Supreme Court of Ohio

Case No. 2021-1280

APPEAL FROM THE COURT OF APPEALS

EIGHTH APPELLATE DISTRICT

CUYAHOGA COUNTY, OHIO

CASE NO. CA-20-110200

STATE EX REL. LAUREN 'CID' STANDIFER & EUCLID MEDIA GROUP, LLC,
Relators-Appellants
v.
CITY OF CLEVELAND,
Respondent-Appellant.

Merit Brief of Appellants-Relators Lauren 'Cid' Standifer and Euclid Media Group, LLC

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INTRODUCTION

This is a public records case in which the City of Cleveland refuses to disclose use-of-force reports generated by the Cleveland Division of Police in clear derogation of this Court's precedent in *State ex rel. Nat. Broad. Co. v. City of Cleveland*, 38 Ohio St. 3d 79, 83 (1988) ("*NBC I*"). The Eighth District Court of Appeals erroneously held that these are exempt under R.C. 149.43(A)(2)(a) as Confidential Law Enforcement Investigatory Records ("CLEIR") that would disclose "the identity of a suspect who has not been charged with the offense to which the record pertains." The Eighth District's finding was based not on the City's own investigation, but, absurdly, the United States Department of Justice's investigation and prosecution of Cleveland's systematic constitutional violations concerning excessive force. This is a vast and improper expansion of the CLEIR exception, determining that the City can interpret its settlement agreement with the Federal Government to circumvent the Ohio Revised Code and this Court's precedents, and enabling the target of an investigation to shield its own records based on another agency's investigation. The records at issue in this case are critically important to the public's understanding of whether the Cleveland Division of Police are operating consistent with their constitutional and other legal duties; withholding them from the press and the public violates R.C. 149.43.

The use-of-force records at issue in this case are not Confidential Law Enforcement Investigatory Records because they do not document a "law enforcement

matter" of the City vis-à-vis the United States Department of Justice's Consent Decree litigation, and these records are created on a routine basis pursuant to department policy to determine whether a law enforcement investigation is necessary, and necessarily precede any law enforcement investigation. The City of Cleveland, as the target of the United States Department of Justice's investigation, cannot use that investigation (or its resolution as embodied in the Consent Decree) to alter the Ohio Revised Code or evade this Court's precedent to shield its own records from the public. Even if these records could somehow be Cleveland's law enforcement investigatory records, the Eighth District's holding that law enforcement officers would recognize their own reports and thus disclose an investigation into their conduct is untenable.

Ohio courts have long established that "public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people." *State ex. rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety*, 148 Ohio St.3d 433, 438 (2016) quoting *NBC I* at 81. To qualify for an exception to disclosure, Cleveland must show that each withheld record "fall[s] squarely within a statutory exception," and Courts are required to strictly construe exceptions against public-records custodians. *Id.* at 438, ¶ 35. Ohio courts liberally construe the Public Records Act—which codifies this right—in favor of broad access and disclosure. *Id*. at 437, citing *State ex rel. Toledo Blade v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 376 (2008).

This Court had held that use-of-force records "involve the city's monitoring and discipline of its police officers," and were "routinely conducted in every incident where deadly force was used by a police officer," and so are "required to be disclosed." *NBC I* at 83, citing *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d 382 (1985). The Eighth District's holding below conflated the City's own routine investigations into individual uses of force with the Department of Justice's investigation into the City's systemic "pattern and practice" of excessive force. The Eighth District held that the withheld records are law enforcement investigatory records because (1) the reports are being prepared pursuant to a settlement agreement between the parties in *United States v. Cleveland*, and (2) disclosing any parts of the report would reveal the identity of officers who had not yet been charged with a crime, but who were being investigated. *State ex rel. Standifer v. Cleveland*, 8th Dist. Cuyahoga No. 110200, 2021-Ohio-3100 ¶ 17. But as this Court held in *NBC I*, records that involve the city's monitoring and discipline of police officers are not law enforcement investigatory records as contemplated by R.C. 149.43(A)(2).

FACTUAL AND PROCEDURAL HISTORY

On September 9, 2020, Relator Cid Standifer, a freelance journalist with a long history of investigative journalism publications, electronically submitted a request to the City of Cleveland for electronic copies of "all reports on use of force incidents between Jan. 1, 2019 and the date the record is generated." Supp. 17. The City

responded by sending Relator a one-page document containing summary numbers on the number of use of force incidents in 2019 and to date in 2020. Supp. 21. When Relator responded requesting the "individual reports for every instance of use of force," the City, in turn, denied and characterized as "likely overbroad." Supp 17, 22. On October 29, 2020, Relator submitted another electronic public records request on the portal, this time requesting the use of records reports between May 30, 2020 and June 1, 2020. Supp. 27. Relator also clarified that she wanted the actual "reports produced by officers describing each individual incident," as opposed to a summary chart. *Id*. Two weeks later, on November 16, 2020, the City denied the request stating that the "information requested is part of an open ongoing investigation and not releasable at this time based on the confidential law enforcement investigatory record exception in R.C. 149.43 (A)(1)(h), (A)(2)." *Id.*

In the months that followed, Relator submitted two more public records requests using the same electronic portal. This time Relator requested all use of force incident reports filed in June 2019. Supp. 30, 35. The City responded by producing records on December 3 and December 10 which were "essentially… a list of numbers" relating to how many reports were filed and on what dates they were filed. Supp 33. Relator, through counsel, notified the City that their production was deficient. Supp 43. When the City did not disclose any of the reports, Relator filed a mandamus action in the Eighth District Court of Appeals.

After several negotiations via counsel, the City still refused to provide 87 use-of-force reports on the basis that they were CLEIRs because investigation was ongoing for these incidents. App. 6. Relators, meanwhile, maintained that these records were pre-investigation, that no interest in R.C. 149.43(A)(2)(a)–(d) supported the City's decision to withhold them, and that they were clearly public records under this Court's *NBC I* decision. On September 3, 2021, the Eighth District Court of Appeals denied Relator's request for a writ of mandamus compelling the disclosure of these records after ruling that the reports were confidential law enforcement records. App. 8-9.

Although the City vaguely referenced the Consent Decree for the first time in its *Reply Brief* (*See* Supp. 226), the Eighth District explicitly relied upon the Cleveland Consent Decree in making this finding without conducting a fulsome examination of the Consent Decree's terms or analyzing whether the City met its burden to show these records were clearly exempt. App. 2, 8. The Cleveland Consent Decree is a court-approved settlement agreement between Cleveland and the United States Department of Justice following the DOJ's investigation of Cleveland's use-of-force practices after a number of high-profile allegations of excessive force. App. 2; *See generally* Order Granting Joint Motion for Consent Decree *United States of America v. City of Cleveland*, N.D. Ohio Case No. 1:15-cv-01046, Docket Entry No. 7 and 7-1 (June 12, 2015) (Supp. 251). This agreement mandated that CDP record data related to use of use of force incidents that could later be tracked and evaluated. *Id*. The Consent Decree's stated

purpose for requiring the City to collect this data is to evaluate police practices and to "facilitate transparency and, as permitted by law, broad public access to information related to CDP's decision making and activities." *Consent Decree* at ¶ 257, Supp. 314.

Under City policy, officers are required to complete the use-of-force report containing factual information about a use-of-force incident noting the date, time, location, and specific circumstances of the incident. *See Cleveland Division of Police General Police Order 2.01.05(III)(A)(1),* App. 12. The report also requires the officer to describe the use of force incident by noting the reason for the initial police presence, the acts that preceded the use of force, any attempts to de-escalate the situation, the level of resistance the officer encountered, and, finally, all uses of force the officer employed. *Id*. After the officer submits the report, the report is sent through a chain of command review to evaluate the appropriateness of the use of force. *Id*. This review is done to determine if an investigation into the use of force is necessary. *Id*. Indeed, after the Consent Decree, Cleveland's use of force reporting follows these steps:

a. officers' use of force reports;
b. supervisor's use of force investigations;
c. force investigations by the Force Investigation Team;
d. force investigations by the Office of Professional Standards;
e. force reviews conducted by the Force Review Board;
f. investigations conducted by Internal Affairs; and
g. all supporting documentation and materials, including relevant ECW downloads, supporting audio-visual recordings, including witness and officer interviews, and any relevant camera downloads, including from body worn cameras.

Supp. 314-15. Notably, Relators have only requested the reports in section (a) above, the initial reports that initiate (and necessarily precede) any further investigations.

The City did not—and cannot—show by clear and convincing evidence that any exception to the Public Records Act applies to these records. Relators-Appellants respectfully request that this Court reverse the Eighth District Court of Appeals, enforce its prior ruling that police use-of-force reports must be immediately released upon request, and issue a writ of Mandamus compelling the city to immediately release the withheld records.

LAW AND ARGUMENT

> **Proposition of Law No. 1:** Police Use-Of-Force Reports that officers complete pursuant to departmental policy are not Confidential Law Enforcement Investigatory Records exempted from disclosure pursuant to R.C. 149.43 because they precede any investigation. (*NBC I*)

I. The City failed to meet its burden to demonstrate that the use-of-force records fall squarely within the confidential law enforcement investigatory record exemption.

The Public Records Act reflects Ohio's policy that "open government serves the public interest and our democratic system." *Welsh-Huggins v. Jefferson Cty. Prosecutor's Off.*, 2020-Ohio-5371, 163 Ohio St. 3d 337, 340. It allows citizens to 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. R.C. 149.43 reinforces the idea that "open access to government records is an

integral entitlement to the people, to be preserved with vigilance and vigor." *Id*. at ¶ 17. As such, the Act is "construed liberally in favor of broad access, and any doubt is resolved in favor of disclosure." *Welsh-Huggins*, 163 Ohio St. 3d at 340. Similarly, the alleged "law enforcement action" at issue—the Consent Decree litigation—specifically requires the City to "facilitate transparency and, as permitted by law, broad public access to information related to CDP's decision making and activities." Supp. 314.

Whether a particular record is exempt from disclosure as a public record fundamentally presents an issue of law, although the application of the exemption will necessarily depend on its factual application to the record in question. *Welsh-Huggins*, 163 Ohio St. 3d at 346. Because these cases present a mixed question of law and fact, a reviewing court should independently review the legal question de novo but defer to the lower court's underlying factual findings, reviewing them only for clear error. *Id*. To do this, reviewing courts should independently review the disputed records and associated evidence to determine whether the records qualify for the claimed exemption. *Id*.; *See also State ex rel. Rocker v. Guernsey*, 2010-Ohio-3288, 126 Ohio St. 3d 224 (appellate court independently reviewed the sealed records and determined that not all parts of the records were inextricably intertwined with the suspect's identity). Public records custodians bear the burden of proving by clear and convincing evidence that a statutory exception to disclosure applies to each specific record. *State ex rel.*

Summers v. Fox, 163 Ohio St.3d 217, 225, 2020-Ohio-5585 at ¶ 33, *citing State ex rel. Cincinnati Enquirer v. Jones-Kelle*y, 118 Ohio St.3d 81, 2008-Ohio-1770 ¶ 22-23

Determining if a public office can refuse to release a record on the basis that it is exempt from disclosure as a confidential law-enforcement investigatory record under under R.C. 149.43(A)(1)(h) and (2) is a two-part test. First, the record must be a confidential law enforcement record; it must pertain to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature. *Rocker*, 2010-Ohio-3288, 126 Ohio St.3d at 224. This requires the investigation of "specific alleged misconduct, not a routine monitoring investigation." *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 2000-Ohio-214, 89 Ohio St. 3d 440, 445 (quoting *State ex rel. Yant v. Conrad*, 74 Ohio St.3d 681, 684 (1996)). Because these records are routinely created to monitor officer uses of force (which do not necessarily involve misconduct in every case), these use-of-force reports do not qualify for the CLEIR exception even if it is later determined through the chain of command that an Internal Affairs investigation is required. Second, release of the records must create a high probability of disclosure of any of the four types of information specified in R.C. 149.43(A)(2)(a)-(d). *Id*. Even if these could qualify as investigatory records of a law enforcement matter, but "**only** to the extent that [its] release … would create a high probability of disclosure of …" "the identity of a suspect who has not been **charged with the offense to which the record pertains**." R.C. 149.43(A)(2) (emphasis added).

The City bears the burden to "prove that the record falls squarely within the statutory exception," and "they must provide evidence to support the applicability of the exemption." *Welsh-Huggins* at 349. In this case, the City has failed to meet their burden because it failed to present evidence explaining why the CLEIR exception applies where the City is not the law enforcement agency for the "law enforcement matter" claimed—the Department of Justice's investigation into the City of Cleveland. The City failed to meet its evidentiary burden to demonstrate that the use of force records relate to a "law enforcement matter" for the confidential law enforcement investigatory record exemption, and that release of the record would create a "high probability of disclosure" of the identity of an uncharged suspect.

Although the Eighth District determined that the records were confidential because they were prepared pursuant to the Consent Decree, the City only raised its argument regarding the Consent Decree late in the briefing process as a few sentences in its reply brief to Appellant's brief in opposition to the City's motion for summary judgment. By failing to raise the Consent Decree in earlier briefs and discussing the argument cursorily in its reply brief, the City failed to meet is evidentiary burden, and it was error for the Eighth District to deny Relators' request for a writ of mandamus.

II. Cleveland Police officers routinely create use-of-force reports to report objective facts before a specific investigation begins.

The use of force reports are not confidential law enforcement investigatory records because they are routinely created by police officers after they use force and

they are used to monitor and discipline police officers. When records "involve the city's monitoring and discipline of its police officers," and are "routinely conducted in every incident where . . . force was used by a police officer," then such records are "required to be disclosed." *NBC I* at 83.

The use of force reports at issue in this case do not initiate an investigation, it is only after they are reviewed by an officer's chain of command that it can be forwarded to internal affairs for an investigation. *See Carney Dep*. at 25:1-23 (Supp. 159). The fact that a use of force report may later lead to an investigation when it goes up the chain of command does not make the initial report exempt from disclosure under R.C. 149.43. *See NBC I* at 85 (rejecting the application of the CLEIR exception when the record "was not 'specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding.) Here, it is typically the law enforcement officers themselves who are filling out the requested reports, not investigators as was the case in *NBC II*, relied upon by the City in its briefing in the Eighth District. *State ex rel. National Broadcasting Co. Inc. v. City of Cleveland*, 57 Ohio St.3d 77, 78, (1991) ("*NBC II*"). This is a routine reporting of the circumstances surrounding an officer's own use of force via a factual incident report. Because these reports are narrative statements written by the officers themselves after any incident where they use force and do not contain investigatory notes or insights, they are "required to be disclosed." *See NBC I at 83*. In the City's briefs below it disregarded *NBC I* and focus solely on *NBC II*, ignoring that

the records at issue in this case are explicitly not the types of investigatory records at issue in *NBC II*. In *NBC II*, NBC requested all files pertaining to **investigations** of police officers' uses of deadly force—after they had been referred to detectives for investigation. The court found that most of these records qualified for the exemption because "they appear comparable to those records compiled pursuant to criminal investigations that police routinely perform when they investigate crimes." *NBC II* at 79. As such, NBC's arguments failed because the records requested were investigatory records, and the "routine-ness" of the investigation was routine for all detectives who were investigating any other type of potential crime. While *NBC II* specifically states that just because a task is routine does not mean that it is subject to disclosure, it exclusively examines circumstances in which *investigators* are engaging in routine investigatory tactics. *NBC II* at 81. In this case, Relators only request the use of force reports written by the officers themselves, not any investigatory files created by from those charged with eventually investigating an incident after supervisors review the use-of-force report to determine whether the incident was within department policy, or whether there is a potential criminal act requiring investigation. The Eighth District's reliance on the mere later review by a chain of command is erroneous because that review does not, by itself, transform a record into the City's investigatory record.

The officers completing the use of force reports are those who were involved or witnessed in a particular use of force—they are not acting in an investigatory capacity

when completing the report. Officers do not have the power to investigate their own conduct, and critically in this case, they are not the investigative authorities in connection with *United States v. Cleveland*. This issue alone is dispositive: public offices that do not have law enforcement authority over a particular matter do not create confidential law enforcement investigatory records "pertaining to" to those matters. *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155, 158 (1997) (records of alleged child abuse do not pertain to a law enforcement matter in the hands of county ombudsman office that has no legally mandated enforcement or investigative authority over child abuse, and instead are required to report those allegations to other authorities). Not all uses of force require further investigation by law enforcement personnel; the use-of-force reports at issue in this case are prepared pursuant to departmental policy without any regard to whether there will eventually be potential misconduct to be investigated. The reports are narrative statements of the incident more akin to the routine factual reports described in *State ex rel. Beacon Journal Pub. Co. v. Univ. of Akron*, 64 Ohio St.2d 392, 415 N.E.2d 310 (1980) (reports concerning alleged rape of student and her subsequent death were merely routine factual reports made by university police under duty imposed upon all law enforcement agencies to generate ongoing offense reports).

Use of force reports are routinely created as a matter of policy, and cannot investigate law enforcement matters until after being reviewed up the chain of command and referred to a separate unit. *Carney Dep.* at 25:1-23 (Supp. 159). Officers are

required to report any use of force greater than *de minimis* force through a field-user portal called "BlueTeam." *Id.* at 8:2-21; 11:10-17 (Supp. 142, 145). Cleveland policy requires officers to report any such use of force incident before ending the shift in which the force was used. App. 12; Supp. 143. In practice, the officer is expected to immediately report any use of force greater than *de minimis*:

> **Q**. What happens directly after a Cleveland police officer has a use-of-force incident? …
> **Q**. What is the officer required to do?
> **A**. Required to report the use of force.
> **Q**. How quickly are they supposed to?
> **A**. Immediately.

Supp. 145. After submitting a UOF report in BlueTeam it is then reviewed by supervisors through the reporting officer's entire chain of command. *See* Cleveland Dep. 16:5-23; 24:8-25 (Supp. 150, 158). Only after the UOF is reviewed by the officer's chain of command, including the Chief of Police, can it be forwarded to Internal Affairs for investigation. Supp. 159. As such, the UOF report itself is not an investigatory record—it is a self-report detailing factual events pertaining to a use of force. Police officers who submit UOF reports are not and cannot investigate themselves.

UOF reports cannot be investigated by the officer who reported the UOF. Supp. 149. ("**Q**. Does a police officer ever investigate themselves? **A**. No."). Even UOF reports that are Level 3 (the highest level of force), while prepared by a supervisor of the officer using force, are factual reports that are submitted to the field-user facing BlueTeam software and are routed through a supervisory review before being referred to Internal Affairs for any investigation. Supp. 150 at 16:3-23. In fact, district-level officers and

supervisors do not even have the ability to release UOF reports to the Internal Affairs case management software—rather, the UOF report must be first reviewed by the chain of command, and can only be released at the level of deputy chief or chief of police. Supp. 157. at 23:15-21. Automatic review of factual reports at the district level cannot be said to initiate an investigation for purposes of the CLEIR exemption because such a conclusion would allow for the circumvention of even releasing incident reports as long as supervisors began "reviewing" them upon their completion. Allowing an automatic-review policy to pose as an "investigation" would go against the plain meaning of the Public Records Act as stated in *NBC I*.

The Use of Force report in BlueTeam is a factual report that must be reviewed before an investigation can take place, and so is like incident reports, 911 calls, or pre-arrest dashcam footage that should be released immediately upon request. *State ex rel. Beacon Journal Pub. Co. v. Maurer*, 91 Ohio St.3d 54, 2001-Ohio-282 (incident reports); *Cincinnati Enquirer*, 75 Ohio St.3d at 379 (911 recordings); *Ohio Dept. of Pub. Safety*, 148 Ohio St.3d 433, 2016-Ohio-7987 (dashcam footage). The investigatory work product exception "protects only those portions of a record which demonstrably reveal an investigator's deliberative and subjective analysis, his interpretation of the facts, his theory of the case, and his investigative plans. **The exception does not protect the objective facts and observations an officer has recorded**." *State ex rel. Jenkins v. City of Cleveland*, 82 Ohio App.3d 770 at 779-80 (8th Dist. 1992). In addition to *NBC I*, his Court has already held that use-of-force reports are unquestionably public records in

enforcing a much broader request in *State ex rel. Dispatch Printing Co. v. Columbus*, 90 Ohio St. 3d 39, 41, 2000-Ohio-8. That case involved a broad request for police disciplinary records including "electronic records regarding use of force reports, use of mace reports, injury to prisoner reports, complaint reports, and use of firearm reports." This Court said "[w]hen we examine the requested information at issue, there is no question that it is a public record." *Id.* Even if these kinds of records are later gathered and used in an investigation (by those with the authority to investigate the incident), the records retain their public record status. *Cincinnati Enquirer* at 378 (1996).

III. The United States Department of Justice's investigation into the Cleveland Division of Police is not a "law enforcement matter" into any individual officer's use of force.

To avoid *NBC I* and *Dispatch Printing*, the Eighth District used the "uncharged suspect" provision in R.C. 149.43(A)(2)(b) to hold that *Cleveland Police officers* might be uncharged suspects. The Eighth District reasoned that even redacted copies could not be disclosed because officers would recognize reports involving themselves and thus create the "high probability of disclosure" of the officer's identity. In turn, the Eighth District not only overlooked that these records precede any investigation, but erroneously conflated the DOJ's investigation into Cleveland's systemic issues with individual investigations into specific conduct in specific incidents. But this reveals the contradiction in treating these as investigatory records of the City: police officers do not investigate themselves (Supp. 149 at 15:22-24), and officers who create reports in

Cleveland's Blue Team system are reporting factual accounts to be reviewed to see if an investigation is required. Because Cleveland police officers are required to report these uses of force "up-the-chain" to determine whether an investigation is necessary, it is Internal Affairs, not the individual officers completing the reports, who create investigatory records. The use-of-force reports are not the City's investigatory records.

The Eighth District held that these records were confidential law enforcement investigatory records because of the Consent Decree in *United States v. Cleveland*—but that was a law enforcement action against the City and the Department as a whole. Cleveland's compliance with the Consent Decree in *United States v. Cleveland* is not a 'law enforcement matter' because the City's compliance is not "a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature" of the City. Even if the Consent Decree action qualified as a "law enforcement matter," the exception for uncharged suspects in (A)(2)(a) cannot be used to shield these reports because the statute limits the application of that subsection to the "offense to which the record pertains." In the case of the Consent Decree Litigation, that is the pattern and practice of constitutional violations—not any individual use-of-force incident.

To further the Consent Decree's policy in favor of "a strong community-police relationship," the City agreed to "provide clear guidance to officers; increase accountability; provide for civilian participation in and oversight of the police; provide officers with needed support, training, and equipment; and increase transparency."

Supp. 261. Yet the City still refuses to release 87 reports in their entirety because they claim the incidents are still "under investigation." But even if these incidents resulted in Cleveland initiating a law enforcement matter, Relators only requested the narrative reports from the officers that document each use of force—the very record that would need to be reviewed to determine whether an investigation is necessary.

This court has already made clear that "exceptions to disclosure under the Public Records Act, R.C. 149.43, are strictly construed against the public-records custodian, and the custodian has the burden to establish the applicability of an exception." *Jones-Kelley*, 886 N.E.2d at 210 (Ohio 2008). In this case, the City has failed to show how the use of force reports could fall under any exception to the Public Records Act.

IV. The Officers' Identities are not inextricably entwined with all of the information on the use-of-force reports.

Even if these records could qualify as a law enforcement record of the City of Cleveland (notwithstanding that it is the United States Department of Justice that is the relevant law enforcement agency in the Consent Decree litigation), Ohio's Public Records Act also requires Respondent to release all non-exempt material. R.C. 149.43(B)(1) ("[I]f a public record contains information that is exempt from the duty to permit public inspection... the person responsible for the public record shall make available all of the information within the public record that is not exempt.") In other words, where a record may contain some exempt material, such as information qualifying as a confidential law enforcement record, the public agency still has a duty to

disclose all non-exempt information. This section of the ORC goes on to identify redaction as one such method of accomplishing this goal and lays out the rules the agency must use in redacting information. *Id*.

In enforcing public offices' duties to release use-of-force reports, this Court has stated that "[i]f the court finds that records contain excepted information, this information must be redacted and any remaining information must be released." *NBC I* at ¶ 4 of the syllabus. *See also Ohio Dept. of Pub. Safety*, ¶ 45-50. This Court has held that providing those redacted records must occur under the Public Records Act even where the redaction process might require extra labor. *See Welsh-Huggins* (holding that the lower court did not err in ordering the agency to create a new version of a video which redacts the exempted material since the redaction can be done using "reasonable computer programing").

The Eighth District held that these records are exempt because they "would create a high probability of disclosure of the identity of the suspect"—i.e., the police officer using the force. App. 8-9. The Eighth District reasoned that the officers often do not know that they are under investigation and that if the records were released, the officer would recognize the reports and conclude that they are being investigated. *Id*. This is circular: the withheld records are narrative reports written by the officers present in every use-of-force incident as a matter of policy; the only way to know whether a

particular use of force is being investigated further would be to note that it was not disclosed as responsive to Relators' request.

> **Proposition of Law No. 2:** A contract, like the Consent Decree, cannot supersede the Public Records Act's disclosure requirements.

This Court has held that public offices cannot alter the legislative requirements of R.C. 149.43 by agreement. *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Commrs.*, 80 Ohio St.3d 134, 137 (Ohio 1997) ("[a] public entity cannot enter into enforceable promises of confidentiality regarding public records."). In *Findlay Publishing*, the Hancock County Board of Commissioners approved a settlement agreement with a confidentiality provision concerning the settlement. *Id*. at 135. This Court held that any such confidentiality provision could not function to preclude disclosure under R.C. 149.43. *Id*. at 137. Ohio's appellate courts within the state have agreed and held that a contract trying to create new exceptions to the Public Records Act or otherwise contract around the Act are not enforceable. *See also Teodecki v. Litchfield Twp.*, 9th Dist. No. 14CA0035-M, 2015-Ohio-2309, ¶ 25 (holding that contracts which have provisions violating the Public Records Act are unenforceable). Indeed, the Ohio Attorney General's own Sunshine Law Manual, which governs how government attorneys should proceed in various legal settings, explicitly notes that "[a] contract between a public office and other parties also cannot create a public records

exemption." Ohio Attorney General, *Ohio Sunshine Laws: An Open Government Resource Manual* (2021), pg. 30.

This Court has explained that the "General Assembly is the ultimate arbiter of policy considerations relevant to public-records laws." *Jones-Kelley*, 886 N.E. 2d at 215-216 (Ohio 2008) (*quoting Kish v. Akron*, 846 N.E.2d 811, 816 (Ohio 2006)). Consequently, this Court has consistently struck down attempts to preclude certain records from the Public Records Act by any entity that is not the state legislature. *See, e.g., State ex rel. James v. Ohio State Univ.*, 637 N.E.2d 911, 913-14 (Ohio 1994) (holding that judges cannot create additional exceptions to the "very narrow, specific exceptions to the public records statute").

The Eighth District Court of Appeals in this case held that "[b]ecause the use of force are being prepared pursuant to a settlement agreement between Cleveland and the Department of Justice," the withheld records are law enforcement investigatory records. *Order* at 16. By bringing the Consent Decree into their order, the Court of Appeals must have been arguing that since these records were created under the direction of the Consent Decree, they are treated differently under the Public Records Act. The City cannot create a new exception in the Ohio Revised Code by contract. Just as the Hancock County Board of Commissioners in *Findlay Publishing* could not designate otherwise public records as confidential in a settlement agreement, nor can the City of Cleveland in any of their settlement agreements. Such an outcome would

contradict the text of R.C. 149.43 and this Court's decisions interpreting it. As such, to the extent the Court of Appeals concluded that the records being created under the Consent Decree exempt them from the Public Records Act, that conclusion is error.

The Eighth District's holding that these records qualify for the CLEIR exception would mean nearly all of Cleveland's post-Consent Decree records related to police use of force are exempt from disclosure — a result that not only directly contradicts applicable case law, but the text and spirit of the Consent Decree's commitment to public transparency and accountability. The Consent Decree explicitly states that to ensure that City's police services are consistent with community values, constitutional, and efficient, the City has agreed to "increase transparency." Supp. 314. In addition, it gives the following mandate to the CDP: "to report to the City and community as a whole and provide transparency on police department reforms." Supp. 257. To comply with this mandate, the CDP must collect and maintain all data and records necessary to evaluate its use of force practices and "facilitate transparency and, as permitted by law, broad public access to information related to CDP's decision making and activities." Supp. 314. The Consent Decree is evidence of the parties attempt to improve, not detract from, transparency to the community regarding police reform in Cleveland. To find all these use of force records exempt from the Public Records Act would frustrate the purpose of this settlement agreement.

CONCLUSION

The Cleveland Division of Police's use-of-force data, as captured in the initial BlueTeam report, is a public record not eligible for any exception in R.C. 149.43, and should be released immediately upon request. Allowing the City to withhold these routine monitoring records based upon another law enforcement agency's investigation into the City's misconduct subverts the text and intent of the Public Records Act. Relators respectfully request that this Court reverse the Eighth District Court of Appeals' decision, and order Cleveland to immediately release these use-of-force reports.

Respectfully submitted,

/s/Ryan Gillespie
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/s/Koko Etokebe
Koko Etokebe, *Certified Legal Intern*
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CERTIFICATE OF SERVICE

The undersigned certifies that on December 22, 2021 I sent a copy of the foregoing Merit Brief by email to:

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APPENDIX

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE EX REL., LAUREN "CID" STANDIFER, ET AL., :

Relator, :

No. 110200

v. :

:

CITY OF CLEVELAND, :

Respondent. :

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED
DATED: September 3, 2021

Writ of Mandamus
Motion No. 547145
Order No. 548309

Appearances:

First Amendment Clinic, Milton A. Kramer Law Clinic Center, Case Western Reserve University School of Law, Andrew Geronimo, Supervising Attorney, and Calvin J. Freas, Certified Legal Intern, *for relator.*

Barbara A. Langhenry, Cleveland Director of Law, and William M. Menzalora, Chief Assistant Director of Law, and Timothy J. Puin, Assistant Director of Law, *for respondent.*

MARY J. BOYLE, A.J.:

{¶ 1} On December 31, 2021, the relators, Lauren "Cid" Standifer and Euclid Media Group, LLC, commenced this public records mandamus action to compel the respondent, the city of Cleveland, to release all reports of use of force incidents between January 1, 2019, and the date the record is generated. Thus, the focus of this public records mandamus action is the "use of force reports" that Cleveland police officers must complete each time an officer uses force. The relators obtained the questionnaire that the officers must use to enter the information, and they asked for the completed forms.

{¶ 2} Pursuant to mediation, this court's direction, and the parties' efforts to resolve their differences, Cleveland disclosed the reports, including the narrative sections, of the use of force reports not under investigation at the time of release. However, Cleveland withheld 87 reports that are still under investigation. Pursuant to court order, Cleveland submitted copies on CD discs of the reports released, and the narrative sections of those reports not released for in camera inspection. The parties have submitted dispositive motions and have briefed the remaining issue, whether the withheld reports are confidential law enforcement investigatory records ("CLEIR") under R.C. 149.43(A)(2). The court has conducted its in camera inspection, and this matter is ripe for resolution.

Factual and Procedural Background

{¶ 3} In 2015, Cleveland and the United States Justice Department entered into a court-approved settlement agreement regarding, inter alia, the Cleveland

Division of Police's use of force. As part of implementing this settlement agreement, Cleveland revised its "use of force" policies and procedures. This included better defining "use of force," adopting de-escalation techniques, and reporting uses of force. The settlement agreement provided that there would be a data analysis and collection coordinator to ensure the creation and maintenance of a reliable and accurate electronic system to track all data from use of force. (2018 Use of Force Report, attached to the relator's complaint as an exhibit.)

{¶ 4} Thus, whenever an officer uses force, the officer must complete a "Use of Force Report." The report requires the date, time, location, weather, and lighting conditions of the incident. There are also fields for the names and descriptions of the people involved, and any type of injuries sustained or inflicted. The "Incident Summary" section requires the officer to report the following: (1) the reason for initial police presence, such as reports of domestic violence or aggravated robbery; (2) specific description of acts that preceded the use of force, such as suspect refused to follow police commands, suspect was yelling profanities and threats, or suspect started to run away; (3) attempts to de-escalate, such as calling for more officers, allowing the person to vent, or giving clear commands and time to respond; (4) level of resistance encountered, such as suspect tried running away, took fighting stance, or tightened muscles; and (5) complete and accurate description of every type of force used or observed, such as drawing a weapon, using a Taser, or a description of tackling and joint manipulation to handcuff a suspect.

{¶ 5} Following these sections, there is a chain of command section in which supervisors review and evaluate the appropriateness of the use of force. This chain of command goes from sergeant to lieutenant to commander to deputy chief. During this chain of command review, "the police officers involved often are not even aware that the use of force incident is still considered an open matter." (Affidavit of Sergeant Maria Stacho, the IAPro/Blue Team Administrator.)[1]

{¶ 6} On September 9, 2020, the relators submitted an electronic public records request for "all reports on use of force incidents between January 1, 2019 and the date the record is generated." Cleveland responded that there were 342 use of force reports generated in 2019, and 191 thus far in 2020. The relators replied that they were not requesting the number of reports but the actual reports produced by the officers describing each incident. Cleveland responded that it was not required to do a file-by-file review from 2019 to the present because that would be a complete duplication of records and that the request is vague and overly broad. Cleveland cited to *State ex rel. Dillery v. Icsman,* 92 Ohio St.3d 312, 2001-Ohio-193, 750 N.E.2d 156, and *State ex rel. Glasgow v. Jones,* 199 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, in support of its position.

{¶ 7} On October 29, 2020, the relators submitted another electronic public records request for all reports on use of force incidents that occurred on May 30, and June 1, 2020. The relators clarified that they were not requesting the

[1] IA Pro is the software used for storing uses of force data.

number of incidents, but the reports produced by officers describing each individual incident. On November 16, 2020, Cleveland denied this request by stating that the "information requested is part of an open ongoing investigation and not releasable at this time based on the confidential law enforcement investigatory record exception in R.C. 149.43 (A)(1)(h), (A)(2)."

{¶ 8} On November 18, 2020, the relators submitted another electronic public records request for all use of force reports filed in June 2019. This time Cleveland disclosed a list of the use of force reports stating their file number, incident number, and date of occurrence. Essentially, it was a list of numbers. Cleveland also released some police reports making standard redactions, such as, social security numbers, telephone numbers, and motor vehicle and driver records information.

{¶ 9} On December 10, 2020, the relators filed the final electronic public records request and asked for the use of force reports identifying them by the use of force report file number disclosed by the last request. When Cleveland did not disclose the actual reports, the relators commenced this mandamus action.

{¶ 10} On February 10, 2021, after court-directed mediation, Cleveland release three Excel spreadsheets describing use of force incidents in 2019, 2020, and 2021.[2] The relators objected that some reports were withheld pursuant to the

[2] Thus, the "subset" requests of October 29, November 18, and December 10, 2020, were incorporated into the master request of September 9, 2020, and the parties agreed to expand the request to include reports from 2021.

confidential law enforcement investigatory exception, and some of the officer narratives were truncated to 150 words, apparently because of computer limitations.

{¶ 11} The parties continued to resolve their differences, and by May 14, 2021, they had resolved all issues regarding the partial records produced. However, Cleveland withheld in their entirety 87 use of force reports on the basis of the confidential law enforcement investigatory record exemption. This is the remaining issue to be decided.

Discussion of Law

{¶ 12} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief, and (3) there must be no adequate remedy at law. *State ex rel. Harris v. Rhodes,* 54 Ohio St.2d 41, 374 N.E.2d 641 (1978). Mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser,* 50 Ohio St.3d 2d 165, 364 N.E.2d 1 (1977); *State ex rel Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581, 113 N.E.2d 14 (1953). Furthermore, the court has discretion in issuing mandamus. *State ex rel. Pressley v. Indus. Comm. of Ohio,* 11 Ohio St.2d 141, 228 N.E.2d 631 (1967).

{¶ 13} There are peculiar principles to public records mandamus actions. Pursuant to R.C. 149.43, mandamus is the appropriate remedy to compel compliance with Ohio's Public Records Act. *State ex rel. Vindicator Printing Co. v. Youngtown,* 104 Ohio St.3d 1436, 2004-Ohio-7079, 819 N.E.2d 1120. Because the

statute specifies mandamus as the remedy, the relator does not have to show the lack of an adequate remedy at law to prevail. *State ex rel. Morgan v. New Lexington,* 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208. As with all writ actions, the relator must establish the right to a writ by clear and convincing evidence. *Pressley*; and *State ex rel. Pietrangelo v. Avon Lake,* 149 Ohio St.3d 273, 2016-Ohio-5725, 74 N.E.2d 419. The requester must request records before bringing the mandamus action, and the "request must be specific and particularly describe what it is that is being sought." *State ex rel. Zauderer v. Joseph,* 62 Ohio App.3d 752, 756, 577 N.E.2d 444 (10th Dist.1989).

{¶ 14} In Ohio, public records are the people's records. To that end, the public records act is to be construed liberally in favor of broad access and disclosure. The courts are to resolve any doubt in favor of disclosure. *Vindicator, supra.* Exemptions to disclosure under the Public Records Act must be strictly construed against the public records custodian, and the government bears the burden of establishing the applicability of an exception. *Morgan* at ¶ 47.

{¶ 15} R.C. 149.43(A)(1)(h) provides in pertinent part that "Public record" does not mean any of the following: Confidential law enforcement investigatory records. R.C. 149.43(A)(2) defines confidential law enforcement investigatory record as "any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following: (a) the identity of a suspect who has not been charged with the offense to which the record

pertains * * *." The subsection further includes information sources, or witnesses to whom confidentiality has been reasonably promised, specific confidential investigatory techniques, specific investigatory work product, and information that would endanger the life or physical safety of law enforcement personnel, crime victims, witnesses, and confidential information sources.

{¶ 16} The court has reviewed the submitted material. Because the use of force reports are being prepared pursuant to a settlement agreement between Cleveland and the Department of Justice and because each report is reviewed by the chain of command of the police division to determine whether the use of force was appropriate, this court is convinced that the withheld records are law enforcement investigatory records. They are not incident reports as mentioned in *State ex rel. Beacon Journal Publishing Co. v. Univ. of Akron,* 64 Ohio St.2d 392, 415 N.E.2d 310 (1980). The use of force reports are prepared to monitor and discipline the police to make sure excessive force is not being used.

{¶ 17} The remaining issue is whether these reports are confidential. This court holds that they are confidential because their release would create a high probability of disclosure of the identity of the suspect, the officer using the force. These officers often do not know that they are still under investigation, but they would recognize the incidents they reported if these records were prematurely released to the public. Thus, information in the reports are so intertwined with the identity of the suspect that effective redactions could not be made. *State ex rel. McGee v. Ohio State Bd. of Psychology,* 49 Ohio St.3d 59, 550 N.E.2d 945 (1990).

Accordingly, this court denies the application for a writ of mandamus to compel the disclosure of the use of force reports that are still being reviewed. However, nothing in this opinion should be considered as preventing or precluding their release once the reviews have been completed. Similarly, nothing in this opinion precludes future public records requests for the currently withheld records.

{¶ 18} The relators may submit an appropriate motion pursuant to R.C. 149.43(C) within two weeks of the release of this opinion. Cleveland shall have two weeks to respond from the date of the filing of the motion.

{¶ 19} Writ denied.

FILED AND JOURNALIZED
PER APP.R. 22(C)

SEP X 3 2021

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By _____ Deputy

MARY J. BOYLE, ADMINISTRATIVE JUDGE

FRANK D. CELEBREZZE, JR., J., and
LISA B. FORBES, J., CONCUR

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Nailah K. Byrd, Clerk of Courts

STATE EX REL., LAUREN "CID" STANDIFER, ET AL.

Relator

COA NO.
110200

ORIGINAL ACTION

-vs-

CITY OF CLEVELAND

Respondent

MOTION NO. 546572

Date 09/03/21

Journal Entry

Motion by relators to grant writ of mandamus is denied. See journal entry and opinion of same date.

Judge Frank D. Celebrezze, Jr., Concurs

Judge Lisa B. Forbes, Concurs

Mary J. Boyle
Administrative Judge

RECEIVED FOR FILING
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EXHIBIT 3

CLEVELAND DIVISION OF POLICE

GENERAL POLICE ORDER

EFFECTIVE DATE:	CHAPTER:	PAGE:	NUMBER:
July 1, 2019	2 – Legal	1 of 6	2.01.05
SUBJECT: USE OF FORCE – REPORTING			
CHIEF: *Calvin D. Williams, Chief*			

Substantive changes are in italics

PURPOSE: To establish guidelines for the reporting of all use of force responses and for documenting objective reasonableness, necessity, and proportionality after a use of force response.

POLICY: Officers shall notify their supervisor when they have used force, except for *de minimis* force. Officers shall clearly, thoroughly and properly report use of force incidents. The necessity for each application of force shall be documented, identifying the uniqueness of each situation and justifying every force response.

PROCEDURES:

I. Use of Force Notification Guidelines

A. Officers who use or witness force shall contact the Communication Control Section (CCS) and request that their supervisor respond to the scene as soon as practical following any use of force, except for *de minimis* force. *(*Refer to GPO 2.01.01, Use of Force - Definitions).

B. An officer who becomes aware of an allegation of unreported, unreasonable, unnecessary or disproportionate force by another officer shall immediately notify his or her supervisor of that force or allegation. (Refer to GPO 1.07.05, Internal Complaints of Misconduct and GPO 1.07.07, Retaliation*).*

II. Use of Force Reporting General Guidelines

A. Officers shall report all uses of force except for *de minimis* force.

B. All use of force reports shall be completed with sufficient detail for supervisors and the Division to understand the totality of the circumstances, events, and actions of the officer, subject, and other involved individuals during a use of force incident. The use of force report must also permit the Division to conduct a thorough and appropriate investigation and review of the force incident. The Division shall provide regular training (including roll call, in-service, or electronic-based instruction) on reporting writing.

C. Officers shall not use conclusory statements, "boilerplate" or "canned" language (e.g., furtive movement, fighting stance), without supporting details that are well articulated in the required reports. When possible, and to ensure clarity, officers will minimize the use of unnecessary acronyms or jargons.

D. Every application of force by an officer is classified according to the following levels:

1. **Level 1 Use of Force:** Force that is reasonably likely to cause only transient pain and/or disorientation during its application as a means of gaining compliance, including pressure point compliance and joint manipulation techniques, but that is not reasonably expected to cause injury, does not result in an actual injury and does not result in a complaint of injury. It does not include escorting, touching, or handcuffing a subject with no or minimal resistance. Un-holstering a firearm and pointing it at a subject is reportable as a Level 1 use of force.

2. **Level 2 Use of Force:** Force that causes an injury, could reasonably be expected to cause an injury, or results in a complaint of an injury, but does not rise to the level of a Level 3 use of force. Level 2 includes the use of a CEW, including where a CEW is fired at a subject but misses; OC Spray application; weaponless defense techniques (e.g., elbow or closed-fist strikes, kicks, leg sweeps, and takedowns); use of an impact weapon *or beanbag shotgun*, except for a strike to the head, neck or face with an impact weapon *or beanbag shotgun*; and any canine apprehension that involves contact.

3. **Level 3 Use of Force:** Force that includes uses of deadly force; uses of force resulting in death or serious physical harm; uses of force resulting in hospital *confinement* due to a use of force injury; all neck holds; uses of force resulting in a loss of consciousness; canine bite; more than three applications of a CEW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers, a CEW application for longer than 15 seconds, whether continuous or consecutive; and any Level 2 use of force against a handcuffed subject.

E. Officers shall report uses of force in accordance with the reporting requirements of the highest level of force used during the incident. (For example, if an officer uses both Level 1 and Level 2 force during an incident, the incident is classified as a Level 2 force for reporting and review purposes).

F. All officer use of force reports will be evaluated by the *reviewing/investigating* supervisor, chain of command, and/or department's Force Review Board. (Refer to GPO 2.01.06, Supervisory Reviews and Investigations)

III. Involved Officer Reporting Requirements

A. Officers Using Level 1 and Level 2 Force shall:

1. By the end of their tour of duty, complete *and forward to the reviewing/investigating supervisor*, an individual use of force entry in the use of force tracking software, providing a detailed account of the incident from the officer's perspective and including all of the following information:

   a. The reason for the initial police presence

b. A specific description of the acts that preceded the use of force, to include attempts to de-escalate

c. The level of resistance encountered

d. A complete and accurate description of every type of force used or observed

B. Officer Using Level 3 Force shall:

1. By the end of their tour of duty, an individual use of force entry shall be completed as directed by the Officer-in-Charge of FIT. (Refer to GPO 2.01.07, Force Investigation Team)

2. Comply with all additional directives from the Officer-in-Charge of FIT. (Refer to GPO 2.01.07, Force Investigation Team)

IV. Witness Reporting

A. Officers Witnessing or Present During a Use of Force shall:

1. By the end of their tour of duty, complete *and forward to the reviewing/investigating supervisor*, a *Witness Statement Form (Attachment A)* providing a detailed account of the incident from the officer's perspective and including all of the following information:

a. The reason for the witnessing officer's police presence.

b. A specific description of the observed acts that preceded the use of force, to include any observed attempts to de-escalate.

c. Level of resistance observed; and

d. A complete and accurate description of every type of force observed.

2. Submit the *Witness Statement Form* to the *reviewing/investigating* supervisor or Officer-in-Charge of FIT for review/signature *and attach the statement to the use of force entry.*

B. Officers Witnessing Level 3 Force - In addition to completing a *Witness Statement Form* as described in IV, A, 1 (a – d), officers shall comply with all directives from the officer-in-charge of FIT. (Refer to GPO 2.01.07, Force Investigation Team)

C. Citizens and Non-Division Law Enforcement Officers

1. Citizens and non-division law enforcement officers who witness force and are unable or unwilling to give a video recorded statement may make a written statement on a Witness Statement Form (Attachment A).

2. The Witness Statement Form will then be submitted to the reviewing supervisor.

V. Additional Reporting Requirements

A. Officers deploying their CEW shall clearly articulate in their use of force entry justification for the following:

1. Each CEW cycle of any length used on a subject or attempted on a subject.

2. Use of the CEW in drive stun mode.

3. Each CEW cycle in excess of three 5-second CEW cycles in total on any one subject during a single incident.

4. Continuous cycling of the CEW beyond 5 seconds.

5. Use of the CEW on a fleeing subject.

6. CEW application by more than one officer.

B. Deployment of a Canine (Refer to GPO 2.01.01, Use of Force - Definitions, GPO 2.01.06, Supervisory Reviews and Investigations, and the CDP Canine Unit Manual)

1. Other than during training, if a canine deployment does not involve contact, the canine officer shall document the incident using the canine management software program;

2. Deployment of a canine that involves physical contact shall be reported as a Level 2 use of force; and

3. A canine bite shall be reported as a Level 3 use of force.

C. Pointing of a Firearm

1. Un-holstering a firearm or un-holstering and keeping the firearm at the low ready position, high ready position, or "SUL" position, without pointing it at an individual, is <u>not</u> a use of force. *Un-holstering a firearm is subject to the data collection process and shall be included in the officer's disposition when clearing an assignment using the Mobile Computer Aided Dispatch System or by notifying CCS.*

2. Un-holstering and pointing a firearm at a subject is considered a Level 1 reportable use of force. The following are exceptions to this reporting requirement:

a. SWAT Unit officers are not required to report the pointing of a firearm at a subject as a use of force during the execution of SWAT Unit duties;

b. Officers who are deputized and assigned to a Federal Task Force are not required to report the pointing of a firearm at a subject as a use of force when conducting task force operations during which a supervisor is present. The task force supervisor shall forward any reports or forms regarding any such incidents to the commander in their chain of command.

c. Officers assigned to the Gang Impact, Narcotics, Homicide, Sex Crimes, Domestic Violence, and Financial Crimes Units shall not be required to report the pointing of a firearm at a subject as a use of force if done solely while entering and securing a building in connection with the execution of an arrest or search warrant and a supervisor prepares a report detailing the incident provided to the commander in their chain of command.

d. These exceptions shall apply to uniformed officers assigned to duties with all of the above listed exempt units while performing duties assigned by the supervisor during the execution of the warrant(s).

D. Off-Duty Police Action Involving a Use of Force Outside the City of Cleveland

1. When safely able to do so, the officer shall immediately notify CCS of the incident and when the member is scheduled or expected to return to duty. CCS shall inform the member's commander.

2. Upon return to duty, the officer shall:

a. Notify their immediate supervisor of the incident.

b. Complete a use of force database entry. The use of force entry shall contain the following information about the incident: date, time, location, and jurisdiction. No details of the incident are to be included in the use of force entry; the entries are for tracking and documentation only.

c. Obtain a copy of the incident report from the reporting agency.

3. Provide all the materials described here to their immediate supervisor to be routed via the tracking software, to the Internal Affairs Unit. (Refer to GPO 2.01.06, Supervisory Reviews and Investigations).

VI. Failure to Report Use of Force

A. Officers shall be subject to the disciplinary process, up to an including termination, for material (significant) omissions or misrepresentations in their Use of Force Reports, regardless of whether the force was objectively reasonable, necessary and proportional.

B. Officers who use or observe force and fail to report it shall be subject to the disciplinary process, up to and including termination, regardless of whether the force was objectively reasonable, necessary and proportional.

VII. Heightened Responsibilities for Reporting Exceptional Uses of Force

A. In the rare and exceptional circumstances that officers use force that would otherwise be prohibited by Division policy, they must justify the use of force by articulating the specific facts that led to such a use of force. Officers must describe, in detail, the objective reasonableness, necessity, and proportionality of the force that was used, the actions of the subject that constituted immediate danger and grave threat to the officers or others, the officer's efforts to de-escalate the encounter, why the officer believed that no other force options, techniques, tactics or choices consistent with Division policy were available, and how rapidly the officer was able to return to compliance with Division policies.

B. Failure to adequately document and explain the facts underlying any use of force that conflicts with Division policies may subject the officer to the disciplinary process, possible criminal prosecution, and /or possible civil liability.

Ohio Revised Code

Section 149.43 Availability of public records for inspection and copying.

Effective: October 17, 2019
Legislation: House Bill 166 - 133rd General Assembly

(A) As used in this section:

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings, to proceedings related to the imposition of community control sanctions and post-release control sanctions, or to proceedings related to determinations under section 2967.271 of the Revised Code regarding the release or maintained incarceration of an offender to whom that section applies;

(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;

(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under sections 3705.12 to 3705.124 of the Revised Code;

(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;

(f) Records specified in division (A) of section 3107.52 of the Revised Code;

(g) Trial preparation records;

(h) Confidential law enforcement investigatory records;

(i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;

(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;

(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;

(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;

(m) Intellectual property records;

(n) Donor profile records;

(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;

(p) Designated public service worker residential and familial information;

(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;

(r) Information pertaining to the recreational activities of a person under the age of eighteen;

(s) In the case of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code or a review conducted pursuant to guidelines established by the director of health

under section 3701.70 of the Revised Code, records provided to the board or director, statements made by board members during meetings of the board or by persons participating in the director's review, and all work products of the board or director, and in the case of a child fatality review board, child fatality review data submitted by the board to the department of health or a national child death review database, other than the report prepared pursuant to division (A) of section 307.626 of the Revised Code;

(t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;

(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services and supports administers under section 4751.15 of the Revised Code or contracts under that section with a private or government entity to administer;

(v) Records the release of which is prohibited by state or federal law;

(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;

(x) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;

(y) Records listed in section 5101.29 of the Revised Code;

(z) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section;

(aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;

(bb) Records described in division (C) of section 187.04 of the Revised Code that are not designated to be made available to the public as provided in that division;

(cc) Information and records that are made confidential, privileged, and not subject to disclosure under divisions (B) and (C) of section 2949.221 of the Revised Code;

(dd) Personal information, as defined in section 149.45 of the Revised Code;

(ee) The confidential name, address, and other personally identifiable information of a program participant in the address confidentiality program established under sections 111.41 to 111.47 of the Revised Code, including the contents of any application for absent voter's ballots, absent voter's ballot identification envelope statement of voter, or provisional ballot affirmation completed by a program participant who has a confidential voter registration record, and records or portions of records pertaining to that program that identify the number of program participants that reside within a precinct, ward, township, municipal corporation, county, or any other geographic area smaller than the state. As used in this division, "confidential address" and "program participant" have the meaning defined in section 111.41 of the Revised Code.

(ff) Orders for active military service of an individual serving or with previous service in the armed forces of the United States, including a reserve component, or the Ohio organized militia, except that, such order becomes a public record on the day that is fifteen years after the published date or effective date of the call to order;

(gg) The name, address, contact information, or other personal information of an individual who is less than eighteen years of age that is included in any record related to a traffic accident involving a school vehicle in which the individual was an occupant at the time of the accident;

(hh) Protected health information, as defined in 45 C.F.R. 160.103, that is in a claim for payment for a health care product, service, or procedure, as well as any other health claims data in another document that reveals the identity of an individual who is the subject of the data or could be used to reveal that individual's identity;

(ii) Any depiction by photograph, film, videotape, or printed or digital image under either of the following circumstances:

(i) The depiction is that of a victim of an offense the release of which would be, to a reasonable person of ordinary sensibilities, an offensive and objectionable intrusion into the victim's expectation of bodily privacy and integrity.

(ii) The depiction captures or depicts the victim of a sexually oriented offense, as defined in section 2950.01 of the Revised Code, at the actual occurrence of that offense.

(jj) Restricted portions of a body-worn camera or dashboard camera recording;

(kk) In the case of a fetal-infant mortality review board acting under sections 3707.70 to 3707.77 of the Revised Code, records, documents, reports, or other information presented to the board or a person abstracting such materials on the board's behalf, statements made by review board members during board meetings, all work products of the board, and data submitted by the board to the department of health or a national infant death review database, other than the report prepared pursuant to section 3707.77 of the Revised Code.

(ll) Records, documents, reports, or other information presented to the pregnancy-associated mortality review board established under section 3738.01 of the Revised Code, statements made by board members during board meetings, all work products of the board, and data submitted by the board to the department of health, other than the biennial reports prepared under section 3738.08 of the Revised Code;

(mm) Telephone numbers for a victim, as defined in section 2930.01 of the Revised Code, a witness to a crime, or a party to a motor vehicle accident subject to the requirements of section 5502.11 of the Revised Code that are listed on any law enforcement record or report.

A record that is not a public record under division (A)(1) of this section and that, under law, is permanently retained becomes a public record on the day that is seventy-five years after the day on which the record was created, except for any record protected by the attorney-client privilege, a trial preparation record as defined in this section, a statement prohibiting the release of identifying

information signed under section 3107.083 of the Revised Code, a denial of release form filed pursuant to section 3107.46 of the Revised Code, or any record that is exempt from release or disclosure under section 149.433 of the Revised Code. If the record is a birth certificate and a biological parent's name redaction request form has been accepted under section 3107.391 of the Revised Code, the name of that parent shall be redacted from the birth certificate before it is released under this paragraph. If any other section of the Revised Code establishes a time period for disclosure of a record that conflicts with the time period specified in this section, the time period in the other section prevails.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(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;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

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

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically

compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(5) "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) "Donor profile record" means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) "Designated public service worker" means a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employee, investigator of the bureau of criminal identification and investigation, judge, magistrate, or federal law enforcement officer.

(8) "Designated public service worker residential and familial information" means any information that discloses any of the following about a designated public service worker:

(a) The address of the actual personal residence of a designated public service worker, except for the following information:

(i) The address of the actual personal residence of a prosecuting attorney or judge; and

(ii) The state or political subdivision in which a designated public service worker resides.

(b) Information compiled from referral to or participation in an employee assistance program;

(c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a designated public service worker;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a designated public service worker by the designated public service worker's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the designated public service worker's employer from the designated public service worker's compensation, unless the amount of the deduction is required by state or federal law;

(f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a designated public service worker;

(g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

(9) As used in divisions (A)(7) and (15) to (17) of this section:

"Peace officer" has the meaning defined in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

"Correctional employee" means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

"County or multicounty corrections officer" means any corrections officer employed by any county or multicounty correctional facility.

"Youth services employee" means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

"Firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

"EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the meanings defined in section 4765.01 of the Revised Code.

"Investigator of the bureau of criminal identification and investigation" has the meaning defined in section 2903.11 of the Revised Code.

"Federal law enforcement officer" has the meaning defined in section 9.88 of the Revised Code.

(10) "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(11) "Community control sanction" has the meaning defined in section 2929.01 of the Revised Code.

(12) "Post-release control sanction" has the meaning defined in section 2967.01 of the Revised Code.

(13) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.

(14) "Designee," "elected official," and "future official" have the meanings defined in section 109.43 of the Revised Code.

(15) "Body-worn camera" means a visual and audio recording device worn on the person of a peace officer while the peace officer is engaged in the performance of the peace officer's duties.

(16) "Dashboard camera" means a visual and audio recording device mounted on a peace officer's vehicle or vessel that is used while the peace officer is engaged in the performance of the peace officer's duties.

(17) "Restricted portions of a body-worn camera or dashboard camera recording" means any visual or audio portion of a body-worn camera or dashboard camera recording that shows, communicates, or discloses any of the following:

(a) The image or identity of a child or information that could lead to the identification of a child who is a primary subject of the recording when the law enforcement agency knows or has reason to know the person is a child based on the law enforcement agency's records or the content of the recording;

(b) The death of a person or a deceased person's body, unless the death was caused by a peace officer or, subject to division (H)(1) of this section, the consent of the decedent's executor or administrator has been obtained;

(c) The death of a peace officer, firefighter, paramedic, or other first responder, occurring while the decedent was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the decedent's executor or administrator has been obtained;

(d) Grievous bodily harm, unless the injury was effected by a peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(e) An act of severe violence against a person that results in serious physical harm to the person, unless the act and injury was effected by a peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(f) Grievous bodily harm to a peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(g) An act of severe violence resulting in serious physical harm against a peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(h) A person's nude body, unless, subject to division (H)(1) of this section, the person's consent has been obtained;

(i) Protected health information, the identity of a person in a health care facility who is not the subject of a law enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a law enforcement encounter;

(j) Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence;

(k) Information, that does not constitute a confidential law enforcement investigatory record, that could identify a person who provides sensitive or confidential information to a law enforcement agency when the disclosure of the person's identity or the information provided could reasonably be expected to threaten or endanger the safety or property of the person or another person;

(l) Personal information of a person who is not arrested, cited, charged, or issued a written warning by a peace officer;

(m) Proprietary police contingency plans or tactics that are intended to prevent crime and maintain public order and safety;

(n) A personal conversation unrelated to work between peace officers or between a peace officer and an employee of a law enforcement agency;

(o) A conversation between a peace officer and a member of the public that does not concern law enforcement activities;

(p) The interior of a residence, unless the interior of a residence is the location of an adversarial encounter with, or a use of force by, a peace officer;

(q) Any portion of the interior of a private business that is not open to the public, unless an adversarial encounter with, or a use of force by, a peace officer occurs in that location.

As used in division (A)(17) of this section:

"Grievous bodily harm" has the same meaning as in section 5924.120 of the Revised Code.

"Health care facility" has the same meaning as in section 1337.11 of the Revised Code.

"Protected health information" has the same meaning as in 45 C.F.R. 160.103.

"Law enforcement agency" has the same meaning as in section 2925.61 of the Revised Code.

"Personal information" means any government-issued identification number, date of birth, address, financial information, or criminal justice information from the law enforcement automated data system or similar databases.

"Sex offense" has the same meaning as in section 2907.10 of the Revised Code.

"Firefighter," "paramedic," and "first responder" have the same meanings as in section 4765.01 of the Revised Code.

(B)(1) 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 at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being

requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

(4) Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requester's identity or the intended use of the requested public record constitutes a denial of the request.

(5) A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory, that the requester may decline to reveal the requester's identity or the intended use, and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.

(6) If any person requests a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person requesting the copy under this division. The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person

responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person requesting the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by that person. Nothing in this section requires a public office or person responsible for the public record to allow the person requesting a copy of the public record to make the copies of the public record.

(7)(a) Upon a request made in accordance with division (B) of this section and subject to division (B)(6) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

(b) Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to division (B)(7) of this section. A public office that adopts a policy and procedures under division (B)(7) of this section shall comply with them in performing its duties under that division.

(c) In any policy and procedures adopted under division (B)(7) of this section:

(i) A public office may limit the number of records requested by a person that the office will physically deliver by United States mail or by another delivery service to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes;

(ii) A public office that chooses to provide some or all of its public records on a web site that is fully accessible to and searchable by members of the public at all times, other than during acts of God outside the public office's control or maintenance, and that charges no fee to search, access,

download, or otherwise receive records provided on the web site, may limit to ten per month the number of records requested by a person that the office will deliver in a digital format, unless the requested records are not provided on the web site and unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.

(iii) For purposes of division (B)(7) of this section, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(9)(a) Upon written request made and signed by a journalist, a public office, or person responsible for public records, having custody of the records of the agency employing a specified designated public service worker shall disclose to the journalist the address of the actual personal residence of the designated public service worker and, if the designated public service worker's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the designated public service worker's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

(b) Division (B)(9)(a) of this section also applies to journalist requests for:

(i) Customer information maintained by a municipally owned or operated public utility, other than

social security numbers and any private financial information such as credit reports, payment methods, credit card numbers, and bank account information;

(ii) Information about minors involved in a school vehicle accident as provided in division (A)(1)(gg) of this section, other than personal information as defined in section 149.45 of the Revised Code.

(c) As used in division (B)(9) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(10) Upon a request made by a victim, victim's attorney, or victim's representative, as that term is used in section 2930.02 of the Revised Code, a public office or person responsible for public records shall transmit a copy of a depiction of the victim as described in division (A)(1)(gg) of this section to the victim, victim's attorney, or victim's representative.

(C)(1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may do only one of the following, and not both:

(a) File a complaint with the clerk of the court of claims or the clerk of the court of common pleas under section 2743.75 of the Revised Code;

(b) Commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(2) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction

under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

(2) If a requester transmits a written request by hand delivery, electronic submission, or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following:

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

(b) That a well-informed public office or person responsible for the requested public records

reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(3) In a mandamus action filed under division (C)(1) of this section, the following apply:

(a)(i) If the court orders the public office or the person responsible for the public record to comply with division (B) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(ii) If the court makes a determination described in division (C)(3)(b)(iii) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section or if the court determines any of the following, the court may award reasonable attorney's fees to the relator, subject to division (C)(4) of this section:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(iii) The public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not the public office or person was required to comply with division (B) of this section. No discovery may be conducted on the issue of the alleged bad faith of the public office or person responsible for the public records. This division shall not be construed as creating a presumption that

the public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order described in this division.

(c) The court shall not award attorney's fees to the relator if the court determines both of the following:

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

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

(4) All of the following apply to any award of reasonable attorney's fees awarded under division (C)(3)(b) of this section:

(a) The fees shall be construed as remedial and not punitive.

(b) The fees awarded shall not exceed the total of the reasonable attorney's fees incurred before the public record was made available to the relator and the fees described in division (C)(4)(c) of this section.

(c) Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees.

(d) The court may reduce the amount of fees awarded if the court determines that, given the factual

circumstances involved with the specific public records request, an alternative means should have been pursued to more effectively and efficiently resolve the dispute that was subject to the mandamus action filed under division (C)(1) of this section.

(5) If the court does not issue a writ of mandamus under division (C) of this section and the court determines at that time that the bringing of the mandamus action was frivolous conduct as defined in division (A) of section 2323.51 of the Revised Code, the court may award to the public office all court costs, expenses, and reasonable attorney's fees, as determined by the court.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

(E)(1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. A future official may satisfy the requirements of this division by attending the training before taking office, provided that the future official may not send a designee in the future official's place.

(2) All public offices shall adopt a public records policy in compliance with this section for responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under section 109.43 of the Revised Code. Except as otherwise provided in this section, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours.

The public office shall distribute the public records policy adopted by the public office under this division to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public

office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook.

(F)(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or database by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the

bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, "surveys, marketing, solicitation, or resale for commercial purposes" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(G) A request by a defendant, counsel of a defendant, or any agent of a defendant in a criminal action that public records related to that action be made available under this section shall be considered a demand for discovery pursuant to the Criminal Rules, except to the extent that the Criminal Rules plainly indicate a contrary intent. The defendant, counsel of the defendant, or agent of the defendant making a request under this division shall serve a copy of the request on the prosecuting attorney, director of law, or other chief legal officer responsible for prosecuting the action.

(H)(1) Any portion of a body-worn camera or dashboard camera recording described in divisions (A)(17)(b) to (h) of this section may be released by consent of the subject of the recording or a representative of that person, as specified in those divisions, only if either of the following applies:

(a) The recording will not be used in connection with any probable or pending criminal proceedings;

(b) The recording has been used in connection with a criminal proceeding that was dismissed or for which a judgment has been entered pursuant to Rule 32 of the Rules of Criminal Procedure, and will not be used again in connection with any probable or pending criminal proceedings.

(2) If a public office denies a request to release a restricted portion of a body-worn camera or dashboard camera recording, as defined in division (A)(17) of this section, any person may file a mandamus action pursuant to this section or a complaint with the clerk of the court of claims pursuant to section 2743.75 of the Revised Code, requesting the court to order the release of all or portions of the recording. If the court considering the request determines that the filing articulates by clear and convincing evidence that the public interest in the recording substantially outweighs privacy interests and other interests asserted to deny release, the court shall order the public office to

release the recording.