Department investigation" — Today's paper | [Subscribe](#)

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Editorials

Editorial: A video is worth a thousand words; cops should release them in timely manner

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Published: 04 December 2015 04:30 PM

Updated: 07 December 2015 02:45 PM

Editor's note: This editorial was updated Dec. 7 to reflect developments in the Chicago case.

A video is worth a thousand words, and the story it tells about the officer-involved shooting of teenager Laquan McDonald in Chicago last year is jaw-dropping.

A dash-cam video shows several police officers attempting to box in McDonald, who was suspected of slashing car tires. A squad car then roars into the camera frame. An officer jumps out. Within seconds, McDonald lay dead in the street with 16 gunshot wounds.

That was nearly 14 months ago. But not until a judge recently ordered the release of the disturbing footage did the public receive a hint of why the city fought to keep the video under lock and key: The footage and an autopsy report contradict the police's version of events, helping prompt the U.S. Justice Department to launch a broader investigation into the department's policing practices.

Allowing police to determine when — or whether — to release dash- and body-cam video is akin to the fox guarding the hen house. If left to the police, the McDonald video would still be packed away in a dark storage locker somewhere, maybe even destroyed. Without the video, we'd probably never know exactly what happened, and Officer Jason Van Dyke likely would never have been charged with first-degree murder.

Where's the justice in that?

There are times when footage validates police action, such as in the shooting death of Ronald Johnson last year in Chicago. Dash-cam footage showed that Johnson resisted arrest, had a gun and was running toward other police officers when an officer shot him. But police departments shouldn't get to pick and choose what to release when. All videos of use-of-force incidents should be made public in a timely fashion, regardless of what they reveal — for *everybody's* protection.

Sarah Lustbader, a staff attorney at the Bronx Defenders in New York, has an intriguing idea for establishing an independent chain of custody that could add credibility to video evidence. In an opinion piece published in *The Dallas Morning News* last week, she urged that control of such footage be placed in the hands of a neutral third party, with equal access for all interested parties. Until that is done, she says, body cameras will “further empower the very party they were designed to check.”

She says a few police departments already use third-party data storage vendors to help manage body- and dash-cam footage. Leaving video evidence to the whims of law enforcement won't promote openness, accountability or better police-community

relationships, she argues. To the contrary, it is a recipe for mischief and suspicion about motives.

Body and dash-cams are important tools to help sort out the truth of police and citizen encounters — but only if the rules don't change depending on which side stands to benefit.

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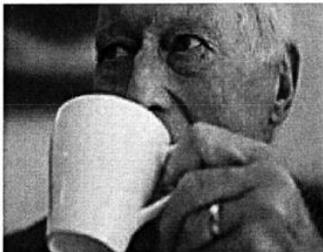
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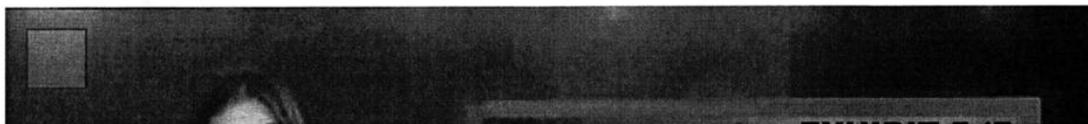
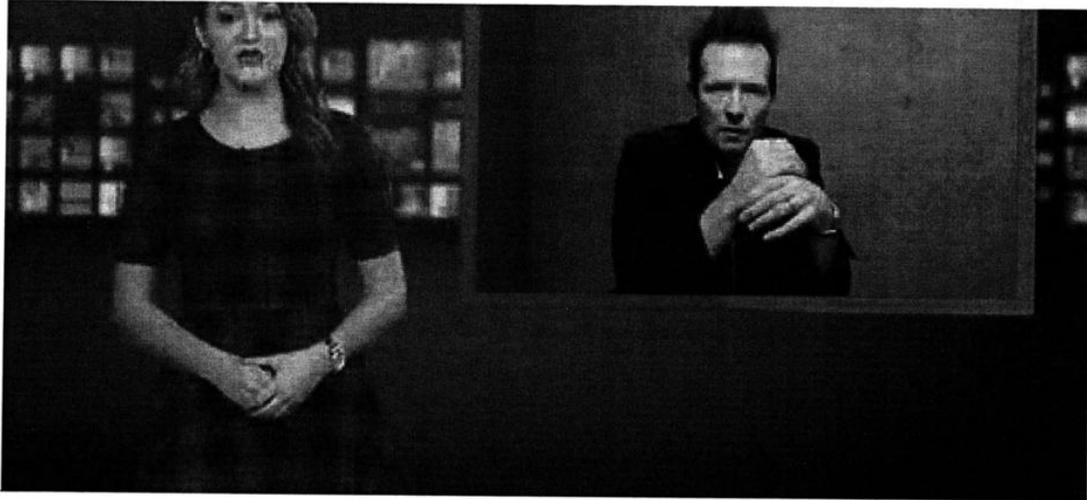


EXHIBIT 5 (Ford Aff.)



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