

**In the
Supreme Court of Ohio**

**STATE ex rel. GATEHOUSE MEDIA
OHIO HOLDINGS II, INC. D/B/A THE
COLUMBUS DISPATCH**

605 S. Front St.
Columbus, Ohio 43215

Relator,

vs.

**THE CITY OF COLUMBUS
Police Department**

Serve: Zach Klein, Esq.
City Attorney
77 North Front Street
Columbus, Ohio 43215

Respondent.

Case No.

Original Action in Mandamus

COMPLAINT FOR WRIT OF MANDAMUS

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For its Complaint for Writ of Mandamus, Relator Gatehouse Media Ohio Holdings II, Inc. d/b/a The Columbus Dispatch ("The Dispatch" or "Relator") states as follows:

I. INTRODUCTION

1. The citizens of Ohio have long enjoyed the right of robust access to the records of their government. The right rests on the idea that in a democracy, the government's records are the people's records, and the officials in whose custody they happen to be are merely trustees for the people. *See State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 13, 2018-Ohio-5108, 123 N.E.3d 887, ¶ 9; *Dayton Newspapers, Inc. v. Dayton*, 45 Ohio St.2d 107, 109, 341 N.E.2d 576 (1976); *State ex rel. Patterson v. Ayers*, 171 Ohio St. 369, 372, 171 N.E.2d 508 (1960). This Court has consistently recognized that "open access to government papers is an integral entitlement of the people, to be preserved with vigilance and vigor." *Kish v. City of Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, 846 N.E.2d 811, ¶ 17.

2. The concept of "public records" in Ohio law dates back to before Ohio's founding. The 1787 ordinance passed by the United States Congress establishing the first government for the Northwest Territory appointed a "Secretary" whose duties included keeping and preserving "the public records of the district." Northwest Territory Ordinance of 1787. Attending the concept of public records recognized in this nearly 250-year-old ordinance was the common law right of Ohio citizens to inspect their records—a right which a turn-of-the-century Cincinnati Superior Court judge explained is a property right, not merely a political one. *Wells v. Lewis*, 12 Ohio Dec. 170, 181 (Super.Ct.1901). Recognizing the right to inspect public records as one based in property law is consistent with the theory on which our system of government rests, which in turn is a rejection of English common law "that curtailed citizens' access to

governmental information." *Kish* at ¶ 17. See also *State ex rel. Natl. Broad. Co. v. City of Cleveland*, 38 Ohio St.3d 79, 81, 526 N.E.2d 786, 788 (1988) (observing that under early English common law "a citizen could inspect documents only with the consent of the crown or by showing that inspection was necessary to maintain or defend a legal action").

3. The right of Ohio citizens to inspect their government's records is a right fundamental to the very operation of Ohio's democracy. It thus follows that there must be limits to how, and to what extent, the government may curtail that right. As with any other property right limited or impaired by government regulation, legislation that intrudes upon an individual's right to inspect public records must be subject to judicial scrutiny. Moreover, the right of inspection is integral to the right of Ohio citizens "to instruct their representatives" and "to petition the general assembly for the redress of grievances" protected by Article I, Section 3. It is also closely tied to the right of Ohio citizens to engage in political speech protected by Article I, Section 11.

4. This case involves the right of Ohio citizens, and by extension the press, to inspect law enforcement records, and specifically, the right to inspect a government record that identifies law enforcement officers involved in a use of force incident.

5. Incidents in which law enforcement officers have used force in the exercise of the state's police powers have long been a catalyst for political debate in this country on myriad important public policy issues, including crime, police reform, and racial discrimination, among others. The identity of a law enforcement officer who uses force in the performance of their duties, including their training, discipline history, and other background information, informs the public debate in important ways.

6. Until this year, Ohio citizens enjoyed a robust right to inspect records identifying police officers involved in use of force incidents, most commonly through police video footage, and police incident and use of force reports.

7. Since the passage of H.B. 343, sometimes referred to as "Marsy's Law," and specifically, the enactment of R.C. 2930.07, Respondent The City of Columbus Police Department ("Respondent" or "Columbus PD") has concealed the identities of police officers involved in use-of-force incidents through redaction or denial of requests, citing Marsy's Law as the legal basis for doing so. In bringing this action under the Ohio Public Records Act (PRA), R.C. 149.43, The Dispatch seeks to challenge that practice. It does so on two alternative grounds.

8. First, Respondent's construction of R.C. 2930.07 is unreasonable as a matter of statutory interpretation, and inconsistent with the Ohio Supreme Court's decision in *City of Centerville v. Knab*, 162 Ohio St.3d 623, 2020-Ohio-5219, 166 N.E.3d 1167. In that case, the Court construed the term "victim" as used in Article I, Section 10(a) of the Ohio Constitution to exclude municipal corporations. As Chief Justice Kennedy wrote in her separate opinion concurring in the judgment, "Marsy's Law . . . creates rights that victims of crime may wield against the government; it does not grant the government rights against the people or itself." *Id.* at ¶ 48 (Kennedy, J. concurring in the judgment). Applying R.C. 2930.07 to shield the identity of police officers who wield the power of the state to utilize lethal force would grant rights to the government against the people, in this case, the people's right to inspect their government's records protected by the common law, and codified in the PRA.

9. Alternatively, if the term "victim" does include police officers involved in use of force incidents while performing their official duties, and thus, gives municipalities the right to shield the identities of officers under R.C. 2930.07, then R.C. 2930.07 unconstitutionally deprives the public and the press of their right to inspect public records—a right that The Dispatch asks this Court to find is protected by Sections 1, 3, 11, and 16 of the Ohio Constitution, as an issue of first impression.

10. Under either legal theory, The Dispatch asks for the same relief: that the Court grant the requested writ of mandamus directing Respondent to provide copies of the records The Dispatch has sought under R.C. 149.43, without redaction of information that would allow The Dispatch to identify the police officers involved.

II. THE PARTIES

11. Relator operates and does business as The Columbus Dispatch, a newspaper of general circulation covering news and events in the Columbus metropolitan area, and throughout Ohio.

12. Respondent the City of Columbus, which includes its police department ("CPD"), is a "public office" within the meaning of R.C. 149.011(A).

13. Pursuant to Section III ("Procedures") of Columbus Police Division Directive No. 2.01,¹ CPD officers or a supervisor are to complete a "Use of Force Report" ("UOFR") following incidents in which an officer uses a certain level of force against a person while in the line of

¹ This policy is available online at <https://new.columbus.gov/files/sharedassets/city/v/2/public-safety/police/directives/divisiondirective2.01.pdf>.

duty. (See **Exhibit 1**.) UOFRs therefore document the organization, functions, policies, decisions, procedures, operations, or other activities of CPD, and constitute records within the meaning of R.C.149.011(g). UOFRs "kept" by CPD are thus "public records" within the meaning of R.C. 149.43(A), unless an exception applies. *State ex rel. Standifer v. City of Cleveland*, 170 Ohio St.3d 367, 2022-Ohio-3711, 213 N.E.3d 665, ¶ 22 (denying categorical rule advanced by City of Cleveland that UOFR are exempt under the confidential law enforcement investigatory records (CLEIR) exception).

14. CPD police cruisers are equipped with dashboard cameras that CPD officers use while engaged in the performance of their official duties. Recordings made by those cameras are "public records," unless an exception applies. See *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety*, 168 Ohio St.3d 433, 2016-Ohio-7987, 71 N.E.3d 258, ¶ 34. See also R.C. 149.43(A)(16) & (17).

15. CPD officers also wear body cameras while they perform their duties under specified circumstances, as detailed in Columbus Police Division Directive No. 11.07.² (See **Exhibit 2**.) Recordings made by such cameras are "records" within the meaning of R.C. 149.011(g), and body-worn camera recordings kept by CPD are "public records," unless an exception applies. *State ex rel. Cincinnati Enquirer v. Cincinnati*, 157 Ohio St.3d 290, 2019-Ohio-3876, 135 N.E.3d 772, ¶ 13. See R.C. 149.43(A)(15) & (17).

² This policy is available online at <https://new.columbus.gov/files/sharedassets/city/v/1/public-safety/police/directives/11.07-body-worn-camera-bwc.pdf>.

III. THE PUBLIC RECORDS REQUESTS

16. Shortly after 4 p.m. on July 6, 2023, CPD officers were involved in a gunfire exchange on Interstate 70 with three individuals suspected of having been involved in an armed robbery of a Porsche dealership earlier in the day ("I-70 Incident").

17. CPD officers killed one suspect during the shootout, Abdisamad Ismail, and one of the suspects shot and injured an unidentified Columbus police officer. The two other suspects escaped but were apprehended a couple days later.

18. Shortly after the shooting, Bethany Bruner, a Dispatch reporter, requested a copy "of all body camera, dash camera and 911 calls etc. from the police shooting on I-70 west today . . ." ("Video Footage Request"), Affidavit of Bethany Bruner ("Bruner Aff."), Ex. A.

19. The next day, July 7, Ms. Bruner sent another request for "a copy of any use of force reports related to the shooting on Interstate 70 on July 6, 2023" ("UOFR Request"), Bruner Aff., Ex. B (collectively the Video Footage Request and UOFR Request are referred to as the "Records Requests").

20. Later that same day CPD issued a press release, stating:

Due to recently passed Marsy's Law and the direction of the Columbus City Attorney's Office, the Columbus Division of Police is unable to release the identities of the eight officers involved in this officer-involved showing.

Bruner Aff., Ex. C. CPD did not (and has not) specifically responded to The Disptach's UOFR Request, nor has CPD provided redacted copies of the UOFRs relating to the I-70 Incident.

21. On July 10, Kathryn Hartshorne, Public Records Supervisor for CPD sent an email to the media specifically denying the Video Footage Request, citing R.C.

149.43(A)(17)(d)-(f), R.C. 149.43(A)(17) (e)-(g), "ORC Chapter 2920 otherwise known as Marsy's Law" and R.C. 149.43(A)(1)(v) ("[r]ecords the release of which is prohibited by state or federal law") ("Video Footage Denial"), Bruner Aff., Ex. D.

22. On September 12, the Dispatch received a portion of the recordings from the dashboard and body-worn cameras sought by the Video Footage Request, but the recordings were redacted in such a way as to conceal the identities of the officers involved. City Attorney Zach Klein released a statement to the media on September 14 explaining that:

[t]he video released in the incident in question is footage captured prior to the point at which the officers become victims of a crime, i.e., when the shots were fired at officers. In accordance with the rights afforded to crime victims under Marsy's Law, identifying information has been removed from the recordings . . .

(See Bruner Aff., Ex. E)

23. To date, The Dispatch has not received any response to its UOFR Request, nor has it received full and complete copies of the records sought by its Video Footage Request.

IV. CLAIMS FOR RELIEF IN MANDAMUS

24. The Dispatch brings this action pursuant to R.C. 149.43 to compel CPD to produce all of the non-exempt information contained in the UOFRs and dashcam and body-worn camera recordings sought by its Records Requests of July 6 and July 7.

25. R.C. 149.43(B)(1) provides "[u]pon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time." That section further provides that "[i]f 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."

26. R.C. 149.43(B)(3) provides that "[i]f a request is ultimately denied, in part or in whole, the public office . . . shall provide the requester with an explanation, including legal authority, setting forth why the request was denied." That section further requires a public office to respond in writing "[i]f the initial request was provided in writing . . ."

27. "Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio's Public Records Act." *State ex rel. Cincinnati Enquirer v. Sage*, 142 Ohio St.3d 392, 2015-Ohio-974, 31 N.E.3d 616, ¶ 10 (internal quotations omitted). To establish entitlement to a writ of mandamus under the PRA, a relator must establish, by clear and convincing evidence, a "clear legal right to the requested relief and a clear legal duty on the part of [the Respondent] to provide relief." *Id.*

28. When an exception to disclosure is invoked, the public office bears the burden of establishing that the withheld record or information "fall[s] squarely" within that exception. *See State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St.3d 81, 2008-Ohio-1770, 886 N.E.2d 206, ¶ 10. "Exceptions to disclosure under the act are strictly construed against the records custodian . . ." *State ex rel. Cincinnati Enquirer v. Cincinnati*, 157 Ohio St.3d 290, 2019-Ohio-3876, 135 N.E.3d 772, ¶ 6.

29. Under this Court's precedent, UOFRs and recordings from police dashboard and body-worn cameras are "public records" within the meaning of R.C. 149.43(A). *See State ex rel. Standifer v. City of Cleveland*, 170 Ohio St.3d 367, 2022-Ohio-3711, 213 N.E.3d 665, ¶ 22; *See State ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety*, 168 Ohio St.3d 433, 2016-Ohio-

7987, 71 N.E.3d 258, ¶ 34; *State ex rel. Cincinnati Enquirer v. Cincinnati*, 157 Ohio St.3d 290, 2019-Ohio-3876, 135 N.E.3d 772, ¶ 13. CPD thus bears the burden of establishing the applicability of an exception to disclosure.

COUNT I
(UOFR Request – Violation of R.C. 149.43(B)(3))

30. Relator incorporates the preceding paragraphs as if fully recited herein.
31. The UOFR Request constitutes a "request" within the meaning of R.C. 149.43(B)(3), and is "in writing" within the meaning of that provision.
32. A UOFR constitutes a "public record" under R.C. 149.43(A)(1), unless an exception applies. CPD bears the burden of establishing the applicability of any exception.
33. Under R.C. 149.43(B)(1), "all public records responsive to the request shall be promptly prepared and made available for inspection to the requester at all reasonable times during regular business hours."
34. If a public office intends to deny a request, it must provide the denial within a reasonable time. *State ex rel. Hogan Lovells U.S., L.L.P. v. Dept. of Rehab. & Corr.*, 156 Ohio St.3d 56, 2018-Ohio-5133, 123 N.E.3d 928, ¶ 44.
35. The Dispatch made its UOFR Request on July 7, 2023 by electronic submission to the CPD's public records unit at "publicrecords@columbuspolice.org." The UOFR Request fairly described the records sought. To date, Relator has not received a response. The over 90-day delay is not reasonable based upon all of the pertinent facts and circumstances. *Id.* at ¶ 32.

36. R.C. 149.43(C)(2) mandates an award of statutory damages where a public office failed to comply with an obligation in accordance with R.C. 149.43(B).

37. R.C. 149.43(C)(3)(b)(i) permits a Court to award a requester attorney's fees where a public office "failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under [R.C. 149.43(B)]."

38. At minimum, CPD failed to comply with its obligation under R.C. 149.43(B)(3) to provide a written response to the UOFR Request setting forth the reasons for its denial, and citing legal authority.

39. The Dispatch is thus entitled to statutory damages of \$1000.

40. The Dispatch also requests an award of its reasonable attorney's fees and costs in bringing this action pursuant to R.C. 149.43(C)(3).

COUNT II
(Video Footage Request – Violation of R.C. 149.43(B)(1))

41. Relator incorporates the preceding paragraphs as if fully recited herein.

42. The Dispatch's Video Footage Request sought copies of recordings made by the dashboard and body-worn cameras of the I-70 shootout on July 6, 2023.

43. Video recordings made by police dashboard and body-worn cameras are public records unless they fall squarely within an exception to disclosure.

44. CPD has redacted from the dashboard and body-worn camera recordings of the I-70 Incident provided to The Dispatch in response to its Video Footage Request all "identifying information" that would permit the public to identify the officers involved in the incident.

45. CPD has redacted this information on the ground that it considers the involved police officers "victims" within the meaning of R.C. 2930.07, which incorporates the definition of "victim" provided in Article I, § 10a of the Ohio Constitution. R.C. 149.43(A)(1)(rr) excepts from the definition of "public records," "[r]ecords, documents, and information the release of which is prohibited under sections 2930.04 and 2930.07 of the Revised Code[.]."

46. CPD bears the burden of demonstrating that the identifying information of the officers involved in the I-70 use of force incident falls squarely within R.C. 149.43(A)(1)(rr). It cannot meet this burden, as a matter of law, for two reasons.

A. The term "victim" as used in R.C. 2930.07 does not include a peace officer against whom a criminal offense or delinquent act is committed while in the line of duty.

47. Recently enacted R.C. 2930.07(C) provides, in part:

Any public office or public official that is charged with the responsibility of knowing the name, address, or other identifying information of a victim or victim's representative as part of the office's or official's duties shall have full and complete access to the name, address, or other identifying information of the victim or victim's representative. That public office or public official shall take measures to prevent the public disclosure of the name, address, or other identifying information of the victim or victim's representative through the use of redaction as set forth in division (D) of this section.

48. R.C. 2930.07(D) provides, in pertinent part:

On written request of the victim or victim's representative to a law enforcement agency, prosecutor's office, or court, all case documents related to the cases or matters specified by the victim maintained by the entity to whom the victim or victim's representative submitted the request shall be redacted prior to public

release pursuant to section 149.43 of the Revised Code to remove the name, address, or other identifying information of the victim.

R.C. 2930.07(D)(1)(a)(i).

49. R.C. Chapter 2930 incorporates the definition of the term "victim" given in Ohio Constitution, Article I, Section 10a, which defines that term as "a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act." R.C. 2930.01(H).

50. The Ohio Supreme Court has held that the term "victim" does not include a municipal corporation, reasoning in part that Ohio voters who approved the amendment would not have "understood and intended that a public corporation would be a victim." *City of Centerville*, 162 Ohio St.3d 623, 2020-Ohio-5219, 166 N.E.3d 1167, ¶ 30. The Court further reasoned that:

[a] constitution serves, in part, as a guarantor of private rights, and Marsy's Law engrains into our Constitution protections for victims of crimes. It seems incongruent in this context to interpret the word "person" in the amendment in a way that would give the government rights enforceable against its own citizens.

Id. at ¶ 29.

51. Echoing that reasoning, Chief Justice Kennedy, in her separate opinion, wrote:

[a] municipal corporation exercising the police power exerts the sovereignty of the state of Ohio against the people, *see State v. Mutter*, 150 Ohio St.3d 429, 2017-Ohio-2928, 82 N.E.3d 1141, ¶ 16, and is therefore "an arm of sovereignty and a governmental agency," *Liming*, 89 Ohio St.3d at 558, 733 N.E.2d 1141, quoting *Wooster v. Arbenz*, 116 Ohio St. 281, 156 N.E.210 (1927). When acting as the sovereign in performing a governmental function, a municipal corporation is not a "person" protected by Article I, Section 10a of the Ohio Constitution. Rather, it is an arm of the state and therefore precluded from violating the rights of victims established by Section 10a. It is the vindicator of the victim's rights and cannot itself be a victim.

Id. at ¶ 50 (Kennedy, J. concurring in the judgment).

52. The same reasoning applies to a peace officer when exercising the powers of the state. As one court of appeals recognized over a century ago:

The police department derives its authority from the state. *State, ex rel. Doerfler, Pros. Atty., v. Price, Atty. Genl.*, 101 Ohio St. 50, 128 N.E. 173.

The duties of a police officer are the upholding of the law, to see that the laws are obeyed; to prevent and punish infraction of the criminal laws of the state and city; and to patrol his beat for these purposes. In procuring the performance of these duties, *through its police officers*, the city is engaged in the discharge of a governmental function. It is the exercise of a state power.

Cincinnati v. Butterfield, 14 Ohio App. 395, 396-97 (1921) (emphasis added).

53. Ohio police officers involved in a use of force incident while in the line of duty are exercising the power of the state of Ohio—powers that they would not have as private citizens. Consequently, their actions while performing their duties are governed by a distinct set of laws. For example, police officers enjoy broad immunity from liability unless their acts or omissions were either "manifestly outside the scope of the employee's employment or official responsibilities" or "with malicious purpose, in bad faith, or in a wanton or reckless manner." R.C. 2744.03(A)(6).

54. The rights afforded by Section 10a make clear that voters who approved the amendment would not have understood or intended that the term "victim" encompass peace officers against whom criminal or delinquent offenses are committed in the line of duty. For instance, Section 10a(A)(6) gives a victim the right "to refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused." Construing the definition of "victim" to include peace officers could allow a defendant-police officer in a civil rights action to avoid discovery, even where the officer is relying on the defense of qualified immunity (a defense not available to private citizens).

55. Other rights, such as the right to "reasonable protection from the accused"; "reasonable notice of any release or escape of the accused"; or "confer with the attorney for the government" do not suggest an intention by Ohio voters to include peace officers, who—by virtue of their position within the government—enjoy ready access to government information about an accused and prosecutors pursuing criminal charges for crimes committed against them.

56. For the foregoing reasons, the term "victim" should not be construed to include peace officers against whom a criminal offense or delinquent act is committed in the line of duty.

B. If R.C. 2930.07 permits a law enforcement agency to redact the names of police officers involved in a use of force incident from public records, the statute should be held to unconstitutionally infringe on the right of the public to inspect public records protected by Sections 1, 3, 11 and 16 of the Ohio Constitution.

57. Article I of the Ohio Constitution ("Ohio Bill of Rights"), like its federal counterpart, places limitations on the power of Ohio government to infringe upon the rights of Ohio citizens. Section 1 protects "certain inalienable rights" of Ohio citizens, among which include liberty and acquiring, possessing, and protecting property. Section 3 protects the right of the people "to instruct their representatives" and to "petition the general assembly for the redress of grievances." Section 11 protects the rights of citizens to "freely speak, write, and publish his sentiments on all subjects." Section 16 affords citizens due process of law for "injury done him in his land, goods, person, or reputation."

58. Ohio citizens have long enjoyed the right to inspect their government's records. Prior to the enactment of the PRA, the Ohio Supreme Court defined this right as follows:

Generally, those records in the custody of public officials which have been designated "public records" by the General Assembly are open to inspection by anyone at appropriate times, subject to the limitation that such inspection does not

endanger the safety of the records or unreasonably interfere with the discharge of the duties of the officer having custody of the same.

State ex rel. Patterson v. Ayers, 171 Ohio St. 369, 171 N.E.2d 508 (1960), paragraph 1 of the syllabus. In a 1901 decision, a Cincinnati Superior Court judge characterized the right of inspection as a property right, and not a mere political one. *Wells v. Lewis*, 12 Ohio Dec. 170, 181 (Super.Ct.1901) (holding that because records were held by county auditor as trustee of the people of Hamilton County, the right of a citizen to inspect them "is the right to inspect property in which he has an interest . . .").

59. Although the Ohio Supreme Court has alluded to the potential existence of limits on how far the General Assembly may go in curtailing the public's right to inspect their records, the Court has never addressed the issue. *See State ex rel. Patterson* at 171 ("How far the General Assembly might go in limiting access to and inspection of public records is not now before us.").

60. Respondent's application of R.C. 2930.07 to conceal the identities of police officers in the dashboard and body-worn camera video footage deprives The Dispatch of its right to inspect records in which it, as a citizen of Ohio, has property rights. *See Wells*. The government's authority to intrude on an individual's property rights is predicated on the proper use of police powers, for the public welfare. *See Moore v. City of Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 38 (addressing zoning ordinances). Accordingly, legislation that intrudes upon an individual's right to inspect government records, at a minimum, must not be arbitrary and unreasonable and have a substantial relation to public health or safety. *Id.*

61. But R.C. 2930.07 also intrudes upon other fundamental rights protected by the Ohio Constitution when applied to conceal information about police officers, namely the right to petition the government, and to free speech.

62. First, such laws burden the right of The Dispatch (and by extension Ohio citizens who read The Dispatch) "to instruct their representatives" and "to petition the general assembly for the redress of grievances" protected by Article I, Section 3. "Facts, after all, are the beginning point for much of the speech that is most essential to advance human knowledge and to conduct human affairs." *Sorrell v. IMS Health*, 564 U.S. 552, 570 (2011). Without knowing the identities of police officers involved in use of force incidents, the public is deprived of information that could inform their views on issues such as crime, police reform, and civil rights—all issues of great public concern and on which the public can be expected to instruct their representative and petition the general assembly.

63. Second, the law burdens The Dispatch's ability to engage in core political speech protected by Section 11 of the Ohio Bill of Rights for the same reason, that is, by depriving it of factual information necessary to engage in speech on issues of great public concern. *Bowling Green v. Lodico*, 11 Ohio St.2d 135, 140, 228 N.E.2d 325 (1967) ("The constitutional safeguard [of free speech] . . . was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people . . .") (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964)). *Cf. Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir.2011) ("Gathering information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting 'the free discussion of governmental affairs.'") (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1966)). Specifically, the identities of police officers involved in use of force incidents allows a

newspaper to investigate an officer's training, prior use of force incidents, disciplinary history, public statements, and other information that inform the public debate about issues such as crime prevention, police reform, and civil rights. *See, e.g., Klein v. Madison*, E.D.Pa. No. 17-4507, 2018 U.S. Dist. LEXIS 121420, at *6 (July 20, 2018) (holding that "the public interest in the proper use of force by police officers, the investigation of complaints regarding excessive force and in alleged false reporting by police officers and other public officials is exceptionally strong").

64. Given the burden that R.C. 2930.07 also places on these other fundamental rights, a heightened level of scrutiny is appropriate. Under intermediate scrutiny, the legislation "(1) must be narrowly tailored to serve a significant government interest, and further, it (2) must leave open alternative means of exercising the right." *State v. Henderson*, 11th Dist. Portage No. 2010-P-0046, 2012-Ohio-1268, ¶ 52 (quoting *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983)). Under strict scrutiny, "a statute will be considered unconstitutional unless it is shown to be necessary to promote a compelling governmental interest." *Sorrell v. Thevenir*, 69 Ohio St.3d 415, 423, 633 N.E.2d 504 (1994).

65. As applied to permit concealing the names of police officers involved in use of force incidents, R.C. 2930.07 fails under even rational basis review, as it does not bear a substantial relation to public health and safety. To the contrary, application of R.C. 2930.07 to the names of police officers involved in use of force incidents would strip the public of access to information that impacts the health and safety of citizens, namely, how the government is employing the use of force in the exercise of its police powers. On the other hand, the *per se* rule against disclosure of the names of police officers involved in a use of force incident due solely to

their status as the victim of a crime does not advance any cognizable governmental or public interest.

66. Accordingly, to the extent R.C. 2930.07 allows Respondent to withhold video footage of the I-70 Incident on the ground that release would disclose identifying information of the police officers involved in the shooting, it violates the Ohio Constitution and cannot be relied upon to withhold records responsive to the Video Footage Request. *See City of Middletown v. Ferguson*, 25 Ohio St.3d 71, 80, 495 N.E.2d 380 (1986) ("An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.") (quoting *Norton v. Shelby Cty.*, 118 U.S. 425, 442 (1886)).

COUNT III
(UOFR Request – Violation of R.C. 149.43(B)(1))

67. Relator incorporates the preceding paragraphs as if fully recited herein.

68. The Dispatch's UOFR Request sought copies of use of force reports for the I-70 Incident. Such reports are "public records" unless otherwise exempt. *State ex rel. Standifer v. City of Cleveland*, 170 Ohio St. 3d 367, 2022-Ohio-3711, 213 N.E.3d 664, ¶ 21 (declining to hold that use of force reports are categorically exempt from disclosure as confidential law enforcement investigatory records).

69. Respondent has not responded to The Dispatch's UOFR Request. To the extent that Respondent relies upon R.C. 2930.07 as the basis for withholding the requested UOFRs, Respondent bears the burden of demonstrating the applicability of that exception, and cannot do so for the reasons previously set forth.

WHEREFORE, The Dispatch requests that the court issue a writ of mandamus commanding Respondent to: (1) respond to The Dispatch's UOFR Request in accordance with R.C. 149.43(B)(3); (2) make all video footage responsive to the Video Footage Request available for inspection and copying in accordance with R.C. 149.43(B)(1); and (3) make all use of force reports responsive to the UOFR Request available for inspection and copying in accordance with R.C. 149.43(B)(1). The Dispatch further requests an award of statutory damages pursuant to R.C. 149.43(C)(2) and an award of its reasonable court costs and attorney's fees pursuant to R.C. 149.43(C)(3).

Respectfully submitted,

/s/ John C. Greiner

John C. Greiner* (0005551)

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PRAECIPE FOR SERVICE

TO THE CLERK:

Please serve a summons and a copy of the *Complaint for Writ of Mandamus* along with the *Affidavit of Bethany Bruner in Support of Complaint for Writ of Mandamus* on the Respondent identified in the caption on page one via certified mail, return receipt requested.

/s/ John C. Greiner
John C. Greiner (0005551)

4868-2841-4592.2

EXHIBIT 1

Columbus Police Division Directive	EFFECTIVE	NUMBER
	Aug. 01, 1987	2.01
	REVISED	TOTAL PAGES
	Dec. 30, 2017	11
Use of Force		



I. Definitions

A. Use of Force

The exertion of energy or the **actions of** personnel in the performance of their duties used to direct or control another's movements or actions. A use of force **may be implemented** to control resistive or aggressive behavior toward the involved personnel, other personnel, third parties, or property.

B. Use of Force Levels of Control

1. Levels of Control used by the Division of Police **for reporting purposes** are:

Level 0: Officer presence, verbal and non-verbal commands, searching, handcuffing, sparking a taser for compliance, **and using** flashbangs and multiple baton rounds as diversions

Level 1: Empty hand control, pressure points, grounding techniques, and joint manipulations

Level 2: Use of chemical spray

Level 3: Use of electronic device (electronic custody belt, taser or **Electronic Control Weapon (ECW)**)

Level 4: Hard empty hand control (strike/punch/kick)

Level 5: Use of impact weapon (baton/flashlight)

Level 6: Police K-9 bite

Level 7: Less lethal weapons (beanbag/multiple baton rounds)

Level 8: Deadly force

C. Deadly Force

Any force which carries a substantial risk that it will proximately result in the death of any person.

D. Injury

1. For the purposes of this directive, injuries are classified as:

a. Minor Injury

An injury that does not require transport to a medical facility.

b. Serious Injury

An injury that requires transport to a medical facility for treatment.

Note: If a Division supervisor classifies an injury as minor, refusal at the county jail does not require a **Use of Force-Injury** to Prisoner administrative investigation.

E. Taser Application

One full or partial five-second cycle of the taser.

II. Policy Statements

A. General

1. ***When reasonable, sworn personnel should try to de-escalate a situation by using trained techniques, such as building rapport, communication skills, taking cover, etc. This is not an all inclusive list.***
2. It is well established that police officers may use force to effect an arrest, to defend themselves, or to defend others. An officer should not desist from any official duty merely because resistance is offered. Police officers shall not use more force than is reasonable in a particular incident.
3. Factors to be considered when determining the reasonableness of a use of force are:
 - a. The severity of the crime at issue.
 - b. Whether the **subject** poses an immediate threat to the safety of the officer or others.
 - c. Whether the **subject** is actively resisting arrest.
 - d. Whether the **subject** is attempting to evade arrest by flight.
4. ***Force may be used during a medical emergency if:***
 - a. ***The person experiencing a medical emergency is incapable of making a rational decision under the circumstances and poses an immediate threat of serious harm to himself, herself, or others.***
 - b. ***Some degree of force is reasonably necessary to minimize the immediate threat.***
 - c. ***The force being used is reasonably necessary under the circumstances.***
5. ***Sworn personnel should take into consideration an unarmed person's known mental health status prior to using force.***
6. Officers shall use their training to guide them through a use of force incident. The preferred response to resistance and aggression is a trained technique **reasonable for the circumstances**. However, during a situation involving the infliction or threatened infliction of serious physical harm, the use of an untrained response, **such as neck restraints**, while not normally authorized, may be reasonable to end the threat and survive the encounter. The proper exertion of physical force used to control **the subject** shall be consistent with Division policy.

7. All uses of force shall be reported consistent with Division policies. Involved personnel shall notify an available on-duty Division supervisor in the following descending order:
 - a. Their immediate supervisor;
 - b. Another sworn supervisor within their chain of command; **or**
 - c. Any other sworn Division supervisor, who may personally conduct the investigation or may notify a supervisor in the involved officer's chain of command to conduct the investigation.
8. The Internal Affairs Bureau (IAB) shall forward a monthly report to the Training Bureau that summarizes all Level 2 through Level 8 Use of Force Reports, form U-10.128, received.
9. The Training Bureau shall review the monthly summary of Use of Force Reports received from IAB along with the original Levels 0 and 1 Use of Force Reports to monitor techniques for their effectiveness and to make approved changes in trained techniques and lesson plans.
10. All sworn Division personnel shall receive annual in-service training in the Division's use of force policy.
11. Division supervisors conducting use of force investigations shall photograph involved persons as detailed in the Supervisor's Manual.
12. Restrictions on Supervisors Conducting Investigations
 - a. Division supervisors who actively participate in or order a use of force shall not conduct any subsequent investigation. This restriction does not apply to tactical situations, **for example, those involving** SWAT, In-Tac, or field forces.
 - b. When a Division supervisor is prohibited from conducting the investigation, the involved supervisor's immediate supervisor or, if unavailable, another Division supervisor of a higher rank than the involved supervisor shall be contacted. The contacted supervisor may conduct the investigation or may assign it to an alternate supervisor.
13. If requested, IAB shall conduct an administrative investigation.

Note: Personnel who are the focus of a criminal investigation may invoke their constitutional rights. This does not apply if the investigation is strictly administrative in nature. Information compelled from the focus employee in an administrative investigation shall not be shared with, or in any manner released to, any unit conducting a criminal investigation, except as pursuant to the Ohio Public Records Act.

14. Sworn personnel shall not use any force for a retaliatory or punitive purpose.

B. Deadly Force

1. Sworn personnel may use deadly force when the involved personnel have reason to believe the response is objectively reasonable to protect themselves or others from the imminent threat of death or serious physical harm.

2. Sworn personnel may use deadly force upon a human being to prevent escape when there is probable cause to believe that the **subject** poses an immediate threat of serious physical harm to others.
3. Sworn personnel **not in a vehicle** should avoid positioning themselves in the path of a moving vehicle **or in a position vulnerable to being struck if the vehicle were suddenly moved**.
 - a. Sworn personnel in the direct path **or a position vulnerable to being struck by** a moving vehicle should attempt to take evasive action to avoid being struck by the vehicle.
 - b. Sworn personnel may only fire a weapon at the driver or occupant of a moving vehicle when there is an articulable, reasonable belief that the subject poses an immediate threat of death or serious physical harm to himself, herself, or others.
 - c. **Sworn personnel should not extend their displayed firearm inside the passenger compartment of an occupied vehicle.**
 - d. **Sworn personnel should avoid reaching into a vehicle and position(s) that make them vulnerable to being dragged.**
4. If reasonable, sworn personnel should give a verbal warning of the intention to use deadly force.
5. While sworn personnel have an affirmative duty to use that degree of force reasonable to protect human life, the use of deadly force is not reasonable merely **to** protect property interests. Only under circumstances where it is reasonable to believe an infliction or threatened infliction of serious physical harm to human life exists is the use of deadly force justified.
6. The use of deadly force by sworn personnel should not create a danger to the public that outweighs the benefits of its use.
7. Sworn personnel shall not fire a warning shot unless there is justification to use deadly force **and should ensure**:
 - a. **There are no bystanders in the line of fire or that could move into the line of fire; and**
 - b. **The backstop is reasonably likely to contain or stop the discharged bullet.**
8. Facts unknown to sworn personnel at the time deadly force is used cannot be considered in determining whether the involved personnel acted in conformity with this policy.
9. Investigations of uses of force resulting in death shall be forwarded to the county prosecutor in the county in which the incident occurred. That prosecutor will determine if the case will be presented to a grand jury.

C. Use of Firearm Against Dangerous Animals

- 1. Sworn personnel being threatened or attacked by a dangerous animal should attempt to use trained techniques and/or intermediate weapons before using a firearm to protect themselves or another person. If these attempts fail to halt the animal's attack, and when left with no alternative other than to use a firearm, sworn personnel should determine whether the backstop is able to control and contain any projectiles that may not find their intended mark or that may ricochet. Consider the presence of individuals and their actions relative to the proximity of the dangerous animal. Grassy and/or dirt areas are the preferred location for a backstop.**
- 2. Sworn personnel shall not fire or deploy a weapon at a dangerous animal unless the animal poses an imminent threat to personnel or others, use of the weapon is reasonable, and the risk to human life is minimized.**
- 3. Sworn personnel shall not use a firearm to prevent or disrupt an animal attacking another animal.**

Note: Pets are deemed to be property, and a firearm is not to be used to protect property.

III. Procedures

A. Level of Control 0 (Sparking a Taser for Compliance) or Level of Control 1 with No Injury

1. Involved Personnel

Complete a Use of Force Report and forward it to your immediate supervisor by the end of your shift or by the beginning of your next shift if the incident occurred outside of assigned duty hours. If your immediate supervisor is unavailable, forward the report to any on-duty supervisor within your chain of command.

2. Investigating Supervisor

- a. Review and sign the Use of Force Report.
- b. Forward the report directly to IAB.
- c. Forward a copy of the report to the immediate supervisor of the involved personnel.

3. Internal Affairs Bureau

Forward the original Use of Force Report to the Training Bureau.

B. Level of Control 0 or 1 with a Complaint of an Injury Caused by the Response - No Serious Physical Harm to a Human

1. Involved Personnel

- a. Cause any needed medical aid to be rendered.

- b. Immediately notify, or cause notification of, an on-duty Division supervisor.
 - c. Complete a Use of Force Report and give it to the investigating supervisor.
2. Investigating Supervisor
- a. Review and sign the Use of Force Report.
 - b. Minor Injury
 - (1) Complete a Data Processing Worksheet, form U-10.164, **and** attach the Use of Force Report; a copy of the Arrest Information, form U-10.100; and any photographs taken.
 - (2) Forward the packet directly to IAB.
 - (3) Forward a copy of the report to the immediate supervisor of the involved personnel.
 - c. Serious Injury
 - (1) Complete an Injury to Prisoner administrative investigation and a Data Processing Worksheet. Attach the Use of Force Report and a copy of the Arrest Information form.
 - (2) Forward the packet through the chain of command to IAB.
3. Internal Affairs Bureau
- a. If applicable, record the incident in the involved personnel's IAB database **record**.
 - b. Maintain a file copy of the Use of Force Report.
 - c. Forward the original Use of Force Report to the Training Bureau.
- C. Level of Control 2
1. Involved Personnel
- a. Cause any needed medical aid to be rendered.
 - b. Immediately notify, or cause notification of, an on-duty supervisor.
 - c. Complete a Use of Force Report and give it to the investigating supervisor.
2. Investigating Supervisor
- a. Review and sign the Use of Force Report.
 - b. Forward a copy of the report to the immediate supervisor of the involved personnel.
 - c. If the **subject** is being arrested or issued a summons:
 - (1) Ensure that the arresting personnel include the facts necessitating the use of chemical spray and details of the decontamination/treatment rendered in the narrative section of the Arrest Information form.
 - (2) Include a brief statement indicating justification for the use of chemical spray, the effectiveness of the chemical spray, and details of the decontamination process and treatment rendered on the Use of Force Report.

- (3) Ensure that an “X” is placed in both the “Chemical Spray” box on the top left corner and the “Use of Force” box on the top right corner on the front of the Arrest Information form.
 - (4) Complete a Data Processing Worksheet, attach the Use of Force Report and a copy of the Arrest Information form, and forward the packet through the involved personnel’s chain of command to IAB.
 - d. If no arrest is made, add comments to the back of the Use of Force Report, and forward it along with a Data Processing Worksheet through the involved personnel’s chain of command to IAB.
 - e. If circumstances indicate that the use of chemical spray was not within Division policy, complete an investigation as indicated on the Use of Force Report, and forward it along with a Data Processing Worksheet through the involved personnel’s chain of command to IAB.
 - f. For a Level of Control 2 against a handcuffed subject:
 - (1) Identify and interview the following:
 - (a) Involved Division personnel
 - (b) All available witnesses
 - (c) The subject upon whom chemical spray was used
 - (2) Review and sign the Use of Force Report.
 - (3) Complete an administrative investigation.
 - (4) Complete a Data Processing Worksheet; attach the Use of Force Report, a copy of the Arrest Information form, and the administrative investigation; and forward the packet through the involved personnel’s chain of command to IAB.
3. Commander
- Make a final determination for Level of Control 2 (not against a handcuffed **subject**) unless deviation from progressive discipline and/or departmental charges are recommended. Forward the investigative packet to IAB.
4. Deputy Chief
- a. Make a final determination for Level of Control 2 against a handcuffed subject unless deviation from progressive discipline and/or departmental charges are recommended.
 - b. Forward the investigative packet to IAB.
 - c. Cause the involved personnel to be notified of the final determination when no discipline or progressive discipline not resulting in departmental charges is the result.
5. Internal Affairs Bureau
- a. Record the incident in the involved personnel’s IAB database **record**.
 - b. Maintain the original Use of Force Report.

D. Level of Control 3

1. Involved Personnel

- a. Cause any needed medical aid to be rendered.
- b. Immediately notify, or cause notification of, an on-duty supervisor.
- c. Complete a Use of Force Report and a Use of Taser Report, form U-10.128T, and give them to the investigating supervisor.

2. Investigating Supervisor

- a. Identify and interview the following:
 - (1) Involved Division personnel
 - (2) All available witnesses
 - (3) The subject upon whom the taser was used
- b. Review and sign the Use of Force Report and the Use of Taser Report.
- c. Complete the Data Processing Worksheet; attach the Use of Force Report, Use of Taser Report, any photographs taken, and a copy of the Arrest Information form; and forward the packet through the involved personnel's chain of command to IAB.
- d. For a Level of Control 3 against a handcuffed subject, when three or more cycles of the taser are applied to one subject, when one taser is applied to multiple subjects during the same incident, or when multiple tasers are applied to the same subject:
 - (1) Complete an administrative investigation.
 - (2) Attach the administrative investigation to the Data Processing Worksheet, Use of Force Report, Use of Taser Report, any photographs taken, and a copy of the Arrest Information form, and forward the packet through the involved personnel's chain of command to IAB.

3. Deputy Chief

- a. Make a final determination for Level of Control 3 unless deviation from progressive discipline and/or departmental charges are recommended.
- b. Forward the investigative packet to IAB.
- c. Cause the involved personnel to be notified of the final determination when no discipline or progressive discipline not resulting in departmental charges is the result.

4. Internal Affairs Bureau

- a. Record the incident in the involved personnel's IAB database **record**.
- b. Maintain the original Use of Force Report.

E. Level of Control 4 through 7

1. Involved Personnel

- a. Cause any needed medical aid to be rendered.
- b. Immediately notify, or cause notification of, an on-duty supervisor.
- c. Complete a Use of Force Report and give it to the investigating supervisor.

2. Investigating Supervisor
 - a. Identify and interview the following:
 - (1) Involved Division personnel
 - (2) All available witnesses
 - (3) The subject upon whom the use of force was used
 - b. Review the Use of Force Report.
 - c. Complete an administrative investigation.
 - d. Complete a Data Processing Worksheet; attach the Use of Force Report, a copy of the Arrest Information form, and the administrative investigation; and forward the packet through the involved personnel's chain of command to IAB.
3. Deputy Chief
 - a. Make a final determination for Levels of Control 4 through 7 unless deviation from progressive discipline and/or departmental charges are recommended.
 - b. Forward the investigative packet to IAB.
 - c. Cause the involved personnel to be notified of the final determination when no discipline or progressive discipline not resulting in departmental charges is the result.
4. Internal Affairs Bureau
 - a. Record the incident in the involved personnel's IAB database **record**.
 - b. Maintain the original Use of Force Report.

F. Use of Force Resulting in Serious Physical Harm to or Death of a Human

Note: If the use of force involves the discharge of a firearm other than a gas gun, follow the procedures set forth in the "Discharged Firearms" directive. If the use of force involves the discharge of a gas gun, follow the procedures set forth in the "Gas Guns and Grenades" directive.

1. Involved Personnel
 - a. Cause any needed medical aid to be rendered.
 - b. Immediately cause Communications Bureau personnel to be notified.
 - c. Secure the scene.
2. Communications Bureau
 - a. Dispatch personnel to render assistance or to secure the scene.
 - b. Notify the **Columbus Division of Fire and those listed on the Emergency Notification Guide**.

Note: The Investigative Duty Desk will contact the Critical Incident Response Team.

3. Officer Support Team
Provide the involved personnel with any assistance, information, or other support they may desire.

Note: Officer Support Team members are subject to being subpoenaed to attend legal proceedings and testify to what they are told by the involved personnel. Therefore, Officer Support Team members are cautioned not to discuss the incident.

4. Critical Incident Response Team

- a. Conduct a criminal investigation.
- b. Advise personnel who are the focus of the investigation of their constitutional rights.

Note: The involved personnel may invoke their constitutional rights at any time during the criminal investigation.

- c. Complete the Use of Force Report and Data Processing Worksheet and attach both to the original investigative packet.
- d. File the original investigative packet.
- e. Forward copies of the investigative packet as follows:

- (1) One copy to the appropriate county prosecutor
- (2) Three copies to the Firearms/Police-Involved Death Review Board if a firearm was used or **if** death occurred under circumstances involving a police action

5. Firearms/Police-Involved Death Review Board

- a. Review all information concerning the incident.
- b. Determine whether the police action was within Division policy.
- c. Prepare and forward a summary of the findings, together with the original investigative packet, the Use of Force Report, and **the** Data Processing Worksheet, through the involved personnel's chain of command to the deputy chief.

Note: If there is a dissenting opinion between the Firearms/Police-Involved Death Review Board members, the dissenting member will include a letter of finding with the investigative packet and route it through the involved personnel's chain of command to the Chief of Police.

6. Immediate Supervisor

- a. Review the entire investigative packet and make recommendations.
- b. Forward the investigative packet through the chain of command.

7. Chain of Command

Review the entire investigative packet and make recommendations.

8. Deputy Chief

- a. Review the investigative packet.
- b. Make a final determination concerning the incident unless deviation from progressive discipline and/or departmental charges are recommended.

Note: If the recommendation of the deputy chief is in disagreement with the finding of the Firearms/Police-Involved Death Review Board, forward the investigative packet to the Chief of Police.

- c. Forward the investigative packet to IAB.
 - d. Cause the involved personnel to be notified of the final determination when no discipline or progressive discipline not resulting in departmental charges is the result.
9. Chief of Police
- a. Make the final determination when a recommendation to bypass progressive discipline is made.
 - b. Make a final determination if there are dissenting opinions **between** the Firearms/Police-Involved Death Review Board and the involved personnel's deputy chief.
 - c. Cause the involved personnel to be notified of the determination.
10. Internal Affairs Bureau
- a. Record the disposition of the incident in the involved personnel's IAB database.
 - b. Maintain the original Use of Force Report.

EXHIBIT 2

Columbus Police Division Directive	EFFECTIVE Dec. 30, 2016	NUMBER 11.07
	REVISED Sep. 30, 2023	TOTAL PAGES 9
Body-Worn Camera (BWC) and Cruiser Video System (CVS)		



Cross Reference: 5.01, 5.02, 5.03, 11.01

Supervisor's Manual: 6.00, 6.06

I. Introduction

The principal purpose of **Body-Worn Camera (BWC) and Cruiser Video System (CVS) equipment** is to collect evidence that may be used to prosecute traffic and criminal offenses, assist with investigations, or help evaluate and train personnel. **They** can also provide documentation of whether the situation was handled lawfully and professionally. Police interactions with individuals during enforcement activity may rapidly evolve, and recording these interactions is an excellent way to provide transparency to the community.

II. Policy Statements

A. BWC Deployment

1. **Sworn personnel assigned a BWC shall wear the BWC and have it powered on while on duty, including when working overtime, unless:**
 - a. **Working an assignment in which wearing the BWC is exempted in the assignment's SOP or applicable MOU. BWC exemptions shall be approved by the appropriate assistant chief.**
 - b. **Working in a location or performing activities as listed in Sections II,O and II,P.**
 - c. **Inside a Division facility and not interacting with citizens.**
 - d. **Wearing the Class A uniform as authorized in the "Professional Appearance" directive.**
2. **Sworn personnel responding to a civil disturbance or crowd control situation shall wear the BWC and have it powered on unless working in plain clothes in a covert capacity. Absent exigent circumstances, sworn personnel not equipped with a BWC shall not interact with the participants or take enforcement action.**

B. BWC Activation

1. Sworn personnel wearing **ing** the BWC shall record the following unless otherwise excluded by this directive or ordered by a sworn Division supervisor:

- a. Dispatched calls for service
 - (1) Sworn personnel shall activate the BWC when dispatched or upon a self-initiated response to all dispatched calls for service.
 - (2) Personnel receiving a dispatched run while in a location or engaged in activities as listed in Sections **II,O** and **II,P** shall activate their BWC at the first reasonable opportunity to do so.

Note: The recording will include both audio and video from the two minutes prior to activation.

- b. Self-initiated activity
 - (1) Sworn personnel shall activate the BWC prior to exiting their vehicle, or if not in a vehicle, prior to approaching an individual, for all self-initiated enforcement actions, investigative activities, and citizen contacts or any time citizen contact is likely to occur.
 - (2) Sworn personnel shall activate the BWC as soon as it is reasonable and safe to do so any time a citizen initiates contact.
- c. All investigatory stops
- d. All traffic and pedestrian stops
- e. All uses of force
- f. All arrests
- g. All forced entries of a structure, vehicle, or other premise
- h. All pursuits by vehicle, bicycle, foot, or other means of transportation available to Division personnel
- i. All responses involving the use of Emergency Vehicle Operations (EVO)
- j. **All stopping tactics**
- k. **All interactions with individuals involved in a civil disturbance or crowd control situation**
- l. **Any time** an encounter becomes adversarial, or its use would be appropriate or valuable to document an incident unless otherwise prohibited.
- 2. **The BWC will activate if in the vicinity when a CVS is activated. This could include the CVS of another agency utilizing the same technology.**
- 3. **The BWC and CVS are equipped with a feature that enables video and audio recording when the camera is powered on even when recording is not activated by the user. Any recording captured in this manner shall only be accessed by authorized PoliceNET Unit personnel at the direction of the Public Safety Director or his or her designee.**

Note: Video recall is possible for the previous 24 hours the CVS was powered on and the previous 18 hours the BWC was powered on while not in a docking station.

- C. Sworn personnel required to wear the BWC shall:
1. **Ensure that the BWC is fully charged, operable, and all previous video recordings have been uploaded at the beginning of their shift.**
 2. **Notify their supervisor at the first reasonable opportunity when they become aware that their BWC is inoperable, malfunctioning, or displaying a battery percentage of 10% or less.**
- D. Sworn personnel shall use only Division-issued BWCs **and BWC mounts** unless serving on a Task Force where the Memorandum of Understanding (MOU) with the sponsoring agency regarding the use of the BWC requires otherwise.
- E. CVS Activation**
1. **Sworn personnel operating a CVS-equipped unit shall record the following:**
 - a. **Investigatory stops**
 - b. **Traffic and pedestrian stops**
 - c. **Suspected OVI stops**
 - d. **Emergency vehicle operations**
 - e. **Stopping tactics**
 - f. **Vehicular pursuits**
 - g. **All interactions with individuals involved in a civil disturbance or crowd control situation**
- Note: Only vehicles equipped with a functioning CVS may be used during a civil disturbance or crowd control situation.**
2. **Sworn personnel shall ensure the CVS backseat camera is activated anytime a person is placed in the rear of their marked unit.**
- F. Sworn personnel shall wear the BWC in the location and manner required by their current assignment. **Sworn personnel shall not place the BWC in a location that obscures their name and badge number.**
- Note: Generally, officers who are assigned to temporarily work in plainclothes for directed patrol or other special assignments will not be required to wear their assigned BWC. However, their supervisor(s) may direct personnel to wear their BWC depending on the day's mission.
- G.** BWCs are not required and may not be available for special duty work, but they may be used provided that the BWC can be fully charged and videos can be uploaded prior to the start of the next regular tour of duty. The City will not compensate personnel for travel time or uploading/charging the BWC.

- H.** Sworn personnel who are not required to wear a BWC and who choose to wear one shall activate the BWC as required in Section II, **B** and shall comply with all policies and procedures contained in this directive.
- I.** BWC **and** CVS use shall be documented on all appropriate paperwork and in the electronic reporting system.
- J.** All sworn personnel involved in the execution of any search warrant served during a tactical operation on an occupied structure shall be equipped with an operating BWC and shall activate their BWC prior to entry of the occupied structure or associated curtilage.
1. Other than a no-knock warrant, the knock on an entry door, the announcement of law enforcement having a search warrant, and the required statutory time delay prior to entry shall be recorded.
 2. This section applies to personnel working in regular and overtime status.
- K.** Task force personnel shall comply with their respective SOP and the Memorandum of Understanding (MOU) with the sponsoring agency for the use of the BWC and the retention and release of BWC video.
- L.** Sworn personnel are not required to cease recording at the request of any person unless ordered by a sworn Division supervisor.
- M.** Sworn personnel shall continue recording until the enforcement activity or encounter has ended, or until they are ordered/permitted to stop recording by a sworn supervisor.
1. Tactical personnel shall continue recording until the execution of a search warrant served during a tactical operation on an occupied structure and associated curtilage has ended. The execution has ended after initial entry is made, suspects are detained or taken into custody, and the scene has been secured.
 2. Sworn supervisors may direct tactical personnel to start, continue, or stop recording after the execution of the warrant has ended based on the circumstances.
- 3. *Sworn personnel may stop recording to view or upload a video from an incident.***
- N.** BWC **and** CVS recordings may be used to provide evidence, record an incident to document the actions and statements of suspects during interviews or while being placed into custody, or as a means to verify an action taken.
- O.** The BWC **or** CVS shall not be used to record non-work-related personal activities where personnel have a reasonable expectation of privacy, such as inside locker rooms, dressing rooms, or restrooms, unless a criminal offense has occurred.
- P.** The BWC **or** CVS shall not be intentionally activated to record privileged communication or conversations of fellow Division personnel during routine, non-enforcement-related activities, with or without their knowledge.

Q. The BWC *and* CVS shall not be used:

1. To gather intelligence information solely based on First Amendment protected speech, associations, or religion;

Note: *This does not apply when personnel are interacting with the citizens involved in First Amendment protected, or related activity, and have other justification to record the activity.*

2. During a strip search or body cavity search; or
3. During a Lethality Assessment Screen.

Note: If the BWC *or* CVS was previously activated during an incident, *it shall be deactivated during the above listed events.* A supervisor's approval *is not required* to deactivate the BWC for any of the above-listed reasons.

R. The BWC shall not be used if ordered by a sworn supervisor.

1. To preserve privacy and dignity, a sworn supervisor may grant approval to not record or to deactivate the BWC for certain people or places. This approval shall not be granted if a citizen has been injured as a result of police activity.
2. Explicit approval to not record or to deactivate the BWC shall be given verbally, over the radio, or in an operations plan.

S. Sworn personnel *should* deactivate the BWC *or* CVS:

1. When gathering information from a confidential informant or source.
2. Without explicit supervisor approval when not in the presence of suspects or citizens and speaking with the Division's legal advisor, covert/investigative personnel, a supervisor, or other sworn personnel.
3. While engaged in guard duty inside a hospital; however, if an encounter becomes adversarial and/or enforcement action becomes necessary, the BWC shall be activated as soon as practical.

T. Sworn personnel shall deactivate the BWC after securing weapons and entering the door into the prisoner processing areas of Franklin County Sheriff's Office Corrections Centers.

1. The preferred course of action is to allow sheriff's office personnel to handle any problem associated with a prisoner.
2. If Division personnel are forced to take enforcement action, they shall activate the BWC as soon as practical.

U. If sworn personnel do not activate the BWC, the battery is exhausted/depleted, or the recorder malfunctions, they shall document the reason(s) on the appropriate paperwork, in the CAD, and/or in the electronic reporting system.

V. If sworn personnel do not record the entire contact, justification shall be expressed verbally on the BWC before turning it off when it is safe and practical to do so.

- W.** Sworn personnel shall re-activate the BWC **and the CVS, when applicable**, if they re-engage suspects/citizens.
- X.** Sworn personnel may be ordered by a sworn supervisor to relinquish their BWC.
- Y.** All digital data shall be uploaded as directed and stored in a secure database that allows limited access. Sworn personnel shall upload video footage prior to going on leave, except when permission is granted by the chain of command designating an alternate time for uploading. If sworn personnel become incapable of uploading the video, the chain of command will make arrangements for uploading all video footage.
- Z.** Personnel shall not tamper with, erase, alter, or destroy any original recorded section of video or audio.

Note: The appropriate authority designated by the Chief of Police will determine proper action for recordings captured by inadvertent BWC activation when it is otherwise prohibited.

AA. All recordings made on the BWC **and CVS** are the property of the Division of Police.

- 1.** Division personnel shall not disseminate these recordings outside of the Division unless approved by the Chief of Police, pursuant to the Ohio Public Records Act, in accordance with a legally binding subpoena, as required by a Task Force MOU, **or as required to share evidence with the appropriate prosecutor.**
- 2.** **Division personnel shall not duplicate recordings or download them to any personally owned device.**
- 3.** **Division personnel shall only share or show recordings to authorized persons for an administrative or law enforcement purpose.**

BB. Recordings shall be securely stored and maintained pursuant to the City of Columbus Division of Police Records Retention Schedule. All stored recordings are subject to release in accordance with Ohio's public records laws.

- 1.** **BWC and CVS recordings have a two-year retention.**
- 2.** **Sworn personnel shall change the classification in the evidence management system from "evidence" to "permanent" if a video should be retained longer than two years.**

CC. Sworn personnel may review video footage of an incident in which they were involved prior to completing a report or making a statement to help ensure accuracy. Sworn personnel should not use the fact that a recording was made as a reason to give a less detailed description of an incident.

DD. A supervisor may view video footage for the purpose of investigations, training, reviews, inquiries, civil claims, or litigation. This may include random reviews or recordings brought to the supervisor's attention that may lead to positive corrective action or discipline as outlined in the applicable collective bargaining agreement (CBA).

Note: Supervisors investigating/managing an incident or sworn personnel wanting to view video in the mobile environment should follow the procedures outlined on the Division's intranet.

EE. Supervisory and investigative review of recordings

1. BWC **and CVS** recordings are subject to review at any time.
2. Supervisors and the involved chain of command wishing to review a recording shall conduct the review on a Division computer **or Division-issued mobile device**.
 - a. Supervisors shall log in to the **evidence management system**.
 - b. Division supervisors will have access to recordings unless access has been restricted due to an investigative purpose.
3. Supervisors and investigative personnel wishing to request a copy of a BWC **or CVS** recording shall complete and forward an Internal **Audio/Video** Request, form S-35.104.
4. Supervisors shall document the review of recordings related to incidents under investigation on the Incident Video Review, form U-10.197. Supervisors shall address the relevant portion(s) of the recording within the administrative investigation to be reviewed by the chain of command as necessary.
5. Supervisors using **video** recordings for an investigative purpose shall review **the** recordings in accordance with established law, Division policy, and the applicable CBA.

FF. Random Video Reviews

1. **Sergeants shall randomly review at least two of each subordinate officer's BWC videos per month, unless supervising a unit with an approved BWC exemption in the SOP. The review shall be documented as outlined in Section III,D,1.**
2. **Lieutenants and above should conduct random reviews of BWC and CVS recordings to use the observations for open discussion and training.**

GG. Division personnel who are assigned to use or are otherwise involved with BWC equipment must complete mandatory training. This training includes proper operation and care, policies and procedures, and limitations of BWC footage. Additional training shall be provided periodically to ensure the continued effective use of the system and equipment and to incorporate changes, updates, and other revisions in policies or equipment.

III. Procedures

A. Sworn Personnel

1. **Notify your supervisor of malfunctioning CVS equipment as soon as practical, but at least prior to the end of your shift.**
2. Notify your supervisor of any known malfunctioning equipment, lost/damaged equipment, or equipment displaying **10%** or less battery **life** on the BWC display.
3. Mark 10-23T for technology repair.

B. Supervisor

1. Ensure required personnel have a functional BWC to complete their tour of duty.
2. Direct personnel with a lost, under-charged, malfunctioning, or damaged BWC to return to the substation or designated location to charge the BWC or attempt to remedy the malfunction.
 - a. If functionality cannot be restored, direct personnel to respond to the PoliceNET Unit to have the BWC repaired or replaced. If the PoliceNET Unit is closed, obtain a replacement from the on-duty Headquarters Operations **Unit** Sergeant. The replacement BWC becomes the sworn employee's Division-issued BWC.
 - b. If the BWC cannot be repaired or replaced, assign personnel without a functioning BWC to work with at least one other officer who is equipped with a functioning BWC, or if staffing permits, assign the personnel without a functioning BWC to administrative duties for the remainder of the tour.
3. Determine if the malfunctioning or lost/damaged equipment was the result of normal wear and tear or negligence, and follow the procedures outlined in the "Lost, Damaged, or Malfunctioning Property" directive.
4. **Ensure malfunctioning CVS equipment is taken for authorized repair as soon as practical and as follows:**

- a. **Communications Shop for repairs to the camera, docking station, Digital Video Recorder, microphone, or connections**
- b. **PoliceNET Unit/DOT for video/network problems with the CVS**

C. PoliceNET Personnel **or** Headquarters Operations **Unit** Sergeant

Collect malfunctioning or damaged equipment and replace it immediately.

D. Random Reviews

1. **Sergeants Required to Conduct Random Reviews**
 - a. **Review two randomly selected BWC recordings for each subordinate officer each month. The incidents should be no more than 30 days old.**

- b. Forward a completed Cruiser Video System (CVS)/Body-Worn Camera (BWC) Supervisory Review, form U-10.193, to the bureau commander.**
- 2. Other Supervisors Conducting Random Review**
 - a.** Review randomly selected recordings on a regular basis. The incidents should be no more than 30 days old.
 - b.** Forward the completed Cruiser Video System (CVS)/Body-Worn Camera (BWC) Supervisory Review form to the bureau commander when there are areas of concern, for example, user error(s) or observations of misconduct, etc.
- 3. Bureau Commander**
 - a. Review the Cruiser Video System (CVS)/Body-Worn Camera (BWC) Supervisory Review form.**
 - b.** If potential misconduct is discovered within the recording, determine the appropriate course of action.
 - c. Forward the completed form to the Headquarters Operations Section.**
- 4. Immediate Supervisor**
 - a.** Ensure sworn personnel who created the BWC recording correct the error.
 - b.** If directed by the chain of command, complete an administrative investigation and send a copy of the Cruiser Video System (CVS)/Body-Worn Camera (BWC) Supervisory Review form to the Headquarters Operations Section.
- 5. Headquarters Operations Section**
 - a.** File completed Cruiser Video System (CVS)/Body-Worn Camera (BWC) Supervisory Review forms.
 - b.** Track results annually to determine compliance/training needs.



Bruner Aff. and Exhibits.pdf

DocVerify ID: BE2A26F9-7A63-424E-AD73-BFA9B02D06B4
Created: October 18, 2023 10:54:21 -8:00
Pages: 17
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E-Signature Summary

E-Signature 1: Bethany Bruner (BB)

October 18, 2023 11:10:28 -8:00 [57C92F3DF875] [144.121.165.66]
bbruner@dispatch.com (Principal)

E-Signature Notary: Kelly E Finn (KEF)

October 18, 2023 11:10:28 -8:00 [D483E12F20E8] [66.42.213.202]
kfinn@ficlaw.com

I, Kelly E Finn, did witness the participants named above electronically sign this document.



**In the
Supreme Court of Ohio**

**STATE *ex rel.* GATEHOUSE MEDIA
OHIO HOLDINGS II, INC. D/B/A THE
COLUMBUS DISPATCH**
605 S. Front St.
Columbus, Ohio 43215

Relator,

vs.

**THE CITY OF COLUMBUS
Police Department**

Serve: Zach Klein, Esq.
City Attorney
77 North Front Street
Columbus, Ohio 43215

Respondent.

Case No.

Original Action in Mandamus

**AFFIDAVIT OF BETHANY BRUNER IN SUPPORT OF COMPLAINT FOR WRIT
OF MANDAMUS**

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

1. My name is Bethany Bruner. I am over the age of 18 and have knowledge of the matters recounted in this affidavit.
2. I cover police and breaking news as a reporter for The Columbus Dispatch ("The Dispatch") and have been in that role since July 16, 2018. Based on information The Dispatch received from the Columbus Police Department ("CPD"), we reported that a little after 4 p.m. on July 6, 2023, CPD officers were involved in a gunfire exchange on Interstate 70 with three



individuals suspected of having been involved in an armed robbery of a Porsche dealership earlier in the day.

3. According to information from CPD, one suspect, Abdisamad Ismail, was killed by CPD officers during the shootout, and an unidentified officer was shot and injured by one of the suspects. The two other suspects escaped but were later apprehended.

4. Shortly after we learned of the shooting, I requested a copy "of all body camera, dash camera and 911 calls etc. from the police shooting on I-70 west today . . ." ("Video Footage Request"). A copy of my Video Footage Request is attached hereto as **Exhibit A**.

5. The next day I sent another request for "a copy of any use of force reports related to the shooting on Interstate 70 on July 6, 2023" ("UOFR Request"). A copy of my UOFR Request is attached hereto as **Exhibit B**.

6. Later on July 7, CPD put out a press release, which is attached hereto as **Exhibit C**.

7. On July 10, Kathryn Hartshorne, Public Records Supervisor for CPD sent an email to the media specifically denying the Video Footage Request. A copy of her email is attached hereto as **Exhibit D**.

8. On September 12, the Dispatch received a portion of the recordings from the dashboard and body-worn cameras sought by the Video Footage Request, but the recordings were redacted in such a way as to conceal the identities of the officers involved. City Attorney Zach Klein released a statement to the media on September 14. A copy of his statement is attached hereto as **Exhibit E**.




9. As of the date of this affidavit, The Dispatch has not received any response to its UOFR Request, nor has it received full and complete copies of the records sought by its Records Request.

FURTHER AFFIANT SAYETH NAUGHT.

Bethany Bruner
Signed on 2023/10/18 11:10:28 -8:00

Bethany Bruner

Sworn to and subscribed to me by Bethany Bruner in my presence this ^{10/18/2023} ___ day of October, 2023.


Signed on 2023/10/18 11:10:28 -8:00

Notary Public



PRAECIPE FOR SERVICE

TO THE CLERK:

Please serve a summons and a copy of this *Affidavit of Bethany Bruner in Support of Complaint for Writ of Mandamus* along with the *Complaint for Writ of Mandamus* on the Respondent identified in the caption on page one via certified mail, return receipt requested.

/s/ Darren W. Ford
Darren W. Ford (0086449)

4861-9072-7813.1

BE2A26F9-7A63-424E-AD73-BFA9B02D06B4 -- 2023/10/18 10:54:21 -8:00 --- Remote Notary



EXHIBIT A

BE2A26F9-7A63-424E-AD73-BFA9B02D06B4 -- 2023/10/18 10:54:21 -8.00 --- Remote Notary



Request

Bruner, Bethany <bbruner@dispatch.com>

Thu 7/6/2023 7:08 PM

To:publicrecords@columbuspolice.org <publicrecords@columbuspolice.org>

The Dispatch would like to request in electronic form if possible a copy of all body camera, dash camera and 911 calls etc. from the police shooting on I-70 west today, as well as any other relevant requests related to the shooting.

Please make these records accessible to the following email addresses:

bbruner@gannett.com
newsroom@dispatch.com
jwilhelm@gannett.com
epyle@gannett.com
nshuda@gannett.com
mferenchik@gannett.com
pflaherty@gannett.com

Thanks--
Bethany

Bethany Bruner
Reporter, Columbus Dispatch
Desk: 614-469-6051
Email: bbruner@dispatch.com
Follow me on Twitter: @bethany_bruner



EXHIBIT B

BE2A26F9-7A63-424E-AD73-BFA9B02D06B4 -- 2023/10/18 10:54:21 -8.00 --- Remote Notary



Records request -- Use of force report

Bruner, Bethany <bbruner@dispatch.com>

Fri 7/7/2023 1:37 PM

To:publicrecords@columbuspolice.org <publicrecords@columbuspolice.org>

Cc:Pyle, Encarnacion <epyle@dispatch.com>;Blackwell Clark, Edwina <blackwellclark@dispatch.com>

Hello--

The Dispatch would like to request, in electronic form, a copy of any use of force reports related to the shooting on Interstate 70 on July 6, 2023. If this request cannot be fulfilled in a reasonable time, please let me know in writing.

Thank you--

Bethany Bruner

Bethany Bruner

Reporter, Columbus Dispatch

Desk: 614-469-6051

Email: bbruner@dispatch.com

Follow me on Twitter: @bethany_bruner



EXHIBIT C

BE2A26F9-7A63-424E-AD73-BFA9B02D06B4 -- 2023/10/18 10:54:21 -8.00 --- Remote Notary



FW: Media Release- Update to Officer-Involved Shooting

Miller, Luella <LUMiller@columbuspolice.org>

on behalf of

InvestigativeDesk <InvestigativeDesk@columbuspolice.org>

Fri 7/7/2023 4:25 PM

To:AkersM <makers@dps.ohio.gov>;Albert, Joseph R. <JAlbert@columbuspolice.org>;Alexander, Shilah R. <SRALEXANDER@columbuspolice.org>;AMATO, MELANIE J. <DIS_MJAMATO@columbuspolice.org>;Amy Simonson <amy.simonson@warnermedia.com>;Antequera, Andres A. <AAAAntequera@columbuspolice.org>;AP Columbus <apcolumbus@ap.org>;Augustyniak, Arkadiusz <AAugustyniak@columbuspolice.org>;axios <columbus@axios.com>;Baker, Jeffrey E <JEBaker@columbuspolice.org>;Barton, Adam M. <ABarton@columbuspolice.org>;Battle, Mary <MBattle@columbuspolice.org>;Becker, Matthew <MBecker@columbuspolice.org>;Behnen, Alexander <ABehnen@columbuspolice.org>;Benson, Jennifer Y. <JBenson@columbuspolice.org>;Bentley, Todd <TBentley@columbuspolice.org>;Berry, Cynthia <CBerry@columbuspolice.org>;Bruner, Bethany <bbruner@dispatch.com>;Bond, Christopher <CBond@columbuspolice.org>;Brammer, Jason <JBrammer@columbuspolice.org>

 1 attachments (61 KB)

42 - UPDATE Officer Involved Shooting Interstate 70 and Mound Street.doc;

Forwarding for release.

Respectfully,

Luella Miller

Office Assistant I, Investigative Desk

T: 614.645.4624

Fax: 614.645.3908

www.columbus.gov

From: Albert, Joseph R.

Sent: Friday, July 7, 2023 4:02 PM

To: InvestigativeDesk <InvestigativeDesk@columbuspolice.org>

Cc: mediarelations <mediarelations@columbuspolice.org>

Subject: Media Release- Update to Officer-Involved Shooting

Approved for immediate release.

Sergeant Joe Albert #5165





NEWS RELEASE

DIVISION OF POLICE • COLUMBUS, OHIO
ELAINE R. BRYANT • CHIEF OF POLICE

For Immediate Release:

For further information, contact:
mediarelations@columbuspolice.org

Public Information Office

Friday, July 7, 2023
MA# 42-2023

Officer-Involved Shooting

UPDATE

Reference MA# 41-2023

The investigation into the officer-involved shooting that occurred on Thursday, July 6, 2023, at Interstate 70 and West Mound Street continues.

The deceased suspect has not been identified.

The second suspect who was identified and interviewed in the early morning hours of Friday, July 7, 2023, has not been formerly charged, therefore the Columbus Division of Police is withholding his identity.

The third male suspect has not been identified or located. The Columbus Division of Police is asking anyone with information regarding his identity and location to contact us at 614-645-4545. Tips can also be to Central Ohio Crime Stoppers at 614-461-TIPS (8477).

Due to recently passed Marsy's Law and the direction of the Columbus City Attorney's Office, the Columbus Division of Police is unable to release the identities of the eight officers involved in this officer-involved shooting. However, their years of service within the Division are as follows:

- Officer #1 is a 10-month veteran of the Division.
- Officer #2 is a 1-year veteran of the Division.
- Officer #3 is a 6-year veteran of the Division.
- Officer #4 is a 5-year veteran of the Division.
- Officer #5 is a 1-year veteran of the Division.
- Officer #6 is a 10-year veteran of the Division.
- Officer #7 is a 27-year veteran of the Division.
- Officer #8 is a 8-year veteran of the Division.

The Ohio Bureau of Criminal Investigation is investigating the officer-involved shooting by CPD.

###



EXHIBIT D

BE2A26F9-7A63-424E-AD73-BFA9B02D06B4 -- 2023/10/18 10:54:21 -8.00 --- Remote Notary



7.6.23 PIS Video

Hartshorne, Kathryn <KHartshorne@columbuspolice.org>

Mon 7/10/2023 11:34 AM

Cc:mediarelations <mediarelations@columbuspolice.org>

All,

The body camera and cruiser video out of the police involved shooting that occurred on 70E on July 6th is denied. The applicable exceptions are listed below.

1. The recording is defined as "restricted" pursuant to the following section of O.R.C. 149.43(A)(17) as it would disclose the following: (d) and (f): Grievous bodily harm, including to a first responder; not effected by a peace officer and without the proper consent of the injured;
2. The recording is defined as "restricted" pursuant to the following section of O.R.C. 149.43(A)(17) as it would disclose the following: (e) and (g): An act of severe violence against a person, including a first responder, that results in serious physical harm to the person; and without the proper consent of the injured
3. ORC Chapter 2930 otherwise known as Marsy's Law
4. Release of which is prohibited by Federal law- Privacy Act

Respectfully,

*K. Hartshorne
Public Records Supervisor
Management Analyst II
Public Records Unit
(614) 645-4925 (main)
(614) 645-4896 (desk)*

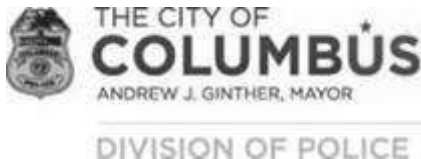


EXHIBIT E

BE2A26F9-7A63-424E-AD73-BFA9B02D06B4 -- 2023/10/18 10:54:21 -8:00 --- Remote Notary



Re: Body camera

Shiple, Pete J. <PJShiple@columbus.gov>

Wed 9/13/2023 5:27 PM

To: Bruner, Bethany <bbruner@dispatch.com>

Cc: Ferenchik, Mark <mferench@dispatch.com>

Busy day. Sorry for the late response. Below are answers to your questions. Let me know if you have any other followups.

1. First, why OK the release of this video now, two months after the shooting? These portions of the video appear like they could have been released back in July following redaction.

This was an issue brought to the City's attention in conversations with Dispatch Editor Edwina Blackwell Clark. Until that conversation, the discussion both internally and with members of the media had been focused on releasing videos of the shooting, which are not public records. After the Dispatch raised the question, it was determined internally that the videos leading up to the point of the shooting were, in fact, public records subject to redaction and release. The CPD Public Records Unit then made those redactions and released the footage. This shooting was the first incident where Marsy's Law intersected with existing protections in the Ohio Public Records Act relative to injured officers, and as such, there were some growing pains in determining how to be both responsive and transparent with the media and the public while also upholding our constitutional duty to follow the law.

2. And second, There are likely video angles from during the shooting that could be redacted in the same way that these were (particularly from dash cameras) that could be released. Should we expect those portions of video to be released as well?

The Division has provided the most relevant footage of the incident from involved officers pursuant to any redactions required under law. There is additional footage totaling hundreds of hours subject to redaction that may be made available if requested of the Division. Note that there were more than 100 cruisers and more than 120 officers at the scene over the period of several hours during and after the incident, and each of the officers and cruisers has camera footage that may be deemed a public record.

Happy to address any further questions. Either way, have a great night.

All the best,

Pete

On Sep 13, 2023, at 9:26 AM, Shiple, Pete J. <PJShiple@columbus.gov> wrote:

Thanks for circling back. Let me get you some answers for these.

From: Bruner, Bethany <bbruner@dispatch.com>

Sent: Wednesday, September 13, 2023 9:25 AM

To: Shiple, Pete J. <PJShiple@columbus.gov>

Cc: Ferenchik, Mark <mferench@dispatch.com>

Subject: [EXTERNAL] Re: Body camera

Pete --



Thanks for getting back to us so quickly last night. I've got a couple of follow-up questions that I wanted to ask.

First, why OK the release of this video now, two months after the shooting? These portions of the video appear like they could have been released back in July following redaction.

And second, There are likely video angles from during the shooting that could be redacted in the same way that these were (particularly from dash cameras) that could be released. Should we expect those portions of video to be released as well?

Thanks--
Bethany

Bethany Bruner
Reporter, Columbus Dispatch
Desk: 614-469-6051
Email: bbruner@dispatch.com
Follow me on Twitter: [@bethany_bruner](https://twitter.com/bethany_bruner)

From: Shipley, Pete J. <PJShipley@columbus.gov>
Sent: Tuesday, September 12, 2023 7:26 PM
To: Bruner, Bethany <bbruner@dispatch.com>
Cc: Ferenchik, Mark <mferench@dispatch.com>
Subject: RE: Body camera

Bethany and Mark, here's a comment from our office on the release of the video. Let me know if you need anything else!

"The release of the body worn video remains consistent with the City's interpretation of the plain language of Marsy's Law as written and adopted by the Ohio General Assembly. This is not a change in policy. Marsy's Law protects the identity of any individual who is the victim of a crime. The video released in the incident in question is footage captured prior to the point at which the officers become victims of a crime, i.e. when the shots were fired at officers. In accordance with the rights afforded to crime victims under Marsy's Law, identifying information has been removed from the recordings. In releasing this footage, the City is balancing its responsibility to be transparent with the public while also upholding its constitutional duty to follow the law."

All the best,

Pete Shipley
He/him/his
Communications Director
Office of Columbus City Attorney Zach Klein
77 N. Front St.
Columbus, OH 43215
C: 614.965.0203
pjshipley@columbus.gov



-----Original Message-----

From: Shipley, Pete J.
Sent: Tuesday, September 12, 2023 4:43 PM
To: 'Bruner, Bethany' <bbruner@dispatch.com>
Cc: Ferenchik, Mark <mferench@dispatch.com>
Subject: RE: Body camera

Thanks for reaching out. Let me check in on this and get back to you as soon as possible. Will be in touch.

Pete

Pete Shipley
He/him/his
Communications Director
Office of Columbus City Attorney Zach Klein
77 N. Front St.
Columbus, OH 43215
C: 614.965.0203
pjshipley@columbus.gov

-----Original Message-----

From: Bruner, Bethany <bbruner@dispatch.com>
Sent: Tuesday, September 12, 2023 4:41 PM
To: Shipley, Pete J. <PJShipley@columbus.gov>
Cc: Ferenchik, Mark <mferench@dispatch.com>
Subject: [EXTERNAL] Body camera

Hi Pete—

Mark may have already reached out to you but just in case I was hoping we could get some comment or statement from City Attorney Klein about the complete 180 switch on the decision to release the body camera footage from the I 70 shooting today.

Bethany

Sent from my iPhone

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