
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.

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

Nick Adamson, *Certified Legal Intern*

Koko Etokebe, *Certified Legal Intern*

Ryan Gillespie, *Certified Legal Intern*

Andrew Geronimo (#0086630)

**Counsel of Record & Supervising
Attorney*

Sara Coulter (#0096793)

FIRST AMENDMENT CLINIC

KRAMER LAW CLINIC CENTER

CASE WESTERN RESERVE UNIVERSITY

SCHOOL OF LAW

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Cleveland, Ohio 44106

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Assistant Director of Law

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**Counsel for Relators-Appellants Cid
Standifer & Euclid Media Group, LLC**

INDEX TO SUPPLEMENT

Verified Complaint with select Exhibits (Dec. 31, 2020).....	1
Relators’ Status Report (Mar. 3, 2021).....	58
Respondent’s Notice of Filing Under Seal (Apr. 26, 2021)	69
Relators’ Motion to Grant Writ of Mandamus (May 14, 2021).....	72
Respondent’s Brief (May 14, 2021).....	106
Deposition Transcript of Commander Brian Carney (May 19, 2021)	133
Respondent’s Motion For Summary Judgment (June 8, 2021).....	184
Respondent’s Reply Brief (June 25, 2021)	220
Relators’ Opposition to Respondent’s Motion for Summ. J. (June 25, 2021).....	239
Settlement Agreement in United States v. Cleveland (“Consent Decree”)	251

IN THE EIGHTH DISTRICT COURT OF APPEALS
CUYAHOGA COUNTY, OHIO

LAUREN 'CID' STANDIFER

c/o Cleveland Scene
737 Bolivar, Suite 4100
Cleveland, Ohio 44115

EUCLID MEDIA GROUP, LLC

d/b/a Cleveland Scene
737 Bolivar, Suite 4100
Cleveland, Ohio 44115

Relator,

v.

THE CITY OF CLEVELAND

c/o Department of Law
601 Lakeside Ave., Room 106
Cleveland, Ohio 44114

Respondent.

Case No. CA 20 110200

Complaint

ORIGINAL ACTION FOR WRIT OF
MANDAMUS: R.C. 149.43

(ORAL ARGUMENT REQUESTED)

VERIFIED COMPLAINT FOR WRIT OF MANDAMUS

1. This action is brought by Relators Lauren 'Cid' Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene, a journalist and news organization, seeking a writ of mandamus compelling Respondents City of Cleveland and Chief of Police Calvin Williams to comply with the Ohio Public Records Act, R.C. 149.43 (the "Act").
2. Respondent City of Cleveland is a political subdivision in the State of Ohio and a "public office" within the meaning of the Act. R.C. 149.011(A).
3. This Court has jurisdiction based on Section 2 of Article IV, Ohio Constitution, which establishes original jurisdiction over petitions for writs of

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mandamus; R.C. 2731.02, *et seq.*, which are the code sections governing mandamus actions; and R.C. 149.43, which is the statute establishing the public's right to public documents.

4. Venue is appropriate in this Court under R.C. 2731.02 and R.C. 149.43(C).

RESPONDENTS DENIED RELATORS' RECORD REQUESTS

The September 9 Request

5. On September 9, 2020, Relator submitted an electronic request for records through the City of Cleveland's public records portal, requesting "all reports on use of force incidents between Jan. 1, 2019 and the date the record is generated." *See Affidavit of Cid Standifer*, attached as Exhibit A, at Exhibit 1.

6. On September 23, 2020, the City responded with a one-page document, containing summary numbers of the number of use of force incidents in 2019, and to date in 2020. *See Id.* at Exhibit 2.

7. Although the City's response was not responsive to Relator's request, the City closed the original request and marked it as complete. *See Id.* at Exhibit 1.

8. Relator Standifer sent the following response: "Hello. Please note that the document you have provided is not responsive to my query. I am requesting all individual reports for every instance of use of force from this time period." *See Id.* at Exhibit 1.

9. Relator Standifer exchanged emails with Sergeant Jennifer Ciaccia, in the Cleveland Division of Police Public Affairs office, who suggested that the September 9

request was "likely overbroad" because responsive documents were "close to 600 reports." *See Id.* at Exhibit 3.

10. Because Respondents objected to the number of documents, Relator Standifer re-issued her requests by individual month, in an attempt to narrow the temporal scope of each request. *See Id.*

11. In response, the City closed all of Relator's monthly requests, and re-opened her larger request, and denied it as "vague and overbroad." *See Id.* at Exhibit 1.

The October 29 Request

12. On October 29, 2020, Relator Standifer submitted an electronic request for records through the City of Cleveland's public records portal, requesting "all reports on use of force incidents that occurred on May 30 and June 1, 2020. Please note I am not requesting the number of incidents, but the reports produced by officers describing each individual incident." *See Id.* at Exhibit 5.

13. On November 16, 2020, the City denied the October 29 request, stating "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)." *See Id.*

The November 18 Request

14. On November 18, 2020, Relator Standifer submitted an electronic request for records through the City of Cleveland's public records portal for "all use of force reports filed in June 2019." See *Id.* at Exhibit 6.

15. On December 3 and December 10, 2020, the City produced records pursuant to Relator's November 18 Request. See *Id.* at Exhibit 6.

16. Upon information and belief, the City's response did not include all responsive records.

17. As part of the City's response to Relator's November 18 request, the City produced a spreadsheet entitled "UOF_June_2019.xlsx". One column of this spreadsheet is entitled "Inc.: File Number," with 60 entries for file numbers beginning with "UOF," e.g., "UOF-2019-0267." See *Id.* at Exhibit 7.

18. On December 11, Relators, through undersigned counsel, sent the City a letter regarding its deficient responses to the September 9, October 29, and November 18 Requests. See *Id.*

19. Attorney Geronimo's letter, *inter alia*, contested the City's denials of the September 9, October 29, and November 18 Requests, and sought to clarify the specific records:

According to the Cleveland Division of Police's Annual Use of Force Reports, officers fill out a specific form regarding use of force incidents, including the reason for use of force, the service being rendered, the extent of injuries, and other details. These details are critical to the public's understanding of the department's use of force in citizen interactions. The records the City produced in response to Cid's November 18 request

were not these reports, and I do not see how they are responsive to her request. In the event there is any misunderstanding, she is seeking the records created when completing the form appended in blank to the City's annual Use of Force Reports (a blank use of force report, as published by the City in its 2018 Annual Use of Force Report, is included along with this letter).

See Id. at Exhibit 9.

The December 10 Request

20. On December 10, Relator Standifer requested the files identified in the spreadsheet. I submitted an electronic request for records through the City of Cleveland's public records portal for "the files identified by the following numbers: UOF2019-0267, UOF2019-0268," etc., listing every individual file name. See Id.

21. On December 16, The City sent a request for clarification regarding my December 10 request, asking: "[a]re you looking for the Use of Force Reports for these or the investigative file?" See Id. at Exhibit 8.

22. Within an hour on December 16, Relator Standifer followed the City's instructions to reply, and sent the following message:

Hello. I am looking for the Use of Force Report that according to department regulations must be generated for every incidence of use of force, and must include details such as the reason for the use of force and whether the subject was injured. These reports would have been generated by the Blue Team report form, a screenshot of which is attached here. Please note the incident reports for these files do not constitute a response to this request.

See Id. at Exhibit 8.

23. Despite Relator Standifer's prompt response on December 16, on December 26, 2020, the City closed my December 10 Request without providing any

records, saying that "the records have been in Requested Clarification status for 10 days. The City of Cleveland considers this request closed." See *Id.* at Exhibit 8.

24. The City has not produced any records responsive to Relators' December 10 Request.

25. When the City sent its December 16 request for clarification, Attorney Geronimo had already described the records Relators were seeking in his December 11 letter to the City.

26. Upon information and belief, when the City sent its December 16 request for clarification, it had already received Attorney Geronimo's letter describing the records Relators were seeking.

RESPONDENTS' DENIALS VIOLATED OHIO'S PUBLIC RECORDS ACT, R.C. 149.43

27. All of Relators' requests specifically and narrowly described the requested records.

28. To the extent Respondent could not understand Relators' September 9, October 29, and November 18 Requests, Attorney Geronimo's December 11 Letter fully and accurately described the records referenced in those requests.

29. To the extent the December 12 Request was vague or ambiguous, Relator Standifer's December 16 response to the City's request for clarification accurately described the records referenced in that request.

30. The requested records are public records.

31. To date, Respondents have not provided the requested records.

32. Under the Act, a public office or person responsible for public records shall make copies of requested public records available to the requester within a reasonable period of time.

33. Relator requested copies of the records, but Respondents did not make copies of them available within a reasonable period of time.

34. Under the Act, 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.

35. Respondents' records are not organized and maintained in a way that allows them to be made available for inspection or copying as required by the Act.

36. Under the Act, 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.

37. Respondents did not transmit a copy of the requested records within a reasonable period of time after receiving Relator's request.

38. If a requester transmits a written request by electronic submission to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records, the requester is entitled to recover statutory damages if a court determines that the Respondent failed to comply with an obligation under R.C. 149.43(B).

39. Statutory damages are \$100 for each business day during which the Respondent fails to comply with an obligation under R.C. 149.43(B), beginning with the day on which the requester files a mandamus action, up to a maximum of \$1,000.

40. Respondents have failed to comply with their obligations under R.C. 149.43(B) as detailed above.

41. Relators respectfully request oral argument to the extent that it would aid the Court in its decision process, or if Relators can address any issues regarding the requested relief.

PRAYER FOR RELIEF

Relators request that this Court:

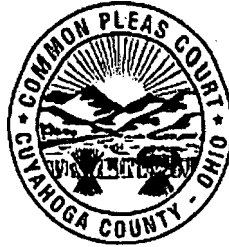
- I. Issue a preemptory writ of mandamus directing Respondents to make public records responsive to Relators' requests available promptly and without improper redactions;
- II. Order that Respondents pay statutory damages and costs to Relators; and
- III. Order any other appropriate relief, including relief available under R.C. 149.43 and R.C. 2731.01 *et seq.*

Dated: December 31, 2020

Respectfully Submitted,

/s/ Andrew C. Geronimo

Andrew C. Geronimo (#0086630)
FIRST AMENDMENT CLINIC
CASE WESTERN RESERVE UNIVERSITY
SCHOOL OF LAW
11075 East Blvd.
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andrew.geronimo@case.edu
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Attorney for Relators



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Appeals

**New Case Electronically Filed: ORIGINAL ACTION (WRIT)
December 31, 2020 13:47**

By: ANDREW GERONIMO 0086630

Confirmation Nbr. 2147057

CID STANDIFER, ET AL.

CA 20 110200

vs.

CITY OF CLEVELAND

Judge:

Pages Filed: 8



CV-4201-PLDG-201230-Standifer Affidavit Supporting Complaint w Exhibits.pdf

DocVerify ID: 68758E5E-0164-4A17-9BEF-43483451BC2B

Created: December 31, 2020 07:48:24 -8:00

Pages: 101

CA 20 110200

Remote Notary: Yes / State: OH

Judge:

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E-Signature Summary

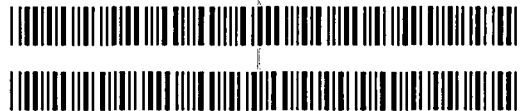
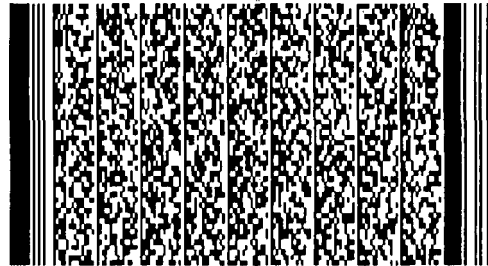
Signer 1: Lauren Marie Standifer (LMS)

December 31, 2020 08:31:49 -8:00 [E1F66D3EF15A] [65.185.103.164]
cid.standifer@gmail.com

E-Signature Notary: Andrew S. Pollis (asp)

December 31, 2020 08:31:49 -8:00 [F5A368688681] [173.91.53.126]
andrew.pollis@case.edu

I, Andrew S. Pollis, did witness the participants named above electronically sign this document.



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IN THE EIGHTH DISTRICT COURT OF APPEALS
CUYAHOGA COUNTY, OHIO

LAUREN 'CID' STANDIFER, et al.,

Relators,

v.

THE CITY OF CLEVELAND, et al.,

Respondents.

Case No. _____

AFFIDAVIT OF LAUREN 'CID' STANDIFER

STATE OF OHIO

)

) SS. AFFIDAVIT OF LAUREN 'CID' STANDIFER

COUNTY OF CUYAHOGA

)

Lauren 'Cid' Standifer, having been duly sworn, states as follows:

1. I am over the age of 18 and competent to testify to the facts below based on personal knowledge.
2. I am a journalist who publishes investigative news stories, including stories in the *Cleveland Scene*.
3. On September 9, 2020, I submitted an electronic request for records through the City of Cleveland's public records portal for "all reports on use of force incidents between Jan. 1, 2019 and the date the record is generated." A true and accurate copy of the September 9 Request, identified by the City of Cleveland as #P015935-090920, is attached as Exhibit 1.

EXHIBIT

A

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4. On September 23, 2020, the City responded with a one-page document, containing summary numbers of the number of reports in 2019, and to date in 2020, (See Exhibit 2), and closed my September 9 request as complete.
5. Later on September 23, 2020, I sent the following response: "Hello. Please note that the document you have provided is not responsive to my query. I am requesting all individual reports for every instance of use of force from this time period." See Exhibit 1.
6. Following my requests, I exchanged emails with Sergeant Jennifer Ciaccia, in the Cleveland Division of Police Public Affairs office, who told me on October 5, 2020 that "If your request is for close to 600 reports, it's likely overbroad." A true and accurate copy of my email exchange with Sergeant Ciaccia is attached as Exhibit 3.
7. Because Respondents objected to the number of documents, I re-issued my requests by individual month, in an attempt to narrow the temporal scope of each request. See Exhibit 3.
8. I withdrew my month-by-month requests (See Exhibit 4) at the City's request, in return for an agreement to seek responsive documents to the September 9 request.
9. On October 13, 2020, the City denied my September 9 Request as "vague and overbroad." See Exhibit 1.
10. On October 29, 2020, I submitted an electronic request for records through the City of Cleveland's public records portal, requesting "all reports on use of force



incidents that occurred on May 30 and June 1, 2020. Please note I am not requesting the number of incidents, but the reports produced by officers describing each individual incident." A true and accurate copy of the October 9 Request, identified by the City of Cleveland as #P020398-102920, is attached as Exhibit 5.

11. On November 16, 2020, the City denied my October 29 Request, stating "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)." See Exhibit 5.
12. Other than the summary report at Exhibit 2, the City has not produced any records responsive to my September 9 Request or my October 29 Request.
13. On November 18, 2020, I submitted an electronic request for records through the City of Cleveland's public records portal for "all use of force reports filed in June 2019." A true and accurate copy of the November 18 Request, identified by the City of Cleveland as #P021938-111820, is attached as Exhibit 6.
14. On December 3 and December 10, 2020, the City produced records pursuant to my November 18 Request. Upon information and belief, the City's response did not include all responsive records.
15. As part of the City's response to my November 18 request, the City produced a spreadsheet entitled "UOF_June_2019.xlsx". One column of this spreadsheet is entitled "Inc.: File Number," and the data lists 60 entries with file names beginning with "UOF," e.g., "UOF-2019-0267." A true and accurate copy of this



spreadsheet (converted to PDF for demonstrative purposes) is attached as Exhibit 7.

16. On December 10, I requested the files identified in the spreadsheet. I submitted an electronic request for records through the City of Cleveland's public records portal for "the files identified by the following numbers: UOF2019-0267, UOF2019-0268," etc. A true and accurate copy of the December 10 Request, identified by the City of Cleveland as #P023565-121020, is attached as Exhibit 8.
17. On December 11, my attorney, Andrew Geronimo, sent the City a letter regarding its deficient responses to my September 9, October 29, and November 18 Requests. A true and accurate copy of this letter is attached as Exhibit 9.
18. Attorney Geronimo's letter contested the denials, and provided the following information about the substance of my September 9, October 29, and November 18 requests:

According to the Cleveland Division of Police's Annual Use of Force Reports, officers fill out a specific form regarding use of force incidents, including the reason for use of force, the service being rendered, the extent of injuries, and other details. These details are critical to the public's understanding of the department's use of force in citizen interactions. The records the City produced in response to Cid's November 18 request were not these reports, and I do not see how they are responsive to her request. In the event there is any misunderstanding, she is seeking the records created when completing the form appended in blank to the City's annual Use of Force Reports (a blank use of force report, as published by the City in its 2018 Annual Use of Force Report, is included along with this letter).

See Exhibit 9.



19. On December 16, The City sent a request for clarification regarding my December 10 request, asking: “[a]re you looking for the Use of Force Reports for these or the investigative file?” See Exhibit 8.

20. Within an hour on December 16, I followed the City’s instructions to reply, and sent the following message:

Hello. I am looking for the Use of Force Report that according to department regulations must be generated for every incidence of use of force, and must include details such as the reason for the use of force and whether the subject was injured. These reports would have been generated by the Blue Team report form, a screenshot of which is attached here. Please note the incident reports for these files do not constitute a response to this request.

See Exhibit 8.

21. When the City sent its December 16 request for clarification, Attorney Geronimo had already described the records I was seeking in his December 11 letter to the City.

22. Despite my prompt response on December 16, on December 26, 2020, the City closed my December 10 Request without providing any records, saying that “the records have been in Requested Clarification status for 10 days. The City of Cleveland considers this request closed.” See Exhibit 8.

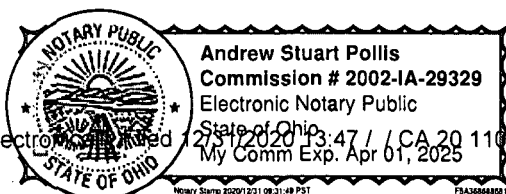
23. The City has not produced any records responsive to my December 10 Request.

FURTHER AFFIANT SAYETH NAUGHT.

Lauren Marie Standifer
Signed on 2020/12/31 08:31:49 -8:00

Lauren ‘Cid’ Standifer

SWORN TO BEFORE ME and subscribed in my presence this ___ day of 12/31/2020
2020.



Notary Andrew S Pollis
Signed on 2020/12/31 08:31:49 -8:00

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EXHIBITS

1. September 9 Request & Denial
2. CPD Production Summary
3. Communications with CPD re:
Requests
4. Closed Monthly Requests
5. October 29 Request & Denial
6. November 18 Request & Denial
7. "UOF" Spreadsheet
8. December 8 Request &
Clarification & Closed
9. Geronimo Letter to Cleveland
Law Department



P015935-090920 - Public Safety - Public Records Request

Message History (5)

On 10/13/2020 1:23:11 AM, Cleveland Public Records Center wrote:

Subject: [Cleveland Public Records Center] Public Safety - Public Records Request :: P015935-090920
Body:

RE: PUBLIC RECORDS REQUEST of Reference # P015935-090920

Dear Cid Standifer,

The City of Cleveland received a public record request from you on **September 09, 2020**. You requested the following:

“Hello. I am requesting all reports on use of force incidents between Jan. 1, 2019 and the date the record is generated.

Very respectfully,

**Cid Standifer
216.538.3696”**

The City of Cleveland is not required to do a file-by-file review from 2019 to the present to produce what is a complete duplication of it's use of force reports during the period requested. As such the request is both vague and overly broad (State ex rel. Dillery v. Icsman(2001), 92 Ohio St.3d 312, 314-315 and State ex rel. Glasgow v. Jones,2008, 119 Ohio St. 3d 391).

You may submit a much more specific and limited public records request.

Sincerely,

City of Cleveland - Public Records



CITY OF CLEVELAND
Mayor Frank G. Jackson

On 9/23/2020 12:21:25 PM, Cid Standifer wrote:

Hello. Please note that the document you have provided is not responsive to my query. I am requesting all individual reports for every instance of use of force from this time period.

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EXHIBIT

1

Page 1

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☑ On 9/23/2020 11:55:49 AM, Cleveland Public Records Center wrote:

Subject: [Cleveland Public Records Center] Public Safety - Public Records Request :: P015935-090920
Body: RE: PUBLIC RECORDS REQUEST of September 09, 2020, Reference #P015935-090920.

Dear Cid Standifer,

The City of Cleveland received a public record request from you on September 09, 2020. You requested the following:

“Hello. I am requesting all reports on use of force incidents between Jan. 1, 2019 and the date the record is generated.

Very respectfully,

Cid Standifer
216.538.3696”

The City has reviewed its files and has located responsive records to your request. Please log in to the Cleveland Public Records Center at the following link [Cleveland Public Records Center](#) to retrieve the appropriate responsive documents.

Please note:

- Please make sure that you allow pop-ups from this site in order to view/download records.
- Records may be viewed/downloaded up to 3 times.
- You have up to 30 days to view/download records.

Public Safety - Public Records Request - P015935-090920

For the City Owned Street Surveillance Cameras, get the player and instructions [here](#).

If responsive materials include video please note:

*Photographs of peace officers whose duties may include undercover or plain clothes positions or assignments are exempt from release under O.R.C. §149.43 (A)(7)(g) and can only be released with the prior written approval of the applicable peace officer.

*Motor vehicle/driver record information (including driver's license numbers, license plate numbers, VIN numbers, and the entirety of a driver's license including photos) pursuant to 18 U.S.C. 7521, et seq. (Driver's Privacy Protection Act)

If you have any questions, or wish to discuss this further, you can reply to this email, go to the [Cleveland Public Records Center](#) and Send a New Message.

Sincerely,

City of Cleveland Public Records

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Page 2





CITY OF CLEVELAND
 Mayor Frank G. Jackson

☐ On 9/9/2020 10:38:47 AM, Cleveland Public Records Center wrote:



Dear Cid Standifer,

Thank you for your interest in public records of the City of Cleveland. Your request has been received and is being processed in accordance with the Ohio Sunshine Laws. Your request was received in this office on 9/9/2020 and has been given the reference number P015935-090920 for tracking purposes.

Records Requested: Hello. I am requesting all reports on use of force incidents between Jan. 1, 2019 and the date the record is generated.

Very respectfully,

Cid Standifer
216.538.3696

Your request will be forwarded to the relevant city department(s) to locate the information you seek and to determine the volume and any costs associated with satisfying your request. You will be contacted about the availability and/or provided with copies of the records in question. **PLEASE NOTE:** The public records law does not require a governmental body to create new information, to do legal research, or to answer questions.

You can monitor the progress of your request at the link below and you will receive an email when your

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request has been completed. Again, thank you for using the Cleveland Public Records Center.

City of Cleveland - Public Records



To monitor the progress or update this request please log into the Cleveland Public Records Center.

On 9/9/2020 10:38:39 AM, Cid Standifer wrote:

Request was created by customer

68758E5E-0164-4A17-9BEF-43483451BC2B --- 2020/12/31 07:46:24 -8:00 --- Remote Notary

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Page 4



Year	Use of Force Totals
2019	342
2020*	191
*2020 Total as of September 14, 2020	

EXHIBIT
2

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Cid Standifer <cid.standifer@gmail.com>

Public records request problem

8 messages

Cid Standifer <cid.standifer@gmail.com>
To: "Ciaccia, Jennifer" <jciaccia2@city.cleveland.oh.us>

Fri, Sep 25, 2020 at 1:59 PM

Hello Ms. Ciaccia,

About two weeks ago, I submitted a request through the public records portal for all the department's use of force reports for 2019 and 2020 YTD. A couple days ago, I got a file through the records request that just had topline use of force numbers for 2019 and 2020 YTD, not the actual reports, and now the request is marked as complete. I sent a response through the portal noting that the document provided wasn't responsive to my request, but I wanted to make sure you were aware of the problem as well. Let me know if you have any questions.

V/r

Cid Standifer
216.538.3696

On Mon, Aug 31, 2020 at 3:18 PM Cid Standifer <cid.standifer@gmail.com> wrote:

Hello Jennifer. I wanted to make sure you saw the questions below. (I sent them pretty late in the evening, so they may have gotten buried.) Can you give a timeline for when you expect a reply? I also haven't gotten responses to my records request for names associated with units, my request for codes in the "call description" field of the CAD database, or the info I requested on the 2017 standoff. Do you have an ETA on those?

Many thanks!

Cid Standifer
216.538.3696

On Wed, Aug 26, 2020 at 10:12 PM Cid Standifer <cid.standifer@gmail.com> wrote:

Hello! I hope you're doing well. I'm working on a story about how often Cleveland police draw their firearms and how often they point them at people. I've put in some records requests, but I was hoping you could help answer some of my questions.

- My analysis of CAD data showed that officers in District 5 were about twice as likely to draw their weapons on any given call than the citywide average (0.9% of calls vs. 0.42% of calls respectively). This disparity holds true for many specific call types. For example, District 5 officers unholstered their firearms on 16% of calls labeled "PLACE ENTERED - SUSP ON SCENE," compared to a citywide average of 7.6%. Does the department have any idea why this disparity exists, and are you concerned about it?
• In particular, I found that police drew their weapons most often when responding to a "PLACE ENTERED- SUSP ON SCENE" call. Is there a policy encouraging police to have weapons ready on such calls? Is there a reason they would believe there is a high chance of being attacked on such calls?
• Can you explain how "PLACE ENTERED - SUSP ON SCENE" calls are different from calls labeled "BURGLARY/HOME INVASION"? I only see one of the latter in the data. Was that an error?
• Looking at the most recent Use of Force report available on the department's website, police reported 78 use of force incidents in 2019 where the level of subject resistance was labeled as "No resistance." However, the department's policy regarding use of force says use of force must be "proportional to the level of resistance." Does this mean the officers involved violated department policy in those 78 cases? If so, what steps has the department taken to halt these incidents?

Please let me know if you need any clarification on any of these questions. I also wanted to give you a heads-up that I have a request in through the public records portal for the officers associated with cars/units listed in the CAD data. That request is under my cstandifer@plains.com account, though that email address is now defunct. I also have a new request filed under my current email address cid.standifer@gmail.com.

Very respectfully,

Electronically Filed 12/31/2020 13:47 / / CA 20 110200 / Confirmation Nbr. 2147057 / CLCEJ

Cid Standifer

EXHIBIT
3

68758E5E-0164-4A17-9BEF-43483451BC2B ... 2020/12/31 07:46:24 -8:00 ... Remote Notary



216.538.3696

Ciaccia, Jennifer <JCiaccia2@city.cleveland.oh.us>
To: Cid Standifer <cid.standifer@gmail.com>

Fri, Sep 25, 2020 at 2:02 PM

Ok. Let me know if you get the response you need. I probably won't be able to look into it until after the debate.

Sergeant Jennifer Ciaccia
Senior Public Information Officer
City of Cleveland, Department of Public Safety

On Sep 25, 2020, at 1:59 PM, Cid Standifer <cid.standifer@gmail.com> wrote:

CAUTION: This email originated from outside of the City of Cleveland. Do not click on links or open attachments unless you recognize the sender and know that the content is safe. If you believe that this email is suspicious, please forward to phishing@clevelandohio.gov.

[Quoted text hidden]

Cid Standifer <cid.standifer@gmail.com>
To: "Ciaccia, Jennifer" <JCiaccia2@city.cleveland.oh.us>

Fri, Sep 25, 2020 at 2:09 PM

Understood. Thanks!
[Quoted text hidden]

Cid Standifer <cid.standifer@gmail.com>
To: "Ciaccia, Jennifer" <JCiaccia2@city.cleveland.oh.us>

Thu, Oct 1, 2020 at 5:01 PM

Hi Jennifer. I wanted to circle back around on this now that the debate is over. I still haven't received a reply through the public records portal. Let me know if you need any additional information about my request.

V/r

Cid Standifer
[Quoted text hidden]

Cid Standifer <cid.standifer@gmail.com>
To: "Ciaccia, Jennifer" <JCiaccia2@city.cleveland.oh.us>

Mon, Oct 5, 2020 at 1:45 PM

Hello Jennifer. I hope you had a great weekend. I wanted to check up on my request for use of force reports from 2019 and 2020 YTD. Have you had a chance to look into it? Should I send an official request via certified mail? I'd like to get this wrapped up for Cleveland Scene this week. If you can give me an ETA on these records I can work on renegotiating the deadline.

V/r

Cid Standifer
216.538.3696
[Quoted text hidden]

Ciaccia, Jennifer <JCiaccia2@city.cleveland.oh.us>
To: Cid Standifer <cid.standifer@gmail.com>

Mon, Oct 5, 2020 at 2:36 PM

I see that you received data but not the reports. If your request is for close to 600 reports, it's likely overbroad.

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Sergeant Jennifer Ciaccia #9176

Cleveland Division of Police, Public Affairs

Office of the Chief


Office: 216-623-5033

Cell: 216-857-1394

Jciaccia2@city.cleveland.oh.us

Submit public records requests via:

https://clevelandoh.govqa.us/WEBAPP/_rs/(S(b5bm1dcl5svsk5xehkevmzlw))/BusinessDisplay.aspx?sSessionID=&did=92&cat=0



On July 3, 2020, Mayor Frank G. Jackson signed an order **mandating the use of masks in public spaces** in the City of Cleveland.

Individuals and businesses that do not comply are subject to penalties.

#MaskUpCLE
@ f v

[Quoted text hidden]

Cid Standifer <cid.standifer@gmail.com>
To: "Ciaccia, Jennifer" <Jciaccia2@city.cleveland.oh.us>

Mon, Oct 5, 2020 at 2:55 PM

I can split it into multiple requests, if that would help, but ultimately I'm going to end up asking for all the use of force reports, so that seems inefficient.

The Ohio auditor's sunshine manual defines "overly broad" as a request "so inclusive that the public office is unable to identify the records sought based on the manner in which the office routinely organizes and accesses records." Is there any reason your office wouldn't be able to identify all the use of force reports it has for 2019 and 2020? Are they filed in some way that makes it difficult to just download batches of them?

A few years ago I received almost 5,000 wage theft reports covering five years from the Ohio Department of Commerce, so I don't think the courts would sustain that 600 records are "overly broad."

If the department won't fulfill the request, I'll have to send the request certified mail so Scene can recover legal fees. Is there a specific department or person I should address it to?

Many thanks,

Cid Standifer
[Quoted text hidden]

Ciaccia, Jennifer <Jciaccia2@city.cleveland.oh.us>
To: Cid Standifer <cid.standifer@gmail.com>

Mon, Oct 5, 2020 at 3:13 PM

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I will let you know what is determined by public records in the next couple of days.

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And I am not sure who that letter would go to but I'd assume the law department. I'll reach out when I know more.

[Quoted text hidden]

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Cleveland Public Records Center

Public Safety - Public Records Request about a month ago

P018213-100520

Hello. I am requesting all reports on use of force incidents between February 1 and February 29, 2020. Please note I am not requesting the number of incidents, but the reports produced by officers describing each individual incident. Very respectfully, Cld Standifer 216.538.3696

Status: Withdrawn

 Cld Standifer




Details

Public Safety - Public Records Request about a month ago

P018212-100520

Hello. I am requesting all reports on use of force incidents between March 1 and March 31, 2020. Please note I am not requesting the number of incidents, but the reports produced by officers describing each individual incident. Very respectfully, Cld Standifer 216.538.3696

Status: Withdrawn

 Cld Standifer




Details

Public Safety - Public Records Request about a month ago

P018211-100520

Hello. I am requesting all reports on use of force incidents between April 1 and April 30, 2020. Please note I am not requesting the number of incidents, but the reports produced by officers describing each individual incident. Very respectfully, Cld Standifer 216.538.3696

Status: Withdrawn

 Cld Standifer



Details

Public Safety - Public Records Request about a month ago

P018210-100520

Hello. I am requesting all reports on use of force incidents between May 1 and May 31, 2020. Please note I am not requesting the number of incidents, but the reports produced by officers describing each individual incident. Very respectfully, Cld Standifer 216.538.3696

Status: Withdrawn

 Cld Standifer



EXHIBIT

4

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P020398-102920 - Public Safety - Public Records Request

Message History (3)

On 11/16/2020 7:59:18 AM, Cleveland Public Records Center wrote:

Subject: [Cleveland Public Records Center] Public Safety - Public Records Request :: P020398-102920

Body:

RE: PUBLIC RECORDS REQUEST of Reference # P020398-102920

Dear Cid Standifer,

The City of Cleveland received a public record request from you on **October 29, 2020**. You requested the following:

“Hello. I am requesting all reports on use of force incidents that occurred on May 30 and June 1, 2020. Please note I am not requesting the number of incidents, but the reports produced by officers describing each individual incident.

Very respectfully,
Cid Standifer
216.538.3696”

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).

If you have any questions, or wish to discuss this further, you can reply to this email or go to the [Cleveland Public Records Center](#) and Send a New Message.

Sincerely,

City of Cleveland - Public Records



CITY OF CLEVELAND
Mayor Frank G. Jackson

On 10/29/2020 3:47:08 PM, Cleveland Public Records Center wrote:



EXHIBIT

5

Page 1

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Dear Cid Standifer,

Thank you for your interest in public records of the City of Cleveland. Your request has been received and is being processed in accordance with the Ohio Sunshine Laws. Your request was received in this office on 10/29/2020 and has been given the reference number P020398-102920 for tracking purposes.

Records Requested: **Hello. I am requesting all reports on use of force incidents that occurred on May 30 and June 1, 2020. Please note I am not requesting the number of incidents, but the reports produced by officers describing each individual incident.**

Very respectfully,
Cid Standifer
216.538.3696

Your request will be forwarded to the relevant city department(s) to locate the information you seek and to determine the volume and any costs associated with satisfying your request. You will be contacted about the availability and/or provided with copies of the records in question. **PLEASE NOTE:** The public records law does not require a governmental body to create new information, to do legal research, or to answer questions.

You can monitor the progress of your request at the link below and you will receive an email when your request has been completed. Again, thank you for using the Cleveland Public Records Center.

City of Cleveland - Public Records



To monitor the progress or update this request please log into the Cleveland Public Records Center.

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Page 2



On 10/29/2020 3:47:04 PM, Cid Standifer wrote:

Request was created by customer

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Page 3



P021938-111820 - Public Safety - Public Records Request

Message History (3)

✉ On 12/3/2020 7:33:10 AM, Cleveland Public Records Center wrote:

Subject: [Cleveland Public Records Center] Public Safety - Public Records Request :: P021938-111820
Body:

RE: PUBLIC RECORDS REQUEST of November 18, 2020, Reference #P021938-111820.

Dear Cid Standifer,

The City of Cleveland received a public record request from you on November 18, 2020. You requested the following:

“Hello. I am requesting all use of force reports filed in June 2019. Thank you.”

The City Of Cleveland - Division Of Police has reviewed its files and has located a portion of the responsive records to your request. Please log in to the [Cleveland Public Records Center](#) at the following link to retrieve the appropriate responsive documents. The City will continue to gather any additional records and you will be notified via email when records are complete.

Public Safety - Public Records Request - P021938-111820

Please note:

- Please make sure that any pop-up blockers are turned off in order to view/download records.
- Records may be viewed/downloaded up to 3 times.
- You have up to 30 days to view/download records.

If you have any questions, or wish to discuss this further, you can reply to this email or go to Cleveland Public Records Center and send a new message.

Sincerely,

City of Cleveland Police Public Records



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☑ On 11/18/2020 12:12:06 PM, Cleveland Public Records Center wrote:



Dear Cid Standifer,

Thank you for your interest in public records of the City of Cleveland. Your request has been received and is being processed in accordance with the Ohio Sunshine Laws. Your request was received in this office on 11/18/2020 and has been given the reference number P021938-111820 for tracking purposes.

Records Requested: **Hello. I am requesting all use of force reports filed in June 2019. Thank you.**

Your request will be forwarded to the relevant city department(s) to locate the information you seek and to determine the volume and any costs associated with satisfying your request. You will be contacted about the availability and/or provided with copies of the records in question. **PLEASE NOTE:** The public records law does not require a governmental body to create new information, to do legal research, or to answer questions.

You can monitor the progress of your request at the link below and you will receive an email when your request has been completed. Again, thank you for using the [Cleveland Public Records Center](#).

City of Cleveland - Public Records



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Page 2

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To monitor the progress or update this request please log into the [Cleveland Public Records Center](#).

On 11/18/2020 12:12:05 PM, Cid Standifer wrote:

Request was created by customer

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Inc: Incident type	Inc: File Number	Inc: Incident Number	Inc: Occurred date
Use of force	UOF2019-0267	2019-156272	6/1/2019
Use of force	UOF2019-0268	2019-156272	6/1/2019
Use of force	UOF2019-0223	2019-159018	6/3/2019
Use of force	UOF2019-0315	2019-161563	6/6/2019
Use of force	UOF2019-0269	2019-166797	6/10/2019
Use of force	UOF2019-0177	2019-166810	6/10/2019
Use of force	UOF2019-0229	2019-166813	6/10/2019
Use of force	UOF2019-0411	2019-170225	6/13/2019
Use of force	UOF2019-0496	2019-170225	6/13/2019
Use of force	UOF2019-0328	2019-170225	6/13/2019
Use of force	UOF2019-0329	2019-170225	6/13/2019
Use of force	UOF2019-0222	2019-171026	6/14/2019
Use of force	UOF2019-0221	2019-172085	6/14/2019
Use of force	UOF2019-0220	2019-172085	6/14/2019
Use of force	UOF2019-0219	2019-172364	6/15/2019
Use of force	UOF2019-0218	2019-172364	6/15/2019
Use of force	UOF2019-0233	2019-172900	6/15/2019
Use of force	UOF2019-0217	2019-174434	6/17/2019
Use of force	UOF2019-0216	2019-174434	6/17/2019
Use of force	UOF2019-0215	2019-174443	6/17/2019
Use of force	UOF2019-0181	2019-174706	6/17/2019
Use of force	UOF2019-0249	2019-175095	6/17/2019
Use of force	UOF2019-0250	2019-175095	6/17/2019
Use of force	UOF2019-0251	2019-175095	6/17/2019
Use of force	UOF2019-0244	2019-175056	6/17/2019
Use of force	UOF2019-0289	2019-175386	6/17/2019
Use of force	UOF2019-0252	2019-175095	6/17/2019
Use of force	UOF2019-0428	2019-175056	6/17/2019
Use of force	UOF2019-0429	2019-175056	6/17/2019
Use of force	UOF2019-0253	2019-175904	6/18/2019
Use of force	UOF2019-0379	2019-175904	6/18/2019
Use of force	UOF2019-0262	2019-177155	6/19/2019
Use of force	UOF2019-0326	2019-178525	6/20/2019
Use of force	UOF2019-0334	2019-178525	6/20/2019
Use of force	UOF2019-0450	2019-178525	6/20/2019
Use of force	UOF2019-0236	2019-180472	6/21/2019
Use of force	UOF2019-0235	2019-180472	6/21/2019
Use of force	UOF2019-0245	2019-180637	6/22/2019
Use of force	UOF2019-0272	2019-180637	6/22/2019
Use of force	UOF2019-0460	2019-181451	6/22/2019
Use of force	UOF2019-0622	2019-181451	6/22/2019
Use of force	UOF2019-0175	2019-181766	6/23/2019
Use of force	UOF2019-0174	2019-181766	6/23/2019

EXHIBIT
7

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Use of force	UOF2019-0311	2019-182261	6/23/2019
Use of force	UOF2019-0377	2019-182261	6/23/2019
Use of force	UOF2019-0208	2019-181992	6/23/2019
Use of force	UOF2019-0273	2019-183522	6/24/2019
Use of force	UOF2019-0214	2019-184300	6/25/2019
Use of force	UOF2019-0213	2019-184300	6/25/2019
Use of force	UOF2019-0212	2019-184300	6/25/2019
Use of force	UOF2019-0274	2019-184296	6/25/2019
Use of force	UOF2019-0275	2019-184296	6/25/2019
Use of force	UOF2019-0211	2019-184300	6/25/2019
Use of force	UOF2019-0210	2019-184296	6/25/2019
Use of force	UOF2019-0209	2019-184296	6/25/2019
Use of force	UOF2019-0341	2019-186972	6/27/2019
Use of force	UOF2019-0352	2019-188056	6/28/2019
Use of force	UOF2019-0316	2019-190687	6/30/2019
Use of force	UOF2019-0317	2019-190687	6/30/2019
Use of force	UOF2019-0207	2019-191380	6/30/2019

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P023565-121020 - Public Safety - Public Records Request

Message History (5)

✉ On 12/26/2020 12:03:28 PM, Cleveland Public Records Center wrote:

Subject: [Cleveland Public Records Center] Public Safety - Public Records Request :: P023565-121020

Body:

Dear Cid Standifer,

In regards to the Public Safety - Public Records Request received on 12/10/2020 requesting records, the records have been in "**Requested Clarification**" status for 10 days. The City of Cleveland considers this request closed. If you would still like the records, please submit another Public Safety - Public Records Request. Thank you for using the Cleveland Public Records Center.

Request Details:

Reference # P023565-121020

Description of Records Requested: Hello. I am requesting the files identified by the following numbers:

- UOF2019-0267
- UOF2019-0268
- UOF2019-0223
- UOF2019-0315
- UOF2019-0269
- UOF2019-0177
- UOF2019-0229
- UOF2019-0411
- UOF2019-0496
- UOF2019-0328
- UOF2019-0329
- UOF2019-0222
- UOF2019-0221
- UOF2019-0220
- UOF2019-0219
- UOF2019-0218
- UOF2019-0233

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EXHIBIT

8

Page 1



UOF2019-0217
UOF2019-0216
UOF2019-0215
UOF2019-0181
UOF2019-0249
UOF2019-0250
UOF2019-0251
UOF2019-0244
UOF2019-0289
UOF2019-0252
UOF2019-0428
UOF2019-0429
UOF2019-0253
UOF2019-0379
UOF2019-0262
UOF2019-0326
UOF2019-0334
UOF2019-0450
UOF2019-0236
UOF2019-0235
UOF2019-0245
UOF2019-0272
UOF2019-0460
UOF2019-0622
UOF2019-0175
UOF2019-0174
UOF2019-0311
UOF2019-0377
UOF2019-0208
UOF2019-0273
UOF2019-0214
UOF2019-0213
UOF2019-0212
UOF2019-0274
UOF2019-0275
UOF2019-0211
UOF2019-0210
UOF2019-0209
UOF2019-0341
UOF2019-0352
UOF2019-0316
UOF2019-0317
UOF2019-0207

Thank you.

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Cid Standifer
216.538.3696

To view the full details of this request please log into the [Cleveland Public Records Center](#).

↩ On 12/16/2020 12:59:23 PM, Cid Standifer wrote:

Hello. I am looking for the Use of Force Report that according to department regulations must be generated for every incidence of use of force, and must include details such as the reason for the use of force and whether the subject was injured. These reports would have been generated by the Blue Team report form, a screen shot of which is attached here. Please note the incident reports for these files do not constitute a response to this request.

Thank you.

Cid Standifer
216.538.3696

✉ On 12/16/2020 12:02:18 PM, Cleveland Public Records Center wrote:

Subject: [Cleveland Public Records Center] Public Safety - Public Records Request :: P023565-121020
Body: PUBLIC RECORDS REQUEST of December 10, 2020, Reference #P023565-121020

Dear Cid Standifer,

The City of Cleveland received a public record request from you on December 10, 2020. You requested the following:

“Hello. I am requesting the files identified by the following numbers:

UOF2019-0267
UOF2019-0268
UOF2019-0223
UOF2019-0315
UOF2019-0269
UOF2019-0177
UOF2019-0229
UOF2019-0411
UOF2019-0496
UOF2019-0328
UOF2019-0329
UOF2019-0222

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Page 3



UOF2019-0221
UOF2019-0220
UOF2019-0219
UOF2019-0218
UOF2019-0233
UOF2019-0217
UOF2019-0216
UOF2019-0215
UOF2019-0181
UOF2019-0249
UOF2019-0250
UOF2019-0251
UOF2019-0244
UOF2019-0289
UOF2019-0252
UOF2019-0428
UOF2019-0429
UOF2019-0253
UOF2019-0379
UOF2019-0262
UOF2019-0326
UOF2019-0334
UOF2019-0450
UOF2019-0236
UOF2019-0235
UOF2019-0245
UOF2019-0272
UOF2019-0460
UOF2019-0622
UOF2019-0175
UOF2019-0174
UOF2019-0311
UOF2019-0377
UOF2019-0208
UOF2019-0273
UOF2019-0214
UOF2019-0213
UOF2019-0212
UOF2019-0274
UOF2019-0275
UOF2019-0211
UOF2019-0210
UOF2019-0209
UOF2019-0341
UOF2019-0352
UOF2019-0316

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UOF2019-0317
UOF2019-0207

Thank you.

Cid Standifer
216.538.3696”

This letter seeks to clarify your request.

Are you looking for the Use of Force reports for these or the investigative file?

You may provide a response to the City by any of the following methods:

1. Reply to this electronic mail
2. Access the Cleveland Public Records Center
3. Regular mail to City of Cleveland, Law Department, 601 Lakeside Ave., Room 106, Cleveland, OH 44114
4. Visit us at City Hall 601 Lakeside Ave., Room 106, Cleveland, OH 44114

Upon receipt of your clarification, the City will further respond to your public record request as required by law.

If you have any questions, please reply to this email.

Thank you for your attention.

Sincerely,

City of Cleveland Public Records



CITY OF CLEVELAND
Mayor Frank G. Jackson

On 12/10/2020 12:24:24 PM, Cleveland Public Records Center wrote:

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Page 5





Dear Cid Standifer,

Thank you for your interest in public records of the City of Cleveland. Your request has been received and is being processed in accordance with the Ohio Sunshine Laws. Your request was received in this office on 12/10/2020 and has been given the reference number P023565-121020 for tracking purposes.

Records Requested: **Hello. I am requesting the files identified by the following numbers:**

UOF2019-0267
UOF2019-0268
UOF2019-0223
UOF2019-0315
UOF2019-0269
UOF2019-0177
UOF2019-0229
UOF2019-0411
UOF2019-0496
UOF2019-0328
UOF2019-0329
UOF2019-0222
UOF2019-0221
UOF2019-0220
UOF2019-0219
UOF2019-0218
UOF2019-0233
UOF2019-0217
UOF2019-0216
UOF2019-0215
UOF2019-0181
UOF2019-0249
UOF2019-0250
UOF2019-0251
UOF2019-0244

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Page 6



UOF2019-0289
UOF2019-0252
UOF2019-0428
UOF2019-0429
UOF2019-0253
UOF2019-0379
UOF2019-0262
UOF2019-0326
UOF2019-0334
UOF2019-0450
UOF2019-0236
UOF2019-0235
UOF2019-0245
UOF2019-0272
UOF2019-0460
UOF2019-0622
UOF2019-0175
UOF2019-0174
UOF2019-0311
UOF2019-0377
UOF2019-0208
UOF2019-0273
UOF2019-0214
UOF2019-0213
UOF2019-0212
UOF2019-0274
UOF2019-0275
UOF2019-0211
UOF2019-0210
UOF2019-0209
UOF2019-0341
UOF2019-0352
UOF2019-0316
UOF2019-0317
UOF2019-0207

Thank you.

Cid Standifer
216.538.3696

Your request will be forwarded to the relevant city department(s) to locate the information you seek and to determine the volume and any costs associated with satisfying your request. You will be contacted about the

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availability and/or provided with copies of the records in question. **PLEASE NOTE:** The public records law does not require a governmental body to create new information, to do legal research, or to answer questions.

You can monitor the progress of your request at the link below and you will receive an email when your request has been completed. Again, thank you for using the Cleveland Public Records Center.

City of Cleveland - Public Records



To monitor the progress or update this request please log into the Cleveland Public Records Center.

On 12/10/2020 12:24:22 PM, Cid Standifer wrote:

Request was created by customer

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Page 8





SCHOOL OF LAW

CASE WESTERN RESERVE
UNIVERSITY

Andrew Geronimo

Director, First Amendment Clinic

Milton A. Kramer Law Clinic Center

11075 East Blvd
Cleveland, Ohio 44106

216-368-6855

andrew.geronimo@case.edu

December 11, 2020

BY EMAIL ONLY TO:

City of Cleveland

c/o Department of Law

blanghenry@city.cleveland.oh.us

**Re: Denial of Public Records, reference nos. P015935-090920,
P020398-102920, P021938-111820**

To Whom It May Concern:

My office represents Cid Standifer and *Cleveland Scene*, and I am writing to address the City's deficient responses to Cid's recent public records requests. Specifically, those requests are as follows:

- # P015935-090920, "The September 9 Request" (denied 10/13):
 - o Requested "all reports on use of force incidents between Jan. 1, 2019 and the date the record is generated";
 - o Cid and Sergeant Jennifer Ciaccia (#9716) exchanged emails in which the City implied the request might be overbroad, so Cid attempted to narrow the request to a series of month-by-month requests. Cid withdrew her month-by-month requests when the City agreed to seek responsive records to the September 9 Request;
 - o The City denied the September 9 Request on the basis that it was "both vague and overly broad," citing *State ex rel. Dillery v. Icsman* and *Glasgow v. Jones*.

- # P020398-102920, the "October 29 Request" (denied 11/18):
 - o Requested "all reports on use of force incidents that occurred on May 30 and June 1, 2020";

EXHIBIT

9

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- The City denied the request on November 18 on the basis that the records were “part of an open ongoing investigation and not releasable at this time” as confidential law enforcement investigatory records, “R.C. 149.43(A)(1)(h), (A)(2).”
- # P021938-111820 the “November 18 Request”
 - Requested “all use of force reports filed in June 2019”;
 - The City produced unresponsive records on 12/3 and 12/10.

Copies of the requests and the City’s responses are attached to this letter. As you know, the Ohio Public Records Act, R.C. 149.43 et seq., requires that public offices organize and maintain public records in a manner that they can be made available for inspection or copying, and to make copies of requested records available within a reasonable period of time.¹ Courts may award statutory damages, court costs, and attorneys’ fees to requesters when public offices fail to comply with the requirements of R.C. 149.43.² Courts “construe[] R.C. 149.43 liberally in favor of broad access and resolves any doubt in favor of disclosure.”³

According to the Cleveland Division of Police’s Annual Use of Force Reports,⁴ officers fill out a specific form regarding use of force incidents, including the reason for use of force, the service being rendered, the extent of injuries, and other details. These details are critical to the public’s understanding of the department’s use of force in citizen interactions. The records the City produced in response to Cid’s November 18 request were

¹ R.C. 149.43(B)(1) and (2).

² R.C. 149.43(C).

³ *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961, ¶ 17 (“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.”).

⁴ *See, e.g.,* Cleveland Division of Police, 2018 Use of Force Report at 51-54.

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not these reports, and I do not see how they are responsive to her request. In the event there is any misunderstanding, she is seeking the records created when completing the form appended in blank to the City's annual Use of Force Reports (a blank use of force report, as published by the City in its 2018 Annual Use of Force Report, is included along with this letter).

As detailed below, the City wrongfully denied the September 9 and October 29 Requests, and did not produce all responsive records to the November 18 Request.

First, the *Glasgow* case does not support the City's position that Cid's September 9 request is overbroad. This is especially true in light of the Ohio Supreme Court's subsequent public records decisions, such as *State ex rel. Kesterson v. Kent State University*, in which the Ohio Supreme Court rejected a similarly overbroad reading of *Glasgow v. Jones* and the overbreadth objection.⁵ The court in *Kesterson* enforced the relator's "voluminous public records requests" seeking "all records of communications" between specific individuals related to the requester, notwithstanding the respondent's position that the request was overbroad.⁶ Cid's request is for a time-limited set of specific, routine report generated by the City, and no "file-by-file review" should be necessary.

Additionally, when denying a request as "ambiguous or overly broad," public offices and persons responsible for public records "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

⁵ *State ex rel. Kesterson v. Kent State Univ.*, 2018-Ohio-5110 at ¶25, 156 Ohio St. 3d 22, 30.

⁶ *Id.*



duties.”⁷ Accordingly, please advise us on how these records are maintained by CPD, and we will consider whether to revise the request.

More fundamentally, while the City contends that Cid’s October 29 request is a confidential law enforcement investigatory record because of an ongoing investigation, these are routine reports, and not CLEIRs. The Ohio Supreme Court has “unequivocally held that incident reports are public records and must be disclosed immediately upon request.”⁸ These kinds of reports “initiate the criminal investigation; they are not part of it.”⁹ Because officers’ are required to create these records prior to the initiation of any investigation, they cannot be CLEIRs.

Furthermore, the existence of an investigation is not enough to justify withholding these records. The City failed to cite any of the overriding interests in 149.43(A)(2), or allege that providing the report would create a high probability of revealing such information. The City’s response falls short of its obligation to “provide the requester with an explanation, including legal authority, setting forth why the request was denied.”¹⁰

I am prepared to take legal action in order to enforce the City’s obligations under R.C. 149.43 regarding Cid’s requests. This includes filing an action for mandamus to order the production of these public records. If litigation is required, we reserve the right to seek statutory damages, costs, and attorneys’ fees incurred to secure the release of these records.

⁷ R.C. 149.43(B)(2)

⁸ *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St. 3d 54, 58, 2001-Ohio-282.

⁹ *Id.*

¹⁰ R.C. 149.43(B)(3).



Please feel free to contact me at 216-368-6855 or andrew.geronimo@case.edu if you would like to discuss the contents of this letter.

Very Truly Yours,



Andrew Geronimo

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P021938-111820 - Public Safety - Public Records Request

Message History (3)

☑ On 12/3/2020 7:33:10 AM, Cleveland Public Records Center wrote:

Subject: [Cleveland Public Records Center] Public Safety - Public Records Request :: P021938-111820
Body:

RE: PUBLIC RECORDS REQUEST of November 18, 2020, Reference #P021938-111820.

Dear Cid Standifer,

The City of Cleveland received a public record request from you on November 18, 2020. You requested the following:

“Hello. I am requesting all use of force reports filed in June 2019. Thank you.”

The City Of Cleveland - Division Of Police has reviewed its files and has located a portion of the responsive records to your request. Please log in to the [Cleveland Public Records Center](#) at the following link to retrieve the appropriate responsive documents. The City will continue to gather any additional records and you will be notified via email when records are complete.

Public Safety - Public Records Request - P021938-111820

Please note:

- Please make sure that any pop-up blockers are turned off in order to view/download records.
- Records may be viewed/downloaded up to 3 times.
- You have up to 30 days to view/download records.

If you have any questions, or wish to discuss this further, you can reply to this email or go to Cleveland Public Records Center and send a new message.

Sincerely,

City of Cleveland Police Public Records



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Page 1



On 11/18/2020 12:12:06 PM, Cleveland Public Records Center wrote:



Dear Cid Standifer,

Thank you for your interest in public records of the City of Cleveland. Your request has been received and is being processed in accordance with the Ohio Sunshine Laws. Your request was received in this office on 11/18/2020 and has been given the reference number P021938-111820 for tracking purposes.

Records Requested: **Hello. I am requesting all use of force reports filed in June 2019. Thank you.**

Your request will be forwarded to the relevant city department(s) to locate the information you seek and to determine the volume and any costs associated with satisfying your request. You will be contacted about the availability and/or provided with copies of the records in question. **PLEASE NOTE:** The public records law does not require a governmental body to create new information, to do legal research, or to answer questions.

You can monitor the progress of your request at the link below and you will receive an email when your request has been completed. Again, thank you for using the [Cleveland Public Records Center](#).

City of Cleveland - Public Records



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To monitor the progress or update this request please log into the [Cleveland Public Records Center](#).

On 11/18/2020 12:12:05 PM, Cid Standifer wrote:

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Page 3



P020398-102920 - Public Safety - Public Records Request

Message History (3)

On 11/16/2020 7:59:18 AM, Cleveland Public Records Center wrote:

Subject: [Cleveland Public Records Center] Public Safety - Public Records Request :: P020398-102920

Body:

RE: PUBLIC RECORDS REQUEST of Reference # P020398-102920

Dear Cid Standifer,

The City of Cleveland received a public record request from you on **October 29, 2020**. You requested the following:

“Hello. I am requesting all reports on use of force incidents that occurred on May 30 and June 1, 2020. Please note I am not requesting the number of incidents, but the reports produced by officers describing each individual incident.

Very respectfully,
Cid Standifer
216.538.3696”

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).

If you have any questions, or wish to discuss this further, you can reply to this email or go to the [Cleveland Public Records Center](#) and Send a New Message.

Sincerely,

City of Cleveland - Public Records



CITY OF CLEVELAND
Mayor Frank G. Jackson

On 10/29/2020 3:47:08 PM, Cleveland Public Records Center wrote:



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Page 1

Dear Cid Standifer,

Thank you for your interest in public records of the City of Cleveland. Your request has been received and is being processed in accordance with the Ohio Sunshine Laws. Your request was received in this office on 10/29/2020 and has been given the reference number P020398-102920 for tracking purposes.

Records Requested: **Hello. I am requesting all reports on use of force incidents that occurred on May 30 and June 1, 2020. Please note I am not requesting the number of incidents, but the reports produced by officers describing each individual incident.**

Very respectfully,
Cid Standifer
216.538.3696

Your request will be forwarded to the relevant city department(s) to locate the information you seek and to determine the volume and any costs associated with satisfying your request. You will be contacted about the availability and/or provided with copies of the records in question. **PLEASE NOTE:** The public records law does not require a governmental body to create new information, to do legal research, or to answer questions.

You can monitor the progress of your request at the link below and you will receive an email when your request has been completed. Again, thank you for using the [Cleveland Public Records Center](#).

City of Cleveland - Public Records



To monitor the progress or update this request please log into the [Cleveland Public Records Center](#).

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Page 2



On 10/29/2020 3:47:04 PM, Cid Standifer wrote:

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P015935-090920 - Public Safety - Public Records Request

Message History (5)

☑ On 10/13/2020 1:23:11 AM, Cleveland Public Records Center wrote:

Subject: [Cleveland Public Records Center] Public Safety - Public Records Request :: P015935-090920
Body:

RE: PUBLIC RECORDS REQUEST of Reference # P015935-090920

Dear Cid Standifer,

The City of Cleveland received a public record request from you on **September 09, 2020**. You requested the following:

“Hello. I am requesting all reports on use of force incidents between Jan. 1, 2019 and the date the record is generated.

Very respectfully,

Cid Standifer
216.538.3696”

The City of Cleveland is not required to do a file-by-file review from 2019 to the present to produce what is a complete duplication of it's use of force reports during the period requested. As such the request is both vague and overly broad (State ex rel. Dillery v. Icsman(2001), 92 Ohio St.3d 312, 314-315 and State ex rel. Glasgow v. Jones,2008, 119 Ohio St. 3d 391).

You may submit a much more specific and limited public records request.

Sincerely,

City of Cleveland - Public Records



CITY OF CLEVELAND
Mayor Frank G. Jackson

☐ On 9/23/2020 12:21:25 PM, Cid Standifer wrote:

Hello. Please note that the document you have provided is not responsive to my query. I am requesting all individual reports for every instance of use of force from this time period.

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Page 1



☐ On 9/23/2020 11:55:49 AM, Cleveland Public Records Center wrote:

Subject: [Cleveland Public Records Center] Public Safety - Public Records Request :: P015935-090920

Body: RE: PUBLIC RECORDS REQUEST of September 09, 2020, Reference #P015935-090920.

Dear Cid Standifer,

The City of Cleveland received a public record request from you on September 09, 2020. You requested the following:

“Hello. I am requesting all reports on use of force incidents between Jan. 1, 2019 and the date the record is generated.

Very respectfully,

Cid Standifer
216.538.3696”

The City has reviewed its files and has located responsive records to your request. Please log in to the Cleveland Public Records Center at the following link [Cleveland Public Records Center](#) to retrieve the appropriate responsive documents.

Please note:

- Please make sure that you allow pop-ups from this site in order to view/download records.
- Records may be viewed/downloaded up to 3 times.
- You have up to 30 days to view/download records.

Public Safety - Public Records Request - P015935-090920

For the City Owned Street Surveillance Cameras, get the player and instructions [here](#).

If responsive materials include video please note:

*Photographs of peace officers whose duties may include undercover or plain clothes positions or assignments are exempt from release under O.R.C. §149.43 (A)(7)(g) and can only be released with the prior written approval of the applicable peace officer.

*Motor vehicle/driver record information (including driver’s license numbers, license plate numbers, VIN numbers, and the entirety of a driver’s license including photos) pursuant to 18 U.S.C. 7521, et seq. (Driver’s Privacy Protection Act)

If you have any questions, or wish to discuss this further, you can reply to this email, go to the [Cleveland Public Records Center](#) and Send a New Message.

Sincerely,

City of Cleveland Public Records

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CITY OF CLEVELAND
Mayor Frank G. Jackson

✉ On 9/9/2020 10:38:47 AM, Cleveland Public Records Center wrote:



Dear Cid Standifer,

Thank you for your interest in public records of the City of Cleveland. Your request has been received and is being processed in accordance with the Ohio Sunshine Laws. Your request was received in this office on 9/9/2020 and has been given the reference number P015935-090920 for tracking purposes.

Records Requested: Hello. I am requesting all reports on use of force incidents between Jan. 1, 2019 and the date the record is generated.

Very respectfully,

Cid Standifer
216.538.3696

Your request will be forwarded to the relevant city department(s) to locate the information you seek and to determine the volume and any costs associated with satisfying your request. You will be contacted about the availability and/or provided with copies of the records in question. **PLEASE NOTE:** The public records law does not require a governmental body to create new information, to do legal research, or to answer questions.

You can monitor the progress of your request at the link below and you will receive an email when your

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request has been completed. Again, thank you for using the Cleveland Public Records Center.

City of Cleveland - Public Records



To monitor the progress or update this request please log into the Cleveland Public Records Center.

On 9/9/2020 10:38:39 AM, Cid Standifer wrote:

Request was created by customer

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Page 4



IN THE EIGHTH DISTRICT COURT OF APPEALS
CUYAHOGA COUNTY, OHIO

LAUREN 'CID' STANDIFER, <i>et al.</i> ,)	CASE NO: CA 20 110200
Relators,)	
	)	ORIGINAL ACTION
v.)	
)	
THE CITY OF CLEVELAND,	)	<u>RELATORS' STATUS REPORT</u>
Respondent.)	
)	
)	

Relators, Lauren 'Cid' Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene, submits this status report in response to the Court Order of February 26, 2021. The Respondent, the City of Cleveland ("City"), has not met its obligations to respond to Relators' public records requests, or meet its burden to justify withholding the requested records in compliance with R.C. 149.43. A brief statement in support is attached, and Relators respectfully urge this Court to take prompt action to enforce the text and intent of R.C. 149.43.

Respectfully submitted,

/s/ Calvin J. Freas

CALVIN J. FREAS
Certified Legal Intern
cfreas-lawclinic@case.edu

/s/ Andrew Geronimo

ANDREW GERONIMO (0086630)
Supervising Attorney
FIRST AMENDMENT CLINIC
MILTON A. KRAMER LAW CLINIC CENTER
Case Western Reserve University
School of Law
11075 East Boulevard
Cleveland, Ohio 44106
Telephone: (216) 368-2766
Fax: (216) 368-5137
andrew.geronimo@case.edu

I. REMAINING LEGAL AND FACTUAL ISSUES

In public records cases like these, speedy resolution is desired as delay causes “such records [to] lose some, most, or all of their newsworthiness with the passage of time.”¹ There are numerous remaining factual issues that remain unaddressed by Respondent’s pleadings and affidavits. These outstanding issues are essential to the resolution of the legal issues at matter and will require further discovery and *in camera* review of withheld materials to properly present the legal issues:

1. When does an investigation of a use of force incident begin?
2. Are law enforcement officers who complete Use of Force reports pursuant to department policy investigating themselves?
3. What specific information is the City alleging that disclosure of the UOF reports would create a “high probability of disclosing”?
4. What are the technical capabilities and limitations of the software that the City uses to document UOF reports?

In order to resolve the above factual issues before newsworthiness is further diminished, Relators respectfully request expedited briefing and discovery, or *in camera* review.²

The outstanding legal issues are:

1. R.C. 149.43 is liberally construed to further broad access, and any doubt is resolved in favor of disclosure of public records. *State ex rel. Warren Newspapers, Inc. v. Hutson* (1994), 70 Ohio St.3d 619, 621. Exceptions to disclosure are strictly construed against the custodian of public records, and the burden to establish an exception is on the custodian. *State ex rel. James v. Ohio State Univ.* (1994), 70 Ohio St.3d

¹ *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 1996-Ohio-214, 75 Ohio St. 3d 374, 380, (Douglas, J., concurring); *See also*, *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 560 (1976) (“the element of time is not unimportant if press coverage is to fulfill its traditional function of bringing news to the public promptly”).

² *State ex rel. Nat. Broad. Co. v. City of Cleveland*, 38 Ohio St. 3d 79 (1998), paragraph four of the syllabus (“When a governmental body asserts that public records are excepted from disclosure and such assertion is challenged, the court must make an individualized scrutiny of the records in question. If the court finds that these records contain excepted information, this information must be redacted and any remaining information must be released.”).

168, 169. Has the City met its burden to show that all withholdings are supported by the facts and the law?

2. Does the Confidential Law Enforcement Investigatory Record (“CLEIR”) exception, codified at R.C. 149.43(A)(2) apply to Use of Force (“UOF”) reports that are created by the officer involved as a matter of departmental policy?
3. How is the City complying with its duty to “facilitate broader access to public records” by “organiz[ing] and maintain[ing] public records in a manner that they can be made available for inspection or copying”? See R.C. 149.43(B)(1)-(2).

II. THE CITY HAS NOT FULFILLED ITS DUTIES UNDER THE PUBLIC RECORDS ACT

All information provided to the date of this filing has been a small fragment of each record requested. Records that have not been provided have largely been withheld based on an assertion of the CLEIR exception. See *Respondent’s Status Report* at 4, 6.

Ohio courts strictly construe the Public Records Act against the custodian of the requested records, placing the burden on the public office in question to both plead and prove facts clearly showing that the claimed exception can apply. *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St. 3d 81, 2008-Ohio-1770, 886 N.E.2d 206, paragraph two of the syllabus. When a record is not clearly exempt from disclosure, the public office must submit evidence sufficient to establish that the claimed exception can apply – mere conclusory statements cannot establish applicability of the exception. See *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St. 3d 396, 401-402 (2000); *Welsh-Huggins v. Jefferson Cty. Prosecutor’s Off.*, 2020-Ohio-5371 ¶ 30. The City has not provided any rationale or evidence outside of conclusory statements claiming the CLEIR exception.

Relator Standifer submitted numerous records requests with the City effectively requesting UOF reports for 2019 and 2020, and attempted to narrow her requests when the City objected. See *Respondent's Status Report* at 3; Records Requests Nos. P020398-102920, P021938-111820, P023565-121020. The City initially responded with first, a four-cell table with total numbers of UOF incidents, and second, a list of UOF incident numbers and their corresponding dates. These numbers and dates were not the requested records. After the initiation of this action, the City produced spreadsheets ostensibly detailing UOF reports for 2019, 2020, and 2021. However, the spreadsheets are notably incomplete and Relator Standifer's records requests remain unsatisfied.

While the City has produced three spreadsheets containing some information regarding the requested records, the City has not produced all non-exempt responsive records.³ The spreadsheets are limited to 150 words from the officer's narrative and provide only fragments of the full record. Further, there is no indication in the spreadsheets provided as to where redactions have been made.

For example, the Respondent's cited the CLEIR exception to redact UOF records from the George Floyd/BLM protests. *Respondent's Status Report* at 6. This blanket and unexplained assertion that the CLEIR exception applies has been ongoing even though the City has the burden of proving that the records are excepted to disclosure. *State ex rel. Strothers v. McFaul*, 122 Ohio App. 3d 327, 330 (1997).

³ Relators do not object to standard redactions such as removing Social Security Numbers, telephone numbers, or driver record information.

Even though the CLEIR exception should not apply to *any* of the requested records,⁴ it is unclear why there was a blanket redaction due to the time period requested outside of a bald assertion that the CLEIR exception applies. This lack of clarity in response to Relator's requests not only does not meet the City's burden to show that the records can be excepted from disclosure, but also puts into question whether the City is simply indiscriminately and inconsistently claiming an exception without a proper basis to do so.

The City appears to now be claiming the CLEIR exception applies to all UOF reports arising out of the George Floyd/BLM protests requested by Relator, but it had previously produced a majority of those reports to the Monitoring Team in the Consent Decree litigation, as documented in the Ninth Semiannual Report in the City of Cleveland's ongoing Consent Decree litigation. *United States v. City of Cleveland*, N.D. Ohio No. 1:15-CV-01046, ECF 345, 33 ("Ultimately, five incident numbers encompass 29 officers' uses of force. The CDP identified one further incident number (2020-169774), but this case remains under review in Internal Affairs and was therefore not reviewed by the Monitoring Team. Additionally, there are [sic] number of individual officer's [sic] uses of force from incident number 2020-247967 that remain under review by Internal Affairs and were also not reviewed."). In other words, it is possible that the City is inconsistently claiming the CLEIR exception for records

⁴ See Section IV.

depending upon the individual or entity requesting those records – rather than the required statutory bases.

Because the City has only produced a fraction of the existing records requested, factual and legal issues remain to be resolved in this matter.

III. THE REQUESTED RECORDS EXIST AND DO NOT REQUIRE THE CREATION OF NEW RECORDS OR FURTHER RESEARCH

The requested records exist. Complying with R.C. 149.43's requirement would not require the City to create UOF reports, summarize UOF reports, or otherwise add information to the records that have already been created by entering a select set of information into a database. Relators are not asking the City to create or compile new records. To the extent that the City claims that producing these existing records is somehow creating a new record, its arguments regarding the difficulty in producing these records seem to suggest that they may not be "organize[d] and maintain[ed] ... in a manner that they can be made available for inspection or copying." R.C. 149.43(B)(1)-(2).

According to the Cleveland Division of Police's Annual Use of Force Reports, officers fill out a specific form regarding use of force incidents, including the circumstances surrounding the use of force that is captured in the officer's narrative. *See, e.g.,* Cleveland Division of Police, 2018 Use of Force Report at 51-54; *United States v. Cleveland*, N.D. Ohio No. 1:15-CV-01046, ECF 345, 36-42. Based on this publicly available information, as well as the spreadsheets already provided by the City, it is obvious that the requested UOF reports have already been created and exist as records held by the

City, but they have not been produced as requested and as required by R.C. 149.43, et seq.

IV. THE CLEIR EXCEPTION DOES NOT APPLY BECAUSE USE OF FORCE RECORDS ARE EFFECTIVELY ROUTINE INCIDENT REPORTS

The records requested cannot be eligible for the CLEIR exception and are therefore public records that should be produced. This question was put to rest in *State ex rel. Nat. Broad. Co. v. City of Cleveland*, 38 Ohio St. 3d 79, 83 (1988), citing *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d 382 (1985) (Finding that “the limited record before this court strongly suggests that most, if not all, of the records at issue herein are not law enforcement investigatory records as contemplated by the statute. Instead, it is apparent that the records involve the city’s monitoring and discipline of its police officers. These internal investigations were not undertaken based upon a specific suspicion of criminal wrongdoing. They were routinely conducted in every incident where deadly force was used by a police officer. This court has held that personnel records reflecting the discipline of police officers are required to be disclosed pursuant to R.C. 149.43.”).

NBC II does not change this conclusion. Rather, while it specifically states that just because a task is routine does not mean that it is subject to disclosure, it examines circumstances in which investigations are being pursued in which *investigators* are engaging in routine investigatory tactics. *State ex rel. Nat'l Broad. Co. v. City of Cleveland*, 57 Ohio St. 3d 77, 81 (1991). As stated in *NBC II* and argued by the City of Cleveland:

“The function of investigators is to investigate. That is their ‘routine.’ There is no such thing as a non-routine investigation.” *Id.* at 80.

Because there cannot be an investigation underway until after a report is filed, and because law enforcement officers do not investigate themselves, their narrative of the incident in which they used force is a routine part of their duties and should be considered as a routine factual incident report. *See State ex rel. Beacon J. Pub. Co. v. Univ. of Akron*, 64 Ohio St. 2d 392, 396 (1980) (“The materials sought by Beacon Journal can only be characterized as routine factual reports. The university’s police were simply fulfilling the duty imposed upon all law enforcement agencies to generate ongoing offense reports, chronicling factual events reported to them.”). Any claim to a CLEIR exception for UOF reports is without merit.

V. THE PROMPT DISCLOSURE OF PUBLIC RECORDS IS IN THE PUBLIC INTEREST, AND CONTINUED DENIAL OF PUBLIC RECORDS UNDERMINES THE TEXT AND INTENT OF THE OHIO PUBLIC RECORDS ACT.

The records at issue are newsworthy, a matter of public concern, and this Court should order Respondents to show cause why the requested records should not be immediately disclosed. *Cf. State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 1996-Ohio-214, 75 Ohio St. 3d 374, 378, 662 N.E.2d 334 (“The moment the tapes were made as a result of the calls (in these cases – and in all other 911 call cases) to the 911 number, the tapes became public records. Obviously, at the time the tapes were made, they were not “confidential law enforcement investigatory records” (no investigation was underway), they were not “trial preparation records” (no trial was contemplated or underway), and

neither state nor federal law prohibited their release. Thus, any inquiry as to the release of records should have been immediately at an end, and the tapes should have been, and should now and henceforth always be, released.”). If the press is to perform its essential functions, the public records act must be vigorously applied and enforced. *See generally, State ex rel. WBNS 10 TV v. Franklin Cty. Sheriff’s Off.*, 2003-Ohio-409, ¶ 19, 151 Ohio App. 3d 437, 443–44 (“There is a manifest public benefit in rigorously enforcing public records requests because of the public’s need for complete, accurate, and timely news reports concerning the actions of government and public officials. Obtaining access to public records without unreasonable delays allows the news media to provide accurate and timely news reports which clearly benefits the public at large.”).

Immediate relief is appropriate in this matter because the public records here are newsworthy, a matter of public concern, and the continued unreasonable delay in disclosure undermines the text and intent of the Public Records Act.

VI. CONCLUSION

For the above reasons, Relators respectfully request that this Court:

1. Order Respondent to immediately release all records for which Respondent has not pleaded or proved the clear applicability of an exception, or, alternatively
2. Order Respondent to produce unredacted data to the Court for *in camera* inspection, or, alternatively,
3. Set an expedited discovery and briefing schedule for Relator to discover facts and evidence regarding Respondent’s record-keeping systems and the applicability of any claimed exceptions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

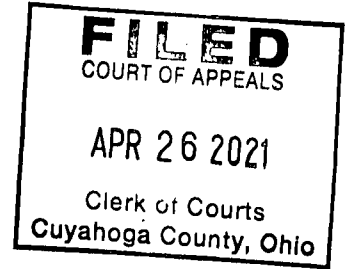
The foregoing was filed electronically and may be accessed via the Court's ECF system by all parties of record.

/s/ Calvin J. Freas

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Certified Legal Intern

/s/ Andrew Geronimo

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IN THE COURT OF APPEALS OF OHIO
EIGHTH DISTRICT

CID STANDIFER, et al.)	Case No. CA-20-110200
)	
Relator	)	Original Action
)	
vs.	)	NOTICE OF FILING UNDER SEAL
	)	OF NARRATIVES, ETC., FROM USE
THE CITY OF CLEVELAND	)	OF FORCE REPORTS CURRENTLY
	)	UNDER INVESTIGATION
Respondent	)	(CLEIR EXEMPTION)

Respondent, The City of Cleveland (“City”), hereby provides notice of its manual filing under seal with the Clerk, of Excel exports of the Narratives and other key information from Use of Force Reports that are currently under investigation.

The City maintains that these records are exempted from disclosure under CLEIR and so is filing the records under seal pursuant to the Court’s 03/22/2021 judgment entry order (“By April 30, 2021, the parties shall have completed discovery and shall submit briefs and evidence on the remaining issues, such as the capabilities of Cleveland’s computer and its software, as well as whether any records come within the confidential law enforcement investigatory record exception. Cleveland is to submit under seal for in camera inspection any records for which it claims that exemption”).¹

CA20110200

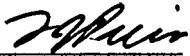
116882348



Respectfully submitted,

BARBARA A. LANGHENRY (0038838)
Director of Law

¹ The records filed under seal are Excel exports from the IPro/BlueTeam software, and include the full Narratives of the Use of Force Reports which the City contends are exempted from the Public Records Act by the CLEIR exemption. Additional information from the CLEIR records was not exported to Excel because of technology limitations and because Requester’s main concern has been to obtain the Narratives.

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CERTIFICATE OF SERVICE

The foregoing was filed electronically and may be accessed through the Court's ECF system by all parties of record; and was sent via email to counsel of record, Andrew Geronimo, acg33@case.edu.

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Court of Appeals

MOTION FOR...
May 14, 2021 14:23

By: ANDREW GERONIMO 0086630

Confirmation Nbr. 2254069

CID STANDIFER, ET AL.

CA 20 110200

vs.

CITY OF CLEVELAND

Judge:

Pages Filed: 55

IN THE EIGHTH DISTRICT COURT OF APPEALS
CUYAHOGA COUNTY, OHIO

LAUREN 'CID' STANDIFER, <i>et al.</i>,	)	CASE NO: CA 20 110200
Relators,)	
	)	ORIGINAL ACTION
v.)	
)	
THE CITY OF CLEVELAND,	)	<u>MOTION TO GRANT WRIT OF</u>
Respondent.	)	<u>MANDAMUS</u>
)	
)	

Relators, Lauren 'Cid' Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene, submit this Motion to Grant Writ of Mandamus in response to the Court Order of March 22, 2021. The Respondent, the City of Cleveland ("Cleveland"), has not met its obligations to respond to Relators' public records requests, and cannot meet its burden to justify withholding the requested records in compliance with R.C. 149.43. Relators respectfully urge this Court to issue a writ of mandamus commanding Cleveland to produce the requested public records and award Relators statutory damages and court costs.

Respectfully submitted,

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BRIEF IN SUPPORT

I. Introduction

Relator Lauren ‘Cid’ Standifer, in connection with reporting for Relator Euclid Media Group LLC d/b/a *Cleveland Scene*, requested Use of Force (“UOF”) reports from Cleveland in the late months of 2020. She received a few responses, all of which were non-responsive to her requests – primarily, Cleveland produced total numbers of UOF reports (rather the actual reports), along with various objections to her requests. Standifer adjusted her requests to accommodate Cleveland’s objections, but was again met with entirely non-responsive material. After commencing this mandamus action and after a generally unsuccessful mediation, Cleveland produced partial records¹ and redacted an unknown number of incidents over which it broadly and entirely asserted the CLEIR exemption. Since this Court’s Order on March 22, 2021, the parties have resolved all issues regarding the partial records produced, but have not come to a resolution regarding the records entirely withheld based on an assertion of the CLEIR

¹ Cleveland provided Relators with copies of responsive records that included dates, times, and persons involved in Uses of Force, but Cleveland represented that it could only export 150 characters (i.e., letters and punctuation) of the responsive records. In lieu of extensive discovery regarding the capability of Cleveland’s computer systems, the parties have agreed that the full, unredacted narratives for the uncontested UOF reports can be produced to Relators if the Court approves the agreed protective order submitted to the Court on May 11, 2021, which would alleviate the need for the City to redact these records. In the event the Court does not grant the Agreed Protective Order, Relators wishes to reserve the right to contest any redactions or other withholdings from those records,

exemption. The most recent count of entirely withheld UOF records consist of two entries from 2019, thirty-three from 2020, and fifty-two from 2021.

Not only has Cleveland failed to meet its burden to justify continue withholding UOF reports, but it has refused to *specifically* detail the legal reasons why. *See Cleveland's Responses to Relators' Written Discovery Requests*, attached as Exhibit 1 at 4.² As detailed below, the Confidential Law Enforcement Investigatory Records ("CLEIR") exemption is a narrow, qualified exemption, and, from a review of similar records, it is unlikely that these records could create a "high probability" of disclosing the types of information protected by R.C. 149.43(A)(2).

Relator therefore respectfully requests that this Court issue a writ of mandamus commanding Respondent to comply with R.C. 149.43(B) and release the public records at issue, and award Relators statutory damages under R.C. 149.43(B)(2) and court costs under R.C. 149.43(B)(3).

II. Law and Argument

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 *State ex. rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 38 Ohio St.3d 79, 81 (1988). To qualify for an exception to disclosure, Cleveland must show that each

² ("Interrogatory No. 10: Identify what statutorily exempted category of information you are relying upon to claim the CLEIR exception for the requested records in this matter. **RESPONSE:** R.C. 149.43(A)(2)(a)-(d) ...").

withheld record “fall[s] squarely within a statutory exception,” and exceptions are strictly construed against public-records custodians. *Ohio Dept. of Pub. Safety*, 148 Ohio St.3d at 438, 2016-Ohio-7987 at ¶ 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).

Determining whether a public record may be exempt to public disclosure based upon the CLEIR exemption is a two-part test:

- (1) the party claiming the exemption must show that the record “pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature **only** to the extent that [its] release ... would create a high probability of disclosure of any of the following:
- (2) (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.

R.C. 149.43(A)(2) (emphasis added). While Relators to not have access to Cleveland’s sealed filings to evaluate the propriety of the application of these exemptions, the Court must construe the Public Records Act broadly in favor of disclosure, ensure that any withheld records fall squarely within an exemption, and, even if any information in the

record is exempt, order that Cleveland “make available all of the information within the public record that is not exempt” in compliance with R.C. 149.43(B)(1).

- a. **Cleveland has not, and cannot, satisfy its burden to show that the requested records are exempt from disclosure because the records are routine reports that may initiate an investigation, and they are created by individuals who cannot investigate themselves.**

In response to Relators’ public records requests, Cleveland has only baldly asserted the CLEIR exemption—utterly failing to meet its burden to justify its refusal to release public records. *See e.g.*, Ex. 1 at 4, Interrogatory No. 10. The records requested cannot be eligible for the CLEIR exemption because they are routine reports that pre-date any investigation. These UOF reports are effectively incident reports and are therefore public records that must be produced. This question was put to rest in *NBC I* when the Supreme Court of Ohio decided that when 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,” then such records are “required to be disclosed.” *State ex rel. Nat. Broad. Co. v. City of Cleveland*, 38 Ohio St. 3d 79, 83 (1988) (“*NBC I*”), citing *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d 382 (1985). In other words, even when *deadly force* is used by an officer, routine reports regarding such force must be disclosed.

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. *See* Deposition Transcript of Commander Brian Carney (as Cleveland’s 30(B)(6) Representative) at 25:1-23, attached as Exhibit 2

(hereinafter “Cleveland Dep.”). Police officers in the Cleveland Division of Police (“CDP”) are required to report any use of force greater than *de minimis* force through a field-user portal called “BlueTeam.” See Cleveland Dep. at 8:2-21; 11:10-17. Cleveland policy requires officers to report any such use of force incident before ending the shift in which the force was used. See Cleveland Division of Police General Police Order 2.01.05(III)(A)(1), attached as Exhibit 3; see also Cleveland Dep. 9:17-23. 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.

Cleveland Dep. at 11:10-17. 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. 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. See Cleveland Dep. at 25:1-23. 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.

Cleveland Dep. at 15:22-24. (“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. Cleveland Dep. 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. Cleveland Dep. 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*.

Because there cannot be an investigation underway until after a report is created, and because law enforcement officers do not investigate themselves, their narrative of the incident in which they used force is a routine part of their duties and should be considered a routine factual incident report. *See State ex rel. Beacon J. Pub. Co. v. Univ. of Akron*, 64 Ohio St. 2d 392, 396 (1980) (“The materials sought by Beacon Journal can only be characterized as routine factual reports. The university’s police were simply fulfilling the duty imposed upon all law enforcement agencies to generate ongoing offense reports, chronicling factual events reported to them.”); *see also State ex rel. Beacon J. Publ'g Co. v. Maurer*, 2001-Ohio-282, 91 Ohio St. 3d 54, 56 (stating “[w]e have stated that incident reports initiate criminal investigations but are not part of the investigation.”).

Similarly, UOF reports do not create law enforcement investigatory records – they are used to determine whether a law enforcement investigation is necessary.

Reading *NBC I* alongside *State ex rel. Nat'l Broad. Co. v. City of Cleveland*, 57 Ohio St. 3d 77 (1991) (“*NBC II*”) clarifies when, exactly, an “investigation” for the purposes of applying the CLEIR exemption begins. In *NBC II*, NBC was requesting all files pertaining to investigations of police officers’ uses of deadly force arguing that: (1) they were effectively personnel files, and (2) they were routinely created by detectives investigating those uses of deadly force. The records requested included detective investigatory files. Essentially, the court in *NBC II* found that most of these records qualified for the CLEIR exemption because “they appear comparable to those records compiled pursuant to criminal investigations that police routinely perform when they investigate crimes.” 57 Ohio St. 3d 77, 79 (1991). As such, NBC’s arguments failed because the records requested were not personnel files, 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 investigations are being pursued in which *investigators* are engaging in routine investigatory tactics. *NBC II*, 57 Ohio St. 3d at 81. That is not the case here, as logic dictates (and Cleveland admits) that officers are not investigating themselves when completing a UOF report.

As stated in *NBC II* (and argued by the City of Cleveland in that case): “The function of investigators is to investigate. That is their ‘routine.’ There is no such thing

as a non-routine investigation.” *Id.* at 80. While *NBC II* was ostensibly correct that the “routine-ness” of an investigator’s work cannot be used to justify disclosure of an investigator’s work product, its holding is generally inapplicable here because this case does not pertain to investigations or investigators. Rather, this case is about police officers routinely reporting their own actions – factual incident reports focused solely upon justifying uses of force. Because every UOF report from a police officer is effectively an incident report, the CLEIR exception at R.C. 149.43(A)(2) cannot apply, and all UOF reports are public records subject to disclosure.

Records that were public records prior to their use in an investigation retain this status, even if the records are later gathered and used in the course of an investigation. *See Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378 (1996) (“[o]nce clothed with the public records cloak, the records cannot be defrocked of their status.”) 911 tapes, for example, are not subject to CLEIR because an investigation was not underway at the time the tapes were created. *See id.* (“The moment the tapes were made as a result of the calls (in these cases – and in all other 911 call cases) to the 911 number, the tapes became public records. Obviously, at the time the tapes were made, they were not “confidential law enforcement investigatory records” (no investigation was underway), they were not “trial preparation records” (no trial was contemplated or underway), and neither state nor federal law prohibited their release. Thus, any inquiry as to the release of records should have been immediately at an end, and the tapes should have been, and should now and henceforth always be, released.”).

The CLEIR exception in R.C. 149.43(A)(2) is a qualified exception – the Respondent has the burden to show all portions of the withheld records “fall squarely within a statutory exception,” and the Court then must analyze whether this burden has been met and the exception applies. *Ohio Dept. of Pub. Safety*, 148 Ohio St.3d at 441 (“Respondents’ blanket assertion of privilege...at odds with the well-settled understanding that investigatory work product is entitled to qualified, not absolute, protection from disclosure...the work-product exception in R.C. 149.43 does not automatically shield all potential evidence of criminal activity from disclosure.”). In *Ohio Dept. of Pub. Safety*, for example, the Court bifurcated its analysis of the dash-cam recordings at issue, demonstrating how narrowly the CLEIR exception is applied – the Court would not even apply the exception to the entirety of a record where only a small portion of it fit the CLEIR requirements. *See id.* at 441–42 (“The dash-cams here began to record automatically as soon as the troopers activated their emergency lights and siren, so the troopers did not exercise any investigatory discretion in activating their dash-cams... a large portion of the recordings did not involve any investigative functions at all.”) Yet, Cleveland continues to assert the CLEIR exemption over the entirety of the UOF records withheld, refusing to even reveal dates, times, and other information that is not exempt. *See Cleveland Dep.* 27:13-25; 28:1-25; 29:1-5. (“MR. PUIN: Our position is that they’re part of the investigatory file so they’re privileged in their entirety. ... obviously there is some data that truly wouldn’t be significant under CLEIR but our official position is that all of that is withheld as part of the investigatory file while the matter is under investigation.”). Here, police officers similarly do not have or exercise

investigatory discretion in reporting their actions. They are required to self-report all uses of force greater than *de minimis* force before the end of the shift in which they used that force. See Exhibit 3, GPO 2.01.05(III)(A)(1). This is routine non-investigatory behavior and cannot be subject to the CLEIR exemption.

In analyzing whether Cleveland meets the second step of the CLEIR analysis, *NBC I* grants clarity. “The specific investigatory work product exception ... protects 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 encompass objective facts and observations he has recorded.” *State ex rel. Nat. Broad. Co. v. City of Cleveland*, 38 Ohio St. 3d 79 (1988), paragraph three of the syllabus. This was re-affirmed in *NBC II*. 57 Ohio St. 3d 77 at 81. The UOF reports at issue here cannot meet this second prong because they are merely “objective facts and observations” about a use of force. Further, Cleveland has refused to specifically cite what releasing these records would create a “high probability of disclosure” of within R.C. 149.43(A)(2)(a)-(d). Rather, Cleveland has simply quoted the entire section of the statute. Ex. 1. Cleveland cannot meet either prong required to qualify for the CLEIR exemption.

b. Relators are entitled to statutory damages and costs.

In addition to mandamus relief ordering compliance, R.C. 149.43 provides for statutory damages and court costs. See R.C. 149.43(C)(2) (“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.”); see also R.C.

149.43 (C)(3)(a)(i) (“[i]f 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.”) Because Cleveland has failed to provide Relators with responsive records without adequate justification, this Court should award statutory damages and costs.³

III. Conclusion

The records at issue here capture the essence of the Public Records Act, which “reflects the state's policy that ‘open government serves the public interest and our democratic system.’” *Welsh-Huggins*, 2020-Ohio-5371 ¶10, quoting *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 38 (2006). “Public records are one portal through which the people observe their government, ensuring its accountability, integrity, and equity while minimizing sovereign mischief and malfeasance.” *Id.* quoting *Kish v. Akron*, 109 Ohio St.3d 162, 166 (2006). There is a recognized public interest in these UOF reports, to the extent that they detail officers’ uses of force in the midst of city-wide and nation-wide dialogues about policing, police violence, and police reform. For these reasons, Relators respectfully request that this Court:

³ Relators filed their mandamus action on December 31, 2020, and are entitled to the full amount of statutory damages prescribed by R.C. 149.43(C)(2) – \$1,000. *See* R.C. 149.43(C)(2) (“[t]he 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.”)

1. Issue a writ of mandamus to compel Cleveland to release all responsive, non-exempt records to Relators;
2. Award Relators statutory damages and costs in accordance with R.C. 149.43(C);
3. Order any other relief that the Court deems appropriate.

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CERTIFICATE OF SERVICE

The foregoing was filed electronically on May 14, 2021, and may be accessed via the Court's ECF system by all parties of record.

/s/ Calvin J. Freas

CALVIN J. FREAS
Certified Legal Intern

/s/ Andrew Geronimo

ANDREW GERONIMO (0086630)
Supervising Attorney

EXHIBIT 1

**IN THE EIGHTH DISTRICT COURT OF APPEALS
CUYAHOGA COUNTY, OHIO**

LAUREN 'CID' STANDIFER, <i>et al.</i>,	)	CASE NO: CA 20 110200
)	
Relators,)	
)	
v.	)	<u>RESPONDENT THE CITY OF</u>
	)	<u>CLEVELAND'S RESPONSES TO</u>
THE CITY OF CLEVELAND,	)	<u>RELATORS' FIRST SET OF</u>
	)	<u>DISCOVERY REQUESTS</u>
Respondent.)	
)	

GENERAL OBJECTIONS

Respondent objects to any requested discovery responses that are attorney-client privileged or subject to the work product doctrine; any requests that call for information outside the first-hand knowledge of Respondent; any ambiguous requests; any compound requests; any requests that are irrelevant and not likely to lead to the discovery of admissible evidence; and any requests that are not proportional to the needs of the case. None of these general objections are waived if not stated specifically in response to a particular request.

INTERROGATORIES

INTERROGATORY 1: State the name, address, phone number, and place of employment of the person answering these interrogatories.

RESPONSE:

As to Interrogatory Nos. 6 and 7:

**Commander Brian Carney
Bureau of Compliance
Cleveland Division of Police
Department of Public Safety
C/o Department of Law
601 Lakeside Ave. E., Rm. 106
Cleveland, OH 44114
(216) 664-2800**

EXHIBIT 1

INTERROGATORY 2: Identify all individuals who will offer any evidence in this matter, including any individuals you anticipate calling as witnesses at any evidentiary hearing in this action, and with respect to each, state the general subject matter of the individual's knowledge that relates to his or her testimony.

RESPONSE:

Objection: premature. Without waiving, Commander Brian Carney may testify regarding policies and procedures concerning investigations of use of force by CDP members. Sergeant Maria Stacho has offered affidavits and may further testify regarding the City's use of the IAPro/Blue Team software system.

INTERROGATORY 3: Identify all Items you anticipate using as exhibits during the litigation.

RESPONSE:

Objection: premature. Without waiving, see all records produced in discovery to date and attached to the Affidavits of Maria Stacho.

INTERROGATORY 4: Identify all Items regarding the process(es) and/or procedure(s) that are included in investigating uses of force by police officers.

RESPONSE:

See General Police Orders and Manuals produced in discovery and additional documents produced along with these discovery responses.

INTERROGATORY 5: Identify all Items regarding the process(es) and/or procedure(s) that involve the reporting of uses of force by CDP police officers.

RESPONSE:

See General Police Orders and Manuals produced in discovery and additional documents produced along with these discovery responses.

EXHIBIT 1

INTERROGATORY 6: Identify how the City initiates an investigation of a CDP officer's use of force.

RESPONSE:

Investigations of use of force by a member of the CDP may be initiated by citizens and/or by members of CDP. Citizens may contact the Civilian Police Review Board if they want to make a complaint of misconduct or may contact other City representatives. An immediate supervisor of a police officer involved in a use of force incident may initiate an internal investigation into Level 1 and Level 2 use of force incidents. For a Level 3 use of force incident, the Force Investigation Team would initiate the investigation. Please see GPO's, manuals, and other documents produced to date and herewith, including but not limited to GPO 2.01.06, *Use of Force – Supervisory Reviews and Investigations*.

INTERROGATORY 7: Identify all entities which have authority to bring law enforcement actions against CDP officers.

RESPONSE:

Objection: unclear; calls for a legal conclusion. Without waiving, the City of Cleveland Department of Law, Criminal Division (City Prosecutor's Office); the Cuyahoga County Prosecutor's Office; the State of Ohio; and the United States of America, all have authority to pursue criminal actions against CDP officers.

INTERROGATORY 8: Identify and produce all manuals and policies regarding the IAPro software.

RESPONSE:

EXHIBIT 1

Objection: irrelevant and not likely to lead to the discovery of admissible evidence, not proportional to the needs of the case. Without waiving, see documents produced to date and herewith. This response may be supplemented as the City's investigation continues.

INTERROGATORY 9: Identify and produce all manuals and policies regarding the BlueTeam software.

RESPONSE:

Objection: irrelevant and not likely to lead to the discovery of admissible evidence, not proportional to the needs of the case. Without waiving, see documents produced to date and herewith. This response may be supplemented as the City's investigation continues.

INTERROGATORY 10: Identify what statutorily exempted category of information you are relying upon to claim the CLEIR exception for the requested records in this matter.

RESPONSE:

R.C. 149.43(A)(2)(a)-(d):

(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.

EXHIBIT 1

INTERROGATORY 11: Identify all Items regarding the capabilities of the current and previous versions of the software Cleveland uses to collect use of force reports from CDP police officers.

RESPONSE:

Objection: unclear, irrelevant and not likely to lead to the discovery of admissible evidence, not proportional to the needs of the case, calls for expert testimony. Without waiving, see manuals produced to date. This response may be supplemented as the City's investigation continues.

INTERROGATORY 12: Identify the hardware specifications of the physical machine used by Sgt. Stacho to export the information requested in this case, include whether a virtual machine is being utilized and the allocated CPU, GPU, RAM, and storage specifications of the virtual machine.

RESPONSE:

Objection: unclear, irrelevant and not likely to lead to the discovery of admissible evidence, not proportional to the needs of the case, calls for expert testimony. Without waiving, see manuals produced to date. This response may be supplemented as the City's investigation continues.

INTERROGATORY 13: Identify all individuals who have assisted Sgt. Stacho in resolving issues with exporting records from IAPro or BlueTeam since January 1, 2021.

RESPONSE:

Objection: unclear, irrelevant and not likely to lead to the discovery of admissible evidence, not proportional to the needs of the case. Without waiving, see exhibits attached to Affidavit of Sgt. Maria Stacho, including emails from Tim Cantrell, Network Analyst II,

EXHIBIT 1

regarding the CI upgrade to IAPro in Spring 2021. This response may be supplemented as the City's investigation continues.

INTERROGATORY 14: Identify all support requests from the City sent to CI Technologies, or any other service provider, regarding issues with exporting records from IAPro or BlueTeam since February 17, 2020.

RESPONSE:

Objection: unclear, irrelevant and not likely to lead to the discovery of admissible evidence, not proportional to the needs of the case. Without waiving, see exhibits attached to Affidavit of Sgt. Maria Stacho, including emails from Tim Cantrell, Network Analyst II, regarding the CI upgrade to IAPro in Spring 2021. This response may be supplemented as the City's investigation continues.

INTERROGATORY 15: Identify all machines, and their corresponding hardware specifications and virtual machine specifications, that have been used to successfully or unsuccessfully export the requested information from IAPro or BlueTeam.

RESPONSE:

Objection: unclear, irrelevant and not likely to lead to the discovery of admissible evidence, not proportional to the needs of the case, outside the first-hand knowledge of Respondent, calls for expert testimony. Without waiving, this response may be supplemented as the City's investigation continues.

INTERROGATORY 16: Identify all Items regarding the contracts and licenses between Cleveland and CI Technologies, IAPro, IAPro NextGen, and BlueTeam.

EXHIBIT 1

RESPONSE:

Objection: unclear, irrelevant and not likely to lead to the discovery of admissible evidence, not proportional to the needs of the case. Without waiving, this response may be supplemented as the City's investigation continues.

VERIFICATION

I hereby swear or affirm that the foregoing answers to Interrogatory Nos. 6 and 7 are true to the best of my knowledge and belief.

/s/ Brian Carney

COMMANDER BRIAN CARNEY
CLEVELAND DIVISION OF POLICE

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Sworn to and subscribed before me this 20th day of April, 2021, by the foregoing Affiant, who did swear or affirm that the foregoing answers to Interrogatory Nos. 6 and 7 were his true act and deed.

T. P. P. (0065720)
NOTARY PUBLIC

TIMOTHY J. P. P., Attorney
NOTARY PUBLIC - STATE OF OHIO
My Commission Has No Expiration Date
Section 147.03 O.R.C.

EXHIBIT 1

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION 1: Admit that internal investigations into a police officer's use of force do not begin at the moment a police officer uses force.

RESPONSE:

Cannot truthfully admit or deny because this request is unclear; an investigation may inquire into an officer's actions prior to the moment the officer uses force.

REQUEST FOR ADMISSION 2: Admit that at the moment any police officer reports that he or she used force there is no ongoing investigation into that specific use of force.

RESPONSE:

Cannot truthfully admit or deny because an investigation may be ongoing into an officer's use of force even if the officer did not report the use of force

REQUEST FOR ADMISSION 3: Admit that investigations into uses of force by police officers do not begin until those uses of force are known by Cleveland.

RESPONSE:

Cannot truthfully admit or deny because an investigation may be ongoing into an officer's use of force by an entity other than the City even if the City is unaware of the use of force

REQUEST FOR ADMISSION 4: Admit that there are only two ways that uses of force can be known by the CDP: (1) by self-report from the police officer that used force, or (2) the use of force was observed and/or reported by other means.

RESPONSE:

Admit

EXHIBIT 1

REQUEST FOR ADMISSION 5: Admit that an investigation of a use of force by a CDP police officer does not begin until either: (1) a police officer self-reports a use of force, or (2) the use of force was observed and/or reported by other means.

RESPONSE:

Cannot truthfully admit or deny because this Request is unclear (investigation by whom?)

REQUEST FOR ADMISSION 6: Admit that every use of force report in which Cleveland has claimed the CLEIR exception was not under investigation until either: (1) a police officer self-reported the use of force, or (2) the use of force was observed and/or reported by other mediums.

RESPONSE:

Cannot truthfully admit or deny because this Request calls for a legal conclusion (“every” use of force report?)

REQUEST FOR ADMISSION 7: Admit that CDP police officers do not have law enforcement investigatory power over themselves or their own uses of force.

RESPONSE:

Cannot truthfully admit or deny because this Request is unclear (what type of investigatory power/ by whom?) (CDP does have the authority to investigate CDP members)

REQUEST FOR ADMISSION 8: Admit that the software used by Cleveland to document uses of force by police officers in the Cleveland Division of Police can export all information entered into the software.

RESPONSE:

Cannot truthfully admit or deny because this Request is unclear (what is meant by “export”?)

EXHIBIT 1

REQUEST FOR ADMISSION 9: Admit that the information requested in this case are records that currently exist.

RESPONSE:

Cannot truthfully admit or deny because the records may exist but not in a form preferred by Requester

REQUEST FOR ADMISSION 10: Admit that IPro NextGen (Web) is SaaS. SaaS means the capability provided to the consumer to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through either a thin client interface, such as a web browser, or a program interface.

RESPONSE:

Cannot truthfully admit or deny because this Request is unclear and calls for expert testimony

REQUEST FOR ADMISSION 11: Admit that Cleveland's records held in IPro are not maintained in a manner that they can be made available for inspection or copying.

RESPONSE:

Deny

REQUEST FOR ADMISSION 12: Admit that Cleveland's records held in BlueTeam are not maintained in a manner that they can be made available for inspection or copying.

RESPONSE:

Deny

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION 1: Produce all Items identified, referred to, and relied upon in answering the foregoing Interrogatories.

EXHIBIT 1

RESPONSE:

See documents produced to date and herewith

REQUEST FOR PRODUCTION 2: Produce all Items identified, referred to, and relied upon in answering the foregoing Requests for Admission.

RESPONSE:

See documents produced to date and herewith

REQUEST FOR PRODUCTION 3: Produce all Items that you intend to use or offer into evidence as an exhibit in any proceeding in this litigation.

RESPONSE:

Objection: premature. Without waiving, see documents produced to date and herewith

REQUEST FOR PRODUCTION 4: Produce all contracts and licenses between Cleveland concerning any of the following entities, services, or pieces of software: CI Technologies, IAPro, IAPro NextGen, and BlueTeam.

RESPONSE:

Objection: unclear, irrelevant and not likely to lead to the discovery of admissible evidence, not proportional to the needs of the case. Without waiving, this response may be supplemented as the City's investigation continues.

REQUEST FOR PRODUCTION 5: Produce all manuals and policies regarding the IAPro software.

RESPONSE:

Objection: unclear, irrelevant and not likely to lead to the discovery of admissible evidence, not proportional to the needs of the case. Without waiving, see documents produced to

EXHIBIT 1

date and herewith. This response may be supplemented as the City's investigation continues.

REQUEST FOR PRODUCTION 6: Produce all manuals for past IAPro versions used by Cleveland.

RESPONSE:

Objection: unclear, irrelevant and not likely to lead to the discovery of admissible evidence, not proportional to the needs of the case. Without waiving, see documents produced to date and herewith. This response may be supplemented as the City's investigation continues.

REQUEST FOR PRODUCTION 7: Produce all manuals and policies regarding the BlueTeam software.

RESPONSE:

Objection: unclear, irrelevant and not likely to lead to the discovery of admissible evidence, not proportional to the needs of the case. Without waiving, see documents produced to date and herewith. This response may be supplemented as the City's investigation continues.

EXHIBIT 1

BARBARA A. LANGHENRY (0038838)
Director of Law

By: *s/ Timothy J. Puin*

William M. Menzalora (0061136)
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PROOF OF SERVICE

The foregoing discovery responses were emailed on April 21, 2021, to counsel of record for Relator, Andrew Geronimo (acg33@case.edu) and Calvin Freas (cfras-lawclinic@case.edu).

By: *s/ Timothy J. Puin*

TIMOTHY J. PUIN (0065120)
72894v1

EXHIBIT 3



CLEVELAND DIVISION OF POLICE

GENERAL POLICE ORDER



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

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.

EXHIBIT 3

PAGE: 2 of 6	SUBJECT: USE OF FORCE – REPORTING	NUMBER: 2.01.05
-----------------	--------------------------------------	--------------------

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

EXHIBIT 3

PAGE: 3 of 6	SUBJECT: USE OF FORCE – REPORTING	NUMBER: 2.01.05
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- 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

EXHIBIT 3

PAGE: 4 of 6	SUBJECT: USE OF FORCE – REPORTING	NUMBER: 2.01.05
-----------------	--------------------------------------	--------------------

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 not 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:

EXHIBIT 3

PAGE: 5 of 6	SUBJECT: USE OF FORCE – REPORTING	NUMBER: 2.01.05
-----------------	--------------------------------------	--------------------

- 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

EXHIBIT 3

PAGE: 6 of 6	SUBJECT: USE OF FORCE – REPORTING	NUMBER: 2.01.05
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- A. Officers shall be subject to the disciplinary process, up to and 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.



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Appeals

APPELLEE'S BRIEF FILED
May 14, 2021 12:28

By: TIMOTHY J. PUIN 0065120

Confirmation Nbr. 2253894

CID STANDIFER, ET AL.

CA 20 110200

vs.

CITY OF CLEVELAND

Judge:

Pages Filed: 75

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

Lauren “Cid” Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene,

Relator

v.

The City of Cleveland

Respondent

Original Action

**BRIEF OF RESPONDENT
THE CITY OF CLEVELAND**

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Counsel for Respondent
The City of Cleveland

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE ISSUE.....1

STATEMENT OF THE CASE1

STATEMENT OF THE FACTS 2

 I. Ms. Standifer’s Public Records Requests and the City’s Responses 2

 II. UOF Reports Withheld Under the CLEIR Exception 2

 A. Records Filed Under Seal April 26, 2021 2

 B. Facts Regarding UOF Reports 3

ARGUMENT..... 6

 I. Burden of Proof in Public-Records-Access Cases..... 6

 II. The CLEIR Exception..... 7

 III. The Withheld UOF Reports Are Subject to the CLEIR Exception 9

 A. A UOF Report Is a Confidential Law Enforcement Record 9

 B. Release of the UOF Reports Under Investigation
 Would Compromise the Investigations12

 IV. This Action Should Be Dismissed As Moot15

 V. This Action Should Be Dismissed Under R.C. 2731.0415

CONCLUSION 16

PROOF OF SERVICE17

APPENDIX

 Exhibit A: Affidavit of Lieutenant Charles Neidbalson

 Exhibit B: Deposition of Commander Brian Carney

 Exhibit C: Respondent’s interrogatory responses

TABLE OF AUTHORITIES

Cases

Blue v. Ryan, 8th Dist. Cuyahoga Nos. 106166, 106180, 106181, and 106182,
2017-Ohio-8072 16

Crenshaw v. City of Cleveland Law Department, 8th Dist. Cuyahoga No. 108519,
2020-Ohio-92115

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Gannett Co., Inc. v. James, 108 Misc.2d 862, 438 N.Y.S.2d 901
(1981) 14

In re Collado, 8th Dist. Cuyahoga No. 110048, 2020-Ohio-53..... 16

Mentch v. Cuyahoga County Public Library Board, 8th Dist. Cuyahoga No. 105963,
2018-Ohio-1398 16

Neer v. State of Iowa, Iowa App. No. 10-0966, 2011 WL 662725
(Feb. 23, 2011) 14

Shoop v. State, 144 Ohio St.3d 374, 2015-Ohio-2068, 43 N.E.3d 43215

State ex rel. Armatas v. Plain Twp. Bd. of Trustees, Slip Opinion
No. 2021-Ohio-1176..... 6

State ex rel. Beacon Journal Pub. Co. v. University of Akron,
64 Ohio St.2d 392, 415 N.E.2d 310 (1980) 11

State ex rel. Caster v. Columbus, 151 Ohio St.3d 425, 2016-Ohio-8394,
89 N.E.3d 598..... 8

State ex rel. Cincinnati Enquirer v. Ohio Department of Commerce,
Division of State Fire Marshal, 145 N.E.3d 1232, 2019-Ohio-4009 (10th Dist.)..... 7

State ex rel. Jenkins v. City of Cleveland, 82 Ohio App.3d 770, 613 N.E.2d 652
(8th Dist. 1992)8, 9, 10, 14

State ex rel. Kesterson v. Kent State Univ., 156 Ohio St.3d 22, 2018-Ohio-5110,
Brief123 N.E.3d 89515

State ex rel. Musial v. N. Olmsted, 106 Ohio St.3d 459, 2005-Ohio-5521,
835 N.E.2d 1243 8

State ex rel. National Broadcasting Company, Inc. v. City of Cleveland,
38 Ohio St.3d 79, 83, 526 N.E.2d 786 (1988) 11

State ex rel. National Broadcasting Company, Inc. v. City of Cleveland,
57 Ohio St.3d 77, 566 N.E.2d 146 (1991) 11, 12

State ex rel. Ohio Patrolmen’s Benevolent Assn. v. Mentor,
89 Ohio St.3d 440, 732 N.E.2d 969 (2000) 11, 12

State ex rel. Patituce & Assocs., L.L.C. v. Cleveland, 2017-Ohio-300, 81 N.E.3d 863 (8th
Dist.)15

State ex rel. Perry v. Byrd, 8th Dist. Cuyahoga No. 109006, 2020-Ohio-34 3

State ex rel. Polovischak v. Mayfield, 50 Ohio St.3d 51, 552 N.E.2d 635 (1990) 6, 8-9

State ex rel. Rocker v. Guernsey County Sheriff’s Office, 126 Ohio St.3d 224,
2010-Ohio-3288, 932 N.E.2d 3277, 9, 13

State ex rel. Thompson Newspapers, Inc. v. Martin, 47 Ohio St.3d 28,
546 N.E.2d 939 (1989)8

Watson v. Cuyahoga Metro. Housing Auth., 8th Dist. Cuyahoga No. 99932,
2014-Ohio-1617 8

Welsh-Huggins v. Jefferson County Prosecutor’s Office, Slip Opinion
No. 2020-Ohio-5371..... 6

White v. Dept. of Rehabilitation and Correction, 10th Dist. Franklin No. 19AP-85,
2020-Ohio-386 6

Statutes

Ohio Rev. Code 149.43 *passim*

Ohio Rev. Code 2731.0415-16

STATEMENT OF THE ISSUE

Is the City justified in withholding Use of Force reports for incidents that are still under investigation, under the CLEIR exception, R.C. 149.43(A)(1)(h)?

STATEMENT OF THE CASE

On December 31, 2020, Relator, Lauren “Cid” Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene (collectively, “Ms. Standifer”) filed their original action in this Court seeking a writ of mandamus directing Respondent, The City of Cleveland (“City”), to turn over records in response to Ms. Standifer’s public records requests for Use of Force Reports (“UOF Reports”) completed by members of the Cleveland Division of Police (“CDP”). Ms. Standifer made several requests between September 9, 2020, and December 10, 2020. Although each request was different, all were consistent with the original request for “all reports on use of force incidents between Jan. 1, 2019 and the date the record is generated.”

After mediation and continued discussion by the parties, an agreement was reached regarding the format and content of UOF Reports to be disclosed, except for one category of records that remain in dispute: UOF Reports concerning uses of force by CDP members that are still under investigation. Ms. Standifer contends that UOF reports are routine incident reports that do not meet the definition of a “Confidential law enforcement investigatory record” under R.C. 149.43(A)(2). The City maintains that UOF Reports that are part of an open investigation are exempted from the Public Records Act by R.C. 149.43(A)(1)(h), which provides that “Public record” does not mean “Confidential law enforcement investigatory records” (hereinafter, “the CLEIR exception”).

Written discovery and a deposition of the City have been conducted. Per the Court's Judgment Entries of March 22, 2021, and April 29, 2021, the City filed the records at issue with the Court. In addition to the records themselves, the City's evidence is the Affidavit of Sergeant Maria Stacho filed on March 29, 2021, including its attachments; the Affidavit of Lieutenant Charles Neidbalson attached hereto as Exhibit A; the May 3, 2021, deposition of Commander Brian Carney, attached as Exhibit B;¹ and Respondent's interrogatory responses, attached as Exhibit C.

STATEMENT OF THE FACTS

I. Ms. Standifer's Public Records Requests and the City's Responses

The City incorporates the Status Report of Respondent filed March 3, 2021, which lists Ms. Standifer's multiple public records requests from September 9, 2020, through December 10, 2020, and the City's responses. Briefly, Ms. Standifer requested copies of the UOF Reports that CDP members are required to complete after interactions with the public in which a CDP member used physical force in the course of his or her duties. The time frame for the records requested was from January 1, 2019, to the present. After several months of working together, including during the course of this litigation, Ms. Standifer and the City agree that the only remaining issue is whether the CLEIR exception applies to UOF Reports concerning uses of force by CDP members that are still under investigation.

II. UOF Reports Withheld Under the CLEIR Exception

A. Records Filed Under Seal April 26, 2021

¹ Exhibit B is an unofficial copy of the transcript; the City will file a final copy of the transcript upon receipt from the court reporter, unless the transcript is filed first by Ms. Standifer.

The City is withholding a limited number of UOF Reports in their entirety on the basis of the CLEIR exception, R.C. 149.43(A)(1)(h). The number of open investigations into uses of force changes frequently as investigations are opened and closed. (Stacho Aff., 3/29/2021, ¶ 15.) At the time of the City's manual filing under seal of the narratives from the currently-open investigations, there were two open investigations from 2019; 33 from 2020; and 52 from 2021. (See 4/26/2021 Supplemental Manual Filing.)

There are limitations in the amount of data that can be exported to Excel from the City's IPro/ BlueTeam software system. (Stacho Aff., 3/29/2021, ¶ 14.) The parties agree that the officer's narratives are more important than other data columns (i.e., secondary details such as the hospital to which a person was taken). For these reasons, the full narratives of the withheld UOF Reports were filed with the Court (see 4/26/2021 Supplemental Manual Filing), and certain secondary data was left out. However, the type of secondary information presently being withheld can be seen from the columns of information in the initial Excel spreadsheets disclosed to Ms. Standifer and filed with the Court. (See 3/23/2021 Notice of Manual Filing.)

Since producing the initial Excel spreadsheets to Ms. Standifer, the City has also reached an agreement to produce (subject to an agreed protective order filed with the Court on May 11, 2021, for its review and approval) the full narratives from each UOF Report except for those still under investigation.

B. Facts Regarding UOF Reports

A UOF Report is a written report of the facts and circumstances of an incident involving use of force by a police officer that is entered directly into the CDP's IPro/ BlueTeam software program. (Stacho Aff., 3/29/2021, ¶ 4.) A UOF Report is an entirely separate record from the initial report, field report, offense/incident report, or detail

report, i.e., the commonly-understood “police report” that responding officers prepare after being called to a scene that includes the names of witnesses, victims, and suspects; and the facts of an alleged offense or incident such as a motor vehicle accident or a domestic violence complaint. (*Id.* at ¶ 5.)

A UOF Report does not just contain empirical facts; the report includes the officer’s mental impressions and subjective analyses of the circumstances in which force was used. See General Police Order (“GPO”) 2.01.05 (Ex. 1 to Stacho Aff., 3/29/2021), p. 1 (UOF Reports shall be detailed enough to permit an understanding of “the totality of the circumstances); *id.* (“Officers shall not use conclusory statements, ‘boilerplate’ or ‘canned’ language”); *id.* at pp. 2, 3 (CDP officers who witness use of force should make a report “from the officer’s perspective”); *id.* at p. 6 (officers reporting exceptional uses of force must state “why the officer believed that no other force options...were available”).

A criminal or administrative proceeding may result from investigation of the use of force described in a UOF Report. See Neidbalson Aff., Ex. A, ¶ 2 (referring to criminal or administrative proceedings in connection with Use of Force Reports); GPO 2.01.06 (Ex. 7 to Stacho Aff., 3/29/2021), *passim*, including p. 7 (discussing Internal Affairs involvement); Stacho Aff., 3/29/2021, ¶ 16 (discussing investigations involving UOF Reports); Respondent’s answer to Interrogatory Nos. 6, 7 (Ex. C) (identifying criminal and administrative authorities who may pursue investigations into uses of force); Carney Dep., Ex. B, p. 17 (describing criminal and administrative proceedings resulting from Internal Affairs investigations).

However, this does not mean that the UOF Report provides the sole factual basis for an investigation. A use of force can be brought to the attention of the CDP by a

citizen, another officer, or other sources of information besides the UOF Report. See Carney Dep. Ex. B., pp. 9, 16; GPO 2.01.05 (Ex. 1 to Stacho Aff., 3/29/2021), p. 3 (officers witnessing or present during a use of force are also required to report the use of force, not just the officer who used the force); Respondent's answer to Interrogatory No. 6 (Ex. C) ("Investigations of use of force by a member of the CDP may be initiated by citizens and/or by members of CDP"). For the most serious uses of force, Level 3 uses of force, a supervisory officer creates the initial entry in IAPro/ BlueTeam, not the officer who used the force. (Carney Dep., Ex. B., p. 17.) Thus, self-reporting by the involved officer is not the sole factual basis or the definitive beginning of an investigation.

Releasing a UOF Report for an incident that is still under investigation would compromise the investigation. See Stacho Aff., 3/29/2021, ¶ 16 ("Disclosure of the records not only would create a high probability of disclosure of the identity of uncharged suspects in use of force incidents, disclosure would reveal witnesses named in the reports who may be contacted and who have been or will be reasonably promised confidentiality. Thus, information in the reports would tend to disclose the identity of confidential witnesses. Also, information in the reports could be construed as endangering the physical safety of all involved if prematurely disclosed"); Neidbalson Aff., Ex. A, ¶ 2 (release would unfairly publicize the names of officers who might not be charged in any criminal or administrative proceeding, and would reveal confidential information about witnesses and victims, even potentially endangering the safety of all concerned. Release also could lead to destruction of evidence, tampering with witnesses, and inappropriate disclosure of information to the subject officers regarding the investigations).

ARGUMENT

I. Burden of Proof in Public-Records-Access Cases

In *Welsh-Huggins v. Jefferson County Prosecutor's Office*, Slip Opinion No. 2020-Ohio-5371, ¶ 34-35, the Supreme Court of Ohio stated the burdens of production and persuasion in public-records-access actions. The Court noted that all concerned assumed that the right of a public-records requester to obtain relief for denial of access to public records in violation of R.C. 149.43 required clear and convincing evidence. *See also State ex rel. Armatas v. Plain Twp. Bd. of Trustees*, Slip Opinion No. 2021-Ohio-1176, ¶ 11 (relator bringing mandamus action under the Public Records Act, R.C. 149.43, bears the burden of proof by clear and convincing evidence); *State ex rel. Perry v. Byrd*, 8th Dist. Cuyahoga No. 109006, 2020-Ohio-34, ¶ 5 (same).

However, the burden is not the same for the public office claiming a record is exempt. The public office has the lesser burden of showing that the “requested record falls squarely within the exemption.” *Welsh-Huggins, supra*, at ¶ 35 (citations omitted). This is a preponderance of the evidence burden. *White v. Dept. of Rehabilitation and Correction*, 10th Dist. Franklin No. 19AP-85, 2020-Ohio-386, ¶ 12 (a party who claims that an exemption applies is required to prove that the requested records fall squarely within the exemption by a preponderance of the evidence).

The public office’s burden is met without any testimony required, if the content of the record itself is enough to show the exception applies. *Welsh-Huggins, supra*, at ¶ 35 (exemption applies if the showing is “obviously apparent and manifest just from the content of the record itself”). *See also State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 54, 552 N.E.2d 635 (1990) (application of CLEIR exception determined from *in camera* review).

II. The CLEIR Exception

The exception at issue in this case is the CLEIR exception, which is listed at R.C. 149.43(A)(1)(h). Per R.C. 149.43(A)(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.

State ex rel. Cincinnati Enquirer v. Ohio Department of Commerce, Division of State Fire Marshal, 145 N.E.3d 1232, 2019-Ohio-4009 (10th Dist.) ¶ 22 (the CLEIR exception was created in R.C. 149.43(A)(1)(h) and is defined at R.C. 149.43(A)(2)).

Whether a document satisfies the CLEIR exception is determined by a two-part test: (1) whether the record pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature; and (2) whether release of the record would create a high probability of disclosure of any one of the statutorily enumerated types of information that is exempt from public disclosure. *State ex rel. Rucker v. Guernsey County Sheriff’s Office*, 126 Ohio St.3d 224, 2010-Ohio-3288, 932 N.E.2d 327, ¶ 8 (citation omitted).

The CLEIR exception provides a broad exclusion from the reach of the Public Records Act. *State ex rel. Caster v. Columbus*, 151 Ohio St.3d 425, 2016-Ohio-8394, 89 N.E.3d 598, ¶ 19. The CLEIR exception includes “information assembled by law enforcement officials in connection with a probable or pending criminal proceeding.” *Id.* Thus, the CLEIR exception permits withholding not just individual items of information in a document contained within an investigatory file -- the exception protects entire documents in an investigatory file. *Id.* at ¶ 48 (the exception may require the withholding of not just “parts of some records” but of “some records” themselves); *Watson v. Cuyahoga Metro. Housing Auth.*, 8th Dist. Cuyahoga No. 99932, 2014-Ohio-1617, ¶ 43 (“certain records, such as confidential law-enforcement investigatory records, are exempt from disclosure under R.C. 149.43(A)”).

To require redaction of each item of confidential information within a document, as opposed to exempting the entire document itself, would render the CLEIR exception ineffective at protecting the confidential information identified in the statute. *State ex rel. Jenkins v. City of Cleveland*, 82 Ohio App.3d 770, 776, 613 N.E.2d 652 (8th Dist. 1992) (“The court has further ruled that when protected information is inextricably intertwined with the rest of the record, it is appropriate to withhold the entire record”); *State ex rel. Thompson Newspapers, Inc. v. Martin*, 47 Ohio St.3d 28, 30, 546 N.E.2d 939 (1989) (“we find that the sealed record cannot be redacted since any portion of the document would tend to disclose the identity of the suspect”).

The uncharged-suspect category of the CLEIR exception applies even in the absence of pending or highly probable criminal charges. *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 2005-Ohio-5521, 835 N.E.2d 1243, ¶ 27. Further, a “record of investigation which qualifies as a confidential law enforcement investigatory

record under R.C. 149.43(A)(2) does not forfeit its statutory protection merely because there has been a passage of time with no forthcoming enforcement action.” *State ex rel. Polovischak, supra*, at 54.

III. The Withheld UOF Reports Are Subject to the CLEIR Exception

A. A UOF Report is a Confidential Law Enforcement Record

Addressing the first part of the two-part test for application of the CLEIR exception, a UOF Report is a record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature. *State ex rel. Rocker, supra*. That a UOF Report meets this broad definition is apparent from the face of the records. See also Neidbalson Aff., Ex. A, ¶ 2 (a criminal or administrative proceeding may result from the reported incidents); GPO 2.01.06 (Ex. 7 to Stacho Aff., 3/29/2021), *passim*, including p. 7 (discussing Internal Affairs involvement); Stacho Aff., 3/29/2021, ¶ 16 (discussing nature of UOF Reports under investigation); Respondent’s answer to Interrogatory Nos. 6, 7 (Ex. C) (identifying criminal and administrative authorities who may pursue investigations into uses of force); Carney Dep., Ex. B, p. 17 (describing criminal and administrative proceedings resulting from Internal Affairs investigations).

A UOF Report is an entirely separate record from the initial report, field report, offense/incident report, or detail report, i.e., the commonly-understood “police report.” (Stacho Aff., 3/29/2021, ¶ 5.) In this regard, UOF Reports, like the records in *Jenkins*, “really cannot be characterized as empirical facts,” because they include the officer’s mental impressions and subjective analyses of the circumstances in which force was used. *State ex rel. Jenkins, supra*, at 779-80. See GPO 2.01.05, p. 1 (Ex. 1 to Stacho Aff., 3/29/2021) (UOF Reports shall be detailed enough to permit an understanding of “the totality of the circumstances); *id.* (“Officers shall not use conclusory statements,

‘boilerplate’ or ‘canned’ language”); *id.* at pp. 2, 3 (CDP officers who witness use of force should make a report “from the officer’s perspective”); *id.* at p. 6 (officers reporting exceptional uses of force must state “why the officer believed that no other force options...were available”).

Like autopsy reports, the reports themselves are part of the investigation. *State ex rel. Jenkins, supra*, at 780. While a reporting officer may not be investigating himself or herself, his or her “analysis” and “deliberation” are required by GPO 2.01.05. *Id.* In a UOF Report, the officer is not necessarily reporting solely on his or her own conduct, the officer may be reporting the conduct of other officers, and in all cases the officer is analyzing the role of citizens involved in the incidents and the facts and circumstances that led to the use of force. See GPO 2.01.05, pp. 1, 3 (Ex. 1 to Stacho Aff., 3/29/2021).

Ms. Standifer has argued that, “[b]ecause there cannot be an investigation underway until after a report is filed, and because law enforcement officers do not investigate themselves, their narrative of the incident in which they used force is a routine part of their duties and should be considered as a routine factual incident report.” (Relator’s Status Report, 3/12/2021, Section IV.) First, it is incorrect to assume the investigation begins only after the officer who used the force reported the force. An investigation could be ongoing into an officer’s use of force based on citizen complaints, or the reports of other officers, even if the subject officer delayed reporting or failed to report his or her own use of force. See Carney Dep. Ex. B., pp. 9, 16; GPO 2.01.05 (Ex. 1 to Stacho Aff., 3/29/2021), p. 3 (officers witnessing or present during a use of force are also required to report the use of force, not just the officer who used the force); Respondent’s answer to Interrogatory No. 6 (Ex. C) (“Investigations of use of force by a member of the CDP may be initiated by citizens and/or by members of CDP”).

Further, given the mandate that all non-*de minimis* uses of force must be investigated (GPO's 2.01.05, 2.01.06) (Exs. 1, 7 to Stacho Aff., 3/29/2021), a UOF Report is necessarily initiated in the context of a presumed ongoing investigation. (Per GOP 2.01.06, it is the policy of the Cleveland Division of Police that uses of force be investigated – *i.e.*, not Use of Force Reports.) Thus, it is incorrect to assume that UOF Reports only concern the author's own use of force and that no investigation begins until after such a report.

For these reasons, UOF Reports are not “routine factual reports” or “ongoing offense reports, chronicling factual events reported to [police].” *State ex rel. Beacon Journal Pub. Co. v. University of Akron*, 64 Ohio St.2d 392, 397, 415 N.E.2d 310 (1980) (describing the type of record not subject to the CLEIR exception). On the contrary, the UOF Reports are precisely the type of record analyzed under the CLEIR exception. See *State ex rel. National Broadcasting Company, Inc. v. City of Cleveland*, 57 Ohio St.3d 77, 79-80, 566 N.E.2d 146 (1991) (“*NBC II*”) (“Not only the police investigations here [of use of force] but also the disciplinary and administrative reviews of the police investigations were encompassed in this broad statutory language as a ‘confidential law enforcement investigatory record’...Moreover, these records continue to be exempt despite the passage of time, the lack of enforcement action, or a prosecutor’s decision not to file charges”);² *State ex rel. Ohio Patrolmen’s Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 445, 732 N.E.2d 969 (2000) (“even if the internal affairs investigation of the Spetrino complaint were considered routine, there is no automatic, *per se*

² In her Status Report filed March 12, 2021, Ms. Standifer relied on *NBC I*, *i.e.*, *State ex rel. National Broadcasting Company, Inc. v. City of Cleveland*, 38 Ohio St.3d 79, 83, 526 N.E.2d 786 (1988). Such reliance is misplaced in light of the Supreme Court’s subsequent analysis in *NBC II*, that the CDP’s internal investigations into use of force are more like criminal investigations than personnel matters.

exclusion of all routine police criminal investigations” from the first step of the CLEIR exception test).

In *NBC II*, the Supreme Court of Ohio held that City of Cleveland investigative files related to police officers’ uses of force “appear comparable to those records compiled pursuant to criminal investigations that police routinely perform when they investigate crimes.” *NBC II, supra*, at 79.

The court of appeals explicitly found that the “ * * * investigations of the use of deadly force by police officers ‘were conducted in the same manner and for the same purpose as were investigations of incidents involving the use of deadly force by non-police.’ * * * The ‘primary purpose’ of the investigations * * * is to present ** information to the prosecutor who determines whether to file criminal charges. * * * If the prosecutor does file criminal charges, the records prepared during these investigations * * * assist the prosecutor ‘in preparing the case for presentation to the County Grand Jury and the Common Pleas Court.’ * * * After criminal proceedings have been concluded, an administrative review of the incident is conducted.

Id. The same is true in this case. See Carney Dep., Ex. B. pp. 16-17.

Thus, the records withheld by the City in this case meet the first part of the two-part test stated in the *State ex rel. Rucker* decision. *NBC II, supra*, at 80 (“these internal police investigations meet the first step of the definition of a ‘confidential law enforcement investigatory record’ under R.C. 149.43(A)(2)”; *State ex rel. Ohio Patrolmen’s Benevolent Assn., supra*, at 445 (“The first requirement is satisfied because the records pertain to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature.”) (citations omitted).

B. Release of the UOF Reports Under Investigation Would Compromise the Investigations

Addressing the second part of the two-part test for application of the CLEIR exception, release of UOF Reports under investigation would create a high probability of

disclosure of one or more of the enumerated types of information that is exempt from public disclosure under R.C. 149.43(A)(2). *State ex rel. Rocker, supra*.

The only evidence in the record is that the release of the UOF Reports under investigation would compromise the investigations. (Stacho Aff., 3/29/2021, ¶ 16) (“Disclosure of the records not only would create a high probability of disclosure of the identity of uncharged suspects in use of force incidents, disclosure would reveal witnesses named in the reports who may be contacted and who have been or will be reasonably promised confidentiality. Thus, information in the reports would tend to disclose the identity of confidential witnesses. Also, information in the reports could be construed as endangering the physical safety of all involved if prematurely disclosed”).

The officer in charge of CDP Internal Affairs, Lieutenant Charles Neidbaldson, testified in his Affidavit that open UOF files like those filed under seal with the Court are not publicly released, because release of the records would compromise the investigations. Release would unfairly publicize the names of officers who might not be charged in any criminal or administrative proceeding, and would reveal confidential information about witnesses and victims, even potentially endangering the safety of all concerned. Release also could lead to destruction of evidence, tampering with witnesses, and inappropriate disclosure of information to the subject officers regarding the investigations. (Neibaldson Aff., Ex. A, ¶ 1-2.)

Even without this unrebutted testimony, it is apparent from the face of the withheld documents filed under seal on April 26, 2021, that they contain categories of information identified in R.C. 149.43(A)(2), *i.e.*, the identity of a suspect who has not been charged (the police officers who committed the uses of force), R.C. 149.43(A)(2)(a); and information that is sensitive and confidential in relation to both

witnesses, victims, and law enforcement officers, R.C. 149.43(A)(2)(b), (d). The inclusion of the officer's analysis of the circumstances involving the use of force implicates the work product exception in R.C. 149.43(A)(2)(c). *State ex rel. Jenkins, supra*, at 780 ("A number of the records contain the subjective deliberations of the officers").³

An officer whose use of force is under investigation certainly would not appreciate his or her name appearing in *Scene* magazine before any final decision is made regarding disposition of the investigation or possible criminal charges. *State ex rel. Thompson Newspapers, Inc., supra*, at 30 ("Moreover, we recognize that one of the purposes for the public records exception in R.C. 149.43(A)(2) is to avoid the situation in which the release of confidential law enforcement investigatory records would subject a person to adverse publicity where he may otherwise never have been identified with the matter under investigation").

Courts in other jurisdictions similarly have held that use of force reports may be protected from public records requests. *See Neer v. State of Iowa*, Iowa App. No. 10-0966, 2011 WL 662725, *4 (Feb. 23, 2011) ("To require an item-by-item assessment of everything within a criminal investigation file would, for all practical purposes, eliminate the investigative report exemption....were we to impose such a requirement, we believe the 'incident' disclosure exception would swallow the provision holding 'investigative reports' confidential"); *Gannett Co., Inc. v. James*, 108 Misc.2d 862, 869,

³ The withheld records also contain information that should be redacted under R.C. 149.43 and the right to privacy, such as Social Security numbers, motor vehicle records identifiers, medical treatment information, and the like, which the parties agree are protected from disclosure.

438 N.Y.S.2d 901 (1981) (denying petitioner’s request for every use of force report over a four-year period).

Thus, the City has met its burden of proof by a preponderance of the evidence that the withheld records are subject to the CLEIR exception.

IV. This Action Should Be Dismissed As Moot

Where a public office produces the requested records prior to the court’s decision in a legal action brought by the requester, the requester’s action is moot. *Crenshaw v. City of Cleveland Law Department*, 8th Dist. Cuyahoga No. 108519, 2020-Ohio-921, ¶ 40, citing *State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 22, 2018-Ohio-5110, 123 N.E.3d 895, ¶ 13; *State ex rel. Patituce & Assocs., L.L.C. v. Cleveland*, 2017-Ohio-300, 81 N.E.3d 863, ¶ 2, 4 (8th Dist.).

In this case, all responsive records have been produced except for records lawfully withheld on the grounds of the CLEIR exception, R.C. 149.43(A)(1)(h). Accordingly, Ms. Standifer’s request has been fully satisfied and this action should be dismissed as moot.

V. This Action Should Be Dismissed Under R.C. 2731.04

R.C. 2731.04 provides, in pertinent part: “Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit.”

As set forth in *Shoop v. State*, 144 Ohio St.3d 374, 2015-Ohio-2068, 43 N.E.3d 432, ¶ 10, an individual party suing in their own name is not entitled to a writ of mandamus because R.C. 2731.04 provides that an application for a writ of mandamus “must be * * * in the name of the state on the relation of the person applying” and dismissal is warranted when a mandamus action fails to do so.

The parties styled as “Relator” in the caption of the Verified Complaint for Writ of Mandamus filed December 31, 2020, are Lauren “Cid” Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene. A writ of mandamus cannot be granted in their names, such that this action cannot go forward and should be dismissed outright without even hearing their arguments.

The Eighth District has dismissed purported mandamus actions for this reason. See *Blue v. Ryan*, 8th Dist. Cuyahoga Nos. 106166, 106180, 106181, and 106182, 2017-Ohio-8072, ¶ 7 (failure to petition in the name of the state “provides an independent basis to dismiss” mandamus actions); *Mentch v. Cuyahoga County Public Library Board*, 8th Dist. Cuyahoga No. 105963, 2018-Ohio-1398, ¶ 80 (“[a] petitioner’s failure to comply with the requirements of [R.C. 2731.04] is an independent basis to dismiss a mandamus action”); *In re Collado*, 8th Dist. Cuyahoga No. 110048, 2020-Ohio-5337, ¶ 8 (“an action for writ of mandamus shall be brought in the name of the state on behalf of the individual seeking relief. R.C. 2731.04. The failure to do so is grounds for dismissal”); *Everett v. Parma Hts.*, 8th Dist. Cuyahoga No. 99611, 2013-Ohio-5314, ¶¶ 26-27 (“The Everetts failed to comply with R.C. 2731.04 in bringing their mandamus action against the City and thus, their claim fails as a matter of law”).

Accordingly, the City is entitled to judgment for failure of the parties styling themselves as “Relator” in the complaint of this action to bring their action in the name of the State as required by R.C. 2731.04.

CONCLUSION

For the foregoing reasons, Respondent, The City of Cleveland, respectfully asks that this Court order that (i) judgment in the City’s favor be entered on the complaint of Lauren “Cid” Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene; and the

petition for a writ of mandamus be denied; (ii) the records at issue be considered exempted from the Public Records Act by R.C. 149.43(A)(1)(h); (iii) court costs be assessed to Ms. Standifer.

Respectfully submitted,

BARBARA A. LANGHENRY (0038838)
Director of Law

By: s/ Timothy J. Puin
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Counsel for Respondent, The City of Cleveland

PROOF OF SERVICE

The foregoing was filed electronically on May 14, 2021, and may be accessed through the Court's ECF system by all parties of record.

By: s/Timothy J. Puin

TIMOTHY J. PUIN (0065120)

72927v1

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

Lauren "Cid" Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene,
Relator

v.

The City of Cleveland
Respondent

Original Action

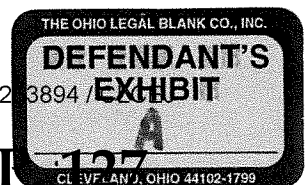
AFFIDAVIT OF LIEUTENANT CHARLES NEIDBALSON

NOW COMES Lieutenant Charles Neidbalson, and for his Affidavit, states as follows:

1. I am an adult who is competent to make this affidavit, and I have first-hand knowledge of the facts set forth herein, as the officer in charge of the Internal Affairs Unit of the Cleveland Division of Police. Also, I have reviewed copies of records that I understand were filed under seal with the Court regarding open investigations.

2. In my experience, the City would not publicly release the Use of Force reports completed by officers in IAPro/BlueTeam while an internal investigation is still pending into an officer's use of force. Release of the records would compromise the investigations. Release would unfairly publicize the names of officers who might not be charged in any criminal or administrative proceeding, and would reveal confidential information about witnesses and victims, even potentially endangering the safety of all concerned. Release also could lead to destruction of evidence, tampering with witnesses, and inappropriate disclosure of information to the subject officers regarding the investigations.

FURTHER AFFIANT SAYETH NAUGHT.



Charles Neidbalsen #8547, Lt
LIEUTENANT CHARLES NEIDBALSON, CDP

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Sworn to and subscribed before me this 12 day of May, 2021, by the foregoing Affiant, who did swear or affirm it was his true act and deed.

T. J. Puin

NOTARY PUBLIC
TIMOTHY J. PUIN, Attorney
NOTARY PUBLIC - STATE OF OHIO
My Commission Has No Expiration Date
Section 147.03 O.R.C.

73008v1



IN THE EIGHTH DISTRICT COURT OF APPEALS
CUYAHOGA COUNTY, OHIO

LAUREN 'CID' STANDIFER, *et al.*,) CASE NO: CA 20 110200
))
) Relators,)
))
) v.)
) RESPONDENT THE CITY OF
THE CITY OF CLEVELAND,) CLEVELAND'S RESPONSES TO
) RELATORS' FIRST SET OF
) DISCOVERY REQUESTS
))
) Respondent.)
))

GENERAL OBJECTIONS

Respondent objects to any requested discovery responses that are attorney-client privileged or subject to the work product doctrine; any requests that call for information outside the first-hand knowledge of Respondent; any ambiguous requests; any compound requests; any requests that are irrelevant and not likely to lead to the discovery of admissible evidence; and any requests that are not proportional to the needs of the case. None of these general objections are waived if not stated specifically in response to a particular request.

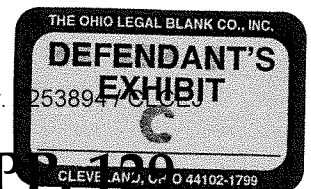
INTERROGATORIES

INTERROGATORY 1: State the name, address, phone number, and place of employment of the person answering these interrogatories.

RESPONSE:

As to Interrogatory Nos. 6 and 7:

Commander Brian Carney
Bureau of Compliance
Cleveland Division of Police
Department of Public Safety
C/o Department of Law
601 Lakeside Ave. E., Rm. 106
Cleveland, OH 44114
(216) 664-2800



INTERROGATORY 6: Identify how the City initiates an investigation of a CDP officer's use of force.

RESPONSE:

Investigations of use of force by a member of the CDP may be initiated by citizens and/or by members of CDP. Citizens may contact the Civilian Police Review Board if they want to make a complaint of misconduct or may contact other City representatives. An immediate supervisor of a police officer involved in a use of force incident may initiate an internal investigation into Level 1 and Level 2 use of force incidents. For a Level 3 use of force incident, the Force Investigation Team would initiate the investigation. Please see GPO's, manuals, and other documents produced to date and herewith, including but not limited to GPO 2.01.06, *Use of Force – Supervisory Reviews and Investigations*.

INTERROGATORY 7: Identify all entities which have authority to bring law enforcement actions against CDP officers.

RESPONSE:

Objection: unclear; calls for a legal conclusion. Without waiving, the City of Cleveland Department of Law, Criminal Division (City Prosecutor's Office); the Cuyahoga County Prosecutor's Office; the State of Ohio; and the United States of America, all have authority to pursue criminal actions against CDP officers.

INTERROGATORY 8: Identify and produce all manuals and policies regarding the IAPro software.

RESPONSE:

RESPONSE:

Objection: unclear, irrelevant and not likely to lead to the discovery of admissible evidence, not proportional to the needs of the case. Without waiving, this response may be supplemented as the City's investigation continues.

VERIFICATION

I hereby swear or affirm that the foregoing answers to Interrogatory Nos. 6 and 7 are true to the best of my knowledge and belief.

/s/ Brian Carney
per email TSP - executed remotely due to covid concerns

COMMANDER BRIAN CARNEY
CLEVELAND DIVISION OF POLICE

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Sworn to and subscribed before me this 20th day of April, 2021, by the foregoing Affiant, who did swear or affirm that the foregoing answers to Interrogatory Nos. 6 and 7 were his true act and deed.

NOTARY PUBLIC

Timothy J. Purn (0065720)
TIMOTHY J. PURN, Attorney
NOTARY PUBLIC - STATE OF OHIO
My Commission Has No Expiration Date
Section 147.03 O.R.C.



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Appeals

NOTICE OF
May 19, 2021 14:08

By: TIMOTHY J. PUIN 0065120

Confirmation Nbr. 2257579

CID STANDIFER, ET AL.

CA 20 110200

vs.

CITY OF CLEVELAND

Judge:

Pages Filed: 50

**IN THE COURT OF APPEALS OF OHIO
EIGHTH DISTRICT**

CID STANDIFER, et al.	)	Case No. CA-20-110200
)	
Relator	)	Original Action
)	
vs.	)	NOTICE OF FILING TRANSCRIPT
	)	OF DEPOSITION OF COMMANDER
THE CITY OF CLEVELAND	)	BRIAN CARNEY
)	
Respondent)	

Respondent, The City of Cleveland (“City”), hereby provides notice of its filing of the deposition of Commander Brian Carney, attached, which deposition was taken on May 3, 2021, and is evidence in support of the City’s position in this matter.

Respectfully submitted,

BARBARA A. LANGHENRY (0038838)
Director of Law

By: s/Timothy J. Puin
WILLIAM M. MENZALORA (0061136)
Chief Assistant Director of Law
TIMOTHY J. PUIN (0065120)
Assistant Director of Law
City of Cleveland, Department of Law
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Email: tpuin@city.cleveland.oh.us
Attorneys for City of Cleveland

CERTIFICATE OF SERVICE

The foregoing was filed electronically and may be accessed through the Court's ECF system by all parties of record; and was sent via email to counsel of record, Andrew Geronimo, acg33@case.edu.

By: s/Timothy J. Puin
TIMOTHY J. PUIN (0065120) 72916v1

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IN THE EIGHTH DISTRICT COURT OF APPEALS
CUYAHOGA COUNTY, OHIO

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LAUREN "CID" STANDIFER,  
et al.,  
Relators,

vs. Case No: CA-20-110200

CITY OF CLEVELAND,  
Respondent.

~~~~~

Deposition of
COMMANDER BRIAN CARNEY

Monday, May 3, 2021

10:03 a.m.

TAKEN VIA VIDEOCONFERENCE

Sandra L. Rice

1 APPEARANCES:

2 Andrew Geronimo, Esq.
3 Calvin J. Freas (certified legal intern)
4 First Amendment Clinic
5 Case Western Reserve University
6 School of Law
7 11075 East Boulevard
8 Cleveland, Ohio 44106
9 (216) 368-2766
10 Andrew.geronimo@case.edu,

11 On behalf of the Relators;

12 Timothy Puin, Esq.
13 Assistant Director of Law
14 City of Cleveland Law Department
15 601 Lakeside Avenue
16 Room 106
17 Cleveland, Ohio 44114
18 (216) 664-2807,
19 tpuin@clevelandohio.gov,

20 On behalf of the Respondent.

21 ALSO PRESENT:

22 Gabrielle Wilson (certified legal intern)
23
24
25

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W I T N E S S I N D E X

PAGE

CROSS-EXAMINATION
COMMANDER BRIAN CARNEY
BY MR. FREAS

5

E X H I B I T I N D E X

EXHIBIT

PAGE

Relators' Exhibit 1, Cleveland
Division of Police, Internal Affairs
Unit, Policies and Procedures Manual

19

Relators' Exhibit 2, Cleveland
Division of Police, Use of Force
Report

22

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THE NOTARY: For the record, my name is Sandy Rice in Cleveland, Ohio. Today is Monday, May 3, 2021. Counsel, and interns, would you please identify yourselves for the record, and then does counsel agree to the all-remote attendance in the taking of this deposition and agree that I may swear in the witness remotely?

MR. GERONIMO: Andy Geronimo for Relators here along with, and I'll let the interns introduce themselves, but supervising Calvin Freas in this matter and, yes, we consent to everything. Calvin, if you would also introduce yourself.

MR. FREAS: I'm Calvin Freas, certified legal intern at the First Amendment Clinic here on behalf of Relators.

MS. WILSON: Gabrielle Wilson, certified legal intern here on behalf of the Relators.

MR. PUIN: Good morning. This is Assistant Director of Law Tim Puin for Respondent. We do consent to the remote

1 depo and to the swearing in remotely.

2 - - - -

3 COMMANDER BRIAN CARNEY, of lawful age, called
4 by the Relators for the purpose of
5 cross-examination, as provided by the Rules of
6 Civil Procedure, being by me first duly sworn, as
7 hereinafter certified, deposed and said as
8 follows:

9 CROSS-EXAMINATION OF COMMANDER BRIAN CARNEY
10 BY MR. FREAS:

11 Q. Good morning, Commander Carney.

12 A. Good morning.

13 Q. So just to state again, I'm Calvin Freas. I'm a
14 certified legal intern at the First Amendment
15 Clinic at Case Western Reserve here representing
16 Cid Standifer and Euclid Media Group, LLC under
17 the supervision of Professor Andrew Geronimo.

18 Just so that we are clear and have some
19 ground rules, this deposition is being
20 transcribed by a court reporter. As such, please
21 answer verbally and try not to talk over any of
22 my questions. If you're unclear about a question
23 please ask me for clarification because if you do
24 answer we will assume that you understood the
25 question. Does all of that make sense?

1 A. Yes.

2 Q. For the record also do you understand that you're
3 under oath?

4 A. Yes.

5 Q. Do you also understand that you are appearing
6 pursuant to a notice of deposition to give
7 Cleveland's testimony on the topics listed on
8 that notice?

9 A. Yes.

10 Q. And are you prepared today to give Cleveland's
11 testimony on the topics listed on that notice?

12 A. Yes.

13 Q. Thank you. Would you state your name and spell
14 it for the record?

15 A. I'm Commander Brian Carney, B-R-I-A-N
16 C-A-R-N-E-Y.

17 Q. Thank you. Could you state your title?

18 A. I am the commander of the Bureau of Compliance,
19 Cleveland Division of Police.

20 Q. And what are some of the duties that you do in
21 that role as well as some of the duties in the
22 past?

23 A. I was hired in 2001 so I have 20 years with the
24 city. I'm currently in charge of the Bureau of
25 Compliance which consists of the policy unit, the

1 inspection unit, our case preparation unit, and
2 our inspections -- did I say inspections unit?

3 Q. I believe so.

4 A. That's it. And I oversee our compliance section
5 which consists of consent decree deliverables,
6 insuring compliance with our consent decree with
7 the Department of Justice.

8 Q. So could you give us some background on what the
9 policy unit does?

10 A. The policy unit creates all of our general police
11 orders, divisional notices, any other assignments
12 that I may task them with, but most of their
13 duties consist of general police orders.

14 Q. General police orders. So is that policy unit
15 in -- kind of overseeing some of the procedures
16 as to uses of force?

17 A. No.

18 Q. Does the Bureau of Compliance oversee any
19 procedures as to uses of force?

20 A. Yes.

21 Q. Could you describe to me what a "use of force"
22 is?

23 A. I would defer to the definitions of our general
24 police order. I don't have those in front of me.

25 Q. Okay. As a layperson could I kind of get an

1 understanding of what a "use of force" is?

2 A. It would be any force which is not de minimus
3 force that would involve take-downs, use of
4 intermediate weapons. We have Level-1 use of
5 force, Level-2 use of force, and Level-3 use of
6 force, Level-1 being the minimum amount of force
7 used, with Level-3 being the most serious use of
8 force, a deadly, deadly use of force.

9 Q. Is Level-3 always a deadly use of force?

10 A. No. It can be a head strike or use of asp baton,
11 use of force on a pregnant citizen. The use of a
12 taser, excessive use of a taser. There may be
13 some other criteria.

14 Q. Okay. Could you describe what a "de minimis use
15 of force" is?

16 A. De minimis would be, again, I don't have the
17 definition in front of me, but it could be like
18 an escort position, any force that would not be
19 what a reasonable person would believe to cause
20 pain or injury. It wouldn't involve take-downs
21 or striking.

22 Q. And police officers do not have to report de
23 minimis uses of force?

24 A. Correct.

25 Q. But they are required to report anything above de

1 minimis?

2 A. Correct.

3 Q. What ways does Cleveland learn about a
4 use-of-force incident?

5 A. What way? I don't understand the question.

6 Q. I'm sorry. I can rephrase. In what ways does a
7 use-of-force incident usually come to the
8 attention of the City of Cleveland or the
9 Cleveland Division of Police?

10 A. A use of force can be reported by either the
11 officer or through a citizen or an investigation
12 that is conducted by the division through various
13 entities, and it can also be investigated through
14 other municipalities such as -- well, not
15 municipalities but, let me rephrase that, the
16 county or the United States of America.

17 Q. What would you say the most common, out of all of
18 those ways, a use of force is brought to the
19 attention of the City of Cleveland or the
20 Cleveland Division of Police?

21 A. Through self reporting by the officer.

22 Q. Are officers required to self report?

23 A. Yes.

24 Q. How does that process usually work? I know that
25 it's in the policies and procedures, but how does

1 it usually work day to day?

2 A. If an officer has used a Level-2 or a Level-3 use
3 of force they are required by our policy to
4 report that use of force to a supervisor who
5 would then initiate an investigation.

6 Q. Are they required to report Level-1 uses of
7 force?

8 A. No. I'm sorry. That, a Level-1 can be a pistol
9 point which is required to report.

10 Q. Okay.

11 A. And that is a Level-1.

12 Q. But that's the only Level-1 that's required to
13 report?

14 A. To the best of my knowledge, yes.

15 Q. How often would you say the city receives a
16 report about a particular use-of-force incident
17 from both an officer that used the force and by
18 any other means?

19 A. Are you referring to any other means such as the
20 county or the Civilian Police Review Board or
21 another entity?

22 Q. Or the citizen or any of those other ways that
23 Cleveland learns of uses of force.

24 A. I don't know. I can't give you that number.

25 Q. But self reporting is the vast majority?

1 A. That would be the most common, yes.

2 Q. What happens after, directly after a Cleveland
3 police officer --

4 MR. PUIN: Excuse me, Calvin. I'm
5 sorry. I'm just going to object to the use
6 of the term "vast majority." I think that
7 was putting words in the witness's mouth
8 but you can go ahead.

9 MR. FREAS: Thank you.

10 Q. What happens directly after a Cleveland police
11 officer has a use-of-force incident?

12 A. What happens as to who? Are you talking about
13 the investigation?

14 Q. What is the officer required to do?

15 A. Required to report the use of force.

16 Q. How quickly are they supposed to?

17 A. Immediately.

18 Q. Thank you. Could you tell me generally about the
19 Office of Professional Standards?

20 A. I don't oversee the Office of Professional
21 Standards. It's a civilian entity, an external
22 entity, by the City of Cleveland. The civilian
23 -- they have a Civilian Police Review Board which
24 sustains or not sustains a case which are led by
25 the Office of Professional Standards civilian

1 investigators, but the Civilian Police Review
2 Board is the authority which determines if they
3 are going to find any misconduct, and that is
4 sent to the chief of police or the director of
5 public safety.

6 Q. How does the Office of Professional Standards
7 interact with your bureau?

8 A. They provide the Bureau of Compliance with any
9 sustained findings of misconduct.

10 Q. How do they typically learn about potential
11 misconduct?

12 A. Through civilian complaints.

13 Q. Thank you. Could you tell me about the Force
14 Investigation Team?

15 A. The Force Investigation Team investigates Level-3
16 uses of force. It consists of various units
17 throughout the division.

18 Q. Could you tell me why the Office of Professional
19 Standards does not participate on a Force
20 Investigation Team when there is a criminal
21 investigation or a potential criminal
22 investigation?

23 A. It's my understanding representatives of the
24 Office of Professional Standards is a part of the
25 Force Investigation Team. I don't know what

1 level of participation that they are involved
2 with. I'm not a member of the FIT team.

3 Q. Are there individuals within the Bureau of
4 Compliance that are on the FIT team?

5 A. The inspection unit may be called upon when
6 Internal Affairs is short staffed. That training
7 has not been completed yet so the inspection unit
8 has not been called on yet, but in the near
9 future it's my understanding the inspection unit
10 may be part of that FIT team or force
11 investigation team.

12 Q. Okay. Could you tell me about International --
13 or Internal Affairs?

14 A. Yes.

15 Q. What is the purpose of having Internal Affairs
16 division?

17 A. To provide accountability for the division to
18 investigate any allegations of misconduct,
19 criminal matters, administrative misconduct.

20 Q. Why is it divided into a separate division?

21 A. Separate division from what?

22 Q. Why is Internal Affairs something that is
23 separate from any other investigatory divisions
24 within the Cleveland Division of Police?

25 A. I don't think I understand your question. It's

1 its own separate unit.

2 Q. How does Internal Affairs provide accountability
3 as you said?

4 A. Through investigations. If they determine that
5 there is a level of misconduct then it would be
6 sent to the chief of police and we would have a
7 pre-disciplinary hearing to determine that
8 misconduct, and if the officer or the member of
9 the division was found to be guilty of that
10 misconduct then they would have that appropriate
11 penalty from written reprimand up to termination.

12 Q. How does someone become part of Internal Affairs?

13 A. There is a list of minimum requirements, one
14 being they hold a rank of sergeant. They can't
15 have any previous misconduct findings. The
16 consent decree outlines specific minimum
17 requirements to the Internal Affairs unit.
18 That's just some of the requirements.

19 Q. And why do those requirements exist?

20 A. To have minimum requirements for a specialized
21 unit.

22 Q. Do you recall one of or do you recall some of
23 those minimum requirements?

24 A. Yes, what I just explained: Holding the rank of
25 sergeant, no previous misconduct findings.

1 Q. And why do you think there is no -- there's a
2 requirement for no previous misconduct findings?

3 A. That was negotiated in the City of Cleveland's
4 consent decree. I was not involved in that
5 negotiation process.

6 Q. If an officer is being investigated by Internal
7 Affairs are they ever -- is that officer being
8 investigated ever part of an Internal Affairs
9 committee investigating them?

10 A. I'm sorry, I don't understand the last part,
11 involving a committee?

12 Q. Or when Internal Affairs opens an investigation
13 into a police officer's alleged misconduct is
14 that officer who is being investigated ever part
15 of the investigatory team?

16 A. Are they part of the Internal Affairs?

17 Q. Or any investigatory team.

18 A. They could be assigned to a specialist unit. The
19 Internal Affairs investigates all members of the
20 division so I can't answer that, a general
21 statement like that, where they are assigned to.

22 Q. Does a police officer ever investigate
23 themselves?

24 A. No.

25 Q. Are all uses of force investigated by Internal

1 Affairs?

2 A. No.

3 Q. When does Internal Affairs initiate an
4 investigation?

5 A. By means of a complaint by another officer or
6 citizen or when assigned by the chief of police,
7 but the Internal Affairs at the end of their
8 routing of the uses of force they do review all
9 Level-1's, 2's and 3's. That is our policy that
10 all of the uses of force do go to Internal
11 Affairs so at some point they do review those.

12 Q. Okay. At what point does Internal Affairs review
13 a use of force?

14 A. It's different for each level whether it's a
15 Level-1 or a Level-2 or a Level-3. Level-1's are
16 sent directly to Internal Affairs. I believe
17 after the commander of the assigned member
18 reviews it it's sent from the commander to
19 Internal Affairs. Level-2, same thing. Then
20 Level-3's are investigated by Internal Affairs or
21 the FIT team, Force Investigation Team, which
22 consists of the Internal Affairs unit and other
23 various units.

24 Q. Thank you. How does the Cleveland Division of
25 Police, Internal Affairs, determine whether or

1 not they are engaging in a criminal
2 investigation?

3 A. Most of the Internal Affairs investigations start
4 off as a criminal investigation and then it's
5 presented to a prosecutor or a grand jury for
6 determination of whether it's a criminal case or
7 not. After the prosecutor -- if the prosecutor
8 "no papers," if no papers are issued charging the
9 officer then it's an administrative
10 investigation; or if it's a "true bill" obviously
11 the officer would be charged or if there's a "no
12 bill" by the grand jury then there would be an
13 administrative investigation at that point.

14 Q. Are you familiar with Blue Team and IA Pro?

15 A. Yes.

16 Q. Who creates uses-of-force reports in Blue Team?

17 A. It can be a member of the division who uses the
18 force but also if it's a Level-3 it's my
19 understanding the supervisor of the Internal
20 Affairs unit creates the initial entry.
21 Level-1's and Level-2's it would be the officer
22 who used the force.

23 Q. Who reviews uses-of-force reports?

24 A. Can you be more specific?

25 Q. Once it's put into Blue Team who then reviews the

1 uses-of-force reports?

2 A. For a Level-1 and Level-2 the ascending chain of
3 command by that officer, sergeant, lieutenant,
4 captain, commander, and then it is sent to the
5 Internal Affairs unit where it's reviewed by the
6 Internal Affairs superintendent or his designee
7 for a Level-1 or a Level-2.

8 Q. Going back to the Level-3, you said that the
9 supervisor inputs the use-of-force report into
10 Blue Team. How long has that been the case?

11 A. I don't know when that procedure or policy
12 actually started. I don't have a definitive
13 answer.

14 Q. I want to remind you that you are testifying on
15 behalf of the City of Cleveland so it would be
16 helpful if you knew when that policy came into
17 effect.

18 A. I don't have an answer for when the force
19 investigation manual came into effect, when it
20 was approved by the court. It was filed in
21 federal court with Judge Oliver and I don't have
22 that exact date.

23 Q. Do you have a year?

24 A. Maybe 2018, 2019.

25 Q. Okay. Thank you.

1 MR. PUIN: For the record, if you
2 look at PACER for Northern District of Ohio
3 Case 1:15-CV-1046 you will see that certain
4 use-of-force policies and procedures were
5 approved by the court on January 17th, 2017
6 and again on April 15, 2019.

7 THE WITNESS: Thank you.

8 MR. FREAS: Okay.

9 Q. How often do use-of-force reports from police
10 officers lead to criminal charges against an
11 officer?

12 A. I would say rarely.

13 Q. Okay.

14 MR. FREAS: Professor Geronimo, do
15 you have Exhibit 1 ready?

16 MR. GERONIMO: Yes. I'm going to
17 share my screen now. Can you all see this?

18 MR. PUIN: Yes.

19 Q. Okay. Showing you what we'll mark as Relators'
20 Exhibit 1, do you recognize this document?

21 A. Yes.

22 - - - -

23 (Thereupon, Relators' Exhibit 1, Cleveland
24 Division of Police, Internal Affairs Unit,
25 Policies and Procedures Manual, was marked

1 for purposes of identification.)

2 - - - -

3 MR. FREAS: Professor Geronimo,
4 could you scroll down to Page 8?

5 MR. GERONIMO: Can you still read
6 it if it's this size?

7 MR. FREAS: Yes. And if you
8 scroll down to the bottom at 6a.

9 MR. GERONIMO: Okay. I can blow
10 it up a little bit.

11 Q. Commander Carney, do you see where it notes "If
12 it is determined" at 6c? Do you see 6c?

13 A. Yes.

14 Q. And could you read that portion, 6c?

15 A. "If it is determined that the documented behavior
16 constitutes alleged misconduct requiring
17 investigation following consultation with the
18 chief of police, the IA superintendant and/or the
19 chief so notify the commanding officer within 15
20 days and initiate an investigation through either
21 Internal Affairs or the chain of command,
22 whichever is appropriate."

23 Q. Thank you. This section is about information
24 entered into Blue Team by officers; is that
25 correct?

1 A. Yes.

2 Q. And the documented behavior here in the portion
3 that you've read is only information supplied by
4 a police officer; correct?

5 A. No. This is just reviewing all allegations of
6 minor infractions reported in Blue Team. It
7 doesn't define who it's reported by.

8 Q. But you just previously said that it was
9 information entered into Blue Team by officers;
10 right?

11 A. What I said was -- are you talking about use of
12 force or are you talking about minor infractions?

13 Q. I'm talking about this specific piece of
14 information here in 6c. In using Blue Team
15 officers will put information in here and 6c is
16 referring to documented behavior and that
17 documented behavior is inputted into Blue Team by
18 a police officer?

19 A. Yes.

20 Q. Okay. Thank you.

21 MR. FREAS: Professor Geronimo, do
22 you have Exhibit 2 ready?

23 MR. GERONIMO: I do.

24 MR. FREAS: Thank you.

25 Q. Showing you what we'll mark as Relators' Exhibit

1 2 do you recognize this document?

2 A. I recognize it as a use-of-force report. I don't
3 recognize this particular incident.

4 Q. Great. Thank you.

5 - - - -

6 (Thereupon, Relators' Exhibit 2, Cleveland
7 Division of Police, Use of Force Report, was
8 marked for purposes of identification.)

9 - - - -

10 Q. Could you tell us what the time of occurrence or
11 the date of occurrence was here?

12 A. June 6, 2019.

13 Q. And the time of occurrence?

14 A. 01:27.

15 Q. And could you describe to us what that indicator
16 underneath "IA Pro assigned investigator" means?

17 MR. GERONIMO: I can also make
18 this larger. I know this type is small so
19 if you need help or if anybody needs help
20 seeing please let me know.

21 A. It says "unassigned."

22 Q. What does that "unassigned" mean?

23 A. I would assume that it means it hasn't been
24 assigned a supervisor to review it yet or
25 investigate it, that it's pending assignment as

1 indicated in the category to the left of that.

2 Q. When do use-of-force reports usually have this
3 "unassigned" indicator?

4 A. I don't know exactly how that information is
5 generated. If this report was generated by the
6 officer who used the force it may not have been
7 forwarded to the supervisor at that point. I
8 don't know when that information is entered, if
9 it's automated or if it has to be entered once
10 it's released to IA Pro. I believe once it's
11 released to IA Pro it is assigned as -- to a
12 supervisor.

13 Q. After a use-of-force report is put into Blue Team
14 when is it assigned to IA Pro?

15 A. Only when once users -- there are only certain
16 users that have that, that release to IA Pro
17 function, so at the deputy chief level or the
18 chief of police or Internal Affairs or the
19 inspection unit can release those investigations
20 into IA Pro. It can't be done at the district
21 level.

22 MR. FREAS: Professor Geronimo,
23 can you scroll down a bit?

24 MR. GERONIMO: Where do you want
25 me?

1 MR. FREAS: To the point where
2 there is some supervisory review.

3 MR. GERONIMO: So I'll start it,
4 this is on Page 5 to 6 of this report.
5 We're at the chain of command history which
6 is what I think you're looking for.

7 MR. FREAS: That's correct.

8 Q. So at the point that this chain of command
9 history starts is this in IA Pro or is it still
10 in Blue Team?

11 A. It's still on Blue Team.

12 Q. Okay. So as it starts, and here it says
13 "Completed and submitted for your review" from
14 the police officer who used the force in this
15 particular use-of-force incident and it was sent
16 to a sergeant. What are the -- what is the
17 typical chain of review within Blue Team here?

18 A. Just as you see it: From Patrol Officer Piter to
19 Sergeant Charles Lane who is, I assume, to be
20 Officer Piter's immediate supervisor. The
21 sergeant would review it. If it needs to be --
22 if there's any corrections that are needed, that
23 sergeant would send it back to Officer Piter. If
24 no corrections are needed the sergeant would send
25 it to his or her lieutenant.

1 Q. What happens if, let's say it goes all the way up
2 the chain of command or chain of custody, as its
3 chain of command here, and the end of the chain
4 of command recommends no further action?

5 A. It would be released to IA Pro at that point and
6 closed as within policy.

7 Q. Okay. What if further action was recommended?

8 A. It would be returned to the investigating
9 supervisor for corrective action.

10 Q. And at what point would it move into IA Pro?

11 A. After the -- if there was corrective action and
12 that was completed it would go back up through
13 the ascending chain of command for review by the
14 chief of police. If there was any misconduct or
15 a pre-disciplinary hearing was required it would
16 be sent to the case preparation unit and the case
17 preparation unit would release it to IA Pro
18 usually after a pre-disciplinary hearing is
19 concluded. If the chief of police does not send
20 it to the case preparation unit because there was
21 no misconduct and the corrective action was
22 completed then the chief would release it to IA
23 Pro at that point.

24 MR. FREAS: Professor Geronimo,
25 could we go back to Exhibit 1 and go down

1 to Page 27.

2 Q. Commander Carney, do you see this as the Internal
3 Affairs Manual header, Dispositions?

4 A. Yes.

5 Q. Why does Internal Affairs not have a similar no
6 unassigned disposition like Blue Team does?

7 A. These dispositions are specific to Internal
8 Affairs cases.

9 Q. So these are all the dispositions that Internal
10 Affairs could put on a case that they are
11 investigating?

12 A. Yes, sir.

13 Q. And none of these have the no unassigned
14 investigator disposition that we find in Blue
15 Team?

16 A. Correct.

17 Q. Thank you. I would like to talk briefly or ask
18 you briefly about some of the records that have
19 been withheld in this case allegedly due to the
20 CLEIR exception. Can you tell me how many
21 use-of-force reports have been withheld?

22 A. No.

23 Q. By "no" do you mean you don't know how many have
24 been withheld?

25 A. I do not know how many were withheld.

1 Q. Okay.

2 MR. PUIN: We can get you that
3 number. I think the dispositions change
4 frequently as the matters are handled
5 internally so it's kind of a rolling number
6 but I can give you the latest. In other
7 words, how many did we file under seal with
8 the Court of Appeals last week as
9 representing those that are being withheld
10 from CLEIR, I'll tell you how many those
11 are after the depo today.

12 MR. FREAS: Thank you.

13 Q. So I'm assuming that because you are unaware of
14 how many are withheld you wouldn't be able to
15 tell me any of the dates of some of the incidents
16 that have been withheld?

17 A. Correct.

18 Q. And you would be unable to tell me the date that
19 any investigation was started on those incidents?

20 MR. PUIN: I'm going to object.
21 The fact that he doesn't know the number or
22 which ones were withheld doesn't mean that
23 if he did know that number he would be able
24 to tell you the date. The dates and other
25 information may be subject to CLEIR also.

1 MR. GERONIMO: And if I can just
2 jump in here, Tim, would you be saying that
3 the date of any specific incident would be
4 subject to the confidential law enforcement
5 investigatory record?

6 MR. PUIN: Yes. We're withholding
7 all of the data that is exported from Blue
8 Team, IA Pro to Excel we're withholding all
9 of the columns of information about the
10 uses-of-force incidences that are still
11 under investigation.

12 MR. GERONIMO: Even the columns
13 that don't create a substantial danger of
14 revealing any of the types of statutory
15 information?

16 MR. PUIN: Our position is that
17 they're part of the investigatory file so
18 they're privileged in their entirety.
19 We're not going to parse out which columns
20 under Excel might fit which exceptions in
21 the statute or not. Our first production
22 may have included some of the columns of
23 information, I'm not sure, so obviously
24 there is some data that truly wouldn't be
25 significant under CLEIR but our official

1 position is that all of that is withheld as
2 part of the investigatory file while the
3 matter is under investigation.

4 MR. GERONIMO: Okay. I guess
5 we'll deal with that when we have to.
6 Calvin, do you have further questions? I
7 would like to take a quick break just to --
8 maybe a breakout room, so I could talk with
9 them.

10 - - - -

11 (Off the record.)

12 - - - -

13 MR. FREAS: Commander Carney,
14 thank you very much for your time. I don't
15 want to take anymore of your time. I don't
16 have further questions for you. I wanted
17 to note the city has a right to review the
18 transcript or waive that right. Obviously,
19 Mr. Puin, you will probably making that
20 decision. Again, thank you very much and I
21 hope you have a great rest of your day.

22 MR. PUIN: Calvin, we were talking
23 in the breakout room and we may want to
24 clarify one point that you had raised. It
25 was about the Level-1 use of force.

1 Commander Carney wants to clarify his
2 answer but I wanted to note that, you know,
3 he is the city's representative but to the
4 extent anything he says can be construed as
5 inconsistent with the published GPO or
6 manual he would defer to those because no
7 one person, even if they're speaking for
8 the city, can have those all memorized.

9 But, Commander, what was the point
10 you wanted to bring up about Level-1 use of
11 force?

12 THE WITNESS: Yes, and thank you.
13 Just as it related to the Level-1 use of
14 force I think I just gave one example of
15 what a Level-1 use of force is, but there's
16 other examples of Level-1 uses of force
17 such as pressure point compliance, joint
18 manipulation, but would not reasonably
19 expect it to cause injury.

20 MR. GERONIMO: And we understand
21 about the policies. We're mostly just
22 trying to get a flavor for how they're
23 applied and to the extent we don't know
24 sort of the in between to the policies so
25 we would never, you know, Commander, put

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you up against the policies. We understand the policies are what they are so we appreciate that clarification.

THE WITNESS: Thank you.

MR. PUIN: You know, we have a briefing deadline coming up pretty soon and we don't want to delay the proceedings but we'll reserve the right to review the transcript and we'll turn it around pretty quickly so there's no delay.

MR. GERONIMO: And, Sandy, I think we will need the transcript so we'll order that.

- - - -

(Signature not waived.)

(Deposition concluded at 11:00 a.m.)

- - - -

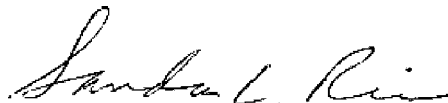
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C E R T I F I C A T E

The State of Ohio,) SS:
County of Cuyahoga.)

I, Sandra L. Rice, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named witness was by me, before the giving of their deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney or financially interested in this action; that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 3rd day of May, 2021.



Sandra L. Rice, Notary Public, State of Ohio
My commission expires September 26, 2024

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

May 5, 2021

To: Timothy J. Puin, Esq.

Case Name: Standifer, Lauren "Cid", et al. v. City of Cleveland

Veritext Reference Number: 4566868

Witness: Commander Brian Carney Deposition Date: 5/3/2021

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

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DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4566868
CASE NAME: Standifer, Lauren "Cid", et al. v. City of Cleveland
DATE OF DEPOSITION: 5/3/2021
WITNESS' NAME: Commander Brian Carney

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

Date Commander Brian Carney

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal

this _____ day of _____, 20_____.

Notary Public

Commission Expiration Date

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ERRATA SHEET
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ASSIGNMENT NO: 4566868

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Date Commander Brian Carney

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____

DAY OF _____, 20_____.

Notary Public

Commission Expiration Date

0	26 32:23	address 33:15	anymore 29:15
01:27 22:14	26151 32:22	administer 32:8	appeals 1:1 27:8
1	27 26:1	administrative 13:19 17:9,13	appear 34:11 35:15
1 3:7 8:4,6 10:6,8 10:11,12 16:15 18:2,7 19:15,20,23 25:25 29:25 30:10 30:13,15,16 1's 16:9,15 17:21 1046 19:3 106 2:10 10:03 1:16 1100 33:1 11075 2:4 11:00 31:16 15 19:6 20:19 17th 19:5 1820 33:2 19 3:8 1:15 19:3	28 32:17	affairs 3:8 13:6,13 13:15,22 14:2,12 14:17 15:7,8,12,16 15:19 16:1,3,7,11 16:12,16,19,20,22 16:25 17:3,20 18:5,6 19:24 20:21 23:18 26:3 26:5,8,10	appearances 2:1 appearing 6:5 appended 35:11 35:18 applied 30:23 appreciate 31:3 appropriate 14:10 20:22 approved 18:20 19:5 april 19:6 ascending 18:2 25:13 asp 8:10 assigned 15:18,21 16:6,17 22:16,24 23:11,14 assignment 22:25 34:2 35:2 36:2 assignments 7:11 assistant 2:8 4:24 assume 5:24 22:23 24:19 assuming 27:13 attached 35:7 attendance 4:6 attention 9:8,19 attorney 32:14,15 authority 12:2 authorize 35:11 authorized 32:7 automated 23:9 ave 33:1 avenue 2:9
	3	affiliated 32:16 affixed 34:15 35:21 aforementioned 32:13 age 5:3 agree 4:6,7 ahead 11:8 al 1:5 33:6 34:3 35:3 allegations 13:18 21:5 alleged 15:13 20:16 allegedly 26:19 amendment 2:3 4:18 5:14 america 9:16 amount 8:6 andrew 2:2 5:17 andrew.geronimo 2:6 andy 4:9 answer 5:21,24 15:20 18:13,18 30:2 anybody 22:19	
	3 1:15 4:3 8:5,7,9 10:2 12:15 16:15 17:18 18:8 3's 16:9,20 368-2766 2:5 3rd 32:19		
	4		
	44106 2:5 44114 2:10 33:2 4566868 33:7 34:2 35:2 36:2		
	5		
	5 3:4 24:4 33:4 5/3/2021 33:8 34:3 35:3		
	6		
	6 22:12 24:4 601 2:9 664-2807 2:11 6a 20:8 6c 20:12,12,14 21:14,15		
	8		
	8 20:4		
	a		
	a.m. 1:16 31:16 able 27:14,23 accountability 13:17 14:2 acknowledge 34:11 35:16 act 34:14 35:20 action 25:4,7,9,11 25:21 32:15		
	2		
2 3:9 8:5 10:2 16:15,19 18:2,7 21:22 22:1,6 2's 16:9 17:21 20 6:23 34:16 35:22 36:22 20-110200 1:7 2001 6:23 2017 19:5 2018 18:24 2019 18:24 19:6 22:12 2021 1:15 4:3 32:19 33:4 2024 32:23 216 2:5,11 216-523-1313 33:3 22 3:10			

b	ca 1:7 33:25 called 5:3 13:5,8 calvin 2:2 4:12,14 4:16 5:13 11:4 29:6,22 captain 18:4 carney 1:12 3:3 5:3,9,11 6:15 20:11 26:2 29:13 30:1 33:8 34:4,9 35:4,13 36:20 case 1:7 2:3 5:15 7:1 11:24 17:6 18:10 19:3 25:16 25:16,20 26:10,19 33:6 34:3 35:3 case.edu 2:6 cases 26:8 category 23:1 cause 8:19 30:19 certain 19:3 23:15 certificate 35:11 certification 34:1 35:1 certified 2:2,14 4:17,21 5:7,14 certify 32:8,8 chain 18:2 20:21 24:5,8,17 25:2,2,3 25:3,13 change 27:3 33:13 33:14 35:8 36:3 changes 33:12 34:7 35:7,9 charge 6:24 charged 17:11 charges 19:10 charging 17:8 charles 24:19 chief 12:4 14:6 16:6 20:18,19	23:17,18 25:14,19 25:22 cid 1:4 5:16 33:6 34:3 35:3 citizen 8:11 9:11 10:22 16:6 city 1:8 2:9 6:24 9:8,19 10:15 11:22 15:3 18:15 29:17 30:8 33:6 34:3 35:3 city's 30:3 civil 5:6 32:17 34:5 35:5 civilian 10:20 11:21,22,23,25 12:1,12 clarification 5:23 31:3 clarify 29:24 30:1 clear 5:18 cleir 26:20 27:10 27:25 28:25 cleveland 1:8 2:5,9 2:10 3:7,9 4:2 6:19 9:3,8,9,19,20 10:23 11:2,10,22 13:24 16:24 18:15 19:23 22:6 32:18 33:2,6 34:3 35:3 cleveland's 6:7,10 15:3 clevelandohio.gov 2:11 clinic 2:3 4:18 5:15 closed 25:6 columns 28:9,12 28:19,22 come 9:7	coming 31:6 command 18:3 20:21 24:5,8 25:2 25:3,4,13 commander 1:12 3:3 5:3,9,11 6:15 6:18 16:17,18 18:4 20:11 26:2 29:13 30:1,9,25 33:8 34:4,9 35:4 35:13 36:20 commanding 20:19 commission 32:23 34:19 35:25 36:25 committee 15:9,11 common 9:17 11:1 complaint 16:5 complaints 12:12 completed 13:7 24:13 25:12,22 33:15 compliance 6:18 6:25 7:4,6,18 12:8 13:4 30:17 concluded 25:19 31:16 conducted 9:12 confidential 28:4 consent 4:13,25 7:5,6 14:16 15:4 consist 7:13 consists 6:25 7:5 12:16 16:22 constitutes 20:16 construed 30:4 consultation 20:17 contract 32:16 correct 8:24 9:2 20:25 21:4 24:7 26:16 27:17
c			
c 6:16 32:3,3			

<p>corrections 24:22 24:24 33:12 35:17 corrective 25:9,11 25:21 counsel 4:3,6 32:14 county 1:2 9:16 10:20 32:5 34:10 35:15 court 1:1 5:20 18:20,21 19:5 27:8 32:16 34:7 create 28:13 creates 7:10 17:16 17:20 criminal 12:20,21 13:19 17:1,4,6 19:10 criteria 8:13 cross 3:3 5:5,9 currently 6:24 custody 25:2 cuyahoga 1:2 32:5 cv 19:3</p>	<p>deadly 8:8,8,9 deal 29:5 dear 33:10 decision 29:20 decree 7:5,6 14:16 15:4 deed 34:14 35:20 deemed 33:19 defer 7:23 30:6 define 21:7 defined 32:16 definition 8:17 definitions 7:23 definitive 18:12 delay 31:7,10 deliverables 7:5 department 2:9 7:7 33:22 depo 5:1 27:11 deposed 5:7 deposition 1:11 4:7 5:19 6:6 31:16 32:9,10,13 33:8,11 34:1,3 35:1,3 depositions 32:8 deputy 23:17 describe 7:21 8:14 22:15 designee 18:6 determination 17:6 determine 14:4,7 16:25 determined 20:12 20:15 determines 12:2 different 16:14 direction 32:12 directly 11:2,10 16:16</p>	<p>director 2:8 4:24 12:4 disciplinary 14:7 25:15,18 disposition 26:6 26:14 dispositions 26:3,7 26:9 27:3 district 1:1 19:2 23:20 divided 13:20 division 3:8,10 6:19 9:9,12,20 12:17 13:16,17,20 13:21,24 14:9 15:20 16:24 17:17 19:24 22:7 divisional 7:11 divisions 13:23 document 19:20 22:1 documented 20:15 21:2,16,17 downs 8:3,20 due 26:19 duly 5:6 32:9 duties 6:20,21 7:13</p>	<p>entered 20:24 21:9 23:8,9 35:9 entire 34:5 35:5 entirety 28:18 entities 9:13 entity 10:21 11:21 11:22 entry 17:20 errata 33:13,18 35:7,10,18 36:1 escort 8:18 esq 2:2,8 33:5 et 1:5 33:6 34:3 35:3 euclid 5:16 exact 18:22 exactly 23:4 examination 3:3 5:5,9 example 30:14 examples 30:16 excel 28:8,20 exception 26:20 exceptions 28:20 excessive 8:12 excuse 11:4 executed 35:10 execution 34:14 35:19 exhibit 3:6,7,9 19:15,20,23 21:22 21:25 22:6 25:25 exist 14:19 expect 30:19 expiration 34:19 35:25 36:25 expires 32:23 explained 14:24 exported 28:7 extent 30:4,23</p>
d			
<p>d 3:1,5 32:17 danger 28:13 data 28:7,24 date 18:22 22:11 27:18,24 28:3 32:13 33:8 34:3,9 34:19 35:3,13,25 36:20,25 dates 27:15,24 day 10:1,1 29:21 32:19 34:16 35:22 36:22 days 20:20 33:18 de 8:2,14,16,22,25 deadline 31:6</p>			
		e	
		<p>e 3:1,1,5,5 6:16 32:3,3 east 2:4 effect 18:17,19 eighth 1:1 either 9:10 20:20 email 33:17 employee 32:14,15 enclosed 33:11 enforcement 28:4 engaging 17:1</p>	

<p>external 11:21</p>	<p>forward 33:15</p>	<p>gpo 30:5</p>	<p>incidents 27:15,19</p>
<p>f</p>	<p>forwarded 23:7</p>	<p>grand 17:5,12</p>	<p>included 28:22</p>
<p>fact 27:21 familiar 17:14 federal 18:21 file 27:7 28:17 29:2 filed 18:20 financially 32:15 find 12:3 26:14 33:11 findings 12:9 14:15,25 15:2 firm 32:16 first 2:3 4:17 5:6 5:14 28:21 32:9 fit 13:2,4,10 16:21 28:20 flavor 30:22 following 20:17 follows 5:8 force 3:10 7:16,19 7:21 8:1,2,3,5,5,6 8:6,8,8,9,11,15,18 8:23 9:4,7,10,18 10:3,4,7,16,17,23 11:11,15 12:13,15 12:16,19,25 13:10 15:25 16:8,10,13 16:21 17:16,18,22 17:23 18:1,9,18 19:4,9 21:12 22:2 22:7 23:2,6,13 24:14,15 26:21 28:10 29:25 30:11 30:14,15,16 foregoing 34:13 35:18 forth 32:10</p>	<p>found 14:9 freas 2:2 3:4 4:12 4:16,16 5:10,13 11:9 19:8,14 20:3 20:7 21:21,24 23:22 24:1,7 25:24 27:12 29:13 free 34:14 35:20 frequently 27:4 front 7:24 8:17 function 23:17 further 25:4,7 29:6,16 future 13:9</p>	<p>great 22:4 29:21 ground 5:19 group 5:16 guess 29:4 guilty 14:9</p>	<p> 33:13 inconsistent 30:5 incorporated 35:12 indicated 23:1 indicating 33:13 indicator 22:15</p>
	<p>g</p>	<p>h</p>	<p>23:3</p>
	<p>gabrielle 2:14 4:20 general 7:10,13,14 7:23 15:20 generally 11:18 generated 23:5,5 geronimo 2:2 4:9 4:9 5:17 19:14,16 20:3,5,9 21:21,23 22:17 23:22,24 24:3 25:24 28:1 28:12 29:4 30:20 31:11 give 6:6,10 7:8 10:24 27:6 given 32:12 giving 32:9 go 11:8 16:10 25:12,25,25 goes 25:1 going 11:5 12:3 18:8 19:16 27:20 28:19 good 4:23 5:11,12</p>	<p>h 3:5 hand 32:18 handled 27:4 happens 11:2,10 11:12 25:1 head 8:10 header 26:3 hearing 14:7 25:15,18 help 22:19,19 helpful 18:16 hereinafter 5:7 hereunto 32:18 hired 6:23 history 24:5,9 hold 14:14 holding 14:24 hope 29:21</p>	<p>individuals 13:3 information 20:23 21:3,9,14,15 23:4 23:8 27:25 28:9 28:15,23 infractions 21:6 21:12 initial 17:20 initiate 10:5 16:3 20:20 injury 8:20 30:19 inputs 18:9 inputted 21:17 inspection 7:1 13:5,7,9 23:19 inspections 7:2,2 insuring 7:6 interact 12:7 interested 32:15 intermediate 8:4 intern 2:2,14 4:17 4:21 5:14</p>
		<p>i</p>	<p>internal 3:8 13:6</p>
		<p>ia 17:14 20:18 22:16 23:10,11,14 23:16,20 24:9 25:5,10,17,22 28:8 identification 20:1 22:8 identify 4:4 immediate 24:20 immediately 11:17 incidences 28:10 incident 9:4,7 10:16 11:11 22:3 24:15 28:3</p>	<p>13:13,15,22 14:2 14:12,17 15:6,8,12 15:16,19,25 16:3,7 16:10,12,16,19,20 16:22,25 17:3,19 18:5,6 19:24 20:21 23:18 26:2 26:5,7,9</p>

internally 27:5	justice 7:7	lieutenant 18:3	minimis 8:14,16
international	k	24:25	8:23 9:1
13:12	kind 7:15,25 27:5	line 33:13 35:7	minimum 8:6
interns 4:4,11	knew 18:16	36:3	14:13,16,20,23
introduce 4:11,14	know 9:24 10:24	list 14:13	minus 8:2
investigate 13:18	12:25 18:11 22:18	listed 6:7,11 35:7	minor 21:6,12
15:22 22:25	22:20 23:4,8	35:17	misconduct 12:3,9
investigated 9:13	26:23,25 27:21,23	listing 35:7	12:11 13:18,19
15:6,8,14,25 16:20	30:2,23,25 31:5	little 20:10	14:5,8,10,15,25
investigates 12:15	knowledge 10:14	llc 5:16	15:2,13 20:16
15:19	l	long 18:10	25:14,21
investigating 15:9	l 1:21 32:7,22	look 19:2	monday 1:15 4:3
25:8 26:11	lakeside 2:9	looking 24:6	morning 4:23 5:11
investigation 9:11	lane 24:19	m	5:12
10:5 11:13 12:14	larger 22:18	madam 33:10	mouth 11:7
12:15,20,21,22,25	latest 27:6	majority 10:25	move 25:10
13:11 15:12 16:4	lauren 1:4 33:6	11:6	municipalities
16:21 17:2,4,10,13	34:3 35:3	making 29:19	9:14,15
18:19 20:17,20	law 2:4,8,9 4:24	manipulation	n
27:19 28:11 29:3	28:4	30:18	n 3:1,1,5 6:15,16
investigations	lawful 5:3	manual 3:8 18:19	name 4:2 6:13
14:4 17:3 23:19	layperson 7:25	19:25 26:3 30:6	33:6 34:3,4,15
investigator 22:16	lead 19:10	mark 19:19 21:25	35:3,4,21
26:14	learn 9:3 12:10	marked 19:25	named 32:9
investigators 12:1	learns 10:23	22:8	near 13:8
investigatory	led 11:24	matter 4:12 29:3	need 22:19 31:12
13:23 15:15,17	left 23:1	matters 13:19	needed 24:22,24
28:5,17 29:2	legal 2:2,14 4:17	27:4	needs 22:19 24:21
involve 8:3,20	4:21 5:14 33:1	mean 22:22 26:23	negotiated 15:3
involved 13:1 15:4	36:1	27:22	negotiation 15:5
involving 15:11	letter 33:19	means 10:18,19	never 30:25
issued 17:8	level 8:4,5,5,6,7,9	16:5 22:16,23	northern 19:2
j	10:2,2,6,8,11,12	32:11	notarized 33:14
j 2:2 33:5	12:15 13:1 14:5	media 5:16	notary 4:1 32:7,22
january 19:5	16:9,14,15,15,15	member 13:2 14:8	33:25 34:10,18
joint 30:17	16:15,19,20 17:18	16:17 17:17	35:15,23 36:23
judge 18:21	17:21,21 18:2,2,7	members 15:19	note 29:17 30:2
jump 28:2	18:7,8 23:17,21	memorized 30:8	33:12
june 22:12	29:25 30:10,13,15	midwest 33:17	notes 20:11
jury 17:5,12	30:16	36:1	notice 6:6,8,11
			32:13

<p>notices 7:11 notify 20:19 number 10:24 27:3,5,21,23 33:7 33:13 numbers 35:7</p>	<p>ones 27:22 opens 15:12 order 7:24 31:12 orders 7:11,13,14 outlines 14:16 oversee 7:4,18 11:20 overseeing 7:15</p>	<p>24:1,8 25:5,10,23 29:24 30:9,17 police 3:8,10 6:19 7:10,13,14,24 8:22 9:9,20 10:20 11:3 11:10,23 12:1,4 13:24 14:6 15:13 15:22 16:6,25 19:9,24 20:18 21:4,18 22:7 23:18 24:14 25:14 25:19 policies 3:8 9:25 19:4,25 30:21,24 31:1,2 policy 6:25 7:9,10 7:14 10:3 16:9 18:11,16 25:6 portion 20:14 21:2 position 8:18 28:16 29:1 potential 12:10,21 pre 14:7 25:15,18 pregnant 8:11 preparation 7:1 25:16,17,20 prepared 6:10 present 2:13 presented 17:5 pressure 30:17 pretty 31:6,9 previous 14:15,25 15:2 previously 21:8 privileged 28:18 pro 17:14 22:16 23:10,11,14,16,20 24:9 25:5,10,17,23 28:8 probably 29:19</p>	<p>procedure 5:6 18:11 34:5 35:5 procedures 3:8 7:15,19 9:25 19:4 19:25 proceedings 31:7 process 9:24 15:5 production 28:21 33:15,17,22 professional 11:19 11:20,25 12:6,18 12:24 professor 5:17 19:14 20:3 21:21 23:22 25:24 prosecutor 17:5,7 17:7 provide 12:8 13:17 14:2 provided 5:5 public 12:5 32:7 32:22 34:10,18 35:15,23 36:23 published 30:5 puin 2:8 4:23,24 11:4 19:1,18 27:2 27:20 28:6,16 29:19,22 31:5 33:5 purpose 5:4 13:15 purposes 20:1 22:8 pursuant 6:6 32:13 put 17:25 21:15 23:13 26:10 30:25 putting 11:7</p>
<p>o</p>	<p>p</p>		
<p>oath 6:3 oaths 32:8 object 11:5 27:20 obviously 17:10 28:23 29:18 occurrence 22:10 22:11,13 office 11:19,20,25 12:6,18,24 32:18 officer 9:11,21 10:2,17 11:3,11,14 14:8 15:6,7,14,22 16:5 17:9,11,21 18:3 19:11 20:19 21:4,18 23:6 24:14,18,20,23 officer's 15:13 officers 8:22 9:22 19:10 20:24 21:9 21:15 official 28:25 34:15 35:21 ohio 1:2 2:5,10 4:2 19:2 32:4,7,18,22 33:2 okay 7:25 8:14 10:10 13:12 16:12 18:25 19:8,13,19 20:9 21:20 24:12 25:7 27:1 29:4 oliver 18:21 once 17:25 23:9,10 23:15</p>	<p>pac pacifier 19:2 page 3:2,6 20:4 24:4 26:1 33:13 33:15 35:7 36:3 pain 8:20 papers 17:8,8 parse 28:19 part 12:24 13:10 14:12 15:8,10,14 15:16 28:17 29:2 35:9 participate 12:19 participation 13:1 particular 10:16 22:3 24:15 parties 32:14 patrol 24:18 penalty 14:11 pending 22:25 person 8:19 30:7 personally 34:11 35:15 phone 33:3 piece 21:13 pistol 10:8 piter 24:18,23 piter's 24:20 place 32:13 please 4:4 5:20,23 22:20 33:11,11 point 10:9 16:11 16:12 17:13 23:7</p>		
			<p>q</p>
			<p>question 5:22,25 9:5 13:25</p>

<p>questions 5:22 29:6,16</p> <p>quick 29:7</p> <p>quickly 11:16 31:10</p>	<p>relators 1:6 2:7 3:7,9 4:10,19,22 5:4 19:19,23 21:25 22:6</p> <p>release 23:16,19 25:17,22</p> <p>released 23:10,11 25:5</p> <p>remind 18:14</p> <p>remote 4:6,25</p> <p>remotely 4:8 5:1</p> <p>rephrase 9:6,15</p> <p>report 3:10 8:22 8:25 9:22 10:4,6,9 10:13,16 11:15 18:9 22:2,7 23:5 23:13 24:4</p> <p>reported 9:10 21:6 21:7</p> <p>reporter 5:20 34:7</p> <p>reporting 9:21 10:25 32:16</p> <p>reports 17:16,23 18:1 19:9 23:2 26:21</p> <p>representative 30:3</p> <p>representatives 12:23</p> <p>representing 5:15 27:9</p> <p>reprimand 14:11</p> <p>request 35:9,11</p> <p>required 8:25 9:22 10:3,6,9,12 11:14 11:15 25:15 33:25</p> <p>requirement 15:2</p> <p>requirements 14:13,17,18,19,20 14:23</p>	<p>requiring 20:16</p> <p>reserve 2:3 5:15 31:8</p> <p>respondent 1:9 2:12 4:25</p> <p>rest 29:21</p> <p>returned 25:8 33:18</p> <p>revealing 28:14</p> <p>review 10:20 11:23 12:1 16:8 16:11,12 22:24 24:2,13,17,21 25:13 29:17 31:8 33:12 34:1 35:1</p> <p>reviewed 18:5</p> <p>reviewing 21:5</p> <p>reviews 16:18 17:23,25</p> <p>rice 1:21 4:2 32:7 32:22</p> <p>right 21:10 29:17 29:18 31:8</p> <p>role 6:21</p> <p>rolling 27:5</p> <p>room 2:10 29:8,23</p> <p>routing 16:8</p> <p>rule 32:17</p> <p>rules 5:5,19 34:5 35:5</p>	<p>school 2:4</p> <p>screen 19:17</p> <p>scroll 20:4,8 23:23</p> <p>seal 27:7 32:18 34:15 35:21</p> <p>section 7:4 20:23</p> <p>see 19:3,17 20:11 20:12 24:18 26:2</p> <p>seeing 22:20</p> <p>self 9:21,22 10:25</p> <p>send 24:23,24 25:19</p> <p>sense 5:25</p> <p>sent 12:4 14:6 16:16,18 18:4 24:15 25:16</p> <p>separate 13:20,21 13:23 14:1</p> <p>september 32:23</p> <p>sergeant 14:14,25 18:3 24:16,19,21 24:23,24</p> <p>serious 8:7</p> <p>set 32:10,18</p> <p>share 19:17</p> <p>sheet 33:13 35:7 35:10,18 36:1</p> <p>short 13:6</p> <p>showing 19:19 21:25</p> <p>shown 33:16</p> <p>signature 31:15 32:22 33:14</p> <p>signed 34:13 35:18</p> <p>significant 28:25</p> <p>signing 33:19</p> <p>similar 26:5</p> <p>sincerely 33:21</p> <p>sir 26:12 33:10</p> <p>size 20:6</p>
r			
<p>r 6:15,16 32:3</p> <p>raised 29:24</p> <p>rank 14:14,24</p> <p>rarely 19:12</p> <p>read 20:5,14 21:3 34:5,6,12 35:5,6 35:17</p> <p>reading 33:19</p> <p>ready 19:15 21:22</p> <p>reason 33:14 35:8 36:3</p> <p>reasonable 8:19</p> <p>reasonably 30:18</p> <p>recall 14:22,22</p> <p>receipt 33:18</p> <p>receives 10:15</p> <p>recognize 19:20 22:1,2,3</p> <p>recommended 25:7</p> <p>recommends 25:4</p> <p>record 4:1,5 6:2 6:14 19:1 28:5 29:11 32:12 35:9</p> <p>records 26:18</p> <p>reduced 32:11</p> <p>reference 33:7 34:2 35:2</p> <p>referenced 34:11 35:15</p> <p>referring 10:19 21:16</p> <p>related 30:13</p> <p>relative 32:14,15</p>		s	
		<p>s 3:1,1 33:15 35:8 35:8 36:3</p> <p>safety 12:5</p> <p>sandra 1:21 32:7 32:22</p> <p>sandy 4:2 31:11</p> <p>saying 28:2</p> <p>says 22:21 24:12 30:4</p>	

<p>small 22:18 solutions 33:1 36:1 soon 31:6 sorry 9:6 10:8 11:5 15:10 sort 30:24 speaking 30:7 specialist 15:18 specialized 14:20 specific 14:16 17:24 21:13 26:7 28:3 spell 6:13 ss 32:4 staffed 13:6 standards 11:19 11:21,25 12:6,19 12:24 standifer 1:4 5:16 33:6 34:3 35:3 start 17:3 24:3 started 18:12 27:19 starts 24:9,12 state 5:13 6:13,17 32:4,7,22 34:10 35:15 statement 15:21 34:13,14 35:19,19 states 9:16 statute 28:21 statutory 28:14 stenotypy 32:11 stipulations 32:14 strike 8:10 striking 8:21 subject 27:25 28:4 submitted 24:13 subscribed 34:10 35:14 36:21</p>	<p>substantial 28:13 suite 33:2 superintendant 20:18 superintendent 18:6 superior 33:1 supervising 4:12 supervision 5:17 supervisor 10:4 17:19 18:9 22:24 23:7,12 24:20 25:9 supervisory 24:2 supplied 21:3 supposed 11:16 sure 28:23 sustained 12:9 sustains 11:24,24 swear 4:8 swearing 5:1 sworn 5:6 32:9 34:10,13 35:14,18 36:21</p> <p style="text-align: center;">t</p> <p>t 3:1,5 32:3,3 take 8:3,20 29:7 29:15 32:8 taken 1:18 32:13 talk 5:21 26:17 29:8 talking 11:12 21:11,12,13 29:22 taser 8:12,12 task 7:12 team 12:14,15,20 12:25 13:2,4,10,11 15:15,17 16:21,21 17:14,16,25 18:10 20:24 21:6,9,14,17 23:13 24:10,11,17</p>	<p>26:6,15 28:8 tell 11:18 12:13,18 13:12 22:10 26:20 27:10,15,18,24 term 11:6 termination 14:11 testify 32:9 testifying 18:14 testimony 6:7,11 32:12 34:6,7 35:6 35:9,12 thank 6:13,17 11:9 11:18 12:13 16:24 18:25 19:7 20:23 21:20,24 22:4 26:17 27:12 29:14 29:20 30:12 31:4 thing 16:19 think 11:6 13:25 15:1 24:6 27:3 30:14 31:11 thirty 33:18 tim 4:24 28:2 time 22:10,13 29:14,15 32:13 timothy 2:8 33:5 title 6:17 today 4:3 6:10 27:11 topics 6:7,11 tpuin 2:11 training 13:6 transcribed 5:20 32:11 34:7 transcript 29:18 31:9,12 33:11,12 34:5,12 35:5,11,17 true 17:10 32:12 truly 28:24 truth 32:10,10,10</p>	<p>try 5:21 trying 30:22 turn 31:9 type 22:18 types 28:14 typewriting 32:11 typical 24:17 typically 12:10</p> <p style="text-align: center;">u</p> <p>unable 27:18 unassigned 22:21 22:22 23:3 26:6 26:13 unaware 27:13 unclear 5:22 underneath 22:16 understand 6:2,5 9:5 13:25 15:10 30:20 31:1 understanding 8:1 12:23 13:9 17:19 understood 5:24 unit 3:8 6:25 7:1,1 7:2,9,10,14 13:5,7 13:9 14:1,17,21 15:18 16:22 17:20 18:5 19:24 23:19 25:16,17,20 united 9:16 units 12:16 16:23 university 2:3 use 3:10 7:21 8:1,3 8:4,5,5,7,8,9,10,11 8:11,12,14 9:4,7 9:10,18 10:2,4,16 11:5,11,15 16:13 18:9 19:4,9 21:11 22:2,7 23:2,13 24:15 26:21 29:25 30:10,13,15</p>
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<p>users 23:15,16 uses 7:16,19 8:23 10:6,23 12:16 15:25 16:8,10 17:16,17,23 18:1 28:10 30:16 usually 9:7,24 10:1 23:2 25:18</p>	<p>wilson 2:14 4:20 4:20 withheld 26:19,21 26:24,25 27:9,14 27:16,22 29:1 withholding 28:6 28:8 witness 4:8 19:7 30:12 31:4 32:9 32:12,18 33:8,11 34:1,4,11 35:1,4 35:15 witness's 11:7 witness' 33:14 words 11:7 27:7 work 9:24 10:1 writing 32:11 written 14:11</p>
v	
<p>v 33:6 34:3 35:3 various 9:12 12:16 16:23 vast 10:25 11:6 verbally 5:21 veritext 33:1,7 36:1 veritext.com. 33:17 videoconference 1:18 vs 1:7</p>	
w	x
	x 3:1,5,5
	y
<p>w 3:1 waive 29:18 waived 31:15 33:19 want 18:14 23:24 29:15,23 31:7 wanted 29:16 30:2 30:10 wants 30:1 way 9:5 25:1 ways 9:3,6,18 10:22 weapons 8:4 week 27:8 western 2:3 5:15 whereof 32:18 whichever 20:22</p>	<p>y 6:16 year 18:23 years 6:23</p>

Ohio Rules of Civil Procedure

Title V. Discovery

Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless examination and reading are waived by the witness and by the parties. Any changes in form or substance that the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill, cannot be found, or refuses to sign. The witness shall have thirty days from submission of the deposition to the witness to review and sign the deposition. If the deposition is taken within thirty days of a trial or hearing, the witness shall have seven days from submission of the deposition to the witness to review and sign the deposition. If the trial or hearing is scheduled to commence less than seven days before the deposition is submitted to the witness, the court may establish a deadline for the

witness to review and sign the deposition. If the deposition is not signed by the witness during the period prescribed in this division, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Appeals

MOTION FOR...
June 8, 2021 15:37

By: TIMOTHY J. PUIN 0065120

Confirmation Nbr. 2272378

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

CA 20 110200

vs.

CITY OF CLEVELAND

Judge:

Pages Filed: 35

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

State ex rel. Lauren “Cid” Standifer and Euclid Media Group, LLC d/b/a Cleveland
Scene,

Relator

v.

The City of Cleveland

Respondent

Original Action

**RESPONDENT’S
MOTION FOR SUMMARY JUDGMENT WITH BRIEF IN SUPPORT**

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MOTION FOR SUMMARY JUDGMENT

Respondent, The City of Cleveland (“City”), respectfully moves the Court pursuant to Rule 56(C) of the Ohio Rules of Civil Procedure for summary judgment on the Complaint filed against it by State ex rel. Lauren “Cid” Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene (collectively, “Standifer”). There is no genuine issue as to any material fact and the City is entitled to judgment as a matter of law.

The grounds for this motion are set forth in the Brief and exhibits previously filed by the City on May 14, 2021, which are attached and incorporated.

In its Judgment Entry of May 14, 2021, the Court ordered that the parties shall submit briefs and evidence by June 18, 2021, with replies and recertifications by June 25, 2021. This filing is meant to make clear that the City has complied with the Court’s Order that the City’s brief and evidence be filed by June 18, 2021, and also to re-style the City’s May 14, 2021, Brief as a motion for summary judgment with supporting memorandum.

The City will submit its combined Reply Brief in support of this motion/ Brief in Opposition to Standifer’s May 14, 2021, Motion to Grant Writ of Mandamus, by the deadline of June 25, 2021.

In *State ex rel. East Cleveland v. Norton*, 8th Dist. Cuyahoga No. 98772, 2013-Ohio-3723, ¶ 2, this Court stated:

The Supreme Court of Ohio has also firmly established that the facts submitted in support of the complaint for mandamus and the proof produced must be plain, clear and convincing before a court is justified in using the “strong arm of the law” by way of granting a writ of mandamus. *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967).

Standifer has not met her burden of proof in this case and the City is entitled to judgment as a matter of law.

Therefore, for the foregoing reasons and as more fully set forth in the attached Brief with exhibits which was previously filed on May 14, 2021, Respondent, The City of Cleveland, respectfully moves the Court for summary judgment in its favor on all claims against it in this action.¹

Respectfully submitted,

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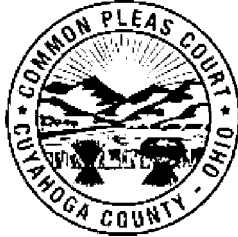
PROOF OF SERVICE

The foregoing was filed electronically and may be accessed through the Court's ECF system by all parties of record.

By: s/Timothy J. Puin

TIMOTHY J. PUIN (0065120)

¹ The City respectfully notes here that its argument in the attached brief based on the pleading requirements of R.C. 2731.04 is now moot following the Court's Judgment Entry of May 27, 2021.



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Appeals

APPELLEE'S BRIEF FILED
May 14, 2021 12:28

By: TIMOTHY J. PUIN 0065120

Confirmation Nbr. 2253894

CID STANDIFER, ET AL.

CA 20 110200

vs.

CITY OF CLEVELAND

Judge:

Pages Filed: 75

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

Lauren “Cid” Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene,

Relator

v.

The City of Cleveland

Respondent

Original Action

**BRIEF OF RESPONDENT
THE CITY OF CLEVELAND**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE ISSUE.....1

STATEMENT OF THE CASE1

STATEMENT OF THE FACTS 2

 I. Ms. Standifer’s Public Records Requests and the City’s Responses 2

 II. UOF Reports Withheld Under the CLEIR Exception 2

 A. Records Filed Under Seal April 26, 2021 2

 B. Facts Regarding UOF Reports 3

ARGUMENT..... 6

 I. Burden of Proof in Public-Records-Access Cases..... 6

 II. The CLEIR Exception..... 7

 III. The Withheld UOF Reports Are Subject to the CLEIR Exception 9

 A. A UOF Report Is a Confidential Law Enforcement Record 9

 B. Release of the UOF Reports Under Investigation
 Would Compromise the Investigations12

 IV. This Action Should Be Dismissed As Moot15

 V. This Action Should Be Dismissed Under R.C. 2731.0415

CONCLUSION..... 16

PROOF OF SERVICE17

APPENDIX

 Exhibit A: Affidavit of Lieutenant Charles Neidbalson

 Exhibit B: Deposition of Commander Brian Carney

 Exhibit C: Respondent’s interrogatory responses

TABLE OF AUTHORITIES

Cases

Blue v. Ryan, 8th Dist. Cuyahoga Nos. 106166, 106180, 106181, and 106182,
2017-Ohio-8072 16

Crenshaw v. City of Cleveland Law Department, 8th Dist. Cuyahoga No. 108519,
2020-Ohio-92115

Everett v. Parma Hts., 8th Dist. Cuyahoga No. 99611, 2013-Ohio-5314 16

Gannett Co., Inc. v. James, 108 Misc.2d 862, 438 N.Y.S.2d 901
(1981) 14

In re Collado, 8th Dist. Cuyahoga No. 110048, 2020-Ohio-53..... 16

Mentch v. Cuyahoga County Public Library Board, 8th Dist. Cuyahoga No. 105963,
2018-Ohio-1398 16

Neer v. State of Iowa, Iowa App. No. 10-0966, 2011 WL 662725
(Feb. 23, 2011) 14

Shoop v. State, 144 Ohio St.3d 374, 2015-Ohio-2068, 43 N.E.3d 43215

State ex rel. Armatas v. Plain Twp. Bd. of Trustees, Slip Opinion
No. 2021-Ohio-1176..... 6

State ex rel. Beacon Journal Pub. Co. v. University of Akron,
64 Ohio St.2d 392, 415 N.E.2d 310 (1980) 11

State ex rel. Caster v. Columbus, 151 Ohio St.3d 425, 2016-Ohio-8394,
89 N.E.3d 598..... 8

*State ex rel. Cincinnati Enquirer v. Ohio Department of Commerce,
Division of State Fire Marshal*, 145 N.E.3d 1232, 2019-Ohio-4009 (10th Dist.)..... 7

State ex rel. Jenkins v. City of Cleveland, 82 Ohio App.3d 770, 613 N.E.2d 652
(8th Dist. 1992)8, 9, 10, 14

State ex rel. Kesterson v. Kent State Univ., 156 Ohio St.3d 22, 2018-Ohio-5110,
Brief123 N.E.3d 89515

State ex rel. Musial v. N. Olmsted, 106 Ohio St.3d 459, 2005-Ohio-5521,
835 N.E.2d 1243 8

<i>State ex rel. National Broadcasting Company, Inc. v. City of Cleveland</i> , 38 Ohio St.3d 79, 83, 526 N.E.2d 786 (1988)	11
<i>State ex rel. National Broadcasting Company, Inc. v. City of Cleveland</i> , 57 Ohio St.3d 77, 566 N.E.2d 146 (1991)	11, 12
<i>State ex rel. Ohio Patrolmen’s Benevolent Assn. v. Mentor</i> , 89 Ohio St.3d 440, 732 N.E.2d 969 (2000)	11, 12
<i>State ex rel. Patituce & Assocs., L.L.C. v. Cleveland</i> , 2017-Ohio-300, 81 N.E.3d 863 (8th Dist.)	15
<i>State ex rel. Perry v. Byrd</i> , 8th Dist. Cuyahoga No. 109006, 2020-Ohio-34	3
<i>State ex rel. Polovischak v. Mayfield</i> , 50 Ohio St.3d 51, 552 N.E.2d 635 (1990)	6, 8-9
<i>State ex rel. Rocker v. Guernsey County Sheriff’s Office</i> , 126 Ohio St.3d 224, 2010-Ohio-3288, 932 N.E.2d 327	7, 9, 13
<i>State ex rel. Thompson Newspapers, Inc. v. Martin</i> , 47 Ohio St.3d 28, 546 N.E.2d 939 (1989)	8
<i>Watson v. Cuyahoga Metro. Housing Auth.</i> , 8th Dist. Cuyahoga No. 99932, 2014-Ohio-1617	8
<i>Welsh-Huggins v. Jefferson County Prosecutor’s Office</i> , Slip Opinion No. 2020-Ohio-5371.....	6
<i>White v. Dept. of Rehabilitation and Correction</i> , 10th Dist. Franklin No. 19AP-85, 2020-Ohio-386	6
<u>Statutes</u>	
Ohio Rev. Code 149.43	<i>passim</i>
Ohio Rev. Code 2731.04	15-16

STATEMENT OF THE ISSUE

Is the City justified in withholding Use of Force reports for incidents that are still under investigation, under the CLEIR exception, R.C. 149.43(A)(1)(h)?

STATEMENT OF THE CASE

On December 31, 2020, Relator, Lauren “Cid” Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene (collectively, “Ms. Standifer”) filed their original action in this Court seeking a writ of mandamus directing Respondent, The City of Cleveland (“City”), to turn over records in response to Ms. Standifer’s public records requests for Use of Force Reports (“UOF Reports”) completed by members of the Cleveland Division of Police (“CDP”). Ms. Standifer made several requests between September 9, 2020, and December 10, 2020. Although each request was different, all were consistent with the original request for “all reports on use of force incidents between Jan. 1, 2019 and the date the record is generated.”

After mediation and continued discussion by the parties, an agreement was reached regarding the format and content of UOF Reports to be disclosed, except for one category of records that remain in dispute: UOF Reports concerning uses of force by CDP members that are still under investigation. Ms. Standifer contends that UOF reports are routine incident reports that do not meet the definition of a “Confidential law enforcement investigatory record” under R.C. 149.43(A)(2). The City maintains that UOF Reports that are part of an open investigation are exempted from the Public Records Act by R.C. 149.43(A)(1)(h), which provides that “Public record” does not mean “Confidential law enforcement investigatory records” (hereinafter, “the CLEIR exception”).

Written discovery and a deposition of the City have been conducted. Per the Court's Judgment Entries of March 22, 2021, and April 29, 2021, the City filed the records at issue with the Court. In addition to the records themselves, the City's evidence is the Affidavit of Sergeant Maria Stacho filed on March 29, 2021, including its attachments; the Affidavit of Lieutenant Charles Neidbalson attached hereto as Exhibit A; the May 3, 2021, deposition of Commander Brian Carney, attached as Exhibit B;¹ and Respondent's interrogatory responses, attached as Exhibit C.

STATEMENT OF THE FACTS

I. Ms. Standifer's Public Records Requests and the City's Responses

The City incorporates the Status Report of Respondent filed March 3, 2021, which lists Ms. Standifer's multiple public records requests from September 9, 2020, through December 10, 2020, and the City's responses. Briefly, Ms. Standifer requested copies of the UOF Reports that CDP members are required to complete after interactions with the public in which a CDP member used physical force in the course of his or her duties. The time frame for the records requested was from January 1, 2019, to the present. After several months of working together, including during the course of this litigation, Ms. Standifer and the City agree that the only remaining issue is whether the CLEIR exception applies to UOF Reports concerning uses of force by CDP members that are still under investigation.

II. UOF Reports Withheld Under the CLEIR Exception

A. Records Filed Under Seal April 26, 2021

¹ Exhibit B is an unofficial copy of the transcript; the City will file a final copy of the transcript upon receipt from the court reporter, unless the transcript is filed first by Ms. Standifer.

The City is withholding a limited number of UOF Reports in their entirety on the basis of the CLEIR exception, R.C. 149.43(A)(1)(h). The number of open investigations into uses of force changes frequently as investigations are opened and closed. (Stacho Aff., 3/29/2021, ¶ 15.) At the time of the City's manual filing under seal of the narratives from the currently-open investigations, there were two open investigations from 2019; 33 from 2020; and 52 from 2021. (See 4/26/2021 Supplemental Manual Filing.)

There are limitations in the amount of data that can be exported to Excel from the City's IPro/ BlueTeam software system. (Stacho Aff., 3/29/2021, ¶ 14.) The parties agree that the officer's narratives are more important than other data columns (i.e., secondary details such as the hospital to which a person was taken). For these reasons, the full narratives of the withheld UOF Reports were filed with the Court (see 4/26/2021 Supplemental Manual Filing), and certain secondary data was left out. However, the type of secondary information presently being withheld can be seen from the columns of information in the initial Excel spreadsheets disclosed to Ms. Standifer and filed with the Court. (See 3/23/2021 Notice of Manual Filing.)

Since producing the initial Excel spreadsheets to Ms. Standifer, the City has also reached an agreement to produce (subject to an agreed protective order filed with the Court on May 11, 2021, for its review and approval) the full narratives from each UOF Report except for those still under investigation.

B. Facts Regarding UOF Reports

A UOF Report is a written report of the facts and circumstances of an incident involving use of force by a police officer that is entered directly into the CDP's IPro/ BlueTeam software program. (Stacho Aff., 3/29/2021, ¶ 4.) A UOF Report is an entirely separate record from the initial report, field report, offense/incident report, or detail

report, i.e., the commonly-understood “police report” that responding officers prepare after being called to a scene that includes the names of witnesses, victims, and suspects; and the facts of an alleged offense or incident such as a motor vehicle accident or a domestic violence complaint. (*Id.* at ¶ 5.)

A UOF Report does not just contain empirical facts; the report includes the officer’s mental impressions and subjective analyses of the circumstances in which force was used. See General Police Order (“GPO”) 2.01.05 (Ex. 1 to Stacho Aff., 3/29/2021), p. 1 (UOF Reports shall be detailed enough to permit an understanding of “the totality of the circumstances); *id.* (“Officers shall not use conclusory statements, ‘boilerplate’ or ‘canned’ language”); *id.* at pp. 2, 3 (CDP officers who witness use of force should make a report “from the officer’s perspective”); *id.* at p. 6 (officers reporting exceptional uses of force must state “why the officer believed that no other force options...were available”).

A criminal or administrative proceeding may result from investigation of the use of force described in a UOF Report. See Neidbalson Aff., Ex. A, ¶ 2 (referring to criminal or administrative proceedings in connection with Use of Force Reports); GPO 2.01.06 (Ex. 7 to Stacho Aff., 3/29/2021), *passim*, including p. 7 (discussing Internal Affairs involvement); Stacho Aff., 3/29/2021, ¶ 16 (discussing investigations involving UOF Reports); Respondent’s answer to Interrogatory Nos. 6, 7 (Ex. C) (identifying criminal and administrative authorities who may pursue investigations into uses of force); Carney Dep., Ex. B, p. 17 (describing criminal and administrative proceedings resulting from Internal Affairs investigations).

However, this does not mean that the UOF Report provides the sole factual basis for an investigation. A use of force can be brought to the attention of the CDP by a

citizen, another officer, or other sources of information besides the UOF Report. See Carney Dep. Ex. B., pp. 9, 16; GPO 2.01.05 (Ex. 1 to Stacho Aff., 3/29/2021), p. 3 (officers witnessing or present during a use of force are also required to report the use of force, not just the officer who used the force); Respondent's answer to Interrogatory No. 6 (Ex. C) ("Investigations of use of force by a member of the CDP may be initiated by citizens and/or by members of CDP"). For the most serious uses of force, Level 3 uses of force, a supervisory officer creates the initial entry in IAPro/ BlueTeam, not the officer who used the force. (Carney Dep., Ex. B., p. 17.) Thus, self-reporting by the involved officer is not the sole factual basis or the definitive beginning of an investigation.

Releasing a UOF Report for an incident that is still under investigation would compromise the investigation. See Stacho Aff., 3/29/2021, ¶ 16 ("Disclosure of the records not only would create a high probability of disclosure of the identity of uncharged suspects in use of force incidents, disclosure would reveal witnesses named in the reports who may be contacted and who have been or will be reasonably promised confidentiality. Thus, information in the reports would tend to disclose the identity of confidential witnesses. Also, information in the reports could be construed as endangering the physical safety of all involved if prematurely disclosed"); Neidbalson Aff., Ex. A, ¶ 2 (release would unfairly publicize the names of officers who might not be charged in any criminal or administrative proceeding, and would reveal confidential information about witnesses and victims, even potentially endangering the safety of all concerned. Release also could lead to destruction of evidence, tampering with witnesses, and inappropriate disclosure of information to the subject officers regarding the investigations).

ARGUMENT

I. Burden of Proof in Public-Records-Access Cases

In *Welsh-Huggins v. Jefferson County Prosecutor's Office*, Slip Opinion No. 2020-Ohio-5371, ¶ 34-35, the Supreme Court of Ohio stated the burdens of production and persuasion in public-records-access actions. The Court noted that all concerned assumed that the right of a public-records requester to obtain relief for denial of access to public records in violation of R.C. 149.43 required clear and convincing evidence. *See also State ex rel. Armatas v. Plain Twp. Bd. of Trustees*, Slip Opinion No. 2021-Ohio-1176, ¶ 11 (relator bringing mandamus action under the Public Records Act, R.C. 149.43, bears the burden of proof by clear and convincing evidence); *State ex rel. Perry v. Byrd*, 8th Dist. Cuyahoga No. 109006, 2020-Ohio-34, ¶ 5 (same).

However, the burden is not the same for the public office claiming a record is exempt. The public office has the lesser burden of showing that the “requested record falls squarely within the exemption.” *Welsh-Huggins, supra*, at ¶ 35 (citations omitted). This is a preponderance of the evidence burden. *White v. Dept. of Rehabilitation and Correction*, 10th Dist. Franklin No. 19AP-85, 2020-Ohio-386, ¶ 12 (a party who claims that an exemption applies is required to prove that the requested records fall squarely within the exemption by a preponderance of the evidence).

The public office’s burden is met without any testimony required, if the content of the record itself is enough to show the exception applies. *Welsh-Huggins, supra*, at ¶ 35 (exemption applies if the showing is “obviously apparent and manifest just from the content of the record itself”). *See also State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 54, 552 N.E.2d 635 (1990) (application of CLEIR exception determined from *in camera* review).

II. The CLEIR Exception

The exception at issue in this case is the CLEIR exception, which is listed at R.C. 149.43(A)(1)(h). Per R.C. 149.43(A)(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.

State ex rel. Cincinnati Enquirer v. Ohio Department of Commerce, Division of State Fire Marshal, 145 N.E.3d 1232, 2019-Ohio-4009 (10th Dist.) ¶ 22 (the CLEIR exception was created in R.C. 149.43(A)(1)(h) and is defined at R.C. 149.43(A)(2)).

Whether a document satisfies the CLEIR exception is determined by a two-part test: (1) whether the record pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature; and (2) whether release of the record would create a high probability of disclosure of any one of the statutorily enumerated types of information that is exempt from public disclosure. *State ex rel. Rucker v. Guernsey County Sheriff’s Office*, 126 Ohio St.3d 224, 2010-Ohio-3288, 932 N.E.2d 327, ¶ 8 (citation omitted).

The CLEIR exception provides a broad exclusion from the reach of the Public Records Act. *State ex rel. Caster v. Columbus*, 151 Ohio St.3d 425, 2016-Ohio-8394, 89 N.E.3d 598, ¶ 19. The CLEIR exception includes “information assembled by law enforcement officials in connection with a probable or pending criminal proceeding.” *Id.* Thus, the CLEIR exception permits withholding not just individual items of information in a document contained within an investigatory file -- the exception protects entire documents in an investigatory file. *Id.* at ¶ 48 (the exception may require the withholding of not just “parts of some records” but of “some records” themselves); *Watson v. Cuyahoga Metro. Housing Auth.*, 8th Dist. Cuyahoga No. 99932, 2014-Ohio-1617, ¶ 43 (“certain records, such as confidential law-enforcement investigatory records, are exempt from disclosure under R.C. 149.43(A)”).

To require redaction of each item of confidential information within a document, as opposed to exempting the entire document itself, would render the CLEIR exception ineffective at protecting the confidential information identified in the statute. *State ex rel. Jenkins v. City of Cleveland*, 82 Ohio App.3d 770, 776, 613 N.E.2d 652 (8th Dist. 1992) (“The court has further ruled that when protected information is inextricably intertwined with the rest of the record, it is appropriate to withhold the entire record”); *State ex rel. Thompson Newspapers, Inc. v. Martin*, 47 Ohio St.3d 28, 30, 546 N.E.2d 939 (1989) (“we find that the sealed record cannot be redacted since any portion of the document would tend to disclose the identity of the suspect”).

The uncharged-suspect category of the CLEIR exception applies even in the absence of pending or highly probable criminal charges. *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 2005-Ohio-5521, 835 N.E.2d 1243, ¶ 27. Further, a “record of investigation which qualifies as a confidential law enforcement investigatory

record under R.C. 149.43(A)(2) does not forfeit its statutory protection merely because there has been a passage of time with no forthcoming enforcement action.” *State ex rel. Polovischak, supra*, at 54.

III. The Withheld UOF Reports Are Subject to the CLEIR Exception

A. A UOF Report is a Confidential Law Enforcement Record

Addressing the first part of the two-part test for application of the CLEIR exception, a UOF Report is a record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature. *State ex rel. Rocker, supra*. That a UOF Report meets this broad definition is apparent from the face of the records. See also Neidbalson Aff., Ex. A, ¶ 2 (a criminal or administrative proceeding may result from the reported incidents); GPO 2.01.06 (Ex. 7 to Stacho Aff., 3/29/2021), *passim*, including p. 7 (discussing Internal Affairs involvement); Stacho Aff., 3/29/2021, ¶ 16 (discussing nature of UOF Reports under investigation); Respondent’s answer to Interrogatory Nos. 6, 7 (Ex. C) (identifying criminal and administrative authorities who may pursue investigations into uses of force); Carney Dep., Ex. B, p. 17 (describing criminal and administrative proceedings resulting from Internal Affairs investigations).

A UOF Report is an entirely separate record from the initial report, field report, offense/incident report, or detail report, i.e., the commonly-understood “police report.” (Stacho Aff., 3/29/2021, ¶ 5.) In this regard, UOF Reports, like the records in *Jenkins*, “really cannot be characterized as empirical facts,” because they include the officer’s mental impressions and subjective analyses of the circumstances in which force was used. *State ex rel. Jenkins, supra*, at 779-80. See GPO 2.01.05, p. 1 (Ex. 1 to Stacho Aff., 3/29/2021) (UOF Reports shall be detailed enough to permit an understanding of “the totality of the circumstances); *id.* (“Officers shall not use conclusory statements,

'boilerplate' or 'canned' language"); *id.* at pp. 2, 3 (CDP officers who witness use of force should make a report "from the officer's perspective"); *id.* at p. 6 (officers reporting exceptional uses of force must state "why the officer believed that no other force options...were available").

Like autopsy reports, the reports themselves are part of the investigation. *State ex rel. Jenkins, supra*, at 780. While a reporting officer may not be investigating himself or herself, his or her "analysis" and "deliberation" are required by GPO 2.01.05. *Id.* In a UOF Report, the officer is not necessarily reporting solely on his or her own conduct, the officer may be reporting the conduct of other officers, and in all cases the officer is analyzing the role of citizens involved in the incidents and the facts and circumstances that led to the use of force. See GPO 2.01.05, pp. 1, 3 (Ex. 1 to Stacho Aff., 3/29/2021).

Ms. Standifer has argued that, "[b]ecause there cannot be an investigation underway until after a report is filed, and because law enforcement officers do not investigate themselves, their narrative of the incident in which they used force is a routine part of their duties and should be considered as a routine factual incident report." (Relator's Status Report, 3/12/2021, Section IV.) First, it is incorrect to assume the investigation begins only after the officer who used the force reported the force. An investigation could be ongoing into an officer's use of force based on citizen complaints, or the reports of other officers, even if the subject officer delayed reporting or failed to report his or her own use of force. See Carney Dep. Ex. B., pp. 9, 16; GPO 2.01.05 (Ex. 1 to Stacho Aff., 3/29/2021), p. 3 (officers witnessing or present during a use of force are also required to report the use of force, not just the officer who used the force); Respondent's answer to Interrogatory No. 6 (Ex. C) ("Investigations of use of force by a member of the CDP may be initiated by citizens and/or by members of CDP").

Further, given the mandate that all non-*de minimis* uses of force must be investigated (GPO's 2.01.05, 2.01.06) (Exs. 1, 7 to Stacho Aff., 3/29/2021), a UOF Report is necessarily initiated in the context of a presumed ongoing investigation. (Per GOP 2.01.06, it is the policy of the Cleveland Division of Police that uses of force be investigated – *i.e.*, not Use of Force Reports.) Thus, it is incorrect to assume that UOF Reports only concern the author's own use of force and that no investigation begins until after such a report.

For these reasons, UOF Reports are not “routine factual reports” or “ongoing offense reports, chronicling factual events reported to [police].” *State ex rel. Beacon Journal Pub. Co. v. University of Akron*, 64 Ohio St.2d 392, 397, 415 N.E.2d 310 (1980) (describing the type of record not subject to the CLEIR exception). On the contrary, the UOF Reports are precisely the type of record analyzed under the CLEIR exception. See *State ex rel. National Broadcasting Company, Inc. v. City of Cleveland*, 57 Ohio St.3d 77, 79-80, 566 N.E.2d 146 (1991) (“*NBC I*”) (“Not only the police investigations here [of use of force] but also the disciplinary and administrative reviews of the police investigations were encompassed in this broad statutory language as a ‘confidential law enforcement investigatory record’...Moreover, these records continue to be exempt despite the passage of time, the lack of enforcement action, or a prosecutor’s decision not to file charges”);² *State ex rel. Ohio Patrolmen’s Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 445, 732 N.E.2d 969 (2000) (“even if the internal affairs investigation of the Spetrino complaint were considered routine, there is no automatic, *per se*

² In her Status Report filed March 12, 2021, Ms. Standifer relied on *NBC I*, *i.e.*, *State ex rel. National Broadcasting Company, Inc. v. City of Cleveland*, 38 Ohio St.3d 79, 83, 526 N.E.2d 786 (1988). Such reliance is misplaced in light of the Supreme Court’s subsequent analysis in *NBC II*, that the CDP’s internal investigations into use of force are more like criminal investigations than personnel matters.

exclusion of all routine police criminal investigations” from the first step of the CLEIR exception test).

In *NBC II*, the Supreme Court of Ohio held that City of Cleveland investigative files related to police officers’ uses of force “appear comparable to those records compiled pursuant to criminal investigations that police routinely perform when they investigate crimes.” *NBC II, supra*, at 79.

The court of appeals explicitly found that the “ * * * investigations of the use of deadly force by police officers ‘were conducted in the same manner and for the same purpose as were investigations of incidents involving the use of deadly force by non-police.’ * * * The ‘primary purpose’ of the investigations * * * is to present ** information to the prosecutor who determines whether to file criminal charges. * * * If the prosecutor does file criminal charges, the records prepared during these investigations * * * assist the prosecutor ‘in preparing the case for presentation to the County Grand Jury and the Common Pleas Court.’ * * * After criminal proceedings have been concluded, an administrative review of the incident is conducted.

Id. The same is true in this case. See Carney Dep., Ex. B. pp. 16-17.

Thus, the records withheld by the City in this case meet the first part of the two-part test stated in the *State ex rel. Rucker* decision. *NBC II, supra*, at 80 (“these internal police investigations meet the first step of the definition of a ‘confidential law enforcement investigatory record’ under R.C. 149.43(A)(2)”; *State ex rel. Ohio Patrolmen’s Benevolent Assn., supra*, at 445 (“The first requirement is satisfied because the records pertain to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature.”) (citations omitted).

B. Release of the UOF Reports Under Investigation Would Compromise the Investigations

Addressing the second part of the two-part test for application of the CLEIR exception, release of UOF Reports under investigation would create a high probability of

disclosure of one or more of the enumerated types of information that is exempt from public disclosure under R.C. 149.43(A)(2). *State ex rel. Rocker, supra*.

The only evidence in the record is that the release of the UOF Reports under investigation would compromise the investigations. (Stacho Aff., 3/29/2021, ¶ 16) (“Disclosure of the records not only would create a high probability of disclosure of the identity of uncharged suspects in use of force incidents, disclosure would reveal witnesses named in the reports who may be contacted and who have been or will be reasonably promised confidentiality. Thus, information in the reports would tend to disclose the identity of confidential witnesses. Also, information in the reports could be construed as endangering the physical safety of all involved if prematurely disclosed”).

The officer in charge of CDP Internal Affairs, Lieutenant Charles Neidbaldson, testified in his Affidavit that open UOF files like those filed under seal with the Court are not publicly released, because release of the records would compromise the investigations. Release would unfairly publicize the names of officers who might not be charged in any criminal or administrative proceeding, and would reveal confidential information about witnesses and victims, even potentially endangering the safety of all concerned. Release also could lead to destruction of evidence, tampering with witnesses, and inappropriate disclosure of information to the subject officers regarding the investigations. (Neibaldson Aff., Ex. A, ¶ 1-2.)

Even without this unrebutted testimony, it is apparent from the face of the withheld documents filed under seal on April 26, 2021, that they contain categories of information identified in R.C. 149.43(A)(2), *i.e.*, the identity of a suspect who has not been charged (the police officers who committed the uses of force), R.C. 149.43(A)(2)(a); and information that is sensitive and confidential in relation to both

witnesses, victims, and law enforcement officers, R.C. 149.43(A)(2)(b), (d). The inclusion of the officer's analysis of the circumstances involving the use of force implicates the work product exception in R.C. 149.43(A)(2)(c). *State ex rel. Jenkins, supra*, at 780 ("A number of the records contain the subjective deliberations of the officers").³

An officer whose use of force is under investigation certainly would not appreciate his or her name appearing in *Scene* magazine before any final decision is made regarding disposition of the investigation or possible criminal charges. *State ex rel. Thompson Newspapers, Inc., supra*, at 30 ("Moreover, we recognize that one of the purposes for the public records exception in R.C. 149.43(A)(2) is to avoid the situation in which the release of confidential law enforcement investigatory records would subject a person to adverse publicity where he may otherwise never have been identified with the matter under investigation").

Courts in other jurisdictions similarly have held that use of force reports may be protected from public records requests. *See Neer v. State of Iowa*, Iowa App. No. 10-0966, 2011 WL 662725, *4 (Feb. 23, 2011) ("To require an item-by-item assessment of everything within a criminal investigation file would, for all practical purposes, eliminate the investigative report exemption....were we to impose such a requirement, we believe the 'incident' disclosure exception would swallow the provision holding 'investigative reports' confidential"); *Gannett Co., Inc. v. James*, 108 Misc.2d 862, 869,

³ The withheld records also contain information that should be redacted under R.C. 149.43 and the right to privacy, such as Social Security numbers, motor vehicle records identifiers, medical treatment information, and the like, which the parties agree are protected from disclosure.

438 N.Y.S.2d 901 (1981) (denying petitioner's request for every use of force report over a four-year period).

Thus, the City has met its burden of proof by a preponderance of the evidence that the withheld records are subject to the CLEIR exception.

IV. This Action Should Be Dismissed As Moot

Where a public office produces the requested records prior to the court's decision in a legal action brought by the requester, the requester's action is moot. *Crenshaw v. City of Cleveland Law Department*, 8th Dist. Cuyahoga No. 108519, 2020-Ohio-921, ¶ 40, citing *State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 22, 2018-Ohio-5110, 123 N.E.3d 895, ¶ 13; *State ex rel. Patituce & Assocs., L.L.C. v. Cleveland*, 2017-Ohio-300, 81 N.E.3d 863, ¶ 2, 4 (8th Dist.).

In this case, all responsive records have been produced except for records lawfully withheld on the grounds of the CLEIR exception, R.C. 149.43(A)(1)(h). Accordingly, Ms. Standifer's request has been fully satisfied and this action should be dismissed as moot.

V. This Action Should Be Dismissed Under R.C. 2731.04

R.C. 2731.04 provides, in pertinent part: "Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit."

As set forth in *Shoop v. State*, 144 Ohio St.3d 374, 2015-Ohio-2068, 43 N.E.3d 432, ¶ 10, an individual party suing in their own name is not entitled to a writ of mandamus because R.C. 2731.04 provides that an application for a writ of mandamus "must be * * * in the name of the state on the relation of the person applying" and dismissal is warranted when a mandamus action fails to do so.

The parties styled as “Relator” in the caption of the Verified Complaint for Writ of Mandamus filed December 31, 2020, are Lauren “Cid” Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene. A writ of mandamus cannot be granted in their names, such that this action cannot go forward and should be dismissed outright without even hearing their arguments.

The Eighth District has dismissed purported mandamus actions for this reason. See *Blue v. Ryan*, 8th Dist. Cuyahoga Nos. 106166, 106180, 106181, and 106182, 2017-Ohio-8072, ¶ 7 (failure to petition in the name of the state “provides an independent basis to dismiss” mandamus actions); *Mentch v. Cuyahoga County Public Library Board*, 8th Dist. Cuyahoga No. 105963, 2018-Ohio-1398, ¶ 80 (“[a] petitioner’s failure to comply with the requirements of [R.C. 2731.04] is an independent basis to dismiss a mandamus action”); *In re Collado*, 8th Dist. Cuyahoga No. 110048, 2020-Ohio-5337, ¶ 8 (“an action for writ of mandamus shall be brought in the name of the state on behalf of the individual seeking relief. R.C. 2731.04. The failure to do so is grounds for dismissal”); *Everett v. Parma Hts.*, 8th Dist. Cuyahoga No. 99611, 2013-Ohio-5314, ¶¶ 26-27 (“The Everetts failed to comply with R.C. 2731.04 in bringing their mandamus action against the City and thus, their claim fails as a matter of law”).

Accordingly, the City is entitled to judgment for failure of the parties styling themselves as “Relator” in the complaint of this action to bring their action in the name of the State as required by R.C. 2731.04.

CONCLUSION

For the foregoing reasons, Respondent, The City of Cleveland, respectfully asks that this Court order that (i) judgment in the City’s favor be entered on the complaint of Lauren “Cid” Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene; and the

petition for a writ of mandamus be denied; (ii) the records at issue be considered exempted from the Public Records Act by R.C. 149.43(A)(1)(h); (iii) court costs be assessed to Ms. Standifer.

Respectfully submitted,

BARBARA A. LANGHENRY (0038838)
Director of Law

By: s/ Timothy J. Puin
William M. Menzalora (0061136)
Chief Assistant Director of Law
Timothy J. Puin (0065120)
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Counsel for Respondent, The City of Cleveland

PROOF OF SERVICE

The foregoing was filed electronically on May 14, 2021, and may be accessed through the Court's ECF system by all parties of record.

By: s/ Timothy J. Puin

TIMOTHY J. PUIN (0065120)

72927v1

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

Lauren "Cid" Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene,
Relator

v.

The City of Cleveland
Respondent

Original Action

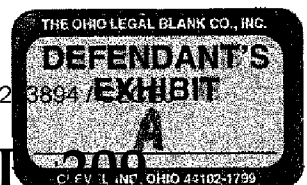
AFFIDAVIT OF LIEUTENANT CHARLES NEIDBALSON

NOW COMES Lieutenant Charles Neidbalson, and for his Affidavit, states as follows:

1. I am an adult who is competent to make this affidavit, and I have first-hand knowledge of the facts set forth herein, as the officer in charge of the Internal Affairs Unit of the Cleveland Division of Police. Also, I have reviewed copies of records that I understand were filed under seal with the Court regarding open investigations.

2. In my experience, the City would not publicly release the Use of Force reports completed by officers in IAPro/BlueTeam while an internal investigation is still pending into an officer's use of force. Release of the records would compromise the investigations. Release would unfairly publicize the names of officers who might not be charged in any criminal or administrative proceeding, and would reveal confidential information about witnesses and victims, even potentially endangering the safety of all concerned. Release also could lead to destruction of evidence, tampering with witnesses, and inappropriate disclosure of information to the subject officers regarding the investigations.

FURTHER AFFIANT SAYETH NAUGHT.



Charles Neidbalsen #8547, Lt
LIEUTENANT CHARLES NEIDBALSON, CDP

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Sworn to and subscribed before me this 12 day of May, 2021, by the foregoing Affiant, who did swear or affirm it was his true act and deed.

T. Puin
NOTARY PUBLIC

TIMOTHY J. PUIN, Attorney
NOTARY PUBLIC - STATE OF OHIO
My Commission Has No Expiration Date
Section 147.03 O.R.C.

73008v1



EXHIBIT B

Cited pages from the official transcript of the May 3, 2021, deposition of Brian Carney,
filed May 19, 2021

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IN THE EIGHTH DISTRICT COURT OF APPEALS
CUYAHOGA COUNTY, OHIO

~~~~~

LAUREN "CID" STANDIFER,  
et al.,  
Relators,

vs. Case No: CA-20-110200

CITY OF CLEVELAND,  
Respondent.

~~~~~

Deposition of
COMMANDER BRIAN CARNEY

Monday, May 3, 2021
10:03 a.m.

TAKEN VIA VIDEOCONFERENCE

Sandra L. Rice

1 minimis?

2 A. Correct.

3 Q. What ways does Cleveland learn about a
4 use-of-force incident?

5 A. What way? I don't understand the question.

6 Q. I'm sorry. I can rephrase. In what ways does a
7 use-of-force incident usually come to the
8 attention of the City of Cleveland or the
9 Cleveland Division of Police?

10 A. A use of force can be reported by either the
11 officer or through a citizen or an investigation
12 that is conducted by the division through various
13 entities, and it can also be investigated through
14 other municipalities such as -- well, not
15 municipalities but, let me rephrase that, the
16 county or the United States of America.

17 Q. What would you say the most common, out of all of
18 those ways, a use of force is brought to the
19 attention of the City of Cleveland or the
20 Cleveland Division of Police?

21 A. Through self reporting by the officer.

22 Q. Are officers required to self report?

23 A. Yes.

24 Q. How does that process usually work? I know that
25 it's in the policies and procedures, but how does

1 Affairs?

2 A. No.

3 Q. When does Internal Affairs initiate an
4 investigation?

5 A. By means of a complaint by another officer or
6 citizen or when assigned by the chief of police,
7 but the Internal Affairs at the end of their
8 routing of the uses of force they do review all
9 Level-1's, 2's and 3's. That is our policy that
10 all of the uses of force do go to Internal
11 Affairs so at some point they do review those.

12 Q. Okay. At what point does Internal Affairs review
13 a use of force?

14 A. It's different for each level whether it's a
15 Level-1 or a Level-2 or a Level-3. Level-1's are
16 sent directly to Internal Affairs. I believe
17 after the commander of the assigned member
18 reviews it it's sent from the commander to
19 Internal Affairs. Level-2, same thing. Then
20 Level-3's are investigated by Internal Affairs or
21 the FIT team, Force Investigation Team, which
22 consists of the Internal Affairs unit and other
23 various units.

24 Q. Thank you. How does the Cleveland Division of
25 Police, Internal Affairs, determine whether or

1 not they are engaging in a criminal
2 investigation?

3 A. Most of the Internal Affairs investigations start
4 off as a criminal investigation and then it's
5 presented to a prosecutor or a grand jury for
6 determination of whether it's a criminal case or
7 not. After the prosecutor -- if the prosecutor
8 "no papers," if no papers are issued charging the
9 officer then it's an administrative
10 investigation; or if it's a "true bill" obviously
11 the officer would be charged or if there's a "no
12 bill" by the grand jury then there would be an
13 administrative investigation at that point.

14 Q. Are you familiar with Blue Team and IA Pro?

15 A. Yes.

16 Q. Who creates uses-of-force reports in Blue Team?

17 A. It can be a member of the division who uses the
18 force but also if it's a Level-3 it's my
19 understanding the supervisor of the Internal
20 Affairs unit creates the initial entry.
21 Level-1's and Level-2's it would be the officer
22 who used the force.

23 Q. Who reviews uses-of-force reports?

24 A. Can you be more specific?

25 Q. Once it's put into Blue Team who then reviews the

IN THE EIGHTH DISTRICT COURT OF APPEALS
CUYAHOGA COUNTY, OHIO

LAUREN 'CID' STANDIFER, <i>et al.</i>,	)	CASE NO: CA 20 110200
)	
Relators,)	
)	
v.	)	<u>RESPONDENT THE CITY OF</u>
	)	<u>CLEVELAND'S RESPONSES TO</u>
THE CITY OF CLEVELAND,	)	<u>RELATORS' FIRST SET OF</u>
	)	<u>DISCOVERY REQUESTS</u>
Respondent.)	
)	

GENERAL OBJECTIONS

Respondent objects to any requested discovery responses that are attorney-client privileged or subject to the work product doctrine; any requests that call for information outside the first-hand knowledge of Respondent; any ambiguous requests; any compound requests; any requests that are irrelevant and not likely to lead to the discovery of admissible evidence; and any requests that are not proportional to the needs of the case. None of these general objections are waived if not stated specifically in response to a particular request.

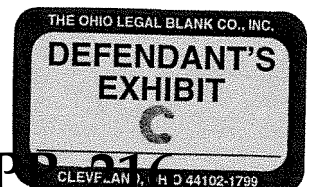
INTERROGATORIES

INTERROGATORY 1: State the name, address, phone number, and place of employment of the person answering these interrogatories.

RESPONSE:

As to Interrogatory Nos. 6 and 7:

**Commander Brian Carney
Bureau of Compliance
Cleveland Division of Police
Department of Public Safety
C/o Department of Law
601 Lakeside Ave. E., Rm. 106
Cleveland, OH 44114
(216) 664-2800**



INTERROGATORY 6: Identify how the City initiates an investigation of a CDP officer's use of force.

RESPONSE:

Investigations of use of force by a member of the CDP may be initiated by citizens and/or by members of CDP. Citizens may contact the Civilian Police Review Board if they want to make a complaint of misconduct or may contact other City representatives. An immediate supervisor of a police officer involved in a use of force incident may initiate an internal investigation into Level 1 and Level 2 use of force incidents. For a Level 3 use of force incident, the Force Investigation Team would initiate the investigation. Please see GPO's, manuals, and other documents produced to date and herewith, including but not limited to GPO 2.01.06, *Use of Force – Supervisory Reviews and Investigations*.

INTERROGATORY 7: Identify all entities which have authority to bring law enforcement actions against CDP officers.

RESPONSE:

Objection: unclear; calls for a legal conclusion. Without waiving, the City of Cleveland Department of Law, Criminal Division (City Prosecutor's Office); the Cuyahoga County Prosecutor's Office; the State of Ohio; and the United States of America, all have authority to pursue criminal actions against CDP officers.

INTERROGATORY 8: Identify and produce all manuals and policies regarding the IAPro software.

RESPONSE:

RESPONSE:

Objection: unclear, irrelevant and not likely to lead to the discovery of admissible evidence, not proportional to the needs of the case. Without waiving, this response may be supplemented as the City's investigation continues.

VERIFICATION

I hereby swear or affirm that the foregoing answers to Interrogatory Nos. 6 and 7 are true to the best of my knowledge and belief.

/s/ Brian Carney
per with TSP - executed remotely due to covid concerns

COMMANDER BRIAN CARNEY
CLEVELAND DIVISION OF POLICE

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Sworn to and subscribed before me this 20th day of April, 2021, by the foregoing Affiant, who did swear or affirm that the foregoing answers to Interrogatory Nos. 6 and 7 were his true act and deed.

Timothy J. Purn (0065720)
NOTARY PUBLIC

TIMOTHY J. PURN, Attorney
NOTARY PUBLIC - STATE OF OHIO
My Commission Has No Expiration Date
Section 147.03 O.R.C.



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Appeals

APPELLEE'S REPLY
June 25, 2021 16:51

By: TIMOTHY J. PUIN 0065120

Confirmation Nbr. 2286765

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

CA 20 110200

vs.

CITY OF CLEVELAND

Judge:

Pages Filed: 18

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

State ex rel. Lauren “Cid” Standifer and Euclid Media Group, LLC d/b/a Cleveland
Scene,

Relator

v.

The City of Cleveland

Respondent

Original Action

**REPLY BRIEF OF RESPONDENT
THE CITY OF CLEVELAND**

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The City of Cleveland

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

ARGUMENT 1

 I. UOF Reports Are Not Routine Incident Reports and the CLEIR
 Exception Applies..... 1

 A. UOF Reports Are Not Reports of Routine Incidents..... 2

 B. UOF Reports Require Analysis and Judgment 4

 C. UOF Reports Do Not Initiate Investigations,
 They Are Part of the Investigations 5

 D. Internal Supervisor Reviews Are Within
 The CLEIR Exemption 6

 E. Ms. Standifer’s Reliance on *NBC I* Is Misplaced
 Given *NBC II* 7

 F. UOF Reports Under Investigation Meet the Second Part
 Of the Test For Application of the CLEIR Exemption 7

 II. Relators Are Not Entitled to Statutory Damages and Costs 9

CONCLUSION 10

PROOF OF SERVICE 11

EXHIBIT A

 Affidavit (Recertification)

TABLE OF AUTHORITIES

Cases

Henneman v. Toldeo, 35 Ohio St.3d 241, 520 N.E.2d 207 (1988) 9

J&C Marketing, LLC v. McGinty, 143 Ohio St.3d 315, 2015-Ohio-1310,
37 N.E.3d 1183..... 9

State v. Kempton, 4th Dist. Ross No. 15CA3489, 2018-Ohio-928 3

State ex rel. Beacon Journal Publishing Co. v. Maurer, 91 Ohio St.3d 54,
741 N.E.2d 511 (2001)1

*State ex rel. Cincinnati Enquirer v. Ohio Department of Commerce,
Division of State Fire Marshal*, 145 N.E.3d 1232, 2019-Ohio-4009 5

State ex rel. Cincinnati Enquirer v. Pike County Coroner’s Office,
153 Ohio St.3d 63, 2017-Ohio-89881, 9

State ex rel. National Broadcasting Company, Inc. v. City of Cleveland,
38 Ohio St. 3d 79, 526 N.E.2d 786 (1988) 7

State ex rel. National Broadcasting Company, Inc. v. City of Cleveland,
57 Ohio St.3d 77, 566 N.E.2d 146 (1991) 4, 7

State ex rel. Oriana House, Inc. v. Montgomery, 10th Dist. Franklin Nos.
04AP-492, 04AP-504, 2005-Ohio-3377..... 3

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Consent Decree, Doc. #: 7-1 (June 12, 2015); Doc. #: 320 (July 13, 2020) 3

Statutes

Ohio Rev. Code 149.43 *passim*

Rules

Civ.R. 56 10

Other

Ohio Attorney General Dave Yost, OHIO SUNSHINE LAWS 2021:
AN OPEN GOVERNMENT RESOURCE MANUAL 6

City of Cleveland, *Police Publications and Information*,
<https://www.clevelandohio.gov/CityofCleveland/Home/Government/CityAgencies/PublicSafety/Police/PublicationsInformation> (accessed June 25, 2021) 2

Noga, *Some Facts About Police and Public Encounters*,
2020 ADVANCED GOV'T L. 13-III (State Bar of Texas 2020) 3

INTRODUCTION

Pursuant to the Court's Judgment Entry of May 14, 2021, this Reply Brief is respectfully submitted:

(1) in support of the City's Motion for Summary Judgment, which was filed on June 8, 2021, and the Brief of Respondent, filed on May 14, 2021; and

(2) in opposition to the May 14, 2021, Motion to Grant Writ of Mandamus ("Motion") filed by Relators, State ex rel. Lauren "Cid" Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene (collectively, "Ms. Standifer").

Pursuant to the Court's Judgment Entry of May 14, 2021, the Affidavit attached hereto as Exhibit A is a recertification of the current status of the City's responses to Ms. Standifer's public records requests.

ARGUMENT

I. UOF Reports Are Not Routine Incident Reports and the CLEIR Exception Applies

"Under R.C. 149.43(A)(1)(h), a confidential law enforcement investigatory record is not a public record." *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St.3d 54, 56, 741 N.E.2d 511 (2001).

"Whether a document satisfies the CLEIR exception is determined by a two-part test: (1) whether the record is a confidential law-enforcement record and (2) whether release of the record would create a high probability of disclosure of any one of the statutorily enumerated types of information that is exempt from public disclosure." *State ex rel. Cincinnati Enquirer v. Pike County Coroner's Office*, 153 Ohio St.3d 63, 2017-Ohio-8988, 101 N.E.3d 396, ¶ 33.

There is no dispute that UOF Reports concerning uses of force that are no longer under investigation are public records. The issue is whether UOF Reports concerning uses of force that are still under investigation are public records.

Ms. Standifer does not contest that UOF Reports concerning uses of force that are still under investigation are “law-enforcement records” under the first part of the test; rather, she disagrees that they are “*confidential* law-enforcement records.” She believes that UOF Reports are similar to initial police incident or field reports, transcripts of 911 calls, and bodycam videos of initial police activity in response to an emergency call. The following statement sums up her position:

Because there cannot be an investigation underway until after a report is created, and because law enforcement officers do not investigate themselves, their narrative of the incident in which they used force is a routine part of their duties and should be considered a routine factual incident report.

(Ms. Standifer’s Motion at p. 7.)

Ms. Standifer’s analysis is based on a fundamental misunderstanding of the nature of UOF Reports and the context in which they are created.

A. UOF Reports Are Not Reports of Routine Incidents

UOF Reports cannot be characterized as reports of routine monitoring or oversight, because uses of force by police are not routine, they are unusual or rare. An officer may complete a Daily Duty Report or incident reports on a daily basis, but ideally would never need to create a Use of Force report.¹

¹ According to the 2020 Use of Force Report, Cleveland Division of Police, Table 5-2018-2020, Number of Use of Force Incidents and Service Types by District, less than 0.2% of all calls for service from 2018-2020 resulted in a use of force. See City of Cleveland, *Police Publications and Information*, <https://www.clevelandohio.gov/CityofCleveland/Home/Government/CityAgencies/PublicSafety/Police/PublicationsInformation> (accessed June 25, 2021). This report is generally consistent with broader

The current protocol for Use of Force reporting was developed in conjunction with the U.S. Department of Justice and is overseen by the U.S. District Court for the Northern District of Ohio.² Given the DOJ's well-publicized finding that CDP members have engaged in improper uses of force in the past, every use of force currently is being scrutinized and investigated. Although most uses of force ultimately may be found to have been justified for public safety and to have been exercised within division guidelines, every use of force potentially could represent police misconduct, until an investigation is completed that determines to the contrary.

Thus, the requirement for a Use of Force report is akin to a "special audit" as opposed to routine monitoring. *State ex rel. Oriana House, Inc. v. Montgomery*, 10th Dist. Franklin Nos. 04AP-492, 04AP-504, 2005-Ohio-3377, ¶ 77, *rev'd on other grounds*, 110 Ohio St.3d 456, 2006-Ohio-4854, 854 N.E.2d 193 (holding that redacted portions of audit records were directed to specific misconduct and were not simply part of routine monitoring.)

studies. "The Bureau of Justice Statistics branch of the U.S. Department of Justice, which is the principal federal agency responsible for measuring crime and justice system statistics, confirms the rarity of use of force and related fatalities." Noga, *Some Facts About Police and Public Encounters*, 2020 ADVANCED GOV'T L. 13-III (State Bar of Texas 2020).

² See *United States of America v. City of Cleveland*, N.D. Ohio No. 1:15-cv-01046, Consent Decree, Doc. #: 7-1, PageID #: 386, ¶ 47-48 (June 12, 2015) ("As soon as practical following a use of force, CDP will ensure that the incident is accurately and properly reported, documented, and investigated. A fundamental goal of the revised use of force policy will be to account for, review, and investigate every reportable use of force and reduce any improper uses of force. CDP will track and analyze officers' uses of force to hold officers accountable for unreasonable uses of force; to guide training and policy; and to identify poor tactics and emerging trends"); *id.*, at Doc. #: 320, PageID #: 7015 (July 13, 2020) ("The Consent Decree requires that, whenever force is used, it comply with CDP's new use of force policies and be appropriately investigated and reviewed by the Division"). This Court can take judicial notice of appropriate matters in other cases that are available through an online docket. *E.g.*, *State v. Kempton*, 4th Dist. Ross No. 15CA3489, 2018-Ohio-928, ¶ 17.

Of course, reports are routinely created about rare events like police use of force, but that does not make them “routine reports” like traffic tickets, 911 calls, or field incident reports. *State ex rel. National Broadcasting Company, Inc. v. City of Cleveland*, 57 Ohio St.3d 77, 79, 566 N.E.2d 146 (1991) (“*NBC II*”) (“The words ‘routine’ or ‘routinely’ are not used in the public records statute. We find no reason to engraft onto the precise words of R.C. 149.43(A)(2) a requirement that ‘confidential law enforcement investigatory records’ be publicly released, without exception, simply because the records resulted from routine police investigations. As Cleveland urges: ‘The function of investigators is to investigate. That is their “routine.” There is no such thing as a non-routine investigation.’ Indeed, the broad language of the definition in R.C. 149.43(A)(2), which refers to ‘criminal, quasi-criminal, civil, or administrative’ law enforcement matters, would be frustrated by such an interpretation”).

B. UOF Reports Require Analysis and Judgment

UOF Reports are not merely duplicative of the field report or bodycam footage that records the circumstances of an interaction between police and the public; if that were true, there would be no reason for officers to complete them.

UOF Reports include the officer’s mental impressions and subjective analyses of the circumstances in which force was used. See General Police Order (“GPO”) 2.01.05, Page 1 of 6 (Ex. 1 to Stacho Aff., 3/29/2021) (UOF Reports shall be detailed enough to permit an understanding of “the totality of the circumstances); *id.* (“Officers shall not use conclusory statements, ‘boilerplate’ or ‘canned’ language”); *id.*, Page 3 of 6 (CDP officers who witness use of force should make a report “from the officer’s perspective”); *id.*, Page 6 of 6 (officers reporting exceptional uses of force must state “why the officer believed that no other force options...were available”).

Thus, Ms. Standifer is incorrect in saying UOF Reports are “merely ‘objective facts and observations’ about a use of force.” (Ms. Standifer’s Motion at p. 11.) UOF Reports are distinct from field reports and bodycam footage in that they require the officer to conduct an analysis and to use his or her judgment.

C. UOF Reports Do Not Initiate Investigations, They Are Part of the Investigations

UOF Reports do not initiate investigations, they are part of the investigations. *State ex rel. Cincinnati Enquirer v. Ohio Department of Commerce, Division of State Fire Marshal*, 145 N.E.3d 1232, 2019-Ohio-4009, ¶ 25 (10th Dist.) (distinguishing routine incident reports from records subject to the CLEIR exemption) (citations omitted). The beginning of an investigation is marked by the use of force itself, not by the UOF Report. Put another way, it is the use of force that is being investigated, not the officer. GPO 2.01.06 (Ex. 7 to Stacho Aff., 3/29/2021) (“POLICY: *It is the policy of the Cleveland Division of Police that supervisors investigating use of force incidents...*”) (underline added); *United States of America v. City of Cleveland, supra*, Doc. #: 7-1, PageID #: 386, ¶ 47-48 (June 12, 2015) (“A fundamental goal of the revised use of force policy will be to account for, review, and *investigate every reportable use of force* and reduce any improper uses of force”) (*italics* added).

A use of force is not unknown unless and until the officer who used force self-reports on the UOF Report form. The person upon whom force was used certainly knows about the use of force. So do fellow officers and witnesses. Any one of these can and often do make the first report of a use of force. See Carney Dep. pp. 9, 16, 17; GPO 2.01.05 (Ex. 1 to Stacho Aff., 3/29/2021), p. 3; Respondent’s answer to Interrogatory No. 6.

In arguing that “law enforcement officers do not investigate themselves,” (Ms. Standifer’s Motion at p. 7), Ms. Standifer confuses the internal disciplinary process with the investigation of the use of force. While a reporting officer cannot discipline himself or herself, he or she can certainly participate in the investigation of his or her own use of force. An officer who self-reports is perfectly capable of evaluating, and indeed is expected and required to evaluate, his or her own use of force in the UOF Report.

D. Internal Supervisor Reviews Are Within the CLEIR Exemption

Ms. Standifer’s distinction between internal reviews of uses of force by superior officers and Internal Affairs investigations is irrelevant for purposes of the CLEIR exception, because both undertakings are contemplated by R.C. 149.43(A)(2)’s definition of a confidential law enforcement investigatory record “as any record that pertains to a law enforcement matter *of a criminal, quasi-criminal, civil, or administrative nature*” (emphasis added). Whether the UOF report is being reviewed by a superior officer in an administrative review, or by Internal Affairs or the Prosecutor in a potential criminal case, it still meets the definition of a record exempted by the statute. The City’s statement of Policy in GPO 2.01.06 discusses “investigating” uses of force through “reviews,” pointing out that the two activities are part of the same process.

Thus, Ms. Standifer is wrong to argue that the internal review process only “pose[s] as an ‘investigation.’” (Ms. Standifer’s Brief at pp. 5-7.) The internal review process is part of the investigation. See Ohio Attorney General Dave Yost, OHIO SUNSHINE LAWS 2021: AN OPEN GOVERNMENT RESOURCE MANUAL, p. 77 (“This exemption is often mistaken as one that applies only to police investigations. In fact, the Confidential Law Enforcement Investigatory Records exemption, commonly known as

‘CLEIRs,’ applies to investigations of alleged violations of criminal, quasi-criminal, civil, and administrative law”).

E. Ms. Standifer’s Reliance on *NBC I* Is Misplaced Given *NBC II*

In mischaracterizing UOF Reports as routine incident reports, Ms. Standifer relies on *NBC I*, *State ex rel. National Broadcasting Company, Inc. v. City of Cleveland*, 38 Ohio St. 3d 79, 526 N.E.2d 786 (1988). However, *NBC I* is not on point because the Supreme Court revisited the nature of the use of force reports at issue in that case in *NBC II*, and determined that the *NBC I* decision was incorrect in its application of the CLEIR exemption. *See NBC II, supra*, at 79 (“In *NBC I*, we did refer to routine internal investigations undertaken to monitor police officers. *Id.* at 83, 526 N.E.2d at 790. However, that discussion was premised on the preliminary evidence then before this court. At that time, the actual investigative files compiled were not before the court, but the evidence made them appear comparable to police personnel records. From the evidence now before us, including the actual investigative files, and in view of the specific findings of the court of appeals after our initial remand, the records do not resemble police personnel records. Rather, they appear comparable to those records compiled pursuant to criminal investigations that police routinely perform when they investigate crimes”).

As in *NBC II*, Use of Force Reports are comparable to records compiled pursuant to criminal investigations. Thus, Ms. Standifer is mistaken in relying on *NBC I*.

F. UOF Reports Under Investigation Meet the Second Part of the Test for Application of the CLEIR Exemption

As to the second part of the test, Ms. Standifer argues that the CLEIR exemption “is a narrow, qualified exemption, and, from a review of similar records, it is unlikely

that these records could create a ‘high probability’ of disclosing the types of information protected by R.C. 149.43(A)(2).” (Ms. Standifer’s Motion at p. 3.)

Ms. Standifer cannot reasonably contest the second part of the test, with or without the benefit of reviewing the records, because she has no first-hand knowledge of the ongoing investigations. Fact witnesses in a position to know the nature of the withheld records, Lt. Lieutenant Charles Neidbaldson and Sgt. Maria Stacho, testified to facts establishing that the second part of the test is met. (Stacho Aff., 3/29/2021, ¶ 16); (Neibaldson Aff., 5/14/2021, ¶ 1-2.)

It is unfair for Ms. Standifer to argue that the witnesses merely parroted the statutory language in order to satisfy the second part of the CLEIR test, without specifically identifying the information protected under the CLEIR exemption. (Ms. Standifer’s Motion at p. 11.) The City’s witnesses clearly testified that the categories of information set forth in R.C. 149.43(A)(2) applied. They could not introduce this testimony without referencing the categories identified in the statute.³

Even without such testimony, it is apparent from the face of the records that each of the categories of information set forth in the statute is included within the UOF Reports. As only one of the statutorily enumerated types of information needs to be present for the exemption to apply, it readily may be determined that the exemption applies because it is obvious that the officer who used the force would fit the definition

³ As noted in Ms. Standifer’s Motion at p. 3, the withheld UOF Reports consist of two reports from 2019, 33 from 2020, and 52 from 2021, for a total of 87 separate UOF Reports. It would be unreasonable to contend that the City’s affidavits are insufficient because they do not include testimony about each row of information in each of the 87 separate incidents in the withheld UOF Reports. While the City has worked cooperatively with Ms. Standifer, its original objection that her expectations are overly broad and burdensome (see Complaint at ¶ 10-11) continues to be valid.

in R.C. 149.43(A)(2)(a), of a “suspect who has not been charged with the offense to which the record pertains.” Further, UOF Reports reveal “specific investigatory work product” under R.C. 149.43(A)(2)(c). *State ex rel. Cincinnati Enquirer, supra*, 2017-Ohio-8988, at ¶ 36 (CLEIR protection is extended to records compiled by a public office with authority to conduct administrative or civil violations, not just criminal violations; the exemption applies to records that *pertain* to a law enforcement matter) (*italics in State ex rel. Cincinnati Enquirer*).⁴

For these reasons, the petition for a writ of mandamus should be denied and the City is entitled to summary judgment in its favor.

II. Relators Are Not Entitled to Statutory Damages and Costs

⁴ In *J&C Marketing, LLC v. McGinty*, 143 Ohio St.3d 315, 2015-Ohio-1310, 37 N.E.3d 1183, ¶ 19, the Supreme Court of Ohio reaffirmed the validity of the balancing test that it adopted in *Henneman v. Toldeo*, 35 Ohio St.3d 241, 245, 520 N.E.2d 207 (1988), for determining when internal affairs files are privileged from discovery under the qualified law enforcement investigatory privilege, identifying factors that are informative here in evaluating application of the CLEIR exemption:

(1) [T]he extent to which disclosure will thwart governmental processes by discouraging citizens from giving the government information; (2) the impact upon persons who have given information of having their identities disclosed; (3) the degree to which governmental self-evaluation and consequent program improvement will be chilled by disclosure; (4) whether the information sought is factual data or evaluative summary; (5) whether the party seeking the discovery is an actual or potential defendant in any criminal proceeding either pending or reasonably likely to follow from the incident in question; (6) whether the police investigation has been completed; (7) whether any intradepartmental disciplinary proceedings have arisen or may arise from the investigation; (8) whether the plaintiff's suit is non-frivolous and brought in good faith; (9) whether the information sought is available through other discovery or from other sources; and (10) the importance of the information sought to the plaintiff's case.

It is self-evident that these factors would resolve in favor of application of the qualified privilege in this case.

Statutory damages and costs should not be awarded. Under R.C. 149.43(C), even if it is found that the requested records should have been produced, the Court has discretion to refuse an award of statutory damages and costs. *State ex rel. Carr v. London Corr. Inst.*, 144 Ohio St.3d 211, 2015-Ohio-2363, 41 N.E.3d 1203, ¶ 34 (citations omitted). In this case, R.C. 149.43(C)(2)(a) and (b) support the refusal to award statutory damages even if Ms. Standifer prevails. Based on the ordinary application of statutory and case law at the time of her request, the City as a well-informed public office reasonably believed that its denial did not constitute a failure to comply with R.C. 149.43(B) and further, that its denial served the public policy underlying the CLEIR exemption, to protect against the release of confidential information in an open investigation. However, the main reason to deny Ms. Standifer's request for statutory damages and costs is that the City has fulfilled her public records request to the fullest extent possible in good faith.

CONCLUSION

For the foregoing reasons, Respondent, The City of Cleveland, respectfully asks that this Court order that (i) summary judgment in the City's favor be entered on the complaint of State ex rel. Lauren "Cid" Standifer and Euclid Media Group, LLC d/b/a Cleveland Scene, pursuant to Rule 56(C) of the Ohio Rules of Civil Procedure; (ii) the petition for a writ of mandamus and Ms. Standifer's motion be denied; (iii) the records at issue be considered exempted from the Public Records Act by the CLEIR exemption, R.C. 149.43(A)(1)(h); and (iv) court costs be assessed to Ms. Standifer.

Respectfully submitted,

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PROOF OF SERVICE

The foregoing was filed electronically and may be accessed through the Court's ECF system by all parties of record.

By: s/Timothy J. Puin

TIMOTHY J. PUIN (0065120)

EXHIBIT A

**IN THE COURT OF APPEALS OF OHIO
EIGHTH DISTRICT**

STATE EX REL. LAUREN "CID"	)	Case No. CA-20-110200
STANDIFER, et al.)	
)	
Relators	)	Original Action
)	
vs.)	
)	
THE CITY OF CLEVELAND	)	AFFIDAVIT
	)	OF TIMOTHY J. PUIN
	)	(RECERTIFICATION)
Respondent)	

NOW COMES TIMOTHY J. PUIN, and for his Affidavit, states as follows:

1. I am an adult who is competent to make this Affidavit and I have first-hand knowledge of the facts set forth herein. I am employed by the City of Cleveland in the position of Assistant Director of Law. In the course of my duties, I am required to review and respond to public records requests. I am familiar with the City's public records management system, including the software program GovQA. I personally reviewed Relators' public records requests and the City's responses in this matter; and personally assisted in creating and redacting documents in Excel and Word format that were produced in response to Relators' public records requests.

2. This Affidavit is for the limited purpose of recertifying the City's responses to Relator's public records requests at issue in this case, pursuant to the Court's Judgment Entry of May 14, 2021. The facts relayed here are apparent through the City's filings on the record in this case, including the original certifications by Supervisor of Hardware Evaluations Alberto Guzman and Sergeant Maria Stacho, filed on March 3, 2021, and the City's various Notices of filing.

3. The following table provides an update of the current status of the City's responses to the Relators' public records requests in this case.

Request	Date	Description	City's response
<i>all reports on use of force incidents between Jan. 1, 2019 and the date the record is generated</i>	9/09/2020	"Master Request."	Other than reports exempt under CLEIR, fulfilled to Requester's satisfaction through productions on (1) 2/10/2021 (i.e., 2019, 2020, and 2021 Excel exports of all UOF reports from IAPro/Blue Team, not including full narratives due to technological limitations); (2) 5/25/2021 (i.e., Word export of full narratives from 2021 UOF reports); and (3) 5/27/2021 (i.e., Word export of full narratives from 2019 and 2020 UOF reports).
<i>all reports on use of force incidents between [Jan. 1, 2019] and the date the record is generated. Please note I am not requesting the number of incidents, but the reports produced by officers describing each individual incident.</i>	10/05/2020	Breakdown of Master Request into 21 separate requests (one for each month from Jan. 1, 2019 through the end of Sept. 2020).	See above.
<i>all reports on use of force incidents that occurred on May 30 and June 1, 2020. Please note I am not requesting the number of incidents, but the reports produced by officers describing each individual incident.</i>	10/29/2020	Request for records concerning use of force during George Floyd/BLM protests and aftermath.	See above (as to production of UOF reports from 2020).
<i>all use of force reports filed in June 2019</i>	11/18/2020	Request for one month of records during the period at issue.	See above. Also in the process of voluntarily producing .pdf copies.
<i>I am requesting the files identified by the following numbers: UOF2019-0267 UOF2019-0268 [etc.]</i>	12/10/2020	Breakdown of request for one month of records, i.e., June 2019.	See above. Also in the process of voluntarily producing .pdf copies

FURTHER AFFIANT SAYETH NAUGHT.

T. Puin

ASST. DIR. OF LAW TIMOTHY J. PUIN

STATE OF OHIO)
COUNTY OF CUYAHOGA)

SS:

Sworn to and subscribed before me this 17th day of June, 2021, by the foregoing Affiant, who did swear or affirm it was his true act and deed.

Aaeshah Luton

NOTARY PUBLIC



AAESHAH LUTON
NOTARY PUBLIC
FOR THE
STATE OF OHIO
My Commission Expires
12-13-22



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Appeals

BRIEF IN OPPOSITION TO
June 25, 2021 16:32

By: ANDREW GERONIMO 0086630

Confirmation Nbr. 2286726

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

CA 20 110200

vs.

CITY OF CLEVELAND

Judge:

Pages Filed: 12

IN THE EIGHTH DISTRICT COURT OF APPEALS
CUYAHOGA COUNTY, OHIO

State ex rel. Lauren 'Cid' Standifer,	)	CASE NO: CA 20 110200
and Euclid Media Group, LLC)	
d/b/a <i>Cleveland Scene</i>,	)	ORIGINAL ACTION
Relators)	
v.	)	<u>RELATORS' OPPOSITION TO</u>
	)	<u>RESPONDENT'S MOTION FOR</u>
The City of Cleveland,	)	<u>SUMMARY JUDGMENT</u>
Respondent)	
)	

Relators Cid Standifer and Euclid Media Group, LLC d/b/a *Cleveland Scene* submit this opposition to Respondent City of Cleveland's Motion for Summary Judgment. Cleveland's generalized allegations of harm are not enough to withhold entire records as Confidential Law Enforcement Investigatory Records in light of the R.C. 149.43's strict application in favor of disclosure. This Court should deny Cleveland's Motion for Summary Judgment and issue a writ of mandamus ordering Cleveland to release the Use of Force Reports at issue. A brief in support is attached.

Respectfully Submitted,

/s/ Sara Coulter

Sara Coulter (0096793)

/s/ Andrew Geronimo

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BRIEF IN SUPPORT

The City has not shown that the Use of Force (UOF) Reports that remain at issue “pertain[] to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature,” nor has it shown “a high probability of disclosure” of any of the four enumerated categories of information as required for the Confidential Law Enforcement Investigatory Records (CLEIR) exemption to apply. R.C. 149.43(A)(1)(h) and (A)(2).

The question before this Court is whether the routine act of a law enforcement officer filling out a required UOF Report—for which they do not have investigatory authority,¹ and which is then reviewed to see if an investigation is necessary²—can be withheld as a Confidential Law Enforcement Investigatory Record. The City’s *Motion for Summary Judgment* conflates the purely factual Use of Force Report in Blue Team reporting system that cannot qualify as CLEIRs with the investigatory records in Internal Affairs’s IPro investigatory system, which might if the City could demonstrate that their release would create a “high probability” of disclosure of four specific and narrow categories of information.

Even if the City could make these showings, the City should be required to redact only that information which is necessary to protect against such disclosure of

¹ Carney Dep. at 15:22-24 (“Q. Does a police officer ever investigate themselves? A. No.”)

² Carney Dep. at 22:22-25 (“Q. What does that “unassigned” [in Blue Team] mean? A. I would assume that it means it hasn't been assigned a supervisor to review it yet or investigate it, that it's pending assignment as indicated in the category to the left of that.”).

confidential information and the rest of the UOF Reports should be turned over to Relators pursuant to R.C. 149.43(B)(1).

Relators Cid Standifer and *Cleveland Scene* respectfully request that this Court closely review the records filed under seal, order the public release of all portions of the records which do not fall squarely within an exemption, and order such other relief as is appropriate.

I. Exceptions to the Public Records Act should be narrowly applied.

The City has the burden of showing that the UOF Reports are exempt from public disclosure. See *State ex rel. National Broadcasting Co., Inc. v. City of Cleveland*, 38 Ohio St.3d 79, 83 (1988) (“*NBC I*”) (“a governmental body refusing to release records has the burden of proving that the records are excepted from public disclosure pursuant to R.C. 149.43.”). It is important to note that a requesting party “is at a distinct disadvantage when challenging a government’s claim of an exception to the public records law.” *Id.*

The City misreads *State ex rel. Caster v. Columbus* — a case that deals with the specific investigatory work product exemption in R.C. 149.43(A)(2)(c) — to claim a “broad” exception for all records relating to investigations. But the Ohio Supreme Court has repeatedly held that the Act is to be construed broadly in favor of public access, and its exceptions construed narrowly. See *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety*, 148 Ohio St.3d 33, 438 (2016), quoting *NBC I*, 38 Ohio St.3d at 81. One of Relator’s cases, *State ex rel. Jenkins v. City of Cleveland*, counsels that Courts should reject blanket assertions of the CLEIR exemption, since the legislature specifically “evidenced

an intention to require police investigatory records to be released with only a few narrow exceptions.” *Jenkins*, 82 Ohio App.3d 770 at 783 (8th Dist. 1992). This Court should reject Cleveland’s blanket assertion of the CLEIR exception, and apply the Public Records Act broadly in favor of disclosure.

II. Use of Force Reports precede investigations; they are not investigatory records.

To meet the first prong of the CLEIR exemption, the City must show that the records at issue are confidential law enforcement records. *State ex rel. National Broadcasting Co. Inc. v. City of Cleveland*, 57 Ohio St.3d 77, 78, (1991) (“*NBC II*”). The City relies on *NBC II* to argue that the UOF Reports meet this definition. *NBC II*, however, involved reports generated by *investigators* during their investigations – here, it is typically the law enforcement officers themselves who are filling out the requested reports, not investigators. These officers are routinely reporting their own actions via factual incident reports describing the set of circumstances surrounding their use of force. This is underscored by the City’s policies regarding minor infractions: a supervisor reviews the UOF Report and “the documented behavior constitutes alleged misconduct requiring investigation ... the IA superintendent ... shall initiate an investigation through either Internal Affairs or the chain of command, whichever is appropriate.” Carney Dep. at 20:15-22.

Similarly, many of the cases the City relies upon to try to show the CLEIR exception applies were cases about requests for specific investigatory files – in *Jenkins* the records that “[could not] be described as empirical facts” were “subjective

deliberations” of “investigators.” *Jenkins*, 82 Ohio App.3d at 779-80. A fair read of *Jenkins* highlights the differences between the investigative work product at issue in that case and the purely factual nature of the use-of-force reports at issue in this case. 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.**” *Id.*

In Commander Brian Carney's deposition, he stated that when certain levels of use of force have been used, officers “are required by our policy to report that use of force to a supervisor **who would then initiate an investigation.**” *See Exhibit 1 to 5/14/21 Motion to Grant Writ of Mandamus.* It is the investigators reviewing the reports who initiate the investigation; not the officer when filling out the UOF Report. Similarly, the Cleveland Division of Police's General Police Order states that the “use of force report must also permit the Division to conduct a thorough and appropriate investigation and review of the force incident.” *See Exhibit 3 to 5/14/21 Motion to Grant Writ of Mandamus.* The City's own documents and admissions further support Relator's argument that the UOF Report is not itself part of the investigation; rather, it is a routine report that triggers an investigation down the line.

The Use of Force Report in Blue Team predates an investigation, and investigatory records are held within IAPro. Internal Affairs investigations can generally meet the first prong of the CLEIR test because they typically involve “specific

alleged misconduct," rather than being part of a "routine monitoring investigation." See, e.g., *State ex rel. Ohio Patrolman's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 445, quoting *State ex rel. Yant v. Conrad*, 74 Ohio St.3d 681, 684 (1996). The Use of Force report in Blue Team is a factual report that must be reviewed before an investigation can take place, and so is like incident reports,³ 911 calls,⁴ or pre-arrest dashcam footage⁵ that should be released immediately upon request. Indeed, the Supreme Court of Ohio has said that another police department's use of force reports are public records. *State ex rel. Dispatch Printing Co. v. Columbus* dealt with 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," and which the Ohio Supreme Court said "[w]hen we examine the requested information at issue, there is no question that it is a public record." *State ex rel. Dispatch Printing Co. v. Columbus*, 90 Ohio St. 3d 39, 41, 2000-Ohio-8. Even if these records are later gathered and used in an investigation by those with the authority to investigate the incident, the records themselves retain their public record status. See *Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378 (1996).

³ See, e.g., *State ex rel. Beacon Journal Pub. Co. v. Maurer*, 91 Ohio St.3d 54, 2001-Ohio-282.

⁴ See, e.g., *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 379 (1996).

⁵ See, e.g., *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety*, 148 Ohio St.3d 433, 2016-Ohio-7987.

III. District-level police officers completing UOF reports do not have law enforcement authority over any resulting investigation, and so are not creating law enforcement investigatory records in Blue Team.

Public offices which 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). Police officers do not investigate themselves (Carney Dep. 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.

IV. The City has not shown that all of the withheld Use of Force Reports contain information that, if disclosed, would create a “high probability” of disclosing the statutorily protected information.

The City must also meet the second prong of the CLEIR exemption, which requires that the City show that release of the records would create a “high probability of disclosure” of the four categories of statutorily protected information: (a) identities of uncharged suspects and confidential sources; (b) information that would identify a confidential source; (c) specific investigatory work product, or (d) “Information that would endanger the life or physical safety of law enforcement personnel, a crime

victim, a witness, or a confidential information source.” R.C. 149.43(A)(2). Instead of focusing on these specific, delineated categories of information, the City instead expresses generalized and conclusory concerns.

The City says that release of these records “would reveal witnesses named in the reports who **may be** contacted and who have been or **will be** reasonably promised confidentiality.” (*Stacho Aff.*, 3/29/2021 ¶16) (emphasis added); “information in the reports would **tend to** disclose the identity of confidential witnesses. Also, information in the reports **could be** construed as endangering the physical safety of all involved if prematurely disclosed.” *Id.* (emphasis added). Similarly, the City’s brief describing Lieutenant Neidbalsen’s Affidavit uses conclusory language: “**potentially** endangering the safety of all concerned;” “[r]elease also **could lead to** destruction of evidence...” The City’s evidence conclusorily states that the release of the UOF Reports would only “potentially” “tend to” or “could” disclose protected information. This is not enough to meet the statute’s requirement of a “high probability” of disclosure. Because the City states that “it is apparent from the face of the withheld documents filed under seal on April 26, 2021, that they contain categories of information identified in R.C. 149.43(A)(2)...” it is important that this Court review the records and determine whether they fall “squarely” under the statutory exemptions claimed by the City.

V. The City must release all non-exempted portions of the Records.

Even if some information is protected, the City should still be required to produce non-exempt information contained in the UOF Reports. Notably, in *NBC II*, the Ohio Supreme Court remanded the case “for an *in camera* inspection and redaction of

protected information contained in these investigative files.” *NBC II*, 57 Ohio St.3d at 78. “[W]hen a governmental body asserts that public records are excepted from disclosure and such assertion is challenged, the court must make an individualized scrutiny of the records in question. If the court finds that these records contain excepted information, this information must be redacted and any remaining information must be released.” *State ex rel. Master v. Cleveland*, 75 Ohio St.3d 23, 31 (1996) (quoting *NBC I*, 38 Ohio St.3d at 85). Even if the UOF Reports did qualify as investigatory records that could properly be withheld under the Public Records Act, this court would have to examine each record individually since the City is only entitled to withhold those certain categories of protected information. *See* R.C. 149.43(B)(1) (“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. ”).

VI. This case is not moot.

Relators brought this action to contest the City’s application of the CLEIR exception, and this Court still needs to decide the propriety of that exception here. Even if Cleveland produced all of the requested records, this case would not be moot— Relators have claims for damages and costs and other relief under the statute that remain to be decided. In addition to mandamus relief ordering compliance, R.C. 149.43 provides for statutory damages and court costs. *See* R.C. 149.43(C)(2) (“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.”); *see also* R.C. 149.43 (C)(3)(a)(i) (“[i]f 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.”) Because the City has failed to provide Relators with the responsive records without adequate justification, this Court should award statutory damages and costs, and any other relief available under the statute.

An exception to mootness applies “if a claim is ‘capable of repetition, yet evading review.’” *Ohio Dept. of Pub. Safety*, 148 Ohio St.3d at 438 quoting *State ex rel. Cincinnati Enquirer v. Heath*, 121 Ohio St.3d 165, 166 (2009). Ohio Courts have held that this exception applies where “(1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.” *Id.* Here, it is likely that requesters will request Use of Force Reports in the future, and the public (and public offices) should be able to obtain a ruling on the merits to prevent similar issues with delayed release of non-exempt records in the future.

VII. Conclusion

The Use of Force Reports entered into Blue Team by officers are factual accounts of police activity, completed on a routine basis and pursuant to departmental policy to be reviewed to determine whether “specific alleged misconduct” merits a law-enforcement investigation. The City’s departmental policies outline certain level of uses of force the City deems within policy for certain situations. To accept the City’s

argument that the CLEIR exemption even applies to these records would mean that every time a Cleveland Police Officer completes a Use of Force Report, they are creating investigative records of their own “specific alleged misconduct.” And even if the City could make such a showing, it would not justify the blanket application of CLEIR that the City claims here.

Relators respectfully request that this Court find that Use of Force Reports in Cleveland’s Blue Team system are public records that should be released immediately upon request, and issue a writ of mandamus ordering Cleveland to release the Use of Force Reports, pay damages and costs to Relator, and award any other relief the Court deems appropriate.

Respectfully Submitted,

/s/ Sara Coulter

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/s/ Andrew Geronimo

Andrew Geronimo (0086630)

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⁶ Counsel wish to thank Calvin Freas and Gabrielle Wilson, 2021 CWRU graduates and students in the First Amendment Clinic in Spring 2021 Semester, for their substantial contributions to this case.

CERTIFICATE OF SERVICE

I certify that this *Opposition to Respondent's Motion for Summary Judgment* was filed electronically on June 25, 2021, and will be served upon all parties of record by the Court's electronic case filing system.

/s/ Andrew Geronimo
Andrew Geronimo

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,	)	CASE NO.:
)	
Plaintiff,	)	JUDGE:
)	
v.)	
)	
CITY OF CLEVELAND,)	
)	
Defendant.)	

SETTLEMENT AGREEMENT

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 1

III. COMMUNITY ENGAGEMENT AND BUILDING TRUST 4

 A. Community Police Commission 4

 B. District Policing Committees 7

IV. COMMUNITY AND PROBLEM-ORIENTED POLICING 8

V. BIAS-FREE POLICING 10

VI. USE OF FORCE 12

 A. Use of Force Principles 12

 B. Use of Force Policies 14

 1. Firearms 15

 2. Electronic Control Weapons 16

 3. Oleoresin Capsicum Spray (“OC Spray”) 18

 C. Use of Force Training 19

 D. Use of Force Reporting Policy and Use of Force Reports 20

 E. Use of Force Investigations 22

 1. Investigations of Level 1 Uses of Force 22

 2. Investigations of Level 2 Uses of Force 23

 3. Force Investigation Team and Investigations of Level 3 Uses of Force 27

 F. Force Review Board 31

VII. CRISIS INTERVENTION 34

 A. Mental Health Response Advisory Committee 34

 B. Crisis Intervention Coordinator 35

C.	Crisis Intervention Training.....	35
D.	Specialized Crisis Intervention Trained Officers.....	36
E.	Crisis Intervention Policies and Procedures	38
VIII.	SEARCHES AND SEIZURES.....	39
IX.	ACCOUNTABILITY	43
A.	Internally Discovered Misconduct.....	43
B.	Reporting Misconduct and Preventing Retaliation.....	46
C.	Investigation of Civilian Complaints	47
1.	The Office of Professional Standards	47
2.	Filing and Tracking of Civilian Complaints	49
3.	Classification of Civilian Complaints.....	51
4.	Investigation of Civilian Complaints	52
5.	Communication with the Complainant	54
D.	Police Review Board.....	54
E.	Disciplinary Hearings	56
F.	Discipline	57
X.	TRANSPARENCY AND OVERSIGHT	58
A.	Police Inspector General.....	58
B.	Data Collection and Analysis.....	59
XI.	OFFICER ASSISTANCE AND SUPPORT.....	63
A.	Training.....	63
1.	Training Plan.....	63
2.	Field Training Program.....	66
3.	Documentation of Training.....	67
B.	Equipment and Resources.....	67

C.	Recruitment and Hiring.....	70
D.	Performance Evaluations and Promotions	71
1.	Performance Evaluations	72
2.	Promotions	73
E.	Staffing.....	73
XII.	SUPERVISION.....	74
A.	Duties, and Training of First Line Supervisors.....	74
B.	Officer Intervention Program.....	75
C.	Body Worn Cameras.....	78
XIII.	POLICIES	78
XIV.	IMPLEMENTATION, ASSESSMENT, OUTCOMES, AND ENFORCEMENT	80
A.	Role of the Independent Monitor	80
B.	Selection and Compensation of the Monitor	81
C.	Compliance Reviews	82
D.	Biennial Community Survey.....	83
E.	Outcome Measurements.....	84
F.	Monitoring Plan and Review Methodology.....	88
G.	Monitor Recommendations and Technical Assistance	89
H.	Comprehensive Reassessment	90
I.	Monitor Reports	90
J.	Coordination with the Police Inspector General	91
K.	Communication between Monitor, Parties, and Public	91
L.	Public Statements, Testimony, Records, and Conflicts of Interest.....	92
M.	CDP Consent Decree Implementation Unit.....	93
N.	Implementation Assessment and Report.....	93

O. Access and Confidentiality	94
P. Court Jurisdiction, Modification of this Agreement, and Enforcement.....	95
Q. Termination of this Agreement.....	96
XV. DEFINITIONS AND ABBREVIATIONS.....	97

I. INTRODUCTION

The United States of America and the City of Cleveland (collectively “Parties”) are committed to ensuring that police services in Cleveland are delivered in a manner that is constitutional, effective, and consistent with community values, while preserving officer and public safety. To further these goals, the Cleveland Division of Police (“CDP”) and the Cleveland community must have a strong relationship that is built on mutual trust and respect. The provisions of this Agreement are designed to bolster this relationship and ensure that it endures. The Constitution requires the City to prevent excessive force, to ensure that searches and seizures are reasonable, and to ensure that police services are delivered free from bias. These precepts also are fundamental to a strong community-police relationship. To further these goals, the City has 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. The Parties acknowledge that nothing in this Agreement alters the fact that the City of Cleveland is a governmental entity organized under the laws of Ohio and governed in accordance with its Municipal Charter (“Charter”). This Agreement does not alter the Cleveland Charter provisions regarding control and supervision of the police force. The Mayor of Cleveland and Director of Public Safety retain their authority over CDP and the Chief of CDP retains authority to oversee the operations of CDP.

For these reasons, and noting the general principle that settlements are to be encouraged, particularly settlements between government entities, the Parties agree to implement this Agreement under the following terms and conditions.

II. BACKGROUND

1. On March 14, 2013, at the request of the Mayor of Cleveland and others, the United States Department of Justice (“DOJ”) announced the beginning of its investigation into CDP’s policies and practices to determine whether CDP engages in a pattern or practice of the use of excessive force in violation of the Fourth Amendment of the United States Constitution and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”).
2. As part of its investigation, DOJ, in consultation with experts in police practices,

conducted a comprehensive assessment of officers' use of force and CDP's policies, procedures, training, systems of accountability, and community engagement. The investigation included multi-day onsite tours of CDP's facilities, District command stations, and ride-alongs with officers in every police District; interviews with Cleveland officials, CDP's command staff, members of CDP's specialized units, supervisors, and police officers; an extensive review of documents; and numerous meetings with residents, community groups, members of religious communities, the Office of Professional Standards, the Civilian Police Review Board, and other stakeholders.

3. The City and CDP cooperated during the investigation and provided access to documents, facilities, and personnel. Many members of Cleveland's diverse communities, including community advocates, religious leaders, and members of CDP's patrol officer and management unions, took an active interest in the investigation and played a critical role in providing information and facilitating a thorough investigation.
4. On December 4, 2014, the Department of Justice publicly announced that it had reasonable cause to believe that CDP engages in a pattern or practice of using excessive force. DOJ announced that it had reasonable cause to believe that, although most force used by CDP officers was reasonable, a significant amount of deadly and less lethal force was excessive and constituted an ongoing risk to the public and to CDP officers. DOJ also determined that systemic deficiencies contribute to the pattern or practice of excessive force. These deficiencies relate to operational and structural areas of CDP, including its accountability systems, resource deployment, community policing efforts, policies, and officer support, training, equipment, and supervision. Although DOJ did not specifically investigate CDP's search, seizure, and arrest practices, DOJ's force review revealed Fourth Amendment concerns in those areas as well.
5. The City agrees that DOJ's findings raise issues of importance to the City and the community that should be addressed. To that end, and simultaneous with the release of DOJ's findings, the Parties issued a Joint Statement of Principles agreeing to begin negotiations with the intention of reaching a court-enforceable settlement agreement, to include the appointment of an outside independent monitor to ensure compliance with

the terms of this Agreement. In agreeing to address these important issues, the City is not agreeing with the findings.

6. Constitutional policing and effective policing are interdependent, and rely on a strong partnership between the police department and the communities that it serves. To ensure that the reforms embodied in this Agreement are responsive to community and officer concerns, the Parties consulted extensively with community leaders, police officers, advocates, residents, and other concerned individuals who offered meaningful recommendations and insights on reform. This Agreement reflects the broad input received by the Parties from the diverse communities that make up the City of Cleveland. The Parties are committed to ongoing engagement with community stakeholders to foster continued participation and long-term sustainability of the reforms created by this Agreement.
7. This Agreement was reached as a result of the authority granted to the Department of Justice under Section 14141 to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges, or immunities secured by the Constitution or federal law.
8. This Agreement is not intended to limit the lawful authority of the Mayor of Cleveland over the CDP or the lawful authority of the Chief of Police to oversee the operations of CDP.
9. The Parties acknowledge the appropriation authority of Cleveland City Council under the Ohio Revised Code and the Cleveland Charter and Codified Ordinances. This Agreement is not intended to override the lawful authority of the Cleveland City Council to appropriate funds.
10. This Agreement is not intended to limit the lawful authority of CDP officers to use objectively reasonable force or otherwise fulfill their law enforcement obligations under the Constitution and laws of the United States and the State of Ohio.
11. This Agreement will not be construed as an admission or evidence of liability under any federal, State, or municipal law including 42 U.S.C. § 1983. Nor is the City's entry into this Agreement an admission by the City, CDP, or its officers and employees that they have engaged in any unconstitutional, illegal, or otherwise improper activities or conduct. The Parties acknowledge the many CDP officers who have continued to

work diligently and with integrity despite challenging circumstances.

12. This Agreement will constitute the entire integrated agreement of the Parties. No prior drafts or prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding, except the Department of Justice's December 4, 2014 Findings Letter.
13. This Agreement is binding upon all Parties hereto, by and through their officials, agents, employees, and successors. If the City establishes or reorganizes a government agency or entity whose function includes overseeing, regulating, accrediting, investigating, or otherwise reviewing the operations of CDP or any aspect thereof, the City agrees to ensure that these functions and entities are consistent with the terms of this Agreement and will incorporate the terms of this Agreement into the oversight, regulatory, accreditation, investigation, or review functions of the government agency or entity as necessary to ensure consistency.

III. COMMUNITY ENGAGEMENT AND BUILDING TRUST

14. This Agreement recognizes the importance of community input into the way police services are delivered. Ongoing community input into the development of reforms, the establishment of police priorities, and mechanisms to promote community confidence in CDP will strengthen CDP and the police-community relationship that is necessary to promote public safety. To promote public trust and confidence in CDP, constitutional and effective policing, officer and public safety, and the sustainability of reforms, CDP will create, in accordance with this Agreement, formal and informal mechanisms that facilitate ongoing communication between CDP and the many Cleveland communities it serves.

A. Community Police Commission

15. To leverage the experience and expertise of the people of Cleveland, and to ensure that CDP recognizes and operates in a manner consistent with cooperative community understanding and engagement, the City will establish, within 90 days of the Effective Date, a Community Police Commission ("Commission") consisting of 13 members who represent the many and diverse communities in Cleveland. The Commission will

have the following mandate:

- a. to make recommendations to the Chief of Police and the City, including the Mayor and the City Council, on policies and practices related to community and problem-oriented policing, bias-free policing, and police transparency;
 - b. to work with the many communities that make up Cleveland for the purpose of developing recommendations for police practices that reflect an understanding of the values and priorities of Cleveland residents; and
 - c. to report to the City and community as a whole and to provide transparency on police department reforms.
16. To ensure diverse representation, within 30 days of the Effective Date, the City will establish a selection panel made up of representatives from each of the following: (a) faith based organizations; (b) civil rights advocates; (c) the business/philanthropic community; (d) organizations representing communities of color; (e) advocacy organizations; (f) youth or student organizations; (g) academia; and (h) individuals with expertise in the challenges facing people with mental illness or the homeless. The members of this panel will be selected by the Mayor in consultation with DOJ, and with participation by members of Cleveland City Council as determined by the Council President. Within 30 days of their appointment, the selection panel will accept applications for membership on the Commission from individuals who reside or work in the City of Cleveland. Within 30 days thereafter, in an open public forum, the selection panel will recommend 10 persons to be appointed as members of the Commission for a term of no more than 4 years, ensuring at least 1 representative from each of the categories identified above. The persons recommended by the selection panel shall be appointed as provided in the Charter. Current members of the selection panel cannot apply to become members of the Commission. In addition, the Cleveland Patrolmen's Association, the Fraternal Order of Police, and the Black Shield will each identify one member to be appointed as provided in the Charter to serve on the Commission. Vacancies within the original four year term will be filled in the same fashion as the original appointments. At the end of four years, a selection panel will be reconstituted and members of the Commission will be selected as described above. One member of the Commission will be selected by the Commission to attend meetings

of, and receive relevant information and reports from the Community Relations Board of the City of Cleveland, and one member of the Community Relations Board will be selected by the Community Relations Board to attend meetings of, and receive relevant information and reports from the Commission. The Commission will meet periodically with the Chief of Police and provide recommendations and reports to him or her, but remain independent from, the Chief of Police, the Mayor, and the City Council.

17. The Commission will:
 - a. within 90 days of appointment, hold public meetings across the City, complete an assessment of CDP's bias-free policing policies, practices, and training, and make recommendations;
 - b. on an ongoing basis, including through its membership on the Training Review Committee, assist as appropriate in CDP's development of training related to bias-free policing and cultural competency;
 - c. on an ongoing basis, assess CDP's community activities, and make recommendations for additional strategies for CDP to consider to increase community engagement with and community confidence in CDP;
 - d. on an ongoing basis, review CDP's civilian oversight structure to determine if there are changes it recommends for improving CDP's accountability and transparency; and
 - e. perform other function as set out in this Agreement.
18. In addition to the above, the Commission has the authority to:
 - a. review and comment on CDP's policies and practices related to use of force, search and seizure, and data collection and retention;
 - b. review and comment on CDP's implementation of initiatives, programs, and activities that are intended to support reform; and
 - c. hold public meetings to discuss the Monitor's reports and to receive community feedback concerning CDP's compliance with this Agreement.
19. The City will provide access to all information requested by the Commission related to its mandate, authority, and duties unless it is law enforcement sensitive, legally restricted, or would disclose a personnel action.
20. At least annually, the Commission will issue reports, including any recommendations

for improvement, related to each activity that it undertakes. The City will post the Commission's reports and recommendations to the City's website.

21. The City will consider and timely respond in writing to the Commission's recommendations for improvements. Those responses also will be posted to the City's website.
22. The budget for the Commission will be visible as a separate line item in the budget proposal that is submitted annually pursuant to the Charter to the Cleveland City Council with the appropriations ordinance. The Parties will endeavor to secure private funding for the Commission as appropriate. The Monitor will analyze the Commission's budget and advise the Parties and the Court as to whether it affords sufficient independence and resources to meet the terms of this Agreement.

B. District Policing Committees

23. Working jointly, the Commission, CDP, and Community Relations Board ("CRB"), will work with the District Policing Committees (formerly called District Community Relations Committees) to facilitate regular communication and cooperation between CDP and community leaders at the local level. These District Policing Committees should meet, at a minimum, every quarter.
24. Working jointly, the Commission, CDP, and CRB will develop a mechanism to recruit and expand the membership of the District Policing Committees, each of which should include a representative cross-section of community members, including, for example, representatives of social services providers, faith leaders, local business owners, youth, etc., from that District. Each District Policing Committee also will include at least one CDP officer from that District. CDP will work with the Commission to select officers for each District Policing Committee.
25. CDP will work closely with the District Policing Committees to identify strategies to address crime and safety issues in their District. In developing appropriate strategies, the District Policing Committees should consider and address law enforcement priorities and community policing strategies in their District, and should address any concerns or recommendations about specific CDP policing tactics and initiatives in their District.

26. At least annually, each District Policing Committee will present its identified strategies, concerns and recommendations to the Commission. At the same time, an officer who is a member of the District Policing Committee will present to the Commission CDP's assessment of ways to address, and barriers to, implementing the strategies, concerns and recommendations of the Committee.

IV. COMMUNITY AND PROBLEM-ORIENTED POLICING

27. CDP will develop and implement a comprehensive and integrated community and problem-oriented policing model in order to promote and strengthen partnerships within the community, engage constructively with the community to ensure collaborative problem-solving, and increase community confidence in CDP. CDP will consult with the Commission regarding this model as appropriate.
28. CDP will ensure that its mission statement reflects its commitment to community oriented policing and will integrate community and problem-oriented policing principles into its management, policies and procedures, recruitment, training, personnel evaluations, resource deployment, tactics, and accountability systems.
29. CDP will ensure that officers are familiar with the geographic areas they serve, including their assets, challenges, problems, business, residential and demographic profiles, and community groups and leaders; engage in problem identification and solving activities with the community groups and members regarding the community's priorities; and work proactively with other city and county departments to address quality of life issues.
30. CDP will provide initial and annual in-service community and problem-oriented policing training that is adequate in quality, quantity, type, and scope, and will incorporate into its training of all officers, including supervisors, commanders, and executives, community and problem-oriented policing principles, including:
 - a. methods and strategies to improve public safety and crime prevention through community engagement;
 - b. training that promotes the development of new problem-solving partnerships between the police and community, targeting problem-solving and crime prevention;

- c. leadership, ethics, and effective communication and interpersonal skills;
 - d. community engagement, including how to establish partnerships and actively engage civilians and community organizations, including youth, LGBT, homeless, and mental health organizations and communities;
 - e. principles of procedural justice and its goals;
 - f. conflict resolution and verbal de-escalation of conflict; and
 - g. cultural competency and sensitivity training.
31. The City and CDP will maintain collaborative partnerships with a broad spectrum of community groups. CDP representatives will meet, as appropriate, with residential, business, religious, civic, educational, and other community-based groups in each District, and with the District Policing Committees, to proactively maintain these relationships and identify and address community problems and challenges.
32. CDP will continue to meet with members of the community in each District on a monthly basis. CDP will actively solicit participation from a broad cross-section of community members in each District. Among other things, these community meetings will be used to identify problems and other areas of concern in the community and discuss responses and solutions. During these meetings, CDP may discuss, when appropriate, summaries of relevant audits and reports assessing CDP as well as any policy changes completed during the preceding quarter.
33. Within 365 days of the Effective Date, CDP will develop and implement systems to monitor officer outreach to the community. CDP will use this method to analyze, among other things, whether officers are partnering with a broad cross-section of community members to develop and implement cooperative strategies that build mutual respect and identify and solve problems. The Monitor will review whether the systems developed by the City are effective.
34. At least annually, CDP will present the results of this analysis, broken out by District, in a publicly-available community policing report detailing its community policing efforts in each District. This report will describe the problems and solutions identified in the analysis above. The report also will identify obstacles encountered in community and problem-oriented policing and recommendations for future improvement. In developing this report, CDP will consider, as appropriate, available results from the

biennial survey. The community policing report will be provided to the Commission, posted on CDP's website, and a summary of the report will be provided at each District community meeting following the report's publication.

V. BIAS-FREE POLICING

35. CDP will deliver police services with the goal of ensuring that they are equitable, respectful, and free of unlawful bias, in a manner that promotes broad community engagement and confidence in CDP. CDP expects all officers to treat all members of the Cleveland community with courtesy, professionalism, and respect, and not to use harassing, intimidating, or derogatory language.
36. CDP will integrate bias-free policing principles into its management, policies and procedures, job descriptions, recruitment, training, personnel evaluations, resource deployment, tactics, and accountability systems.
37. CDP will administer all activities without discrimination on the basis of race, ethnicity, national origin, religion, gender, disability, age, sexual orientation, or gender identity.
38. Within 18 months of the Effective Date, CDP will develop a bias-free policing policy that incorporates, as appropriate, the recommendations developed by the Commission pursuant to paragraph 17, and that provides clear guidance to officers that biased policing, including deciding to detain a motorist or pedestrian based solely on racial stereotypes, is prohibited.
39. Within 18 months of the Effective Date, with input from the Commission, CDP will develop training that incorporates the principles of procedural justice and that is designed to ensure that police services are delivered free from bias. The Monitor will review the training to assess whether it is adequate in quality, quantity, scope, and type.
40. The training will be provided to all officers and will include:
 - a. constitutional and other legal requirements related to equal protection and unlawful discrimination, including the requirements of this Agreement;
 - b. strategies, such as problem-oriented policing, procedural justice, and recognizing implicit bias, to avoid conduct that may lead to biased policing or the perception of biased policing;
 - c. historical and cultural systems that perpetuate racial and ethnic profiling;

- d. identification of racial or ethnic profiling practices, and police practices that have a disparate impact on certain demographic categories;
 - e. self-evaluation strategies to identify racial or ethnic profiling;
 - f. District-level cultural competency training regarding the histories and culture of local immigrant and ethnic communities;
 - g. police and community perspectives related to bias-free policing;
 - h. the protection of civil rights as a central part of the police mission and as essential to effective policing;
 - i. instruction in the data collection protocols required by this Agreement; and
 - j. methods, strategies, and techniques to reduce misunderstanding, conflict, and complaints due to perceived bias or discrimination.
41. Supervisor training will include:
- a. how to identify biased police practices when reviewing investigatory stop, arrest, and use of force data;
 - b. how to respond to a complaint of biased police practices, including conducting a preliminary investigation of the complaint in order to preserve key evidence and potential witnesses;
 - c. how to evaluate complaints of improper pedestrian stops for potential biased police practices; and
 - d. engaging the community and developing positive relationships with diverse community groups.
42. Officers also will receive annual in-service training on bias-free policing that is adequate in quality, quantity, type, and scope.
43. To help ensure that police services are delivered in a manner free from bias, CDP will analyze data pursuant to paragraph 265.
44. Within 18 months of the Effective Date, the appointing authority will consider principles of bias-free policing and equal protection in its hiring; unit assignment, as applicable; promotion; and performance assessment processes, including giving consideration to an individual's record of bias-related violations, as well as using interviews or other methods to assess the individual's ability to effectively practice bias-free policing.

VI. USE OF FORCE

45. DOJ acknowledges that CDP recently has made important changes to some of its force policies. Building on these improvements, CDP will revise, develop, and implement force policies, training, supervision, and accountability systems with the goal of ensuring that force is used in accordance with the Constitution and laws of the United States and the requirements of this Agreement and that any use of unreasonable force is promptly identified and responded to appropriately. The force policies, training, supervision, and accountability systems will be designed with the goal of ensuring that officers use techniques other than force to effect compliance with police orders whenever feasible; use force only when necessary, and in a manner that avoids unnecessary injury to officers and civilians; de-escalate the use of force at the earliest possible moment; and accurately and completely report all uses of force.

A. Use of Force Principles

46. The City will implement the terms of this Agreement with the goal of ensuring that use of force by CDP officers, regardless of the type of force, tactics, or weapon used, will comply with the following requirements:
 - a. officers will allow individuals the opportunity to submit to arrest before force is used wherever possible;
 - b. officers will use de-escalation techniques whenever possible and appropriate, before resorting to force and to reduce the need for force. De-escalation techniques may include verbal persuasion and warnings and tactical de-escalation techniques, such as slowing down the pace of an incident, waiting out subjects, creating distance (and thus the reactionary gap) between the officer and the threat, and requesting additional resources (e.g. specialized CIT officers or negotiators). Officers will be trained to consider the possibility that a subject may be noncompliant due to a medical or mental condition, physical or hearing impairment, language barrier, drug interaction, or emotional crisis;
 - c. if force becomes necessary, officers will be limited to using only the amount of force objectively reasonable as necessary to control the person.

- d. in applying force, officers will reduce the level of force as the threat diminishes;
- e. officers normally will not use force against persons who are handcuffed or otherwise restrained, unless it is objectively reasonable and necessary under the circumstances to stop an assault, escape, or as necessary to fulfill other law enforcement objectives;
- f. officers will not use force against persons who only verbally confront them and do not impede a legitimate law enforcement function;
- g. CDP will explicitly prohibit the use of retaliatory force by officers. Retaliatory force includes, for example, force in excess of what is objectively reasonable to prevent an escape to punish individuals for fleeing or otherwise resisting arrest; and force used to punish an individual for disrespecting officers;
- h. officers will not use head strikes with hard objects, except where lethal force is justified. Officers will be trained that a strike to the head with any impact weapon could result in death;
- i. other than to protect an officer's or other person's safety, officers will not use force to subdue an individual who is not suspected of any criminal conduct;
- j. CDP's policy will expressly provide that using a firearm as an impact weapon is never an authorized tactic. Officers will be trained that use of a firearm as an impact weapon could result in death to suspects, bystanders, and themselves;
- k. officers will not use neck holds;
- l. CDP will continue to limit vehicle pursuits to those in which the need to capture the suspect outweighs the danger to the public. CDP will continue to limit the number of CDP vehicles that may be involved in a vehicle pursuit; and
- m. immediately following a use of force, officers and, upon arrival, a supervisor will inspect and observe subjects for injury or complaints of pain resulting from the use of force, and immediately obtain any necessary medical care. As

necessary, officers will provide emergency first aid until professional medical care providers are on scene.

47. As soon as practical following a use of force, CDP will ensure that the incident is accurately and properly reported, documented, and investigated. A fundamental goal of the revised use of force policy will be to account for, review, and investigate every reportable use of force and reduce any improper uses of force.
48. CDP will track and analyze officers' uses of force to hold officers accountable for unreasonable uses of force; to guide training and policy; and to identify poor tactics and emerging trends.

B. Use of Force Policies

49. CDP will develop and implement use of force policies that comply with applicable law and are adequate to achieve the goals described in paragraph 45. The use of force policies will incorporate the use of force principles above, and will specify that the unreasonable use of force will subject officers to the disciplinary process, possible criminal prosecution, and/or possible civil liability.
50. CDP's policies will address the use and deployment of its authorized force techniques, technologies, and weapons that are available to CDP officers, including standard-issue weapons that are made available to all officers and weapons that are made available only to specialized units. The policies will clearly define and describe each force option and the circumstances under which use of such force is appropriate.
51. CDP's policies related to specific weapons will include training and certification requirements that each officer must meet before being permitted to carry and use the authorized weapon.
52. No officer will carry any weapon that is not authorized or approved by CDP.
53. Prior to the use of any approved weapon, the officer, when possible and appropriate, will communicate to the subject and other officers that the use of the weapon is imminent, and allow the subject an opportunity to comply.
54. CDP will implement policies for each of the following weapons using the following guidelines.

1. Firearms

55. Officers will not unholster and display a firearm unless the circumstances create a reasonable belief that lethal force may become necessary. CDP's policies will require and training will teach proper techniques for unholstering, displaying, pointing, and aiming a firearm, and for determining when it is appropriate to do so. The Monitor will review CDP's policies and training to ensure that they comply with this paragraph. If an officer unholsters a firearm during an incident, interaction, or event that would otherwise trigger a reporting or data collection requirement, officers will document that a firearm was unholstered. CDP will annually collect and analyze this data.
56. Unholstering a firearm and pointing it at a subject constitutes a Level 1 reportable use of force and will be reported and investigated as such. The following exceptions to this reporting requirement will apply:
 - a. SWAT Team Officers will not be required to report the pointing of a firearm at a subject as a use of force during the execution of SWAT Team duties;
 - b. officers who are deputized and assigned to a Federal Task Force will not be required to report the pointing of a firearm at a subject as a use of force when conducting federal task force operations during which a supervisor is present. Reports or forms regarding any such incidents that are otherwise prepared by a Task Force supervisor will be provided to CDP;
 - c. officers assigned to the Gang Impact, Narcotics, Homicide, Sex Crimes, Domestic Violence, and Financial Crimes Units will 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.
57. Officers will not fire warning shots.
58. Officers will consider their surroundings before discharging their firearms and will avoid unnecessary risk to bystanders, victims, and other officers.
59. Officers will not discharge a firearm from or at a moving vehicle, unless use of lethal force is justified by something other than the threat from the moving vehicle; officers will not intentionally place themselves in the path of or reach inside a moving vehicle; and, where possible, officers will attempt to move out of the path of a moving vehicle.

60. CDP annually will provide at least 16 hours of firearms training which will include pistol, shotgun, and policy training. In consultation with the Monitor, CDP will develop a plan to provide appropriate night, reduced light, and stress training for officers. Officers will successfully qualify with each firearm they are authorized to use or carry on-duty at least annually. Officers will be required to qualify using proficiency standards and will not be permitted to carry any firearm on which they failed to qualify.

2. Electronic Control Weapons

61. Officers will use Electronic Control Weapons (“ECWs”) only where: (1) grounds for arrest or detention are present and the subject is actively or aggressively resisting, and lesser means would be ineffective; or (2) such force is necessary to protect the officer, the subject, or another party from immediate physical harm, and lesser means would be ineffective or have been tried and failed.
62. Each standard 5-second ECW application is a separate use of force that officers must individually justify as reasonable. After the first ECW application, the officer will reevaluate the situation to determine if subsequent cycles are reasonable. In determining whether any additional application is reasonable, officers will consider that a subject may not be able to respond to commands during or immediately following an ECW application. Officers will not employ more than three cycles of an ECW against a subject during a single incident.
63. Officers will consider transitioning to alternative control measures if the subject does not respond to ECW applications.
64. Officers will not use ECWs in drive stun mode solely as a pain compliance technique. Officers may use ECWs in drive stun mode only to supplement the probe mode to complete the incapacitation circuit, or as a countermeasure to gain separation between officers and the subject so that officers can consider another force option.
65. Officers will determine the reasonableness of ECW use based upon all the relevant circumstances, including the subject’s apparent age, size, physical, and mental condition, and the feasibility of lesser force options.
66. Except where lethal force is authorized, officers will not use ECWs where: (1) a deployment may cause serious physical injury or death from situational hazards,

including falling, losing control of a moving vehicle, or becoming ignited from the presence of potentially explosive or flammable materials or substances; or (2) the subject is visibly pregnant, apparently elderly, a child, visibly frail, has obviously low body mass, or is in apparent medical crisis.

67. Officers will not use ECWs on fleeing persons who do not pose a threat of physical harm to officers, other civilians, or themselves.
68. Officers will not intentionally target ECWs to a subject's head, neck, or genitalia.
69. Officers will not normally use ECWs on handcuffed or restrained persons. ECWs will be used on handcuffed or restrained persons only where the subject is displaying aggressive physical resistance and lesser means would be ineffective or have been tried and failed.
70. Officers will carry ECWs in a weak-side holster to reduce the chances of accidentally drawing and/or firing a firearm.
71. Officers will be trained in and follow protocols developed by CDP, in conjunction with the City's EMS professionals, on the officer's responsibilities following ECW use, including:
 - a. restrictions on removing ECW probes, including the requirements described in the next paragraph;
 - b. understanding the risks of positional asphyxia, and using restraint techniques that do not impair the subject's respiration following a ECW application;
 - c. monitoring all subjects who have received an ECW application while in police custody; and
 - d. informing medical personnel of all subjects who have been subjected to multiple ECW applications, including prolonged applications (more than 15 seconds); or who appear to be under the influence of drugs or exhibiting symptoms associated with excited delirium; or who were kept in prone restraints after ECW use.
72. The City will ensure that all subjects who have been exposed to an ECW application receive a medical evaluation by emergency medical responders in the field or at a medical facility. Absent exigent circumstances, probes will be removed from a subject's skin only by medical personnel or properly trained officers.

73. In addition to the force reporting requirements outlined in paragraph 88, officers will clearly articulate and justify the following regarding their ECW use in a written narrative:
- a. each and every ECW cycle used on a subject or attempted against a subject;
 - b. use of the ECW in drive stun mode;
 - c. ECW application for more than 15 seconds;
 - d. continuous cycling of an ECW;
 - e. ECW application on a fleeing person; and
 - f. ECW application by more than one officer.
74. Officers who have been issued ECWs will receive annual ECW certifications, which will consist of physical competency; weapon retention; CDP policy, including any policy changes; technology changes; and scenario-based training.
75. CDP will develop and implement integrity safeguards on the use of ECWs to ensure compliance with CDP policy. CDP will conduct quarterly downloads of all ECWs. CDP will conduct random and directed audits of ECW application data, which will be provided to the Monitor for review. The audits should include a comparison of the downloaded data to the officer's Use of Force Reports. Discrepancies within the audit should be addressed and appropriately investigated.
76. ECW application data will be tracked and analyzed in CDP's Officer Intervention Program.

3. Oleoresin Capsicum Spray ("OC Spray")

77. Officers will apply OC spray only: (1) when such force is reasonable to protect the officer, the subject, or another party from physical harm and lesser means would be ineffective; or (2) for crowd dispersal or protection and other means would be more intrusive or less effective.
78. After one standard OC spray (one second), each subsequent application is a separate use of force that officers must individually justify as reasonable.
79. Officers will not normally use OC spray on handcuffed or restrained persons. OC spray will be used on handcuffed or restrained persons only where the subject is displaying aggressive physical resistance and lesser means would be ineffective or have been tried

and failed.

80. Officers will be trained in and follow protocols developed by CDP in conjunction with the City's EMS professionals, on the officer's responsibilities following OC spray use, including:
 - a. decontaminating every subject exposed to chemical spray by using cool water to flush the subject's face and eyes within 20 minutes of gaining control of the scene. Officers need not decontaminate subjects who were only secondarily exposed to OC spray, for example, when OC spray is used for crowd control, unless requested by the subject;
 - b. understanding the risks of positional asphyxia, and using restraint techniques that do not impair the subject's respiration following an OC spray application;
 - c. requesting medical response or assistance for subjects exposed to OC spray when they complain of continued effects after having been decontaminated, or they indicate that they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis, heart ailment, etc.) that may be aggravated by OC spray.
81. Officers will carry only CDP issued OC spray.
82. CDP will maintain documentation of the number of OC spray canisters distributed to and utilized by each officer.
83. OC spray application data will be tracked and analyzed in CDP's Officer Intervention Program.

C. Use of Force Training

84. As part of its training requirements in Section XI of this Agreement, within 365 days of the Effective Date, CDP will provide all current officers use of force training that is adequate in quality, quantity, scope, and type and that includes:
 - a. proper use of force decision-making;
 - b. use of force reporting requirements;
 - c. the Fourth Amendment and related law;
 - d. de-escalation techniques, both verbal and tactical, that empower officers to make arrests without using force and instruction that disengagement, area

containment, surveillance, waiting out a subject, summoning reinforcements, using cover, calling in specialized units, or delaying arrest may be the appropriate response to a situation, even when the use of force would be legally justified;

- e. role-playing scenarios and interactive exercises that illustrate proper use of force decision-making, including training on the importance of peer intervention;
- f. the proper deployment and use of all intermediate weapons or technologies;
- g. the risks of prolonged or repeated ECW exposure, including that exposure to ECWs for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious physical injury;
- h. the increased risks ECWs may present to a subject who is pregnant, elderly, a child, frail, has low body mass, or is in medical crisis;
- i. that when using an ECW the drive stun mode is generally less effective than the probe mode and, when used repeatedly, may exacerbate the situation;
- j. firearms training, as described in paragraph 60;
- k. factors to consider in initiating or continuing a vehicle pursuit; and
- l. for supervisors of all ranks, as part of their initial and annual in-service supervisory training, training in conducting use of force investigations; strategies for effectively directing officers to minimize uses of force and to intervene effectively to prevent or stop unreasonable force; and supporting officers who report unreasonable or unreported force, or who are retaliated against for attempting to prevent unreasonable force.

85. CDP also will provide the use of force training described in paragraph 84 to all new officers as part of its training Academy.

86. CDP will provide all officers with annual use of force in-service training that is adequate in quality, quantity, type, and scope.

D. Use of Force Reporting Policy and Use of Force Reports

87. Within 365 days of the Effective Date, CDP will develop and implement a single, uniform, reporting system pursuant to a Use of Force Reporting policy. CDP uses of

force will be divided into three levels. The three levels for the reporting, investigation, and review of use of force correspond to the amount of force used and/or the outcome of the force. This Agreement's categorization of these types of uses of force is based on the following factors: potential of the technique or weapon to cause injury; degree of injury caused; degree of pain experienced; degree of disability experienced by the subject; complaint by the subject; degree of restraint of the subject; impairment of the functioning of any organ; duration of force; and physical vulnerability of the subject. Each level of force will require increasingly rigorous reporting, investigation, and review. The levels of force are defined as follows:

- a. Level 1 is force that is reasonably expected 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 person with no or minimal resistance. Unholstering a firearm and pointing it at a subject is reportable as a Level 1 use of force with the exceptions set forth in paragraph 56.
- b. Level 2 is 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 an ECW, including where an ECW is fired at a person 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, except for a strike to the head, neck or face with an impact weapon; and any canine apprehension.
- c. Level 3 is force that includes: (1) uses of lethal force; (2) uses of force resulting in death or serious physical injury; (3) uses of force resulting in hospital admission; (3) all neck holds; (4) uses of force resulting in a loss of consciousness; (5) canine bites; (6) more than three applications of an ECW 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, or an ECW application for longer than 15 seconds,

whether continuous or consecutive; and (7) any Level 2 use of force against a handcuffed subject.

88. All officers using or observing force will report in writing, before the end of their shift, the use of force in a Use of Force Report. The Use of Force Report will include: (1) a detailed account of the incident from the officer's perspective; (2) the reason for the initial police presence; (3) a specific description of the acts that led to the use of force; (4) the level of resistance encountered; and (5) a complete and accurate description of every type of force used or observed. The use of force reporting policy will explicitly prohibit the use of conclusory statements, "boilerplate," or "canned" language (e.g., "furtive movement" or "fighting stance"), without supporting detail.
89. Officers will be subject to the disciplinary process for material omissions or misrepresentations in their Use of Force Reports.
90. Officers who use or observe force and fail to report it will be subject to the disciplinary process, up to and including termination, regardless of whether the force was reasonable.
91. Officers who use or observe force will notify their supervisors, or ensure that their supervisors have been notified, as soon as practical following any use of force. An officer who becomes aware of an allegation of unreasonable or unreported force by another officer must immediately notify his or her supervisor of that allegation.
92. Use of Force Reports will be maintained centrally.

E. Use of Force Investigations

93. A supervisor who was involved in a use of force, including by participating in or ordering the force under investigation, will not investigate the incident or review the Use of Force Reports for approval or disapproval.

1. Investigations of Level 1 Uses of Force

94. The direct supervisor of the officer(s) employing a Level 1 use of force will review and approve the use of force in writing, return the Use of Force Report to the officer for revision, or elevate the Level 1 use of force before the end of the supervisor's shift following the shift on which the Level 1 force was used. If the Use of Force Report is returned to the officer for revision, all revisions and additional reviews will be

completed within 5 days of the use of force. It is not mandatory for supervisors to report to the scene of a Level 1 use of force. Supervisors will elevate and investigate any Level 1 use of force that appears to have violated policy or was improperly categorized as a Level 1 use of force. If a supervisor determines that an officer's report reveals evidence of a use of force involving potential criminal conduct, he or she will immediately notify Internal Affairs.

2. Investigations of Level 2 Uses of Force

95. The direct supervisor of the officer(s) using force, upon notification of a Level 2 use of force incident or allegation of excessive force, will respond to the location of the occurrence. Where the force is a Level 1 but the subject has alleged excessive force, the supervisor will respond to the scene to determine whether a Level 1 or Level 2 investigation should be conducted.
96. If a CDP supervisor uses a Level 2 use of force, a supervisor of a higher rank will respond to the location of the occurrence and comply with the requirements of this section.
97. For all Level 2 uses of force, the direct supervisor will:
 - a. respond to the scene, examine the subject of the force for injury, and interview the subject for complaints of pain after advising the subject that the interview pertains only to the use of force and not to any underlying alleged crime and that the subject need not answer questions;
 - b. where appropriate, ensure that the subject receives medical attention from an appropriate medical provider;
 - c. obtain an identifying number that allows CDP to track the use of force;
 - d. identify and collect all evidence relevant to the use of force and evaluate that evidence to determine whether the use of force: (1) was consistent with CDP policy; and/or (2) raises any policy, training, tactical, or equipment concerns;
 - e. ensure that all evidence that could establish material facts related to the use of force, including audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;

- f. ensure that a canvass for civilian witnesses is conducted and interview all civilian witnesses. Supervisors will either record the interview or encourage civilian witnesses to provide and sign a written statement in their own words;
 - g. ensure that all officers witnessing a use of force incident by another officer complete a Use of Force Report. Supervisors will ensure that all Use of Force Reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred;
 - h. ensure that involved officers are interviewed separately from one another. Group interviews will be prohibited. Supervisors will not ask officers or other witnesses leading questions that suggest legal justifications for the officers' conduct, where such questions are contrary to appropriate law enforcement techniques; and
 - i. each investigating supervisor will provide a brief written synopsis to their immediate supervisor, which will be forwarded through the chain of command to the District Commander by the end of the shift on which the force occurred, documenting the supervisor's preliminary determination of the appropriateness of the use of force.
98. The investigating supervisor will ensure that all Use of Force Reports include the information required by this Agreement and CDP policy; consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate; and make credibility determinations, if feasible. Supervisors will make all reasonable efforts through the investigation to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force claimed by the officer and the subject's injuries, and inconsistencies between multiple officers. CDP will train all investigating supervisors on how to effectively complete these tasks.
99. Whenever a supervisor determines that there may have been misconduct, the supervisor will immediately notify Internal Affairs and Internal Affairs will determine if it should respond to the scene and/or conduct or take over the investigation.
100. Within five days of learning of the use of force, each supervisor will complete and document his/her investigation using a supervisor's Use of Force Report. Any

extension to this deadline must be authorized by a District Commander. This Report will include the following:

- a. the supervisor's narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officers' conduct based on the supervisor's independent review of the facts and circumstances of the incident;
 - b. documentation of all evidence that was gathered, including names, phone numbers, and addresses of witnesses to the incident. In situations in which there are no known witnesses, the report will specifically state that fact. In situations in which witnesses were present but circumstances prevented the supervisor from determining the identification, phone number, or address of those witnesses, the report will state the reasons why. The report should also include all available identifying information for anyone who refused to provide a statement;
 - c. the names of all CDP employees who used force or witnessed the use of force;
 - d. the investigating supervisor's evaluation of the use of force, based on the supervisor's review of the evidence gathered, including a determination of whether the officers' actions appear to be within CDP policy and consistent with state and federal law; and an assessment of the incident for policy, training, tactical or equipment concerns, including whether the use of force may have been avoided through the use of de-escalation techniques or lesser force options; and
 - e. documentation of any non-disciplinary corrective action taken.
101. Investigatory supervisors will be subject to the disciplinary process for failing to adequately investigate and document a use of force and material omissions or misrepresentations in the supervisory investigation. An investigatory supervisor's failure to adequately investigate a use of force will be addressed in their performance review.
102. Upon completion of the supervisor's Use of Force Report, the investigating supervisor will forward the report through their chain of command to the District Commander, who will review the report to ensure that it is complete and that the findings are

supported using the preponderance of the evidence standard. Each level in the chain of command will review the report within 72 hours of receiving it. Reviewing supervisors in the chain of command will order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings.

103. Where the findings of the Use of Force Report are not supported by a preponderance of the evidence, the investigating supervisor's chain of command will document the reasons for this determination and will include this documentation as an addendum to the original investigation. The investigating supervisor's superior will counsel the investigating supervisor regarding the inadequately supported determination and of any investigative deficiencies that led to it. The District Commander will be responsible for the accuracy and completeness of Use of Force Reports prepared by supervisors under their command.
104. Where an investigating supervisor conducts deficient investigations, the supervisor will receive the appropriate corrective action, including training or demotion, in accordance with performance evaluation procedures and/or the disciplinary process.
105. Whenever an investigating supervisor, reviewing supervisor, or District Commander finds evidence of a use of force involving potential criminal conduct by an officer, he or she will suspend the force investigation immediately and notify Internal Affairs. Internal Affairs will immediately notify FIT, which will take over both the criminal and administrative investigation.
106. When the District Commander finds that the investigation is complete and the findings are supported by the evidence, the investigation file will be promptly forwarded to Internal Affairs. Internal Affairs will review the investigation to ensure that it is complete and that the findings are supported by the evidence.
107. When Internal Affairs completes its review, it will forward the complete file to the Chief of CDP for disposition.
108. At the discretion of the Chief, his or her designee, or Internal Affairs, a use of force investigation may be assigned or re-assigned for investigation to FIT or to another supervisor, whether within or outside of the District in which the incident occurred, or may be returned to the District for further investigation or analysis. This assignment or

re-assignment will be explained in writing.

109. Where, after investigation, a use of force is found to be out of policy, the Chief will direct and ensure the appropriate disciplinary process. Where the use of force indicates policy, training, tactical, or equipment concerns, the Chief will ensure also that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.

3. Force Investigation Team and Investigations of Level 3 Uses of Force

110. CDP may refer criminal investigations of uses of force to an independent and highly competent agency outside CDP where appropriate to ensure the fact and/or appearance of impartiality of investigations.
111. The Internal Affairs Unit will include CDP's Force Investigation Team ("FIT"). Each FIT will be a team comprised of personnel from various units and will not be a new unit to which officers are permanently assigned. The FIT will conduct administrative investigations in all of the following instances and, where appropriate and where not assigned to an outside agency as permitted above, will conduct criminal investigations of: (1) all Level 3 uses of force; (2) uses of force involving potential criminal conduct by an officer; (3) all instances in which an individual died while in, or as an apparent result of being in, CDP custody; and (4) any uses of force reassigned to FIT by the Chief or his or her designee. The FIT will be designed to ensure that these incidents are investigated fully and fairly by individuals with appropriate expertise, independence, and investigative skills to ensure that uses of force that are contrary to law or policy are identified; that training, tactical, and equipment deficiencies related to the use of force are identified; and that investigations are of sufficient quality.
112. FIT will be comprised of personnel who have specialized training and expertise. The FIT membership will be tailored to the circumstances of each investigation, but will normally include one or more FIT detectives, the FIT sergeant, an Office of Professional Standards investigator, an Internal Affairs investigator, and a Homicide Unit supervisory officer, who will serve as the Team's leader. OPS investigators will not participate in criminal investigations. At least one member of the FIT will be available at all times to evaluate potential referrals from CDP supervisors.

113. Prior to performing FIT duties, FIT members will receive FIT-specific training that is adequate in quality, quantity, scope, and type, including FIT procedures, including callout and investigative protocols; the differences between administrative and criminal investigations and how each should be conducted; investigations of officer-involved shootings; investigative equipment and techniques; and proper roles of the following: on-scene counterparts, such as crime scene technicians; the Monitor; any outside investigating agency; the prosecutor's office; and OPS. The training also will address techniques for objective fact-gathering and evaluation and the factors to consider when evaluating credibility. FIT investigators also will receive annual in-service training that is adequate in quantity, quality, type, and scope.
114. Within days from the Effective Date, CDP will identify, assign, and train personnel for the FIT to fulfill the requirements of this Agreement.
115. FIT will respond to the scene of every incident involving a use of force for which it is required to conduct an investigation. The FIT leader will immediately notify the appropriate prosecutor's office. If the City elects to utilize an outside agency to conduct the criminal investigation, the FIT leader will notify the designated outside agency to respond to the scene to conduct the criminal investigation.
116. CDP will develop and implement policies to ensure that, where an outside agency conducts the criminal investigation, FIT conducts a concurrent and thorough administrative investigation.
117. Before using an outside agency to conduct criminal investigations, CDP will develop a memorandum of understanding with the outside agency to ensure that, after an appropriate prosecutor review, completed criminal investigations are provided to FIT and the Monitor, and that information obtained from or as a result of any compelled interviews of officers is not provided to criminal investigators. The memorandum of understanding also will delineate responsibilities between the two agencies and establish investigative protocols to ensure, to the extent possible, thorough, objective and timely administrative and criminal investigations.
118. FIT will:

- a. assume control of the use of force investigation upon their arrival, unless an outside agency is conducting the criminal investigation and control of the scene by the criminal investigating body is appropriate;
- b. ensure that a canvass for, and interview of, civilian witnesses is conducted by FIT team members. FIT members will either record the interview or encourage civilian witnesses to provide and sign written statements in their own words, but will take information from civilian witnesses who have pertinent information even if they refuse to be recorded or refuse to complete or sign a formal statement;
- c. arrange for photographing and processing of the scene;
- d. ensure that all evidence that could establish material facts related to the use of force, including audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;
- e. examine the subject for injury, photograph areas of injury or complaint of injury, interview the subject for complaints of pain after advising the subject that the interview pertains only to the use of force and not to any underlying alleged crime and that the subject need not answer questions, and ensure that the subject receives medical attention from an appropriate medical provider;;
- f. ensure that all officers witnessing the use of force by another officer complete a use of force report regarding the incident;
- g. review all use of force reports to ensure that they include the information required by CDP policy;
- h. consistent with applicable law, interview all officers who witness or are otherwise involved in the incident. To the extent possible, officers will be separated until interviewed. Group interviews will be prohibited. FIT will not ask officers or other witnesses leading questions that suggest legal justifications for the officers' conduct, when such questions are contrary to appropriate law enforcement techniques. FIT will record all interviews. FIT will ensure that all FIT investigation reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred;

- i. arrange for body worn camera video downloads;
 - j. provide an initial briefing to a training representative at the start of the investigation to ensure that any training issues that require immediate attention are identified, and continue to consult as appropriate with the training representative; and
 - k. make all reasonable efforts through the investigation to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force claimed by the officer and the subject's injuries.
119. On at least an annual basis, the Monitor will determine whether the criminal investigations conducted by the outside agency are consistently objective, timely, and comprehensive. If the Monitor determines that they are not and the City disagrees, the Court will resolve the disagreement. If a determination is made that the investigations are not consistently objective, timely, and comprehensive, the memorandum of understanding will be terminated and the FIT will assume responsibility for conducting all criminal investigations of uses of force.
120. If the FIT leader determines that a case has the potential to proceed criminally, compelled interviews of the subject officer(s) will be delayed. No other part of the investigation will be held in abeyance unless specifically authorized by the Chief in consultation with the agency conducting the criminal investigation and the appropriate prosecutor's office.
121. The FIT leader will complete a preliminary report that will be presented to the Chief of Police or the Chief's designee as soon as possible, but absent exigent circumstances, no later than 24 hours after learning of the use of force.
122. With the exception of compelled interviews as described in paragraph 120, FIT will complete its administrative investigation within 60 days. Any request for an extension of time must be supported by a written justification and approved in writing by the Chief or the Chief's designee. CDP's inability to complete the investigation because it is awaiting information from an outside agency, such as the medical examiner's office, will constitute sufficient basis for such an extension for that portion of the investigation. Within seven days of the conclusion of each use of force investigation,

FIT will prepare an investigation report and recommend whether the preponderance of the evidence establishes that the involved officer(s) violated CDP policy, and whether any training or policy concerns are presented. FIT's investigative report and recommendations will be reviewed by the head of Internal Affairs. Within three business days, the head of Internal Affairs will approve or disapprove FIT's recommendations, or request that FIT conduct additional investigation. Any request for additional investigation and the FIT's response will be documented and maintained in the investigatory file. Internal Affairs will forward the investigative report to the Chief of Police for review and approval.

123. CDP will revise the FIT manual to ensure that it is consistent with the force principles outlined in this Agreement and includes the following:
 - a. guidance on an appropriate approach when providing *Garrity* warnings and protections to officers for answering questions regarding their uses of force;
 - b. clear procedures to ensure appropriate separation of criminal and administrative investigations in the event of compelled subject officer statements;
 - c. definitions of all relevant terms;
 - d. clear statements of the mission and authority of FIT;
 - e. procedures for report writing;
 - f. procedures for objective fact-gathering and evaluation and the factors to consider when evaluating credibility;
 - g. procedures for collecting and processing evidence;
 - h. procedures for consulting with the law department, including ensuring that administrative investigations are not unnecessarily delayed while a criminal investigation is pending; and
 - i. scene management procedures.

F. Force Review Board

124. CDP will develop and implement a Force Review Board ("FRB") to serve as a quality control mechanism for uses of force and force investigations, and to appraise use of force incidents from a tactics, training, policy, and agency improvement perspective.

The FRB will review all FIT investigations, all Level 2 investigations where there was a determination of force related misconduct, and a sample of Level 2 use of force investigations. The Force Review Board (“FRB”) will be comprised of the Chief of Police or his or her designee, who will chair the FRB; a supervisor from the training section; a representative from Office of Professional Standards; and a representative from Internal Affairs. One representative from each District, to be selected by the District Commander, will participate in all Force Review Board reviews involving a use of force in that District. The Chair may include any subject matter experts the Chair feels would be helpful in reviewing particular incidents. The FRB also may consult with other advisors as necessary.

125. Each member will receive training on legal updates, updates to CDP’s policies, and CDP training curriculum related to the use of force.
126. The Force Review Board will conduct comprehensive and reliable reviews of investigations within 90 days of submission to the FRB. The scope of the Board’s review will not be limited to assessing an officer’s decision-making at the moment the officer employed force. Rather, the FRB’s review will include the circumstances leading up to the use of force, tactical decisions, information sharing and communication, adequacy of supervision, equipment, training, CDP’s medical response, when applicable, and any commendable actions. The review will include the actions and inactions of all officers, supervisors, commanders, and dispatchers involved in the incident, as appropriate.
127. In conducting these reviews, the Force Review Board will:
 - a. ensure that it is objective and complete and that the findings are supported by a preponderance of the evidence. Where the findings are not supported by a preponderance of the evidence, the FRB will document the reasons for this determination, including the specific evidence or analysis supporting its conclusions, and forward its determination to the Chief of Police;
 - b. hear the case presentation from the lead investigator, or for supervisory investigations, the representative from the District where the force occurred;

- c. review any written or recorded statements from the officer, and discuss the case as necessary with the investigator or District representative to gain a full understanding of the facts of the incident;
 - d. order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the force investigation;
 - e. determine whether the incident raises concerns regarding policy, training, equipment, supervision, medical response by officers on the scene, communication, or tactics, and refer such incidents to the appropriate unit within CDP to ensure they are resolved;
 - f. recommend non-disciplinary corrective action to enable or encourage an officer to improve his/her performance; and
 - g. document its findings and recommendations in a report within 15 days of each FRB case presentation.
128. The FRB will assess the quality of the investigations it reviews, including whether investigations are objective and comprehensive and recommendations are supported by a preponderance of the evidence. The FRB will identify and document any deficiencies that indicate a need for corrective action.
129. Annually, the FRB will examine the data related to use of force provided by the Data Collection and Analysis Coordinator pursuant to paragraph 261, to detect any patterns, trends, and training deficiencies and make recommendations for correction, as appropriate. The analysis will be provided to the Monitor. To avoid duplication of effort in developing the public report required by paragraph 266, this analysis will be conducted in conjunction with the Data Collection and Analysis Coordinator.
130. The FRB will work with the Data Collection and Analysis Coordinator to develop a tracking system to ensure that each of its recommendations has been forwarded to the appropriate personnel. The Chief and his or her designee will ensure that the FRB's recommendations, including non-disciplinary corrective action, are implemented as appropriate.

VII. CRISIS INTERVENTION

131. CDP will build upon and improve its Crisis Intervention Program with the goal of: (a) assisting individuals in crisis; (b) improving the safety of officers, consumers, family members, and others within the community; (c) providing the foundation necessary to promote community and statewide solutions to assist individuals with mental illness; and (d) reducing the need for individuals with mental illness to have further involvement with the criminal justice system. The Crisis Intervention Program will provide a forum for effective problem solving regarding the interaction between the criminal justice and mental health care system and create a context for sustainable change.

A. Mental Health Response Advisory Committee

132. Within 180 days of the Effective Date, CDP and the City will ensure that a Mental Health Response Advisory Committee (“Advisory Committee”) is developed to foster relationships and build support between the police, the community, and mental health providers and to help identify problems and develop solutions designed to improve outcomes for individuals in crisis.
133. The Advisory Committee will include the Crisis Intervention Coordinator and representation from specialized CIT officers. CDP also will seek representation from the Cleveland Municipal Court’s Mental Health Docket, the Ohio Criminal Justice Coordinating Center of Excellence, Cuyahoga County’s Alcohol, Drug Addiction, and Mental Health Services Board (“ADAMHS Board”), FrontLine Services, and any other relevant Cuyahoga County mental health organizations, such as advocacy organizations, homeless service providers, area hospitals, and interested community members.
134. The Advisory Committee will meet regularly and provide guidance to assist CDP in improving, expanding, and sustaining its Crisis Intervention Program.
135. On an annual basis, the Advisory Committee will conduct an analysis of crisis intervention incidents to determine whether CDP has enough specialized CIT officers, whether it is deploying those officers effectively, and whether specialized CIT officers, call-takers, and dispatchers are appropriately responding to people in crisis, and will

recommend appropriate changes to policies, procedures, and training regarding police contact with individuals in crisis.

136. The Advisory Committee's reports and recommendations will be provided to the Commission, will be publicly available, and will be posted on the City's website.

B. Crisis Intervention Coordinator

137. Within 180 days of the Effective Date, CDP will designate an officer, at the rank of captain or above, to act as a Crisis Intervention Coordinator to better facilitate communication between CDP and members of the mental health community and to increase the effectiveness of CDP's Crisis Intervention Program.
138. The Coordinator will develop and maintain partnerships with program stakeholders and serve as a point of contact for advocates, individuals, families, caregivers, professionals, and others associated with the mental health community. The Coordinator will be available as a resource at all times during normal business hours.
139. The Coordinator will participate in the Advisory Committee and on a regular basis solicit feedback from the mental health community and specialized CIT officers, call-takers, and dispatchers regarding the efficacy of CDP's Crisis Intervention Program.
140. The Coordinator will be responsible for coordinating implementation of the changes and recommendations made by the Advisory Committee, as appropriate.
141. The Coordinator will be responsible for ensuring the selection of appropriate candidates for designation as specialized CIT officers. The Coordinator also will be required to ensure that officers, call-takers, and dispatchers are appropriately responding to CIT-related calls.
142. The Coordinator will create ways to recognize and honor specialized CIT officers, call-takers, and dispatchers, where appropriate.

C. Crisis Intervention Training

143. CDP will provide training on responding to individuals in crisis to all of its officers and recruits. Within 365 days of the Effective Date, officers will be provided with at least eight hours of initial training, and all officers will receive annual in-service training thereafter. The initial and annual training will be adequate in quality, quantity, type, and scope, and will include the circumstances in which a specialized CIT officer should

be dispatched or consulted and how situations involving individuals in crisis should be addressed if a specialized CIT officer is not immediately available. All new recruits will receive at least 16 hours of training in the academy that meets these same requirements.

144. Within 365 days of the Effective Date, and annually thereafter, all CDP call-takers, dispatchers, and their supervisors will receive crisis intervention telecommunicators training that is adequate to enable them to identify, dispatch, and appropriately respond to calls for service that involve individuals in crisis. The training will include identification of individuals in crisis; telephonic suicide intervention; crisis management, de-escalation and scenario-based exercises; interactions with individuals with mental illness; information that should be gathered when the call-taker suspects that the call involves an individual in crisis; and the types of calls that require a specialized CIT response. Any crisis intervention training that already has been provided to call-takers, dispatchers, and their supervisors may be considered to fulfill training requirements under this Agreement for those individuals, if appropriate.

D. Specialized Crisis Intervention Trained Officers

145. CDP will provide enhanced specialized training in responding to individuals in crisis to certain officers (“specialized CIT officers”). Specialized CIT officers will continue to be assigned to the patrol division and will maintain their standard patrol duties, except when called upon to respond to incidents or calls involving individuals in crisis.
146. The enhanced training for specialized CIT officers will be at least 40 hours. This enhanced training will be adequate in quality, scope, and type and will include how to conduct a field evaluation, suicide intervention, community mental health resources, common mental health diagnoses, the effects of drug and alcohol abuse, perspectives of individuals with mental health issues, family members, the rights of persons with mental illness, civil commitment criteria, crisis de-escalation, and scenario-based exercises. This training must include on-site visitation to mental health and substance abuse facilities and interaction with individuals with mental illness and substance abuse disorders. Officers who are designated as specialized CIT officers who already have received 40 hours of appropriate crisis intervention training may be considered to have

- fulfilled these training requirements.
147. Specialized CIT officers do not have to receive the initial eight hours of training provided to all officers, but must receive eight hours of annual in-service crisis intervention training, which can be the same training provided to all officers, if appropriate.
 148. Training and designation as a specialized CIT officer will be voluntary. To be eligible for consideration, officers must have at least three years of experience as a CDP officer. CDP will provide an in-depth assessment of each applicant to determine the applicant's fitness to serve as a specialized CIT officer. This assessment will include an examination of the officer's written application, supervisory recommendations, disciplinary file, and an in-person interview. Officers with a history of complaints of, or who have been disciplined for, excessive use of force against individuals in crisis will be presumptively ineligible to be specialized CIT officers.
 149. Supervisors will identify and encourage qualified officers across all shifts and all Districts to serve as specialized CIT officers.
 150. All Field Training Officers will receive the enhanced specialized crisis intervention training described in paragraph 146. Despite having received this training, an FTO will not be designated as a specialized CIT officer unless that FTO has volunteered to be a specialized CIT officer and has been selected by the Coordinator.
 151. Specialized CIT officers who are dispatched to an incident involving an individual in crisis will have primary responsibility for the scene. If a supervisor has assumed responsibility for the scene, the supervisor will seek the input of a specialized CIT officer regarding strategies for resolving the crisis where it is reasonable for them to do so.
 152. Within 365 days of the Effective Date, the Coordinator will develop an effective specialized crisis intervention plan ("Specialized Crisis Intervention Plan"). The goal of the Specialized Crisis Intervention Plan will be to ensure that a specialized CIT officer is available to respond to all calls and incidents that appear to involve an individual in crisis. The Specialized Crisis Intervention Plan will include an assessment of the number of officers necessary to achieve this goal; identification of gaps in coverage of particular shifts or Districts and development of mechanisms to fill those

gaps; identification of any barriers to ensuring full coverage and steps to overcome those barriers; and ways to identify qualified officers and to encourage them to apply. CDP will continually review and revise this plan as barriers to full coverage are identified and addressed. The Specialized Crisis Intervention Plan will take into account the seniority provisions of the Collectively Bargaining Agreement and that CDP may not immediately be able to ensure that a specialized CIT officer is available to respond to all calls or incidents that appear to involve an individual in crisis. Within these constraints, the City will use its best efforts to ensure that a specialized CIT officer responds to all calls and incidents that appear to involve an individual in crisis. The Monitor will assess the Specialized Crisis Intervention Plan and report to the Parties whether it is appropriate and effective, and whether the City is using its best efforts to implement it.

E. Crisis Intervention Policies and Procedures

153. The Ohio Criminal Justice Coordinating Center of Excellence currently is conducting a peer review of the crisis intervention program in Cuyahoga County. The results of the peer review assessment will be provided to the Advisory Committee, DOJ, and the Monitor. In developing its policies and procedures and the plan required by paragraph 152, the City will consider this assessment and any recommendations contained within it.
154. CDP, with recommendations from the Advisory Committee, will revise its policies to make clear that a crisis intervention response may be necessary even in situations where there has been an apparent law violation.
155. CDP, with recommendations from the Advisory Committee, will revise its current crisis intervention policy to ensure that specialized CIT officers have appropriate discretion to direct individuals with mental health and substance abuse issues to the health care system, rather than the judicial system, in those instances where it is appropriate to do so.
156. CDP's policies and procedures will make clear that specialized CIT officers, when available, must be dispatched to all calls or incidents that appear to involve an individual in crisis. CDP will track incidents in which a specialized officer was not

dispatched to such calls. In developing and revising the plan required by paragraph 152, CDP will identify any barriers to ensuring that specialized CIT officers were dispatched to these calls, and will include steps to overcome these barriers.

157. CDP will track calls and incidents involving individuals in crisis by gathering, at a minimum, the following data:
 - a. date, time, and location of the incident;
 - b. subject's name, age, gender, race, ethnicity, and address;
 - c. whether the subject was armed, and the type of weapon;
 - d. whether the subject is a United States military veteran;
 - e. name and address of individual calling for service;
 - f. the reason for the interaction, i.e., suspected criminal conduct or call for assistance;
 - g. name(s) and badge number(s) of the officer(s) on the scene;
 - h. whether a supervisor responded to the scene;
 - i. techniques or equipment officers used;
 - j. any injuries to officers, subject, or others;
 - k. disposition of the incident (e.g., defuse, arrest, citation, referral); and
 - l. brief narrative of the event (only if not included in another document).
158. CDP must publicly report this outcome data annually and provide it to the Advisory Committee, aggregated as necessary to protect privacy.
159. CDP will utilize this outcome data to identify training needs and develop case studies and teaching scenarios for crisis intervention training as well as primary and in-service crisis training; to make changes to the crisis training curriculum; to identify safety issues and trends; to recognize and highlight successful individual officer performance; to develop new response strategies for repeat calls for service; and to identify systemic issues that impede CDP's ability to provide an appropriate response to an incident involving an individual in crisis.

VIII. SEARCHES AND SEIZURES

160. CDP will conduct all investigatory stops, searches, and arrests with the goal of ensuring that they are conducted in accordance with the rights secured and protected by the

Constitution and state and federal law. CDP will conduct investigatory stops, searches, and arrests fairly and respectfully as part of an effective overall crime prevention strategy that takes into account community values. To achieve this goal, CDP will revise, develop, and implement search and seizure policies that comply with applicable law, and include the requirements below.

161. Officers will not use an individual's gender, race, ethnicity, national origin, or perceived sexual orientation as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause, unless such information is part of an actual and credible description of a specific suspect in an investigation that includes other identifying factors.
162. Officers will not conduct investigatory stops when they lack reasonable suspicion.
163. Officers will not conduct pat down searches without specific and articulable facts to reasonably suspect that a particular person is armed and dangerous. This does not restrict an officer's ability to conduct a search incident to arrest or prior to transport.
164. Where an officer seeks consent for a search, the officer will inform the person of his or her right to refuse and to revoke consent at any time and document the person's consent.
165. CDP officers will not rely solely upon an individual's geographic location, or presence in a high crime area without any other specific and articulable facts indicating that the individual has been, is, or is about to engage in criminal activity, as the basis for an investigatory stop.
166. Officers will immediately notify a supervisor when effectuating a custodial arrest for obstructing official business, resisting arrest, or assaulting an officer and no other substantive violation is alleged. Upon notification, the supervisor will respond to the scene.
167. Officers will not use "canned" or conclusory language without supporting detail in documents or reports documenting investigatory stops, searches, or arrests.
168. Officers will articulate the justification for an investigatory stop, search, or arrest in a specific and clear manner in their reports. CDP will train officers to use specific and individualized descriptive language in reports when documenting investigatory stops, searches, and arrests. Supervisors will review all documentation of investigatory stops,

- searches, and arrests for completeness and adherence to law and CDP policy.
169. CDP supervisors will review each arrest report by officers under their command, whether or not they involve the seizure of contraband, and will sign off on those reports to memorialize their review within 24 hours of the arrest, absent exceptional circumstances. Supervisors will review reports and forms for deficiencies including:
- a. “canned” or conclusory language without supporting detail, inconsistent information, insufficient articulation of the legal basis for the action, or other indicia that the information in the reports or forms is not correct or complete;
 - b. arrests following stops that were not supported by reasonable suspicion;
 - c. arrests that are not supported by probable cause, or are otherwise in violation of the law or CDP policy; and
 - d. for every search or arrest involving the recovery of contraband evidence, whether the circumstances by which the evidence was recovered and/or probable cause for arrest was established are plausible and complete.
170. Within seven days, CDP supervisors will separately document and report: (1) investigatory stops and pat-down searches that appear unsupported by reasonable suspicion, or that are otherwise in violation of CDP policy; (2) arrests unsupported by probable cause or that are in violation of CDP policy; or (3) investigatory stops, searches, and arrests that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training.
171. CDP supervisors will take appropriate action to address all apparent violations or deficiencies in investigatory stops, searches, and arrests. Appropriate action may include recommending non-disciplinary corrective action for the involved officer, or referring the incident for administrative or criminal investigation. The supervisor will ensure that each violation or deficiency is addressed in the officer’s performance evaluations.
172. A command-level official will review, within seven days of their completion, all supervisory reports of investigatory stops and pat-down searches not supported by reasonable suspicion, all searches and arrests not supported by probable cause, and all investigatory stops, searches, and arrests that were in violation of CDP policy, or that indicated a need for corrective action or review of agency policy, strategy, tactics, or

training. The commander will evaluate the supervisor's assessment and recommendations and ensure that all appropriate corrective action is taken, including referring the incident to Internal Affairs for investigation, if warranted. The commander also will take appropriate non-disciplinary corrective action and/or will initiate the disciplinary process against supervisors who fail to conduct complete, thorough, and accurate reviews of officers' investigatory stops, searches, and arrests. CDP will take into account the quality and completeness of these supervisory and commander reviews of officers' investigatory stops, searches, and arrests, in supervisory and commander performance evaluations.

173. CDP will provide all officers with initial training that is adequate in quality, quantity, scope, and type on investigatory stops, searches, and arrests, including the requirements of this Agreement. The training will be taught by a qualified instructor with significant experience in Fourth Amendment issues. The training will address the requirements of Fourth Amendment and related law, CDP policies, and this Agreement, including:
 - a. the difference among the scope and degree of intrusion associated with different types of police contacts; the difference between probable cause, reasonable suspicion, and mere speculation; and the difference between voluntary consent and the mere acquiescence to police authority;
 - b. the types of facts and circumstances that may be considered in initiating, conducting, terminating, and expanding an investigatory stop;
 - c. the level of permissible intrusion when conducting searches, such as "pat-downs" or "frisks";
 - d. the permissible nature and scope of searches incident to an arrest;
 - e. procedures for executing searches, including handling, recording, and taking custody of seized property and evidence; and
 - f. the principles of procedural justice and the effect that differing approaches to investigatory stops, searches, and arrests can have on community perceptions of police legitimacy and public safety.
174. CDP also will provide officers with annual search and seizure in-service training that is adequate in quality, quantity, type, and scope.
175. CDP will incorporate the following elements in its training of officers: (1) if possible,

introducing themselves at the initiation of contact with a civilian; (2) stating the reason for an investigatory stop as soon as practicable; (3) ensuring that an investigatory stop is no longer than necessary to take appropriate action; and (4) acting with professionalism and courtesy throughout the interaction.

IX. ACCOUNTABILITY

176. The City and CDP will ensure that all allegations of officer misconduct, whether internally discovered or alleged by a civilian, are fully, fairly, and efficiently investigated; that all investigative findings are supported by a preponderance of the evidence and documented in writing; and that all officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair, consistent, and provides due process. To achieve these outcomes, CDP and the City will implement the requirements set out below.

A. Internally Discovered Misconduct

177. Internal Affairs will conduct objective, comprehensive, and timely investigations of all internal allegations of officer misconduct. All findings will be based on the preponderance of the evidence standard. This standard will be clearly delineated in policies, training, and procedures and accompanied by detailed examples to ensure proper application by investigators.
178. Internal Affairs will be headed by a qualified civilian who is not a current or former employee of CDP, and who is not a current or retired law enforcement officer. The civilian head of Internal Affairs will report directly to the Chief of Police.
179. CDP will ensure that misconduct investigators and commanders possess excellent investigative skills, a reputation for integrity, the ability to write clear reports, and the ability to be fair and objective in determining whether an officer committed misconduct. Officers with a sustained history of civilian complaints of, or who have been disciplined for, excessive use of force, discrimination, or dishonesty will be presumptively ineligible for assignment to Internal Affairs.
180. Within 365 days of the Effective Date, CDP will provide all new personnel assigned to Internal Affairs with initial training and verify that all existing personnel received training within 365 days prior to the Effective Date that is adequate in quality, quantity,

scope, and type on conducting misconduct investigations. This training will include instruction in:

- a. investigative skills, including proper interrogation and interview techniques; gathering and objectively analyzing evidence; and data and case management;
- b. the particular challenges of administrative police misconduct investigations, including identifying alleged misconduct that is not clearly stated in the complaint or that becomes apparent during the investigation;
- c. properly weighing the credibility of civilian witnesses against officers;
- d. using objective evidence to resolve inconsistent statements;
- e. the proper application of the preponderance of the evidence standard; and
- f. CDP rules and policies, including the requirements of this Agreement, and protocols related to administrative investigations of alleged officer misconduct.

181. Internal Affairs investigators also will receive annual training related to conducting misconduct investigations that is adequate in quality, quantity, type and scope.
182. In each investigation, Internal Affairs will collect and consider all relevant circumstantial, direct, and physical evidence, including officer-recorded video as it becomes available through CDP's implementation of body worn cameras or other recording devices. There will be no automatic preference for an officer's statement over a non-officer's statement. Internal Affairs investigators will not disregard a witness's statement solely because the witness has some connection to either the complainant or the officer or because the witness or complainant has a criminal history. In conducting the investigation, Internal Affairs investigators may take into account the record of any witness, complainant, or officer who has been determined to have been deceptive or untruthful in any legal proceeding, misconduct investigation, or other investigation. Internal Affairs investigators will make all reasonable efforts to resolve material inconsistencies between witness statements.
183. Internal Affairs will evaluate all relevant police activity and any evidence of potential misconduct uncovered during the course of the investigation, including each use of force, and any investigatory stops, searches, or seizures that occurred during the incident.

184. If the person involved in the encounter with the police pleads guilty or is found guilty of an offense, Internal Affairs will not consider that information alone to be determinative of whether a CDP officer engaged in misconduct, nor will it justify discontinuing the investigation.
185. Internal Affairs will complete its administrative investigations within 30 days from the date it learns of the alleged misconduct. Any request for an extension of time must be approved in writing by the Chief or the Chief's designee.
186. At the conclusion of each investigation, Internal Affairs will prepare an investigation report. The report will include:
 - a. a narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officer's conduct based on Internal Affairs' independent review of the facts and circumstances of the incident;
 - b. documentation of all evidence that was gathered, including names, phone numbers, and addresses of witnesses to the incident. In situations in which there are no known witnesses, the report will specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number, or address of those witnesses, the report will state the reasons why. The report also will include all available identifying information for anyone who refuses to provide a statement;
 - c. documentation of whether officers were interviewed, and a transcript or recording of those interviews;
 - d. the names of all other CDP employees who witnessed the incident;
 - e. Internal Affairs' evaluation of the incident, based on its review of the evidence gathered, including a determination of whether the officer's actions appear to be within CDP policy, procedure, regulations, orders, or other standards of conduct required of City employees; and an assessment of the incident for policy, training, tactical, or equipment concerns;
 - f. if a weapon was used, documentation that the officer's certification and training for the weapon were current; and

- g. documentation of recommendations for initiation of the disciplinary process.
187. In addition to determining whether an officer committed alleged misconduct, investigations will include an assessment of whether:
- a. the police action was in compliance with training and legal standards;
 - b. the use of different tactics should or could have been employed;
 - c. the incident indicates a need for additional training, counseling, or other non-disciplinary corrective actions; and
 - d. the incident suggests that CDP should revise its policies, strategies, tactics, or training.
188. CDP will ensure that all relevant information from the completed investigation is provided electronically to the officers' supervisors, the Training Review Committee, the Force Review Board, the Officer Intervention Program, and the Data Collection and Analysis Coordinator while ensuring that sensitive information is adequately protected.

B. Reporting Misconduct and Preventing Retaliation

189. CDP will require any CDP employee who observes or becomes aware of any act of misconduct by another employee to report the incident to a supervisor or directly to Internal Affairs. Where an act of misconduct is reported to a supervisor, the supervisor will immediately document and report the information to Internal Affairs. Failure to report an act of misconduct is an egregious offense and will subject the officer to the disciplinary process and, if sustained, will subject the officer to discipline, up to and including termination.
190. CDP will develop a system that allows officers to confidentially and anonymously report potential misconduct by other officers.
191. CDP will expressly prohibit all forms of retaliation, discouragement, intimidation, coercion, or adverse action, against any person, civilian or officer, who reports misconduct, makes a misconduct complaint, or cooperates with an investigation of misconduct.
192. Officers who retaliate against any person who reports or investigates alleged misconduct will be subject to the disciplinary process and possible discipline, up to and including termination.

C. Investigation of Civilian Complaints

1. The Office of Professional Standards

193. The Office of Professional Standards (“OPS”) will investigate all civilian complaints it receives, other than those that allege criminal conduct. All complaints of apparent criminal conduct will be referred to Internal Affairs. Complaints of excessive force will be retained by OPS for investigation except in exceptional circumstances, or if Internal Affairs already has initiated an investigation. Once Internal Affairs completes a referred criminal investigation, if a determination is made that no criminal conduct occurred, the complaint will be referred back to OPS and the Police Review Board (“PRB”) for disposition.
194. The City will ensure that OPS is led by an administrator with the skills, expertise, and experience to effectively manage the intake, tracking, timely, and objective investigation of complaints; identify and implement appropriate training for investigators and PRB members from sources outside of CDP; assess OPS’s equipment and staffing needs, including administrative staff, investigators, and supervisor(s); and ensure that OPS operates in a manner that is transparent and accountable to the community it serves. The administrator also will have the skills, expertise, and experience to develop and implement performance standards for OPS. For future appointments, the City will seek the Commission’s input in developing the minimum qualifications and experience for an administrator.
195. OPS investigators will receive initial training that is adequate in quality, quantity, scope, and type and will include:
 - a. investigative skills, including proper interrogation and interview techniques; gathering and objectively analyzing evidence; and data and case management;
 - b. the particular challenges of administrative investigations of police conduct, including identifying conduct warranting investigation that is not clearly stated in the complaint or that becomes apparent during the investigation;
 - c. properly weighing the credibility of civilian witnesses against officers;
 - d. using objective evidence to resolve inconsistent statements;
 - e. the proper application of the preponderance of the evidence standard; and

- f. CDP rules and policies, including the requirements of this Agreement, and protocols related to administrative investigations of officer conduct alleged to be improper.
196. The training will be provided by sources both inside and outside of CDP, in order to ensure the highest quality training on investigative techniques and CDP policies, procedures, and disciplinary rules. Within 365 days of the Effective Date, OPS investigators will receive training that is adequate in quality, quantity, type, and scope, both initially and annually, in how to conduct administrative investigations.
197. OPS Investigators will not be current members of the CDP, and no CDP personnel will have any active role in OPS's operations.
198. The City will ensure that the lawyer representing OPS does not have any actual or apparent conflicts of interest.
199. OPS will have its own budget, separate from the administrative budget for the Department of Public Safety. The OPS Administrator will oversee the budget. The Monitor will analyze OPS's budget and advise the Parties and the Court as to whether it affords sufficient independence and resources, including sufficient staff and training to meet the terms of this Agreement.
200. Within 180 days of the Effective Date, OPS will develop a revised operations manual that will be made available to the public. The manual will, at a minimum, include the following:
 - a. a mission statement that defines OPS and PRB's core values, mission, and authority;
 - b. definitions of all relevant terms;
 - c. investigative procedures, including procedures for objective fact-gathering and evaluation and the factors that will be considered when evaluating credibility; procedures on report writing; and procedures for collecting and processing evidence;
 - d. procedures outlining when complaints may be administratively dismissed and the process with which OPS must comply to ensure that complaints are not prematurely or unnecessarily dismissed;

- e. outlines the duties and practices of PRB, including how PRB will review OPS findings, how cases will be presented to PRB by OPS, the standard of review PRB will apply to reviewing complaints, how disciplinary recommendations will be determined, and a description of the types of information PRB will make available to the public; and
- f. an explanation of possible dispositions and outcomes of complaints.

2. Filing and Tracking of Civilian Complaints

- 201. Within 365 days of the Effective Date, the City and CDP, in consultation with the Commission and OPS, will develop and implement a program to promote awareness throughout the Cleveland community about the process for filing complaints with OPS.
- 202. CDP and the City will work with the police unions, as necessary, to allow civilian complaints to be submitted to OPS verbally or in writing; in person, by phone, or on line; by a complainant, someone acting on his or her behalf, or anonymously; and with or without a signature from the complainant. All complaints will be documented in writing.
- 203. CDP will post and maintain by the intake window at CDP headquarters and all District headquarters a permanent placard describing the civilian complaint process that includes relevant OPS contact information, including telephone numbers, email addresses, and Internet sites.
- 204. Within 365 days of the Effective Date, CDP will provide training that is adequate in quality, quantity, scope, and type to all police personnel, including dispatchers, to properly handle complaint intake, including how to provide complaint materials and information; the consequences for failing to take complaints; and strategies for turning the complaint process into a positive police-civilian interaction.
- 205. CDP will require all officers to carry complaint forms in their CDP vehicles. Officers will provide complaint forms to individuals upon request. Officers will provide their name and badge number upon request. If an individual indicates to an officer that he or she would like to make a complaint about that officer, the officer will immediately inform his or her supervisor who will respond to the scene to assist the individual in filing a complaint. The supervisor will provide the individual a copy of the completed

- complaint form or a blank form to be completed later by the individual.
206. The City and OPS will make complaint forms and other materials outlining the complaint process and OPS's contact information widely available at locations including: the websites of CDP, OPS and the City of Cleveland; the lobby of OPS's building; CDP headquarters and Districts; and City Hall. OPS will ask locations such as public library branches and the offices and gathering places of community groups to make these materials available.
 207. OPS's complaint form will not contain any language that could reasonably be construed as discouraging the filing of a complaint, including warnings about the potential criminal consequences for filing false complaints.
 208. Within 180 days of the Effective Date, complaint forms and related informational materials will be made available, at a minimum, in English and Spanish. OPS will make every effort to ensure that complainants who speak other languages (including sign language) and have limited English proficiency can file complaints in their preferred language. The fact that a complainant does not speak, read, or write English, or is deaf or hard of hearing will not be grounds to decline to accept or investigate a complaint.
 209. The City will ensure that civilian complaints submitted through other existing systems, including the Mayor's Action Center and the Department Action Center, are immediately forwarded to OPS for investigation.
 210. Within 150 days of the Effective Date, OPS will establish a centralized electronic numbering and tracking system for all complaints. Upon receipt of a complaint, OPS will promptly assign a unique identifier to the complaint, which will be provided to the complainant at the time the complaint is made. OPS's centralized numbering and tracking system will maintain accurate and reliable data regarding the number, nature, and status of all complaints, from initial intake to final disposition, including investigation timeliness and notification to the complainant of the interim status and final disposition of the complaint. The system will be used to determine the status of complaints, as well as for periodic assessment of compliance with relevant OPS policies and procedures and this Agreement, including requirements of timeliness of investigations. The system also will be used to monitor and maintain appropriate

caseloads for OPS investigators.

211. OPS will track, as a separate category of complaints, allegations of biased policing, including allegations that an officer conducted an investigatory stop or arrest based on an individual's demographic category or used a slur based on an individual's demographic category. OPS will require that complaints of biased policing are captured and tracked appropriately, even if the complainant does not so label the allegation.
212. OPS will track, as a separate category of complaints, allegations of unlawful investigatory stops, searches, or arrests.
213. OPS will track, as a separate category of complaints, all allegations of excessive use of force received through OPS's intake process.
214. OPS will conduct regular assessments of the types of complaints being received to identify and assess potential problematic patterns and trends.
215. OPS will produce, at least annually, a public report summarizing complaint trends, including the number and types of complaints received, the disposition of complaints by complaint type, the number and types of complaints administratively dismissed, and the average length of complaint investigations.

3. Classification of Civilian Complaints

216. Within 90 days of the Effective Date, OPS will determine criteria for assigning complaints to one of two tracks: standard and complex. Investigation of complaints assigned to the standard track will be completed within 45 days. Investigation of complaints assigned to the complex track will be completed within 90 days during the first 6 months following the Effective Date and within 75 days thereafter. OPS will undertake a staffing analysis to determine how many investigators are required to meet these targets and, if necessary, the City will use best efforts to expand OPS staff in accordance with the results of the analysis. The staffing analysis will be provided to the Monitor, which will review it for adequacy. The Monitor will advise the Parties as to whether OPS and PRB's budget affords sufficient independence and resources to meet the terms of this Agreement, and whether the City is using best efforts to expand its staff, if indicated by the analysis. The Monitor will include this assessment in its

reports.

217. OPS will not terminate an investigation simply because the complainant seeks to withdraw the complaint or is unavailable, unwilling, or unable to cooperate with an investigation. OPS will continue the investigation and reach a finding, where possible, based on the evidence and investigatory procedures and techniques available. In its annual report, OPS will include the number and types of complaints administratively dismissed and the reasons for closure. Only the following types of complaints may be assigned the disposition of administratively dismissed:
- a. complaints disputing traffic citations, except that allegations of improper conduct contained in such complaints (e.g., racial profiling, illegal search, excessive force) will be classified and investigated according to their merits;
 - b. complaints alleging a delay in police services where the preliminary investigation demonstrates that the delay was due to workload, or otherwise unavoidable;
 - c. complaints regarding off duty officer conduct of a civil nature, unless the alleged conduct, or its effects, constitute misconduct or have a substantial nexus to the officer's City employment; and
 - d. complaints in which the preliminary investigation demonstrates that the officer does not work for CDP, or where the identity of the officer cannot be determined despite the best efforts of OPS.

4. Investigation of Civilian Complaints

218. OPS will ensure that investigations of complaints are as thorough as necessary to reach reliable and complete findings that are supported by the preponderance of the evidence.
219. CDP will ensure that OPS has timely access to all reports related to the incident, including incident reports, supervisory investigations, completed Internal Affairs' investigations, and Force Review Board reports. If an investigation already is being or has been conducted by CDP and the OPS Administrator determines that it was thorough and complete, no additional investigation will be required. However, OPS has the authority to conduct additional investigation of any civilian complaint.
220. OPS investigators will attempt to interview each complainant in person, and where

appropriate, this interview will be recorded in its entirety, absent a specific, documented objection by the complainant.

221. The Chief will order officers who witnessed or participated in an incident that is the subject of an OPS complaint to cooperate with the OPS investigation, including by responding to written questions submitted by OPS or in-person interviews, as request by OPS.
222. OPS investigators will have access to any relevant disciplinary information in the record of an officer who is the subject of a current investigation.
223. In each investigation, OPS will consider all relevant evidence, including circumstantial, direct, and physical evidence. There will be no automatic preference for an officer's statement over a non-officer's statement. OPS will not disregard a witness's statement solely because the witness has some connection to either the complainant or the officer or because the witness or complainant has a criminal history. OPS will make all reasonable efforts to resolve material inconsistencies between witness statements.
224. At the conclusion of its investigation, OPS will explain its findings using one of the following categories:
 - a. Sustained: the preponderance of the evidence establishes that the violation of policy occurred. A complaint may be "sustained in part" if the investigation revealed sufficient evidence to support a finding of a policy violation on one or more, but not all of the complainant's allegations. A complaint may also be "sustained for a violation not based on original complaint" if the investigation reveals evidence of misconduct that was not included in the complainant's original allegation.
 - b. Exonerated: the preponderance of the evidence fails to establish a finding of a policy violation and does not warrant any further investigation or action.
 - c. Unfounded: the preponderance of the evidence fails to establish whether a policy violation occurred or did not occur.
 - d. Not Sustained: the preponderance of the evidence establishes that the alleged conduct did occur, but did not violate CDP policies, procedures, or training.
 - e. Administratively dismissed.
225. OPS will document in writing the investigation of each complaint, including all

investigatory steps taken, and OPS's findings and conclusions. The recommended findings will be supported by a preponderance of the evidence.

226. In addition to determining whether an officer committed the conduct alleged in the complaint and whether it violated policy, OPS may consider whether: (a) the police action was in compliance with training and legal standards; (b) the incident indicates a need for additional training, counseling, or other corrective measures; and (c) the incident suggests that CDP should revise its policies, strategies, tactics, or training. OPS may include recommendations on these topics in its investigation.
227. OPS will forward all investigations and its written conclusions to PRB in sufficient time for PRB to consider them no later than the second regularly scheduled PRB meeting following completion of the investigation.

5. Communication with the Complainant

228. OPS will send periodic written updates to the complainant including:
- a. within seven days of receipt of a complaint, OPS will send non-anonymous complainants a written notice of receipt, including the tracking number assigned to the complaint. The notice will inform the complainant how s/he may contact OPS to inquire about the status of a complaint.
 - b. when OPS concludes its investigation, OPS will notify the complainant that the investigation has been concluded and forwarded to PRB, and inform the complainant when PRB will hear the complaint.
 - c. when PRB reaches a determination, OPS will notify the complainant of PRB's determination and inform the complainant that the case will be forwarded to the Chief of Police or Director of Public Safety for review and/or disciplinary action; and
 - d. when the Chief or Director of Public Safety reports the final outcome of his/her disciplinary process, OPS will notify the complainant of the result, and inform him/her that the matter is now concluded.
229. Notwithstanding the above notices, a complainant may contact OPS at any time to determine the status of his/her complaint.

D. Police Review Board

230. Within 120 days of the Effective Date, in consultation with the Commission, the Mayor will work with the City Council to develop an ordinance to place a Charter Amendment on the ballot that would ensure that the members of PRB are appointed in a transparent manner, are representative of the diverse communities within Cleveland, and allow the chair and a vice chair of PRB, to each serve for a term of one year, to be selected from among the members by majority vote of PRB's membership.
231. PRB members will not be current or former members of the CDP.
232. PRB will have its own budget, separate from the administrative budget for the Department of Public Safety. The OPS Administrator will oversee the budget. The Monitor will analyze PRB's budget and advise the Parties and the Court as to whether it affords sufficient independence and resources, including sufficient staff and training to meet the terms of this Agreement.
233. PRB members will receive initial training that is adequate in quality, quantity, scope, and type and will include:
 - a. constitutional and other relevant law on police-citizen encounters, including law on the use of force and stops, searches, and arrests;
 - b. police tactics;
 - c. investigations of police conduct;
 - d. bias-free policing;
 - e. policing individuals in crisis;
 - f. CDP policies, procedures and disciplinary rules; and
 - g. community outreach.
234. The training will be provided by sources both inside and outside of CDP, in order to ensure the highest quality training on investigative techniques, and CDP policies, procedures, and disciplinary rules.
235. PRB's meetings will be open to the public. The schedule and location of meetings will be designed to ensure easy public access and will be posted on OPS's website, as will agendas for upcoming PRB meetings. PRB members may vote to go into executive session for their deliberations, but case presentations and PRB votes will take place in open session.
236. OPS investigators will attend PRB meetings at which their investigations are being

considered and present their investigation, findings, and conclusions to PRB, whose members can direct questions about cases to them. If PRB determines that it needs additional information before considering a matter, it may ask the investigator to conduct further investigation.

237. PRB's recommended dispositions will be based on a preponderance of the evidence. For each case, PRB shall set forth its conclusion and an explanation of its reasons and supporting evidence in writing including, when applicable, the justification for departing from OPS's recommended disposition.
238. In cases where PRB is recommending a sustained disposition, in whole or in part, PRB will include a recommendation as to disciplinary or non-disciplinary corrective action.
239. PRB will forward all of its recommendations regarding dispositions and discipline to the Chief of Police or Director of Public Safety for their review. PRB may include an assessment of whether: (a) the police action was in compliance with training and legal standards; (b) the incident indicates a need for additional training, counseling, or other corrective measures; and (c) the incident suggests that CDP should revise its policies, strategies, tactics, or training.

E. Disciplinary Hearings

240. The Chief of CDP will issue a General Police Order that requires officers to:
 - (a) cooperate with the Internal Affairs and OPS investigators; and
 - (b) submit all relevant evidence to the investigators such that it is available for consideration by Internal Affairs or PRB.
241. Where PRB or Internal Affairs recommends the initiation of the disciplinary process, the Chief of CDP, or his/her designee, or the Director of Public Safety will conduct a disciplinary hearing and will provide the officer with an opportunity to testify. If an officer provides new or additional evidence at the hearing, the hearing will be suspended and the matter will be returned to Internal Affairs or PRB for consideration, as appropriate.
242. If PRB recommends the initiation of the disciplinary process and recommends a disciplinary level, and the Chief or the Director of Public Safety does not uphold the charges in whole or in part after the hearing, or does not impose the recommended

discipline or non-disciplinary corrective action, the Chief or the Director will set forth in writing his or her justification for doing so.

243. CDP will track the number of instances in which the Chief or the Director of Public Safety rejects, in whole or in part, PRB's recommended disposition.

244. At least annually, the Monitor will review this data and assess whether PRB is achieving its mission.

F. Discipline

245. CDP will ensure that discipline for sustained allegations of misconduct comports with due process, and is consistently applied, fair, and based on the nature of the allegation, and that mitigating and aggravating factors are identified and consistently applied and documented.

246. In order to ensure consistency in the imposition of discipline, CDP will review its current disciplinary matrix and will seek to amend it as necessary to ensure that it:

- a. establishes a presumptive range of discipline for each type of rule violation;
- b. increases the presumptive discipline based on an officer's prior violations of the same or other rules;
- c. sets out defined mitigating and aggravating factors;
- d. prohibits consideration of the officer's race, gender, national origin, age, ethnicity, familial relationships, or sexual orientation;
- e. prohibits consideration of the high (or low) profile nature of the incident;
- f. provides that CDP will not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline; and
- g. provides that CDP will consider whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed.

247. All disciplinary decisions will be documented in writing.

248. If amended, CDP will provide its disciplinary matrix to the Commission, the Police Inspector General, and the police unions for comment.

249. CDP will work with the unions to allow for sustained disciplinary findings to stay in an officer's record for ten years.

X. Transparency and Oversight

A. Police Inspector General

250. The City will hire an individual or individuals with significant experience in law enforcement practices and civil rights law to serve as a Police Inspector General. The City will seek the Commission's input in developing the minimum qualifications and experience for an Inspector General. The Police Inspector General will be appointed by the Mayor into the classified service of the City.
251. The Police Inspector General will work in the Office of the Mayor of the City of Cleveland, but will report to the Chief of CDP.
252. The Police Inspector General will not be a current or former employee of CDP.
253. The duties of the Police Inspector General will include authority to do the following:
 - a. review CDP policies and practices to determine compliance with state and federal law, effectiveness, consistency with principles of bias-free and community policing and procedural justice; whether they promote public and officer safety, and whether they are achieving the goals of this Agreement;
 - b. audit compliance with policies and procedures;
 - c. conduct investigations;
 - d. analyze trends;
 - e. develop specific recommendations for reform concerning policies, procedures, practices, training, and equipment to improve police services and accountability;
 - f. analyze investigations conducted by OPS to determine whether they are timely, complete, thorough, and whether recommended dispositions are supported by the preponderance of the evidence;
 - g. collect and analyze all sustained findings and the discipline imposed, including the use of mitigating and aggravating factors, to assess disciplinary trends and to determine whether discipline is consistently applied, fair, and based on the nature of the allegation; and
 - h. make reports and recommendations for reform publicly available.
254. The Police Inspector General also will have authority to conduct investigations, analyze

trends, and make reports and recommendations, as appropriate, at the request of the Chief of CDP or the Mayor. The Commission may recommend to the Chief of CDP, the Director of Public Safety, or the Mayor additional areas of inquiry for the Inspector General.

255. The budget for the Inspector General will be visible as a separate line item in the budget proposal that is submitted annually pursuant to the Charter to the Cleveland City Council with the appropriation ordinance. The Monitor will analyze the Inspector General's budget and advise the Parties whether it affords sufficient independence and resources to meet the terms of this Agreement. The Monitor will include this assessment in its reports.
256. The Police Inspector General will have access to all documents and data necessary to perform the above functions, including any raw data collected by the Data Collection and Analysis coordinator.

B. Data Collection and Analysis

257. CDP will collect and maintain all data and records necessary to accurately evaluate its use of force practices and search and seizure practices and facilitate transparency and, as permitted by law, broad public access to information related to CDP's decision making and activities. To achieve this outcome, CDP will designate an individual or individuals as the "Data Collection and Analysis Coordinator". The Data Collection and Analysis Coordinator will have the responsibilities below.
258. The Data Analysis and Collection Coordinator will ensure the collection and tracking of all documents related to uses of force and allegations of misconduct and related materials, including:
 - 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.
259. The Data Analysis and Collection Coordinator will ensure the creation and maintenance of a reliable and accurate electronic system to track all data derived from force-related documents, including:
- a. the type(s) of force used;
 - b. whether an officer unholstered a firearm;
 - c. the actual or perceived race, ethnicity, age, and gender of the subject;
 - d. the name, shift, and assignment of the officer(s) who used force;
 - e. the District where the use of force occurred;
 - f. whether the incident occurred during an officer-initiated contact or a call for service;
 - g. the subject's perceived mental or medical condition, use of drugs or alcohol, or the presence of a disability, if indicated at the time force was used;
 - h. the subject's actions that led to the use of force, including whether the subject was in possession of a weapon;
 - i. whether the subject was handcuffed or otherwise restrained during the use of force;
 - j. any injuries sustained by the officer or the subject or complaints of injury, and whether the officer or subject received medical services;
 - k. whether the subject was charged with an offense, and, if so, which offense(s);
 - l. for deadly force incidents, the number of shots fired by each involved officer, the accuracy of the shots, and whether the subject was armed or unarmed; and
 - m. the length of time between the use of force and the completion of each step of the force investigation and review.
260. The Data Collection and Analysis Coordinator will ensure the creation and maintenance of a reliable and accurate electronic system to track data on all vehicle stops, investigatory stops, and searches, whether or not they result in an arrest or issuance of a summons or citation. This system will allow the information to be searched and

summarized electronically. Data is not required to be collected for social contacts and encounters that are voluntary and consensual. CDP's stop and search data collection system will be subject to review and approval by the Monitor and DOJ, and will require officers to document the following:

- a. the officer's name and badge number;
- b. date and time of the stop;
- c. location of the stop;
- d. duration of the stop;
- e. subject(s)'s actual or perceived race, ethnicity, age, and gender;
- f. if a vehicle stop, the presence and number of any passengers;
- g. if a vehicle stop, whether the driver or any passenger was required to exit the vehicle, and the reason for doing so;
- h. reason for the stop, including a brief description of the facts creating reasonable suspicion;
- i. whether any individual was asked to consent to a search and whether such consent was given;
- j. whether a pat-down, frisk, or other non-consensual search was performed on any individual or vehicle, including a brief description of the facts justifying the action;
- k. a full description of any contraband or evidence seized from any individual or vehicle; and
- l. disposition of the investigatory stop, including whether a citation or summons was issued to, or an arrest made of any individual, including the charge(s).

261. The Data Analysis and Collection Coordinator will be responsible for the routine reporting of relevant data to the Chief of Police, FRB, Training Review Committee, OPS, the Commission, and the Police Inspector General.
262. The Data Analysis and Collection Coordinator will be responsible for the annual assessment of forms and data collection systems to improve the accuracy and reliability of data collection. This assessment will be provided to the Monitor.
263. Within 365 days of the Effective Date, the Data Collection and Analysis Coordinator will develop a protocol to accurately analyze the data collected and allow for the

assessments required below. This protocol will be subject to the review and approval of the Monitor and DOJ.

264. Within 90 days of development of the protocol, and annually thereafter, CDP will conduct an assessment and issue a report summarizing its investigatory stop, search, and arrest data. The report will identify significant trends in compliance with the Fourth Amendment of the Constitution, identify which practices are most effective and efficient in increasing public safety and community confidence in CDP, and the steps taken to correct problems and build on successes. The report will be publicly available.
265. Within 150 days of development of the protocol, and annually thereafter, CDP will conduct an assessment and issue a report of all activities, including use of force, arrests, motor vehicle and investigatory stops, and misconduct complaints alleging discrimination, to determine whether CDP's activities are applied or administered in a way that discriminates against individuals on the basis of race, ethnicity, gender, disability, sexual orientation, or gender identity. This report will be based on data the City is obligated to collect, and is not an independent data collection requirement. CDP's report will identify which practices are most effective and efficient in increasing public safety and community confidence in CDP, and identify steps taken to correct problems and build on successes. CDP will make this report publicly available.
266. Within 150 days of the development of the protocol, and annually thereafter, CDP, working with the FRB, will analyze the prior year's force data, including the force-related data listed above, to determine trends; identify and correct deficiencies revealed by this analysis; and document its findings in a public report. The FRB's data analysis responsibilities are outlined in paragraph 129.
267. To ensure transparency in the implementation of this Agreement, all CDP audits, reports, and outcome analyses related to the implementation of this Agreement will be made publicly available, including at the City and CDP websites, to the extent permitted by law. The Commission will work to make paper copies of these documents available to the community. The Commission also may recommend that CDP make additional documents, data, and reports publicly available.
268. To ensure transparency in its ongoing work, to the extent permitted by law, CDP will post its policies and procedures, training plans, community policing initiatives,

community meeting schedules, budgets, and internal audit reports on its website.

XI. OFFICER ASSISTANCE AND SUPPORT

A. Training

269. CDP will ensure that all officers receive adequate training to understand: (a) how to police effectively and safely in accordance with CDP policy; (b) the requirements of this Agreement, Ohio law, and the Constitution and laws of the United States. CDP training will reflect CDP's commitment to procedural justice, bias-free policing, and community policing, and will instill agency expectations that officers police diligently, and have an understanding of and commitment to the constitutional rights of the individuals they encounter.

1. Training Plan

270. CDP will expand the scope and membership of the Training Review Committee. The Training Review Committee, headed by the Commander responsible for Training, will include Training Section staff members, the District training coordinators, union representatives, and members of the Commission.

271. Within 365 days of the Effective Date, the Training Review Committee will develop a written training plan for CDP's recruit academy, probationary field training, and in-service training to ensure that recruits, and officers are trained to effectively and lawfully carry out their duties in accordance with CDP policy, the requirements and goals of this Agreement, Ohio law, and the Constitution and laws of the United States. The plan will:

- a. identify training priorities and broad training goals;
- b. require at least 960 hours of recruit training;
- c. fulfill all of the in-service training required by this Agreement, which will require at least 40 hours of in-service training annually;
- d. develop instructional strategies that incorporate active learning methods such as problem-solving and scenario-based activities, based on current theories of learning; and
- e. establish the frequency and subject areas for recruit and in-service training.

272. The Training Plan need not apply to personnel in the Communication Control Section.
273. Upon the Chief's approval of the training plan, CDP will submit the training plan and schedule of all training required by this Agreement to the Monitor and DOJ. The Monitor will review the training plan and provide the Parties with written comments within 30 days of receipt thereof. DOJ will have 30 days from receipt of the Monitor's comments on the training plan to determine whether the training plan is consistent with the requirements of this Agreement and to provide comments. Both the Monitor and DOJ will comment specifically on whether the proposed training is adequate in quantity, scope and type. If the Monitor or DOJ objects to any aspect of the training plan and schedule, they will note their objections to all Parties in writing. CDP will have 15 days to resolve any objections to its training plan and schedule. If after this 15 day period has run, the Monitor or DOJ maintains its objection, then the Monitor will have an additional 15 days to resolve the objection. If either party disagrees with the Monitor's resolution of the objection, either party may ask the Court to resolve the matter. The training plan and schedule will be implemented once any objections have been resolved.
274. The Training Review Committee will annually review and update CDP's training plan. To inform this update, the Training Review Committee will conduct a needs assessment, taking into consideration: trends in misconduct complaints; problematic uses of force; analysis of officer safety issues; input from members at all levels of CDP; input from members of the community, including community concerns; court decisions; research reflecting the latest in law enforcement trends; individual District needs; and any changes to Ohio or federal law, and to CDP policy. The Training Review Committee's needs assessment also will identify trends and document officer reaction to and satisfaction with the training they received and officer learning as a result of training, including the extent to which officers are applying the knowledge and skills acquired in training to their jobs.
275. CDP's Commander responsible for training will continue to be responsible for overseeing and coordinating all CDP training, including recruit academy; probationary field training; in-service training, including firearms and other use of force training; roll-call training; supervisory training; and all elective training.

276. CDP will designate a single training coordinator in each District. The Commander responsible for training will establish and maintain communications with each District training coordinator to ensure that all officers complete training as required and that documentation of training is provided to the Commander responsible for training.
277. Within 180 days of the Effective Date, CDP will develop recruit academy and in-service curricula that comport with CDP's training plan and that comprehensively address the requirements of this Agreement.
278. Unless otherwise noted, the training required under this Agreement, including training on all policies revised or developed pursuant to this Agreement, will be delivered within two years of the Effective Date. Any training provided to CDP officers beginning in January 2015 may be considered to fulfill training requirements under this Agreement for individual officers, if appropriate.
279. For all other substantive updates or revisions to policy or procedure, CDP will ensure and document that all relevant CDP personnel have received and read the policy or procedure. Notification of each revision or update will include the rationale for the policy changes and the difference between the old and updated policy. Training beyond roll-call may be necessary for many policy updates and revisions to ensure officers understand and can perform their duties pursuant to the policy.
280. The Commander responsible for training will review all training curricula, lesson plans, and procedures for consistency, quality, accuracy, currency, completeness, and compliance with applicable law and CDP policy, and ensure that they effectively teach CDP personnel to understand and follow CDP policies. The Commander responsible for training will ensure that a variety of adult learning techniques, scenario-based training, and problem-solving practices, in addition to traditional lecture formats, are incorporated into all training. The Commander responsible for training also will ensure that all curricula, lesson plans, instructor's qualifications, and testing materials are reviewed by the Training Review Committee and, where appropriate, persons external to CDP with expertise in the relevant lesson areas.
281. CDP will ensure that instructors are qualified and use only curricula and lesson plans that have been approved by the Commander responsible for training. CDP will actively seek out and retain qualified instructors from outside CDP to supplement the skills of

its in-house training staff and adjunct instructors. As appropriate, CDP will incorporate experts and guest speakers, including judges, prosecutors, crime victims, and community members, to participate in relevant courses.

2. Field Training Program

282. Within 270 days of the Effective Date, CDP will revise, as necessary, its field training program for graduates of the police academy to comport with CDP's training plan and this Agreement. The field training program will follow academy training and will continue to be at least 26 weeks.
283. The field training program will incorporate community and problem-oriented policing principles, and problem-based learning methods.
284. Within 270 days of the Effective Date, CDP will review and revise as necessary its Field Training Officer ("FTO") participation policy to establish and implement a program that effectively attracts the best FTO candidates. CDP's policies and procedures on field training will delineate the criteria and methodology for selecting FTOs and field training sergeants. The City will work with the unions to allow only highly qualified officers to serve as FTOs and Field Training Sergeants. Taking into account the collective bargaining agreements with the unions, CDP will revise its eligibility criteria to select FTOs and Field Training Sergeants based on their written applications, performance evaluations, previous performance as police officers, and complaint and disciplinary histories.
285. CDP will ensure that all new FTOs and Field Training Sergeants receive initial and in-service training that is adequate in quality, quantity, scope, and type, and that addresses management and supervision; community-oriented policing; effective problem solving techniques; and field communication. If current FTOs and Field Training Sergeants have received initial training that is sufficient to fulfill the requirements of this Agreement, they will not have to repeat the initial training. FTOs and Field Training Sergeants will receive the required in-service training at least every three years. FTOs and Field training Sergeants will be trained on any substantive changes to FTO policies and practices during the interim period. FTOs and Field Training Sergeants will be required to maintain, and demonstrate on a regular basis, their proficiency in managing

recruits and subordinates, practicing and teaching community and problem-oriented policing, and solving problems effectively. CDP will maintain current documentation of FTOs' evaluations and training.

286. Within 270 days of the Effective Date, CDP will create a mechanism for recruits to provide confidential feedback regarding the quality of their field training, including the extent to which their field training was consistent with what they learned in the academy, and suggestions for changes to academy training based upon their experience in the FTO program. CDP will document its response, including the rationale behind any responsive action taken or decision to take no action.
287. CDP's Training Review Committee will, on an annual basis, analyze all aspects of CDP's FTO program and consider emerging national policing practices in this area. Based on this research and analysis, the Training Review Committee will recommend, and CDP will institute, appropriate changes to policies, procedures, and training related to its FTO program.

3. Documentation of Training

288. CDP will document all training provided to or received by CDP officers, whether required or otherwise. Officers will sign an acknowledgement of attendance or digitally acknowledge completion of each training course (whether provided through CDP or outside sources) as well as completion of annual training requirements and training on any new or substantially revised policies. These acknowledgements will be maintained in a format that allows for analysis by training type, training date, training source, and by individual officer name.
289. Within 540 days of the Effective Date, CDP will develop and implement a system that will allow the Training Section to electronically track, maintain, and produce complete and accurate records of current curricula, lesson plans, training delivered, and other training materials in a centralized electronic file system.
290. CDP will develop and implement accountability measures, including disciplinary and non-disciplinary corrective action, to ensure that all officers successfully complete all required training programs in a timely manner.

B. Equipment and Resources

291. With the goal of ensuring that CDP is provided with the resources, equipment, and updated technology necessary to implement the terms of this Agreement and to allow officers to perform their jobs safely, effectively, and efficiently, the City will implement the paragraphs below.
292. Within 365 days of the Effective Date, CDP will complete a comprehensive equipment and resource study to assess its current needs and priorities to perform the functions necessary for CDP to fulfill its mission and satisfy the requirements of this Agreement. Within six months of completion of this study, CDP will develop an effective, comprehensive Equipment and Resource Plan that is consistent with its mission and that will allow it to satisfy the requirements of this Agreement.
293. Among other items, CDP's Equipment and Resource Plan will provide for necessary equipment including, at least the following:
 - a. an adequate number of computers;
 - b. an adequate number of operable and safe zone cars;
 - c. zone cars with reliable, functioning computers that provide officers with up-to-date technology, including:
 - i. a mobile computer-aided dispatch system that allows officers and supervisors to access real time information received from call-takers and dispatchers;
 - ii. the ability to access CDP's records management system; and
 - iii. access to law enforcement databases that allow officers to learn basic information about the civilians with whom they interact and the call history associated with the locations to which they are responding, as well as warrant and driver's license checks, and information concerning restraining orders; and
 - d. zone cars equipped with first-aid kits that would allow police officers to perform life-saving measures, and equipment necessary to decontaminate persons exposed to OC spray.

This plan also will ensure that CDP:

- e. properly maintains and seeks to continuously improve upon existing equipment and technology; and

- f. is appropriately identifying equipment needs and seeking to utilize, as appropriate, emerging technologies.
294. CDP will actively seek input and feedback from the Commission, patrol officers, and supervisors regarding resource allocation, equipment needs, and technological improvements.
295. Upon the Chief's approval of the Equipment and Resource Plan, CDP will submit it to the Monitor and DOJ. The Monitor will assess the Equipment and Resource Plan and report to the Parties whether it is appropriate, effective, and consistent with the requirements of this Agreement. DOJ may independently review and assess whether the Equipment and Resource Plan is appropriate, effective, and consistent with the requirements of this Agreement. The City and CDP will employ best efforts to implement the Equipment and Resource Plan over the period of time set forth in the approved plan. The Monitor will report to the Parties whether the City and CDP are using best efforts to implement the Equipment and Resource Plan as required.
296. Within 365 days of the Effective Date, CDP will develop or revise, as appropriate, and implement an effective, centralized records management system that will enhance crime analysis, improve responsiveness and transparency, allow for effective and efficient data collection, promote information sharing within CDP and throughout the law enforcement community, aid in developing crime-fighting solutions, and assist CDP in effectively deploying its personnel.
297. Within 180 days of the Effective Date, CDP will utilize a department-wide e-mail system to improve communication and information sharing among all department personnel, including command staff, supervisors, and patrol officers. Patrol officers will not have access to information regarding allegations of misconduct.
298. CDP will employ information technology professionals who are trained to conduct crime and intelligence analysis, who are capable of troubleshooting and maintaining information technology systems and who can identify and suggest appropriate technological advancements.
299. CDP will implement an effective employee assistance program that provides officers ready access to the mental health and support resources necessary to facilitate effective and constitutional policing.

C. Recruitment and Hiring

300. To maintain high-level, quality service, ensure officer safety and accountability, and promote constitutional, effective policing, CDP will review and revise as necessary its recruitment and hiring program to ensure that CDP successfully attracts and hires a diverse group of qualified individuals.
301. The Mayor will work with the City Council to develop an ordinance to place a Charter Amendment on the ballot that would give the appointing authority greater flexibility in the selection of candidates from the certified eligibility list for the CDP.
302. Within 180 days of the Effective Date, CDP will develop a recruitment policy and a strategic recruitment plan that includes clear goals, objectives, and action steps for attracting qualified applicants from a broad cross-section of the community. The recruitment plan will establish and clearly identify the goals of CDP's recruitment efforts and the duties of officers and staff implementing the plan. CDP will regularly review its recruitment and hiring procedures and the effects of those procedures to ensure that those, and other requirements, reflect the needs of the job and do not create artificial or unnecessary barriers to selection. The recruitment plan will be provided to the Monitor and DOJ.
303. The City will implement the recruitment plan within 60 days of it being approved by the Monitor.
304. CDP's recruitment plan will include specific strategies for attracting a diverse group of applicants, including officers who are familiar with the different neighborhoods of Cleveland, who possess strategic thinking and problem-solving skills, emotional maturity, interpersonal skills, and the ability to collaborate with a diverse cross-section of the community.
305. In developing and implementing its recruitment plan, CDP will consult with the Commission and other community stakeholders on strategies to attract a diverse pool of applicants. CDP will create and maintain sustained relationships with community stakeholders to enhance recruitment efforts.
306. CDP will continue to utilize an objective system for hiring and selecting recruits. The system will continue to employ minimum qualification for candidates and an objective process for selecting recruits that employs reliable and valid selection criteria that

comport with the Charter and anti-discrimination laws.

307. CDP will report annually to the public its recruiting activities and outcomes, including the number of applicants, interviewees, and selectees, broken down by gender, race, ethnicity, and national origin, the extent to which CDP has been able to recruit qualified applicants, and a discussion of any challenges to recruiting high-quality applicants.
308. CDP will continue to require all candidates for sworn personnel positions, including new recruits and lateral hires, to undergo a psychological and medical examination to determine their fitness for employment. CDP will continue to maintain a drug testing program that provides for reliable and valid pre-service testing for new officers and random testing for existing officers. The program will continue to be designed to detect the use of illegal substances, including steroids.
309. CDP will conduct thorough, objective, and timely background investigations of candidates for sworn positions in accordance with federal anti-discrimination laws. CDP's suitability determination will include assessing a candidate's criminal history, employment history, use of controlled substances, and ability to work with diverse communities. CDP also will determine, to the extent possible, whether the candidate has been named in a civil action in either Cuyahoga County and/or in the County where the officer lives.
310. As part of the hiring process, consistent with applicable law, CDP will request to review personnel files from candidates' previous employment and, where possible, will speak with the candidate's previous supervisor(s). This review, and any salient information obtained, will be documented in the candidate's file.
311. If a candidate has previous law enforcement experience, CDP will complete a thorough, objective, and timely pre-employment investigation that includes requesting a candidate's history of using lethal and less lethal force, use of force training records, and complaint history. This review, and any salient information obtained from this review, will be documented in the candidate's file.

D. Performance Evaluations and Promotions

312. CDP will ensure that officers who police professionally and effectively are recognized through the performance evaluation process, and that officers who lead professionally

and effectively are identified and receive appropriate consideration for promotion. CDP will further ensure that poor performance or policing that otherwise undermines public safety and community trust is reflected in officer evaluations so that CDP can identify and effectively respond.

1. Performance Evaluations

313. CDP will develop and implement fair and consistent practices to accurately evaluate officer performance in areas related to integrity, community policing, and critical police functions, on both an ongoing and annual basis.
314. As part of this program, within 18 months of the Effective Date, CDP, working with human resources and the police unions as necessary, will continue to utilize a formalized system documenting the annual performance evaluations of each officer by the officer's direct supervisor. The annual performance evaluation will be augmented to include an assessment of:
 - a. community engagement and communication with the public as appropriate to assignment;
 - b. use of community and problem-oriented policing and problem-solving strategies as appropriate to assignment;
 - c. de-escalation strategies;
 - d. techniques for dealing with individuals in crisis;
 - e. civilian commendations and complaints;
 - f. disciplinary actions;
 - g. compliance with policy;
 - h. safety (e.g., officer safety standards and vehicle operations);
 - i. training;
 - j. report writing; and
 - k. decision-making skills.
315. As part of the annual performance review process, supervisors will meet with the employee whose performance is being evaluated to discuss the evaluation. In addition, on an ongoing basis, supervisors will discuss with their subordinates their performance and will document as appropriate the supervisor's ongoing communications regarding

officer performance and areas of growth.

316. CDP will hold supervisors of all ranks accountable for conducting timely, accurate, and complete performance evaluations of their subordinates.

2. Promotions

317. CDP will develop and implement fair and consistent promotion practices that comport with the requirements of this Agreement and result in the promotion of officers who are effective and professional.
318. In determining whether the officer is likely to be effective and appropriate for the position to which he or she is being considered for promotion, the appointing authority will consider the following factors, where relevant:
- a. effective use of community and problem-oriented policing strategies;
 - b. the number and circumstances of uses of force;
 - c. an officer's service as an FTO or Field Training Sergeant;
 - d. disciplinary record;
 - e. problem-solving skills;
 - f. interpersonal skills;
 - g. support for departmental integrity measures; and
 - h. pending disciplinary process.

E. Staffing

319. Within 365 days of the Effective Date, CDP will complete a comprehensive staffing study to assess the appropriate number of sworn and civilian personnel to perform the functions necessary for CDP to fulfill its mission, and satisfy the requirements of this Agreement. Within 180 days of completion of this study, CDP will develop an effective, comprehensive Staffing Plan that is consistent with its mission, including community and problem-oriented policing, and that will allow CDP to meet the requirements of this Agreement.
320. Among other items, CDP's Staffing Plan will address and provide for each of the following:
- a. personnel deployment to ensure effective community and problem-oriented policing;

- b. a sufficient number of well-trained staff and resources to conduct timely misconduct investigations;
 - c. to the extent feasible, Unity of Command; and
 - d. a sufficient number of supervisors.
321. Upon the Chief's approval of the Staffing Plan, CDP will submit it to the Monitor and DOJ. The Monitor will assess the Staffing Plan and report to the Parties whether it is appropriate, effective, and consistent with the requirements of this Agreement. DOJ independently will review and assess whether the Staffing Plan is appropriate, effective, and consistent with the requirements of this Agreement. The City and CDP will employ best efforts to implement the Staffing Plan over the period of time set forth in the approved plan. The Monitor will report to the Parties whether the City and CDP are using best efforts to implement the Staffing Plan as required.

XII. SUPERVISION

A. Duties, and Training of First Line Supervisors

322. CDP will ensure that first line supervisors provide close and effective supervision of officers. This close and effective supervision includes responding to, investigating, and documenting force as required by this Agreement; ensuring that officers are working actively to engage the community with the goal of increasing public trust; monitoring, commanding, and controlling incidents and calls for service; reviewing arrest reports for compliance with law and this Agreement; identifying training and professional development needs; and providing leadership, counseling, redirection, and support to officers as needed.
323. Within 365 days of the Effective Date, CDP will develop and implement mandatory supervisory training for all new and current supervisors. This training for new and current supervisors may be different, but both will be adequate in quality, quantity, type, and scope, and will include the following topics:
- a. techniques for effectively guiding and directing officers and promoting effective and constitutional police practices;
 - b. de-escalating conflict;

- c. evaluating written reports, including identification of canned or conclusory language that is not accompanied by specific facts;
 - d. investigating officer uses of force;
 - e. building community partnerships and guiding officers on this requirement;
 - f. understanding supervisory tools such as the Officer Intervention Program and body worn cameras;
 - g. responding to and investigating allegations of officer misconduct;
 - h. evaluating officer performance;
 - i. consistent disciplinary sanction and non-punitive corrective action;
 - j. monitoring use of force to ensure consistency with policies; and
 - k. legal updates.
324. Thereafter all sworn supervisors will receive adequate in-service management training, which may include updates and lessons learned related to the topics covered in the supervisor training and other areas covered by this Agreement.
325. CDP will hold supervisors directly accountable for the quality and effectiveness of their supervision, including whether supervisors identify and effectively respond to misconduct and ensure that officers effectively engage with the community.

B. Officer Intervention Program

326. Within 365 days of the Effective Date, CPD will create a plan to modify its Officer Intervention Program (“OIP”) to enhance its effectiveness as a management tool to promote supervisory awareness and proactive identification of potentially problematic behavior among officers.
327. CDP supervisors will regularly use OIP data to evaluate the performance of CDP officers across all ranks, units, and shifts. Non-medical CDP supervisors will not have access to confidential medical or mental health information or treatment plans. CDP supervisors will be trained to interpret OIP data; understand and utilize the range of non-disciplinary corrective action they can take to modify officers’ behavior and improve performance; manage risk and liability; promote constitutional policing; and address underlying stressors to promote officer well-being. The intent of OIP is to intervene before discipline is required.

328. The OIP will include a computerized relational database that will be used to collect, maintain, integrate, and retrieve data department-wide and for each officer regarding:
- a. all uses of force;
 - b. all ECW applications and accidental discharges involving a subject;
 - c. all injuries and deaths to persons in custody;
 - d. all critical firearm discharges;
 - e. incidents involving the reportable pointing of a firearm at a person;
 - f. the number of OC spray applications;
 - g. canine bites;
 - h. vehicle pursuits and traffic collisions involving CDP equipment;
 - i. civilian complaints, whether filed with CDP, OPS, or the Mayor's office;
 - j. judicial proceedings where an officer is the subject of a protective or restraining order, other than a temporary restraining order dealing solely with financial matters. Officers will be required to report to their supervisors if they become the subject of a protective or restraining order, other than a temporary restraining order dealing solely with financial matters;
 - k. failures to record incidents with CDP's body worn cameras that are required to be recorded under CDP's body worn camera policy;
 - l. instances in which CDP is informed that a court has made a negative credibility determination regarding a CDP officer, or that a motion was granted on the grounds of a constitutional violation by a CDP officer;
 - m. all disciplinary action taken against officers;
 - n. all documented non-disciplinary corrective action required of officers;
 - o. sick leave usage, especially in concert with regular days off and holidays; and
 - p. all criminal proceedings initiated against an officer, and all civil lawsuits served upon the City and/or its officers or agents, resulting from the actions of CDP officers.
329. CDP will set threshold levels for each OIP indicator that will trigger a formal review, and the thresholds will allow for peer-group comparisons between officers with similar assignments and duties. The Monitor and DOJ will review and approve the OIP threshold levels.

330. CDP will implement rolling thresholds so that, once a review of a particular officer has been triggered as a result of a specific criteria that resulted in an intervention, each subsequent event involving that same criteria will trigger a review for a specified period of time.
331. CDP will collect and, at least quarterly, analyze OIP information related to supervisor, District, squad, and unit trends.
332. OIP will include appropriate identifying information for each involved employee (i.e., name, badge number, shift, and supervisor) and, where appropriate, each involved civilian (e.g., race, ethnicity, national origin, and gender).
333. CDP will develop and implement a comprehensive protocol for using the updated OIP information that will include data storage, data retrieval, reporting, data analysis, pattern identification, supervisory use, supervisory/departmental intervention, documentation, audits, access to the system, and confidentiality of personally identifiable information, medical and mental health records and treatment plans.
334. Supervisors will review OIP data other than confidential medical or mental health records and treatment plans, for all officers under their direct command at least monthly, and whenever an employee first comes under their supervision. At least quarterly, supervisors will review broader, pattern-based reports.
335. Interventions in response to threshold triggers will be timely implemented and designed to assist officers in avoiding potentially problematic behavior. All interventions will be documented in writing and entered into OIP. Supervisors will review the progress and evaluate the effectiveness of the intervention strategy except for those interventions that relate to confidential medical and mental health treatment plans.
336. CDP will enter information into OIP in a timely, accurate, and complete manner, and will securely and confidentially store all data. CDP will maintain all officer specific information in OIP for at least five years following the officer's separation from CDP, unless prohibited by law. Information necessary for aggregate statistical analyses will be maintained indefinitely. CDP will provide in-service training to all employees, including officers, supervisors, and commanders, regarding the updated OIP within 180 days of the system improvements specified in this section to ensure proper understanding and use of the system. CDP supervisors will be trained to use OIP as

designed to help improve the performance of officers under their command. Commanders and supervisors will be trained in evaluating and making appropriate comparisons in order to identify any significant individual or group patterns.

C. Body Worn Cameras

337. CDP's use of body worn cameras is not required by this Agreement. If CDP chooses to use body worn cameras, CDP will provide clear guidance and training on their use, and will implement protocols for testing equipment and preservation of recordings to foster transparency, increase accountability, and build trust, while protecting the privacy rights of individuals.
338. Supervisors will review recordings related to any incident involving at least a Level 2 or 3 use of force; injuries to officers; and in conjunction with any other supervisory investigation.
339. Supervisors will conduct adequate random and directed audits of body worn camera recordings created by officers under their command to confirm compliance with CDP policy and to identify areas where additional training or guidance is needed. Supervisors will incorporate the knowledge gained from this review into their ongoing evaluation and supervision of officers.
340. Officers will be subject to the disciplinary process for intentional or otherwise unjustified failure to activate body worn cameras in violation of CDP policy.

XIII. POLICIES

341. To maintain high quality service, ensure officer safety and accountability, and promote constitutional, effective policing, CDP will ensure that its policies and procedures reflect and express CDP's commitment to building community trust, utilizing community and problem-oriented policing, ensuring bias-free policing, and incorporating the concept of procedural justice.
342. As needed, CDP will develop, revise, and implement policies and procedures to fully incorporate the terms of this Agreement and comply with applicable law. CDP will ensure that its policies and procedures are plainly written, logically organized, and use terms that are clearly defined. Unless otherwise noted, CDP will develop all policies and procedures pursuant to this Agreement within 365 days of the Effective Date.

343. CDP will ensure that officers from all varying ranks and units have a meaningful opportunity to review and comment on new or existing policies and procedures.
344. Prior to submission to the Monitor and DOJ, CDP will provide policies related to bias-free policing, use of force, search and seizure, and data collection and retention to the Commission for review and comment. The Commission will provide any comments to CDP within 15 days of submission. The CDP will consider, discuss with, and timely respond to the Commission's concerns. Where the Commission's concerns are unresolved, CDP will provide the Commission's comments to the DOJ and the Monitor along with the policy when it is submitted for approval.
345. CDP will submit all policies, procedures, manuals, and other administrative orders or directives related to this Agreement to the Monitor and DOJ prior to publication and implementation. If the Monitor or DOJ objects to the proposed policy, procedure, manual, or other administrative order or directive because they do not incorporate the requirements of this Agreement or are inconsistent with this Agreement or law, the Monitor or DOJ will note this objection in writing to all Parties within 15 business days of the receipt of the policy, procedure, manual, or directive. CDP will have 15 business days to resolve any objections to its policies, procedures, manuals, or directives. If, after this 15 day period has run, the Monitor or DOJ maintains its objection, then the Monitor will have an additional 15 business days to resolve the objection. If either party disagrees with the Monitor's resolution of the objection, either party may ask the Court to resolve the matter. The policies will not be published or implemented until any objections have been resolved. The Monitor will determine whether an additional amount of time is necessary to ensure full and proper review of policies. Factors to consider in making this determination include: (a) complexity of the policy; (b) extent of disagreement regarding policy; (c) number of policies provided simultaneously; or (d) extraordinary circumstances delaying review by the DOJ or the Monitor. In determining whether these factors warrant additional time for review, the Monitor will fully consider the importance of prompt implementation of policies and will allow additional time for policy review only where it is clear that additional time is necessary to ensure full and proper review. Any extension to the above timelines by the Monitor will also toll CDP's deadline for policy completion.

346. CDP will post approved policies and procedures on the City’s website to ensure public accessibility. There will be reasonable exceptions for policies, procedures, and administrative orders that are law enforcement sensitive, such as procedures regarding undercover officers or operations.
347. The CDP will review each policy or procedure related to this Agreement six months after it is implemented and annually thereafter, to ensure that the policy or procedure provides effective direction to CDP personnel and remains consistent with this Agreement, and current law. The CDP will review and revise policies and procedures as necessary upon notice of a significant policy deficiency during audits or reviews.
348. CDP will maintain a complete, up-to-date manual of all CDP policies and procedures that is indexed and maintained in an organized manner using a uniform numbering system for ease of reference. Officers and employees will have access to the manual, in hard copy or electronic format. Revisions and updates to CDP policies and procedures will be incorporated into the manual.
349. CDP will ensure that changes in case law and statutes that are relevant to the work of CDP are disseminated to appropriate CDP personnel in a timely manner and incorporated, as needed, into CDP policies, procedures, and training.

XIV. IMPLEMENTATION, ASSESSMENT, OUTCOMES, AND ENFORCEMENT

A. Role of the Independent Monitor

350. The Parties will jointly select an Independent Monitor (“Monitor”) who will assess and report whether the requirements of this Agreement have been implemented, and whether this implementation is resulting in constitutional and effective policing, professional treatment of individuals, and increased community trust of CDP. The Monitor will work with the Parties to identify and address any barriers to compliance.
351. The Monitor will only have the duties, responsibilities, and authority conferred by this Agreement. The Monitor will not, and is not intended to, replace or assume the role and duties of any CDP employee, including the Chief, or any other City official. Nothing in this Agreement alters the fact that the Mayor of Cleveland retains authority over the CDP and the Chief of CDP maintains the authority to oversee the operations of CDP. As an agent of the Court, the Monitor will be subject to the supervision and

orders of the Court, consistent with this Agreement and applicable law.

352. In order to assess and report on CDP's implementation of this Agreement and whether the goals of this Agreement are being achieved, the Monitor will conduct the reviews specified in this Agreement, and will review CDP policies, procedures, practices, training curricula, and programs developed and implemented under this Agreement.

B. Selection and Compensation of the Monitor

353. Within 90 days of the Effective Date, or additional time if agreed to by the Parties, the City and DOJ will together select a Monitor, acceptable to both Parties, to assess and report on CDP's implementation of this Agreement. The Parties have agreed to use an open Request for Information process in selecting the Monitor. This process will be implemented in a manner consistent with this Agreement, including the requirement that the Monitor be jointly selected and acceptable to both DOJ and the City. The Parties' Monitor selection will be subject to the approval of the Court with jurisdiction over this Agreement. The Monitor will be comprised of individuals of the highest ethics.
354. If the Parties are unable to agree on a Monitor or an alternative method of selection within the timeframe agreed to by the Parties, each Party will submit the names of three candidates, or three groups of candidates, along with resumes and cost proposals, to the Court, and the Court will select a Monitor from among the qualified candidates/candidate groups.
355. The Monitor will be appointed for a period of five years from the Effective Date and will have its appointment extended automatically should the City and CDP not demonstrate Substantial and Effective Compliance at the end of this five-year period. The extension of the Monitor beyond seven years will be allowed only if the Court determines that it is reasonably necessary in order to assess and facilitate Substantial and Effective Compliance with this Agreement. The Monitor's appointment will terminate prior to five years if the City has achieved Substantial and Effective Compliance for the time specified in paragraph 401.
356. The City will bear all reasonable fees and costs of the Monitor. DOJ and the City recognize the importance of ensuring that the fees and costs borne by the City are

reasonable, and accordingly fees and costs will be one factor to be considered in selecting the Monitor. In the event that any dispute arises regarding the reasonableness or payment of the Monitor's fees and costs, the City, DOJ, and the Monitor will attempt to resolve such dispute cooperatively prior to seeking the assistance of the Court. If the City and DOJ agree, and the Court approves, an independent third party with no financial interest in the case may pay some or all of the fees and costs of the Monitor.

357. The City will provide the Monitor with permanent office space and reasonable office support such as office furniture, telephones, Internet access, secure document storage, and photocopying.
358. The Monitor, at any time after its initial selection, may request to be allowed to hire, employ, or contract with such additional persons or entities as are reasonably necessary to perform the tasks assigned to the Monitor by this Agreement. Any person or entity hired or otherwise retained by the Monitor to assist in furthering any provision of this Agreement will be subject to the provisions of this Agreement. The Monitor will notify the City and DOJ in writing if the Monitor wishes to select such additional persons or entities. The notice will identify and describe the qualifications of the person or entity to be hired or employed and the monitoring task to be performed. If the City and DOJ agree with the Monitor's proposal, the Monitor will be authorized to hire or employ such additional persons or entities. The City and the DOJ have ten business days to disagree with any such proposal. If the City and DOJ are unable to reach agreement within ten business days of receiving notice of the disagreement, the Court will resolve the dispute.
359. Should any of the Parties to this Agreement determine that the Monitor's individual members, agents, employees, or independent contractors have exceeded their authority, or failed to satisfactorily perform the duties required by this Agreement, the Party may petition the Court for such relief as the Court deems appropriate, including replacement of the Monitor, and/or any individual members, agents, employees, or independent contractors.

C. Compliance Reviews

360. The Monitor will conduct reviews or audits as necessary to determine whether the City

and CDP have complied with the requirements of this Agreement. Compliance requires that the City and CDP: (a) have incorporated the requirement into policy; (b) have trained all relevant personnel as necessary to fulfill their responsibilities pursuant to the requirement; and (c) are carrying out the requirement in actual practice. Compliance reviews and audits will contain the elements necessary for reliability and comprehensiveness. Compliance reviews and audits may be conducted using sampling and compilation data where appropriate.

D. Biennial Community Survey

361. Within 180 days of the Effective Date, and every two years thereafter, the Monitor will conduct a reliable, comprehensive, and representative survey of members of the Cleveland community regarding their experiences with and perceptions of CDP and of public safety. Analysis of the results of this survey will be included in the outcome assessments that are described in paragraph 367 and that may be used to demonstrate sustained compliance with this Agreement.
362. The City and DOJ will endeavor to secure private funding for the biennial community survey.
363. To conduct the biennial community survey, the Monitor will:
 - a. develop a baseline of measures on public satisfaction with policing, attitudes among police personnel, and the quality of police-citizen encounters;
 - b. design, conduct, and analyze baseline and subsequent biennial surveys of a representative sample of City residents, police personnel, and detained arrestees;
 - c. review and consider prior law enforcement surveys in Cleveland and other cities, as well as current or recent concerns in Cleveland, in designing the survey;
 - d. observe community meetings and engage in informal conversations with Cleveland residents, CDP officers and command staff, and other relevant individuals, including DOJ representatives during the pendency of this Agreement;

- e. ensure that the resident and arrestee surveys are designed to capture a representative sample of Cleveland residents, including members of each demographic category;
 - f. conduct the survey in English, Spanish, and other languages, as necessary, to ensure representation of the entire Cleveland community; and
 - g. formally discuss the survey methodology with CDP supervisors and DOJ representatives, throughout the pendency of this Agreement, and consider these opinions in the development of the initial survey and in making improvements to subsequent surveys.
364. CDP and the City agree to cooperate with the design and performance of the survey.
365. The report of the baseline survey and subsequent biennial surveys will be posted to the City's website, and publicly distributed.
366. CDP will analyze the results of the survey and will use this analysis to modify and improve CDP policies, procedures, practices, and protocols, as needed.

E. Outcome Measurements

367. In addition to compliance reviews and audits, the Monitor will conduct qualitative and quantitative assessments to measure whether implementing this Agreement has resulted in constitutional policing. The measurements relating to use of force; addressing individuals in crisis; and stop, search, and arrest are not intended to expand the City's data collection requirements set forth elsewhere in the Agreement. These outcome assessments will include collecting and analyzing, at least annually, the following outcome data, trends, and patterns:
- a. Use of force measurements, including:
 - 1. number of use-of-force incidents as compared to number of arrests, with use-of-force incidents broken down by force type, District, type of related arrest (if any); actual or perceived race, ethnicity, age, and gender of the subject; and, if indicated at the time force was used, the subject's mental or medical condition, use of drugs or alcohol, or the presence of a disability;

2. number of injuries to officers and public, the rate at which officer and subject injuries decrease or increase overall and by severity of injury; number of force complaints, disposition of complaints, source of complaint (internal or external), force type, geographic area, and any identified demographic category of complainant;
 3. the rate at which ECW usage decreases or increases compared to the use of force overall and by weapon;
 4. number of uses of force found to violate policy, broken down by force type, geographic area, type of arrest; actual or perceived race, ethnicity, age, and gender of the subject; and, if indicated at the time force was used, the subject's mental or medical condition, use of drugs or alcohol, or the presence of a disability;
 5. number of officers who have more than one instance of use of force in violation of policy;
 6. force reviews or investigations indicating a policy, training, or tactical deficiency; and
 7. quality of use of force investigations and reviews; and number and rate of use of force administrative investigations which are returned for lack of completeness.
- b. Addressing individuals in crisis measurements, including:
1. number of calls for service and incidents that appear to involve an individual in crisis, broken down by whether specialized CIT officers responded to the calls; and the rate of individuals in crisis directed to the healthcare system, rather than the judicial system;
 2. number of police interactions where force was used on individuals in crisis, including the type of force used; the reason for the interaction, i.e., suspected criminal conduct or a call for assistance; the threat to public safety, including whether the person was armed and if so, with what; a description of the type of resistance offered, if any; and a description of any attempts at de-escalation.
- c. Stop, Search, and Arrest measurements, including:

1. total number of investigatory stops, searches and arrests overall and broken down by District (understanding that different Districts may have inherently different demographic compositions), type of arrest, actual or perceived age, race, gender, and ethnicity of subject, and the rate at which the encounters resulted in a summons or arrest;
 2. data related to the documented reasonable suspicion to stop and probable cause search or arrest, broken down by the actual or perceived race, gender, age, and ethnicity of the person(s) stopped/searched/arrested;
 3. number of searches that resulted in a finding of contraband, overall and broken down by District (understanding that different Districts may have inherently different demographic compositions), type of arrest, and the actual or perceived age, race, gender, and ethnicity of subject.
- d. Bias-Free Policing and Community Engagement measurements, including:
1. number and variety of community partnerships, including partnerships with youth;
 2. homicide clearance rate;
 3. number of civilian complaints regarding police services related to discrimination and their disposition; and
 4. analysis of results of biennial community survey, when available.
- e. Recruitment measurements, including:
1. number of qualified recruit applicants;
 2. detailed summary of recruitment activities, including development and leveraging of community partnerships;
 3. number and race, ethnicity, gender, and any self-identified disability of applicants who failed the initial screening and the reasons for their failure;
 4. number of applicants with fluency in languages other than English, and the specific languages spoken;
 5. number and race, ethnicity, gender, or self-identified disability of lateral candidates, and a list of their former agencies and years of service;
 6. number of applicants with at least two years of college, a college degree, or at least two years of military service;

7. pass/fail rate in each phase of the pre-employment process by race, ethnicity, gender, and self-identified disability of applicants;
 8. the average length of time to move applicants through each phase of the pre-employment process and average amount of time to process applicants; and
 9. composition of recruit classes by race, ethnicity, gender, and self-identified disability.
- f. Training measurements, including:
1. number and percentage of officers provided training pursuant to this Agreement, broken down by the type of training provided;
 2. students' evaluations of the adequacy of training in type and frequency;
 3. modifications or improvements to training resulting from the review and analysis required by this Agreement; and
 4. prevalence of training deficiencies as reflected by problematic incidents or performance trends.
- g. Officer assistance and support measurements, including:
1. availability and use of officer assistance and support services; and
 2. officer reports or surveys of adequacy of officer assistance and support.
- h. Supervision measurements, including supervisors' initial identification of officer violations and performance problems, and the supervisors' responses to those violations and problems;
- i. Civilian complaints, internal investigations, and discipline, including:
1. number of complaints, and whether any increase or decrease in this number appears related to access to the complaint process;
 2. number of sustained, exonerated, unfounded, not sustained, and administratively dismissed complaints by type of complaint;
 3. number of complaint allegations supported by a preponderance of the evidence;
 4. average length of time to complete investigations by complaint type;
 5. number of officers who were subjects of multiple complaints or who had repeated instances of sustained complaints;

6. arrests of officers for on- and off-duty conduct;
 7. criminal prosecutions of officers for on-or off-duty conduct; and
 8. other than vehicle accidents not involving a pursuit, number and nature of civil suits against the City or CDP officers for work related conduct, and the amount of judgments against or settlements resulting from those civil suits.
- j. In conducting these outcome assessments, the Monitor may use any relevant data collected and maintained by CDP or the City (e.g., crime trend pattern analysis), provided that the Monitor has determined, and the Parties agree, that this data is reasonably reliable and complete.

F. Monitoring Plan and Review Methodology

368. Within 90 days of assuming the duties as the Monitor, the Monitor will review and recommend any changes to the outcome measures detailed above that the Monitor deems useful in assessing whether implementation of this Agreement is resulting in constitutional policing. Recognizing that the above outcome measures have been negotiated and agreed to by the Parties, the Parties will move the Court to adopt any recommendations upon which they agree.
369. Within 120 days of assuming the duties as the Monitor, the Monitor will develop a plan for conducting the compliance reviews and outcome assessments, and will submit this plan to the Parties for review and approval. This plan will:
- a. clearly delineate the requirements of this Agreement to be assessed for compliance, indicating which requirements will be assessed together;
 - b. set out a schedule for conducting outcome measure assessments for each outcome measure at least annually, except where otherwise noted, with the first assessment occurring within 365 days of the Effective Date; and
 - c. set out a schedule for conducting a compliance review or audit of each requirement of this Agreement within the first two years of this Agreement, and a compliance review or audit of each requirement at least annually thereafter, unless the Monitor no longer assesses that requirement as provided in the next paragraph.

370. Where the Monitor recommends and the Parties agree, the Monitor may refrain from conducting a compliance review of a requirement previously found to be in compliance by the Monitor, or where outcome assessments indicate that the outcome intended by the requirement has been achieved. The City and CDP will be deemed to have achieved Substantial and Effective Compliance on those requirements and the City's obligations under those provisions will be deemed to have been met for the purpose of seeking termination of this Agreement, without considering the one or two year sustained compliance requirement.
371. At least 90 days prior to the initiation of any outcome measure assessment, compliance review, or audit, the Monitor will submit a proposed methodology for the assessment, review, or audit to the Parties. The Parties will submit any comments or concerns regarding the proposed methodology to the Monitor no later than 45 days prior to the proposed date of the assessment, review, or audit. The Monitor will modify the methodology as necessary to address any concerns or will inform the Parties in writing of the reasons it is not modifying its proposed methodology. Any unresolved disputes involving the Monitor's methodology may be submitted to the Court for resolution.

G. Monitor Recommendations and Technical Assistance

372. The Monitor may make recommendations to the Parties regarding actions necessary to ensure timely Substantial and Effective compliance with this Agreement and its underlying objectives. Such recommendations may include a recommendation to change, modify, or amend a provision of this Agreement, a recommendation for additional training in any area related to this Agreement, or a recommendation to seek technical assistance. In addition to such recommendations, the Monitor may also, at the request of DOJ or the City and based on the Monitor's reviews, provide technical assistance consistent with the Monitor's responsibilities under this Agreement.
373. In the event that Substantial and Effective Compliance with this Agreement requires technical assistance beyond the scope of the Monitor's duties, DOJ, CDP, and/or the Monitor will inform the Parties of the need for technical assistance and its relation to compliance with this Agreement. The Monitor, with assistance from the City, will arrange for the prompt initiation of the required technical assistance, to be performed

by the Monitor, its agent, independent contractor, or a separate entity. The cost for the technical assistance will be borne by the City. If any Party disagrees with the need for the requested technical assistance, the Party will, within 15 days of being informed in writing of the requested technical assistance, inform the Court, which will resolve the dispute.

H. Comprehensive Reassessment

374. Two years and six months after the Effective Date, the Monitor will conduct a comprehensive outcome assessment to determine whether and to what extent the outcomes intended by this Agreement are being achieved, and whether any modifications to this Agreement are necessary for achievement in light of changed circumstances or unanticipated impact (or lack of impact) of the requirement. The Monitoring Plan will provide that this comprehensive outcome assessment will coincide with an annual outcome assessment as required in paragraph 367. This assessment also will address areas of greatest achievement and the requirements that appear to have contributed to this success, as well as areas of greatest concern, including strategies for accelerating Substantial and Effective Compliance. Based upon this comprehensive assessment, the Monitor will recommend any modifications to this Agreement necessary to achieve and sustain intended outcomes. Where the Parties agree with the Monitor's recommendations, the Parties will move the Court to modify this Agreement accordingly. This provision in no way diminishes the Parties' ability to stipulate to modifications to this Agreement as set out below. Nothing in this Assessment will enable the Monitor to unilaterally modify the terms of this Agreement.

I. Monitor Reports

375. The Monitor will file with the Court, every six months, written, public reports that include the following:

- a. a description of the work conducted by the Monitor during the reporting period;
- b. a list of each Agreement requirement, indicating which requirements have been:
 1. incorporated into policy;

2. the subject of sufficient training for all relevant CDP officers and employees; and
 3. carried out in actual practice.
- c. the methodology and specific findings for each compliance review conducted, where appropriate, and redacted as necessary for privacy concerns. An unredacted version will be filed under seal with the Court and provided to the Parties. The underlying data for each compliance review will not be publicly available but will be retained by the Monitor and provided to either or both Parties upon request;
 - d. for any requirements that were reviewed or audited and found not to have been implemented, the Monitor's recommendations regarding necessary steps to achieve compliance;
 - e. the methodology and specific findings for each outcome assessment conducted; and
 - f. a projection of the work to be completed during the upcoming reporting period and any anticipated challenges or concerns related to compliance with this Agreement.
376. The Monitor will provide a copy of the six-month reports to the Parties in draft form within 15 business days after the end of each reporting period. The Parties will have 15 business days upon receipt of the report to informally comment on the draft report. The Monitor will consider the Parties' responses and make appropriate changes, if any, before issuing the report.

J. Coordination with the Police Inspector General

377. In conducting its assessments, reviews, and audits, and in developing its monitoring plan and review methodologies, the Monitor may coordinate and confer with the Police Inspector General to avoid duplication of effort and expenses.

K. Communication between Monitor, Parties, and Public

378. The Monitor will maintain regular contact with the Parties in order to ensure effective and timely communication regarding the status of CDP's compliance with this Agreement. To facilitate this communication, the Monitor will conduct monthly

meetings, which will include participation by the Chief, counsel for the City, CDP's Consent Decree Implementation Unit (described below), and DOJ. The Monitor also will meet at least twice each year with the Mayor.

379. The Monitor will hold public meetings with community stakeholders, including the Commission and the Cleveland City Council, to explain the Monitor's reports and inform the public about this Agreement's implementation process, as well as to hear community perspectives of police interactions. The Monitor will notify the Parties when such meetings are scheduled.

L. Public Statements, Testimony, Records, and Conflicts of Interest

380. Except as required or authorized by the terms of this Agreement or with the Parties acting together: the Monitor, including any agent, employee, or independent contractor thereof, will not make any public statements or issue findings with regard to any act or omission of the City or CDP, or their agents, representatives, or employees; or disclose non-public information provided to the Monitor pursuant to this Agreement. Any press statement made by the Monitor regarding its employment or monitoring activities under this Agreement first will be approved by DOJ and the City.
381. The Monitor, including any agent, employee, or independent contractor thereof, may testify as to its/their observations, findings, and recommendations before the Court with jurisdiction over this matter. However, the Monitor, including any agent, employee, or independent contractor thereof, will not testify in any other litigation or investigative or pre-litigative proceeding with regard to any act or omission of the City, CDP, or any of their agents, representatives, or employees related to this Agreement or regarding any matter or subject of which the Monitor may have received knowledge as a result of his/her performance under this Agreement. This paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.
382. Unless such conflict is waived by the Parties, the Monitor will not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or

claimant's attorney, in connection with a claim or suit against the City or its departments, officers, agents or employees.

383. The Monitor is not a state or local agency, or an agent thereof, and accordingly, the records maintained by the Monitor will not be designated as public records subject to public inspection.
384. The Monitor will not be liable for any claim, lawsuit, or demand arising out of the Monitor's performance pursuant to this Agreement brought by non-parties to this Agreement.

M. CDP Consent Decree Implementation Unit

385. The City and CDP agree to hire and retain, or reassign current City employees to form a unit with the skills and abilities necessary to facilitate compliance with this Agreement. At a minimum, this unit will coordinate the City's and CDP's compliance and implementation activities; facilitate the provision of data, documents, materials, and access to the City's and CDP's personnel to the Monitor and DOJ, as needed; ensure that all data, documents and records are maintained as provided in this Agreement; and assist in assigning implementation and compliance related tasks to CDP personnel, as directed by the Chief or the Chief's designee.

N. Implementation Assessment and Report

386. The City and CDP agree to collect and maintain all data and records necessary to: (1) document compliance with this Agreement, including data and records necessary for the Monitor to conduct reliable outcome assessments, compliance reviews, and audits; and (2) to allow CDP or other City entities to perform ongoing quality assurance in each of the areas addressed by this Agreement.
387. Within 180 days of the Effective Date, the City will file with the Court, with a copy to the Monitor and DOJ, a status report. This report will delineate the steps taken by CDP during the reporting period to comply with this Agreement; CDP's assessment of the status of its progress; plans to correct any problems; and responses to any concerns raised in the Monitor's previous semi-annual report. Following this initial status report, the City will file a status report every six months thereafter while this Agreement is in effect.

O. Access and Confidentiality

388. To facilitate its work, the Monitor may conduct on-site visits and assessments without prior notice to the City and CDP. CDP will notify the Monitor as soon as practicable, and in any case within 12 hours, of any critical firearms discharge, in-custody death, or arrest of any officer.
389. The Monitor will have timely, full, and direct access to all Agreement related individuals, facilities, trainings, meetings, disciplinary hearings, reviews, and the scene of any occurrence that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by this Agreement. The Monitor will cooperate with the City and CDP to access people, scenes, and facilities in a reasonable manner that, consistent with the Monitor's responsibilities, minimizes interference with daily operations.
390. The City and CDP will ensure that the Monitor will have full and direct access to all City and CDP documents and data related to the Agreement that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by this Agreement, except any documents or data protected by work product or the attorney-client privilege (together "privilege"). Privilege may not be used to prevent the Monitor from observing trainings, disciplinary hearings, or reviews, other than reviews with City lawyers in anticipation of litigation or for litigation. Should the City and CDP decline to provide the Monitor with access to documents or data based on privilege, the City and CDP will inform the Monitor and DOJ that it is withholding documents or data on this basis, and will provide the Monitor and DOJ with a log describing the documents or data and the basis of the privilege. If DOJ objects to the City's classification, DOJ may seek resolution of the propriety of the assertion of the privilege from the Court.
391. DOJ and its consultants and agents will have full and direct access to all City and CDP staff, employees, facilities, documents, and data related to the Agreement, in coordination with the Law Department of the City of Cleveland, except any documents or data protected by work product or the attorney-client privilege (together "privilege"). DOJ and its consultants and agents will coordinate with the Law Department of the City of Cleveland to access involved personnel, facilities, and documents in a reasonable manner that, consistent with DOJ's right to seek enforcement of this

Agreement, minimizes interference with daily operations. Should the City or CDP decline to provide DOJ with access to personnel, documents, or data based on privilege, the City and CDP will inform DOJ that it is withholding personnel, documents, or data on this basis, and will provide DOJ with a log describing the documents or data and the basis for withholding. If DOJ objects to the City's classification, DOJ may seek resolution of the propriety of the assertion from the Court.

392. While an administrative or criminal investigation into the conduct of an officer or officers is ongoing, neither the Monitor nor DOJ will ask the subject officer(s) or witness officer(s) questions related to the conduct that is under investigation.
393. The Monitor and DOJ will provide the City and CDP with reasonable notice of a request for copies of documents. Upon such request, the City and CDP will provide copies in a timely manner (electronic, where readily available) of the requested documents to the Monitor and DOJ, unless withheld as privileged or otherwise withheld pursuant to law as described above.
394. The Monitor will have access to all records and information relating to criminal investigations of CDP officers as permitted by law. The Monitor will have access to all documents in criminal investigation files that have been closed by CDP after the Effective Date.
395. The Monitor and DOJ will maintain all confidential or non-public information provided by the City and CDP in a confidential manner. Other than as expressly provided in this Agreement, this Agreement will not be deemed a waiver of any privilege or right the City and CDP may assert, including those recognized at common law or created by statute, rule, or regulation, against any other person or entity with respect to the disclosure of any document.

P. Court Jurisdiction, Modification of this Agreement, and Enforcement

396. This Agreement will become effective upon entry by the Court.
397. The Court will retain jurisdiction of this action for all purposes until such time as the City and CDP have achieved Substantial and Effective Compliance with this Agreement and maintained such compliance for no less than two consecutive years. At all times, the City and CDP will bear the burden of demonstrating by a preponderance

of the evidence its Substantial and Effective Compliance with this Agreement. DOJ acknowledges the good faith of the City of Cleveland in trying to address actions that are needed to promote police integrity and ensure constitutional policing. DOJ, however, reserves its right to seek enforcement of the provisions of this Agreement if it determines that the City and CDP have failed to substantially comply with any provision of this Agreement. DOJ will consult with officials from the City before instituting enforcement proceedings.

398. The City and DOJ may jointly agree to make changes, modifications, and amendments to this Agreement, which will be effective if approved by the Court. Such changes, modifications, and amendments to this Agreement will be encouraged when the Parties agree, or where the Monitor's reviews, assessments, and/or audits demonstrate that an Agreement provision as drafted is not furthering the purpose of this Agreement or that there is a preferable alternative that will achieve the same purpose. Where the Parties or the Monitor are uncertain whether a change to this Agreement is advisable, the Parties may agree to suspend the current Agreement requirement for a time period agreed upon at the outset of the suspension. During this suspension, the Parties may agree to temporarily utilize an alternative requirement. The Monitor will assess whether the suspension of the requirement, and the use of any alternative provision, is as effective, or more effective at achieving the purpose as was the original/current Agreement requirement, and the Parties will consider this assessment in determining whether to jointly stipulate to make the suggested change, modification, or amendment.
399. The Parties agree to defend the provisions of this Agreement including in collective bargaining. The Parties will notify each other of any court, union, or administrative challenge to this Agreement. In the event any provision of this Agreement is challenged in any city or state court, the Parties will seek removal to Federal Court.
400. The City and CDP agree to require compliance with this Agreement by their respective officers, employees, agencies, assigns, or successors.

Q. Termination of this Agreement

401. This Agreement will terminate when the City has been in Substantial and Effective Compliance with the search and seizure provisions for one year and with all of the

remaining provisions for two consecutive years. “Substantial and Effective Compliance” means that the City either has complied with all material requirements of this Agreement, or has achieved sustained and continuing improvement in constitutional policing, as demonstrated pursuant to this Agreement’s outcome measures.

402. If the Parties disagree whether the City has been in Substantial and Effective Compliance with the search and seizure provisions for one year and with all of the remaining provisions for two consecutive years, the City may seek to terminate this Agreement. Prior to filing a motion to terminate, the City agrees to notify DOJ in writing when the City has determined that they are in Substantial and Effective Compliance with this Agreement and that such compliance has been maintained for the required time periods. Thereafter, the Parties will promptly confer as to the status of compliance. If, after a reasonable period of consultation and the completion of any audit or evaluation that DOJ and/or the Monitor may wish to undertake, including on-site observations, document review, or interviews with the City and CDP’s personnel, the Parties cannot resolve any compliance issues, the City may file a motion to terminate this Agreement. If the City moves for termination of this Agreement, DOJ will have 60 days after the receipt of the City’s motion to object to the motion. If DOJ does not object, the Court may grant the City’s motion without a hearing. If DOJ does object, the Court will hold a hearing on the motion, and the burden will be on the City to demonstrate by the preponderance of the evidence that it is in Substantial and Effective Compliance with this Agreement and has maintained such compliance for the required time periods.

403. This Agreement is enforceable only by the Parties. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action. Accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement.

XV. DEFINITIONS AND ABBREVIATIONS

404. “Active physical resistance” means the subject’s physical actions are intended to prevent an officer from placing the subject in custody and taking control, but are not

- directed at harming the officer. Examples include: breaking the officer's grip or hiding from detection. Verbal statements alone do not constitute active resistance.
405. "Aggressive physical resistance" means the subject poses a threat of harm to the officer or others, such as when a subject attempts to attack or does attack an officer; exhibits combative behavior (e.g., lunging toward the officer, striking the officer with hands, fists, kicks, or any weapon).
406. "Arrest" is the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him. An arrest is a restraint of greater scope or duration than an investigatory stop or detention. An arrest is lawful when supported by probable cause.
407. Bias-free policing means policing that is accomplished without the selective enforcement or non-enforcement of the law, including the selection or rejection of particular policing tactics or strategies, based on the subject's membership in a demographic category.
408. "Canine apprehension" means any time a canine is deployed and plays a clear role in the capture of a person. The mere presence of a canine at the scene of an arrest or use of a canine solely to track a subject will not count as a canine apprehension.
409. "CDP" refers to the Cleveland Division of Police and its agents, officers, supervisors, and employees (both sworn and unsworn).
410. "Chief" means the Chief of Police of the Cleveland Division of Police or his or her properly designated Acting Chief.
411. "CIT" means crisis intervention trained.
412. "City" means the City of Cleveland, including its agents, officers, and employees.
413. "Crisis Intervention Program" is a first responder model of police-based crisis intervention that involves a dynamic collaboration of community, health care, and advocacy partnerships committed to improving the way law enforcement and the community respond to individuals in crisis.
414. "Community and problem-oriented policing" is a policing philosophy that promotes and relies on collaborative partnerships between law enforcement agencies and the individuals and organizations they serve to develop solutions to problems, increase trust

- in police, and improve the effectiveness of policing efforts.
415. “Complainant” means any person who makes a complaint against CDP or an officer or employee of CDP.
416. “Court” will refer to the United States District Judge for the Northern District of Ohio presiding over this case.
417. “Critical firearm discharge” means a discharge of a firearm by a CDP officer, including accidental discharges; discharges at animals, other than to euthanize an animal under controlled circumstances; and discharges at persons where no one is struck, with the exception of recreational activities, range, discharges into a weapons clearing trap, and training discharges that do not result in a person being struck.
418. “Days” means calendar days unless otherwise modified.
419. “Demographic category” means race, ethnicity, national origin, age, gender, gender expression or identity, sexual orientation, disability, religion, or limited English proficiency.
420. “Department of Justice” or “DOJ” refers jointly to the United States Department of Justice’s Civil Rights Division and the United States Attorney’s Office for the Northern District of Ohio.
421. “Developmental disability” is a condition that begins during the developmental period and that negatively affects the trajectory of the individual's physical, intellectual, and/or emotional development. A developmental disability is often a lifelong condition that results in substantial functional limitations in areas such as self-care, mobility, self-direction and capacity for independent living. It can also be characterized by problems with both intellectual functioning or intelligence, which include the ability to learn, reason, problem solve, and other skills; and adaptive behavior, which includes everyday social and life skills.
422. “Discipline” or “disciplinary action” means a personnel action for violation of an established law, regulation, rule, administrative rule, or CDP policy, including a verbal reprimand, written reprimand, suspension, or dismissal.
423. “District” refers to one of the service areas of CDP, which together cover the entire geographic area of the City of Cleveland. Each District is led by a District Commander.
424. “ECW” means Electronic Control Weapon, a weapon, including those manufactured by

TASER International, designed primarily to discharge electrical charges into a subject that will cause involuntary muscle contractions and override the subject's voluntary motor responses.

425. "ECW application" means the contact and delivery of an electrical impulse to a subject with an Electronic Control Weapon.
426. "Effective Date" means the day this Agreement is approved and entered as an order of the Court.
427. "Firearm" means any instrument capable of discharging a bullet or shot, including a pistol, revolver, rifle or shotgun. Bean bag shot guns used as such are not firearms for the purposes of this Agreement.
428. "Implement" or "implementation" means the putting into place of a policy or procedure, including the appropriate training of all relevant personnel, and the consistent and verified performance of that policy or procedure in actual practice through the regular use of audit tools.
429. "Including" means "including, but not limited to."
430. "Investigatory stop" or "investigatory detention" means a temporary restraint where the subject of the stop or detention reasonably believes that she or he is not free to leave within the meaning of *Terry v. Ohio*. An investigatory stop or detention may be a pedestrian, vehicle, or bicycle stop.
431. "Individual in crisis" means a person in a mental health crisis or who appears to be significantly under the influence of opioids or PCP.
432. "Less lethal force" means a force application not likely to cause death or serious physical injury. Use of less lethal force can nonetheless result in death or serious physical injury.
433. "Lethal force" means any use of force likely to cause death or serious physical injury, including the critical discharge of a firearm, or strike to the head, neck, or throat with a hard object.
434. "Mental health crisis" means an incident in which someone with an actual or perceived mental illness or developmental disability is experiencing intense feelings of personal distress (e.g., anxiety, depression, anger, fear, panic, hopelessness), obvious changes in functioning (e.g., neglect of personal hygiene, unusual behavior) or catastrophic life

events (e.g., disruptions in personal relationships, support systems, or living arrangements; loss of autonomy or parental rights; victimization; natural disasters), which may, but not necessarily, result in an upward trajectory of intensity culminating in thoughts or acts that are dangerous to his- or herself and/or others.

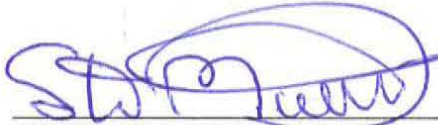
435. “Mental Health community” includes individuals and professionals from the mental health, alcohol and drug addiction, developmentally disabled, and child and adolescent development communities.
436. “Mental Health provider” includes professionals from the mental health, alcohol and drug addiction, developmentally disabled, and child and adolescent development communities, who have the appropriate training and education in their respective fields and who are currently licensed in the State of Ohio to deliver the services he or she has undertaken to provide.
437. “Mental illness” is a medical condition that disrupts an individual’s thinking, perception, mood, or ability to relate to others such that daily functioning and coping with the ordinary demands of life are diminished. Mental illness includes, but is not limited to, serious mental illnesses such as major depression, schizophrenia, bipolar disorder, obsessive compulsive disorder (“OCD”), panic disorder, posttraumatic stress disorder (“PTSD”), and borderline personality disorder. Mental illness includes individuals with dual diagnosis of mental illness and another condition, such as drug and/or alcohol addiction.
438. “Misconduct” means any improper conduct by an officer, including an alleged violation of CDP policy, procedure, regulations, orders, or other standards of conduct required of City employees including the improper use of force. Solely for purposes of this Agreement, misconduct does not include minor infractions, such as uniform violations, routine motor vehicle accidents, or violations unrelated to the terms of this Agreement.
439. “Mobile Computer-Aided Dispatch System” is a computerized method of dispatching police officers on a service call. It can also be used to send messages to the dispatcher and store and retrieve data (i.e., radio logs, field interviews, schedules, etc.).
440. “Monitor” means a team of people who will be jointly selected to monitor and report on the implementation of this Agreement.
441. “Neck hold” refers to one of the following types of holds: (1) carotid restraint hold; (2)

- a lateral vascular neck constraint; or (3) a hold with a knee or other object to a subject's neck.
442. "Non-disciplinary corrective action" refers to action other than discipline taken to enable or encourage an officer to improve his or her performance.
443. "OC Spray application" means the deployment of Oleoresin Capsicum Spray on a known subject. It does not include the deployment of OC Spray to clear a room when there are no visible subjects.
444. "Office of Professional Standards" or "OPS" means the City agency responsible for the intake and investigation of civilian complaints of police misconduct.
445. "OIP" means the Officer Intervention Program.
446. "Passive resistance" means non-compliance with officer commands that is non-violent and does not pose an immediate threat to the officer or the public. Bracing, tensing, linking arms, or verbally signaling an intention to avoid or prevent being taken into custody constitute passive resistance.
447. "Personnel" means all CDP employees.
448. "Police officer" or "officer" means any sworn law enforcement agent employed by or volunteering for CDP, including supervisors and reserve officers.
449. "Policies and procedures" means written regulations or directives, regardless of the name of the regulation or directive, describing the duties, functions, and obligations of CDP personnel, and providing specific direction on how to fulfill those duties, functions, or obligations. These include general orders, special orders, policies, procedures, and standard operating procedures.
450. "Procedural justice" refers to a concept involving four central principles designed to build public confidence in the police: 1) treating people with dignity and respect; 2) giving individuals a chance to be heard during encounters; 3) making decisions fairly and transparently, based on facts; and 4) conveying goodwill and trustworthiness.
451. "Reasonable force" means force that complies with the Fourth Amendment's requirement of objective reasonableness under *Graham v. Connor*.
452. "Records Management System" means an agency-wide system that provides for the storage, retrieval, retention, manipulation, archiving, and viewing of information, records documents, or files pertaining to law enforcement operations.

453. “Seizure” occurs when an officer’s words or actions convey to a reasonable person that he or she is not free to leave.
454. “Serious physical injury” means injury that creates a probability of death, or which causes significant serious permanent or protracted disfigurement, or which causes a significant permanent or protracted loss or impairment of the function of any body part or organ.
455. “Specialized unit” means a designated law enforcement component with specialized training, skills, and mission.
456. “Substantial and Effective Compliance” means that the City either has complied with all material requirements of this Agreement, or has achieved sustained and continuing improvement in constitutional policing, as demonstrated pursuant to this Agreement’s outcome measures.
457. “Supervisor” means sworn CDP personnel at the rank of sergeant or above (or anyone acting in those capacities) and non-sworn CDP personnel with oversight responsibility for other personnel.
458. “Unity of Command” means that all officers are assigned to a consistent, clearly identified first-line supervisor and that first-line supervisors are assigned to work the same days and hours as the officers they are assigned to supervise.
459. “Use of force” means any physical coercion used by an officer in performance of official duties that is a Level 1, 2, or 3 use of force.
460. “Use of force involving potential criminal conduct” means force that a reasonable and trained supervisor would conclude could result in criminal charges due to the apparent circumstances of the use of force.
461. “Use of Force Report” means a written report documenting all force at Level 1 or above.
462. “Will” or “Shall” or “agrees to” means that the provision imposes a mandatory duty.

Respectfully submitted this 26th day of May, 2015.

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