

**STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION**

Shawn Dowdell,	)	October 31, 2018
	)	
	)	Docket # FIC 2018-0136
Complainant,	)	
	)	
against	)	
	)	
Chief, Police Department, City of New	)	
Britain; Police Department, City of New	)	
Britain; and City of New Britain	)	
	)	
Respondents.	)	

**Complainant's Post-Hearing Brief**

On December 14, 2017, employees of the New Britain Police Department (NBPD) killed complainant Shawn Dowdell's son, Zoe. Five NBPD officers stopped the car he was in and, claiming that the car attempted to flee, opened fire on Zoe Dowdell and the two other young men in the vehicle. They were 20, 18, and 15 years old at the time. Zoe Dowdell was shot in the neck and died. That same night, the Connecticut State Police opened a use-of-force investigation into the killing, in anticipation of the State's Attorney beginning an inquiry in accordance with General Statutes § 51-277a.<sup>1</sup>

Shawn Dowdell asked the NBPD<sup>2</sup> for information about his son's death in March 2018; the Commission held a hearing on October 3, 2018. To this day, Mr. Dowdell remains waiting for records showing what happened to his son. Because the record developed by the NBPD

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<sup>1</sup> General Statutes § 51-277a requires the Division of Criminal Justice to conduct an investigation "[w]henever a peace officer, in the performance of his duties, uses deadly physical force upon another person and such person dies as a result thereof." Since 1998, these investigations have been conducted by the State's Attorney's office for a different Judicial District from the location where the use of force occurred. *See* Public Acts 1998, No. 98-048.

<sup>2</sup> The clerk of the Commission added the chief of police and the City of New Britain as respondents. For convenience, Mr. Dowdell will refer to them collectively as "NBPD" or "the respondent." Additionally, the Connecticut Division of Criminal Justice intervened in the dispute, but did not present any evidence at the hearing.

shows a prohibited, generalized preference to withhold records until the State's Attorney releases the investigation results, the Commission should order the records' immediate disclosure.

## **I. Summary of the Record**

Shawn Dowdell asked NBPD to produce three categories of records:

- 1) All records documenting the killing of Zoe Dowdell by New Britain employees on December 14, 2017, including but not limited to video and/or audio recordings;
- 2) All records leading up to New Britain employees' contact with Zoe Dowdell on December 14, 2017, including but not limited to all radio logs, dispatch logs, 911 calls, and any other calls for service; and
- 3) All records documenting New Britain employees' involvement in the death of Zoe Dowdell on December 14, 2017, including but not limited to all incident reports, arrest reports, reports to prosecutors, use of force reports, or death-in-custody reports.

His request was delivered by certified mail on March 5, 2018. Respondent denied the request in a letter sent on March 6, 2018, citing a single exemption: for records prejudicial to a prospective law enforcement action, General Statutes § 1-210(b)(3)(D). Hearing Ex. B. On March 13, 2018, Mr. Dowdell appealed to the Commission.

At a hearing<sup>3</sup> before Commissioner Matthew Streeter, the respondent relied upon the testimony of two witnesses—John Smriga, the State's Attorney for the Fairfield Judicial District, who has been overseeing the use-of-force investigation into Zoe Dowdell's death since mid-April 2018; and NBPD Chief James Wardwell. Mr. Wardwell did not assemble the records responsive to Mr. Dowdell's request, Transcript of record 20:1-3,<sup>4</sup> had "no particular recollection" of the request, *id.* 20:9-10, and did not know if anyone ever performed a search for

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<sup>3</sup> Prior to the hearing, Mr. Dowdell's proceeding was consolidated with that of Sherene Fagon's, Docket No. FIC 2018-0168. Ms. Fagon is Zoe Dowdell's mother, and as Mr. Dowdell understands, made an identical request to NBPD that was met with an identical refusal.

<sup>4</sup> Mr. Dowdell has obtained a certified transcript of the Commission's audio recording of the hearing in this case, and attached it to this brief.

responsive materials. *Id.* 20:24-21:1. If responsive records were uncovered, Wardwell did not review them. *Id.* 20:17-20.

In terms of records responsive to Mr. Dowdell's request, Mr. Wardwell testified that the NBPd has about twenty-four pages of reports, *id.* at 9:5-8, the statements of the five employees who shot at the car Zoe was in, *id.* at 32:19-23, 38:6-9, 11:7-9, dash camera video recordings of the killing, *id.* at 9:22-10:1, and memoranda to those employees and the NBPd Deputy Chief regarding job duty restrictions. *Id.* at 11:13-18. Wardwell has not been actively involved in the State's Attorney's investigation, *id.* at 32:8-11, but testified that he thinks each and every piece of information relating to Zoe Dowdell's killing could prejudice the State's Attorney's investigation. *Id.* at 26:25-27:4. Notwithstanding his belief that all data could be prejudicial, he confirmed that he directed the police department to release the names of the employees who shot Zoe Dowdell to the public, because, he conceded, the employees' names "ha[ve] no impact on whether or not what they did was criminal . . . ." *Id.* at 27:11-25.

The respondent's second and final witness, Mr. Smriga, had not laid eyes on Mr. Dowdell's request until the day of the hearing in this case. *Id.* at 48:16-23. He did not know what the request sought. *Id.* at 48:24-49:2, 50:3-7. He did not conduct any search for the records called for by Mr. Dowdell's request. *Id.* at 49:19-22. He did not know how many responsive records there are, *id.* at 56:14-17, and has not reviewed any responsive records in his possession. *Id.* at 56:5-13. Nonetheless, Mr. Smriga testified that, in his view, no information documenting Zoe Dowdell's killing should be released, because it could "potentially be prejudicial" to his investigation. *Id.* at 62:18-63:7.

Smriga conceded, though, that "it's likely that not ever[y] piece is actually, in reality" prejudicial to his investigation. *Id.* at 59:10-11. He agreed that the best way to determine

whether each piece of responsive information will prejudice his investigation is to actually review it, *id.* at 59:20-23, but admitted that “[t]hat’s not a process that generally occurs . . . we don’t release the information until there’s a conclusion.” *Id.* at 59:23-60:2. Instead, Smriga contended that, because “it’s difficult to ever predict exactly what will be prejudicial . . . it’s important to not release things and try to make those distinctions before the matter is concluded.” *Id.* at 59:15-19.

NBPD presented no other evidence beyond the testimony of Mssrs. Wardwell and Smriga.

On October 5, 2018, two days after the hearing in this dispute, the NBPD released a twelve page memorandum that had been sent by Chief Wardwell to Deputy Chief Christopher Chute and the five NBPD employees who shot at Zoe Dowdell. This memorandum, which Chief Wardwell had described at the hearing, contains details about the shooting, the NBPD’s internal response, and the terms of the restricted duty orders issued to the five. Assistant Corporation Counsel Joseph Skelly explained in a cover letter that the memorandum had been in Chief Wardwell’s custody, and was released after discussions among Mr. Smriga and Executive Assistant State’s Attorney Brian Austin.<sup>5</sup>

## **II. There is No Evidence in the Record That Respondent Made Any Search for Responsive Documents, and the Commission Should Order It to Do So**

Under FOIA, respondents have a duty to conduct a diligent search for the requested records, including those stored in paper format and electronically. *See* G.S. § 1-211(a). If the Commission concludes that respondents failed to conduct a sufficiently thorough search, it may require the agency to promptly conduct such a search,<sup>6</sup> and to submit affidavits detailing who

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<sup>5</sup> The memo is attached to this brief.

<sup>6</sup> The FOIC has ordered agencies, including law enforcement agencies, to conduct diligent searches on many occasions. *See, e.g., Mastrony v. Chief, Police Dep’t, City of Bridgeport*, No. FIC 2015-130 (Oct. 28, 2015);

conducted the search, what methods were used, and what documents were found.<sup>7</sup> Given Respondent's gross disregard of its statutory duties, these obligations should be imposed here.

Respondent plainly failed to meet its burden to show that it diligently searched for each of the three categories of records sought in the request. Neither of respondent's witnesses were able to testify to what search the NBPd undertook in response to the request. Mr. Smriga was not involved in any search for the documents sought in the request. Neither Mr. Smriga nor anyone in his office had reviewed all of the records sent by the state police on the use-of-force investigation, and he could not say with certainty whether the state police had any responsive records that were not included in the files provided to him, such as those compiled in connection with the prosecutions of Mr. Tisdol and Mr. Young, the two other young men in the car with Zoe Dowdell. Transcript at 64:7-16. For his part, Chief Wardwell had "no particular recollection" of any search, and did not conduct one himself. *Id.* at 20:9-10, 20:1-3.

Given this testimony, Respondent plainly has not satisfied its burden to show that it conducted a timely and diligent search for responsive records. Mr. Smriga does not work for the Respondent NBPd and was not involved to any extent with the response to Mr. Dowdell's records request. He was entirely unable to identify any search taken in response to the request. Neither Chief Wardwell nor any other representative of the Respondent offered any information to fill in the gaps in Mr. Smriga's testimony.

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*Stedronsky v. Caruso*, No. FIC 2014-251 (Mar. 11, 2015) (requiring respondent to review at least 900 emails per week); *Aronow v. Univ. of Conn. Health Ctr.*, No. FIC 2013-744 (Oct. 22, 2014); *Brow v. City of East Haven*, No. FIC 2012-012 (Oct. 10, 2012) (criticizing respondent's failure to search for records before denying the request or at any time thereafter, and to read the request before the FOIC hearing).

<sup>7</sup> The FOIC has also ordered affidavits regarding agencies search procedures on many occasions. *See, e.g., Lopez v. Chief, Police Dep't, City of Bridgeport*, No. FIC 2014-402 (Apr. 22, 2015); *Mastrony*; *Hunt v. Glover*, No. FIC 1996-612 (Sept. 10, 1997). This practice is supported by precedent. "Our supreme court has recognized the FOIC's authority to order the submission of affidavits to prove the existence or non-existence of records. Such affidavits 'must not be couched in conclusory language.'" *Newtown Bd. of Educ. v. Freedom of Info. Comm'n*, No. CV 9605558171, 1997 WL 625438, at \*7 (Conn. Super. Ct. Oct. 3, 1997) (quoting *Wilson v. Freedom of Info. Comm'n*, 181 Conn. 324, 341 (1980)).

The NBPD offered no evidence that conducted any search and review of responsive records. Without any evidence in the record demonstrating any search by Respondent, neither Mr. Dowdell nor the Commission can be satisfied that a proper search occurred. Indeed, the NBPD's post-hearing disclosure of twelve pages of responsive records points to its failure to conduct a diligent search and review of responsive records prior to the hearing. Chief Wardwell's testimony that his files contained memoranda to the Deputy Chief of Police and the five NBPD officers involved in the shooting, seems to have prompted a belated evaluation of these records, resulting in their disclosure on October 5th. If Respondent had conducted a diligent search initially, it would likely have identified and disclosed these non-exempt records in March. Respondent's testimony and actions have not provided sufficient evidence that it conducted a prompt and diligent search, instead creating cause for concern that it failed to do so.

### **III. Having Never Reviewed any Responsive Records Held by a Public Agency, a Third Party's Testimony About Such Records is Useless to Adjudge § 1-210(b)(3)(D) Withholding**

Respondent must disclose all responsive records unless it can meet the burden of showing that the records are exempt under FOIA. Respondent has the burden of proving that an exemption applies to each of the withheld records. Because "[t]he general rule, under the act . . . is disclosure," the Connecticut Supreme Court has held that "[e]xceptions to that rule will be narrowly construed in light of the underlying purpose of the act and the burden of proving the applicability of an exemption rests upon the agency claiming it." *Wilson v. Freedom of Info. Comm'n*, 181 Conn. 324, 328 (1980) (citations omitted).

In this case, the sole claimed exemption is General Statutes § 1-210(b)(3)(D), which exempts from mandatory disclosure "records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest

because it would result in the disclosure of . . . information to be used in a prospective law enforcement action if prejudicial to such action.”

To withhold records under § 1-210(b)(3)(D), a public agency must make “an evidentiary showing (1) that the records are to be used in a prospective law enforcement action and (2) that the disclosure of the records would be prejudicial to such an action.” *Dep’t of Pub. Safety v. Freedom of Info. Comm’n*, 51 Conn. App. 100, 105 (1998). In doing so, an agency must “provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested.” *City of New Haven v. Freedom of Info. Comm’n*, 205 Conn. 767, 776 (1988). The agency must create a record with enough detail “to present the commission with an informed factual basis for its decision in review under the act.” *Wilson*, 181 Conn. at 341.

When respondents fail to offer sufficient evidence of prejudice to a law enforcement action, they must promptly disclose the withheld records. *See, e.g., Sedensky v. Freedom of Info. Comm’n*, No. HHBCV136022849S, 2013 WL 6698055, at \*15 (Conn. Super. Ct. Nov. 26, 2013) (ordering release of 911 calls made during the Sandy Hook school shooting); *Hartford v. Freedom of Info. Comm’n*, 201 Conn. 421 (1994) (holding that plaintiffs did not adequately prove they met the FOIA personnel records exemption because they said only “in broad, conclusory terms” that disclosure “might” negatively affect a police operation); *Romitti v. Comm’r, State of Conn., Dep’t of Emergency Services and Pub. Protection*, No. FIC 2015-606 (requiring disclosure of 911 calls withheld under the law enforcement exemption); *Goren v. Nasto*, No. FIC 2007-165 (Nov. 28, 2007) (requiring disclosure of emails withheld under the law enforcement exemption).

**A. There is No Evidence in the Record that Each Responsive Document Will be Used in a “Prospective Law Enforcement Action”**

Respondent made no showing that each of the withheld records would be used in the use-of-force investigation or any criminal prosecutions arising out of it. Mr. Smriga could not have testified that all of the records in his possession would be used in the investigation, simply because he did not review all of the records. Chief Wardwell could not have testified that each of the records would be used because he is not involved in the use-of-force investigation. Further, the NBPD may have additional responsive files. It has offered no information that it searched for or reviewed such files, so cannot say whether these files would be used in a prospective law enforcement action. Without an evidentiary showing that *each* of the withheld records will be used in a prospective law enforcement action, Respondent has failed to meet the first part of its burden to prove the exemption’s applicability.

**B. There is No Basis to Conclude That Disclosure of Each Responsive Document to be Used in a “Prospective Law Enforcement Action” Would Prejudice that Action**

Respondent has also failed to make an evidentiary showing that “the disclosure of the records would be prejudicial to such an action.” *Dep’t of Pub. Safety*, 51 Conn. App. at 105. Neither of its witnesses had reviewed all of the records, or could pinpoint the harms each record would cause if disclosed. Instead, the respondent relies exclusively on conclusory language, speculation, and generalized allegations, rather than specific details of how the disclosure of each withheld record would prejudice the use-of-force investigation. And, several documents and pieces of information related to Zoe Dowdell’s killing have already been released without issue—undermining Respondent’s argument that no records related to the shooting can be disclosed without harm to the use-of-force investigation.



**1. Respondent's Key Witness, Mr. Smriga, Could Not Speak to Prejudice Because He Had Not Reviewed the Responsive Records**

Mr. Smriga testified that he had not seen, viewed, or listened to each of the requested records, and no one in his office had, either. He could not say if he had viewed all of the dash cam footage, or just some of it. Transcript at 64:3-6. The same was true of the radio transmissions. *Id.*.

This testimony places Mr. Smriga's assertions squarely in a position the courts have already rejected, in which "the reliability of the plaintiff's assertion that the release of the audio recordings would prejudice a prospective law enforcement action was wholly undermined by the plaintiff's admission that he had not even listened to the recordings himself." *Sedensky* at \*15. The Connecticut Supreme Court reaffirmed this precedent just days ago, upholding the Commission's finding that the state police "failed to produce any evidence that the documents were exempt from disclosure" where they "only made legal argument and presented testimony of, and an affidavit from, witnesses who had never seen the documents at issue." *Comm'r of Emergency Servs. and Pub. Protection v. Freedom of Information Comm'n*, Nos. SC 19852 and SC 19853, slip op. at 15-16 (Conn. Oct. 30, 2018). Mr. Smriga's testimony is no different. In order for Mr. Smriga's testimony to support the NBPD's claim that each withheld record would prejudice a prospective law enforcement action, he would have needed to be able to credibly speak to the contents of each record and its impact on the investigation. He clearly could not do so.

**2. Both Witnesses' Testimony Was the Definition of Speculation and Generalization**

Because Mr. Smriga had not reviewed each record, he could not meet Respondent's burden to "provide more than conclusory language, generalized allegations or mere arguments of counsel." *City of New Haven*, 205 Conn. at 776. Instead, Mr. Smriga claimed that *no* records

could ever be released before an investigation's conclusion. He said that, if asked, he would direct the NBPd and other agencies not to release any records. Transcript at 57:20-23. He admitted that the best way to determine whether records would be prejudicial would be to review them, but then said "that's not a process that generally occurs," *id.* at 59:23-24, because he prefers to release no records "in every criminal investigation." *Id.* at 59:25-60:2. This is exactly the blanket policy from the State's Attorney's office that the FOIC and courts have firmly rejected. *See Dep't of Pub. Safety*, 51 Conn. App. At 105; *Schoenhorn*, No. FIC 2007-520 at paras. 33-36.

Mr. Smriga speculated that every piece of information in his files *could* cause unspecified harms to the use-of-force investigation, Transcript at 59:8-11, but could not offer a concrete example of having seen dash cam footage, for example, prejudice an investigation or trial. *Id.* at 45:19-46:3. Further, he acknowledged that—nearly a year after the incident—the investigators have already collected and sent him their witness statements. *Id.* at 54:13-19. He further acknowledged that details about the incident, such as those seen in the dash cam video, have already been released to one of the young men in the car with Zoe Dowdell, as part of the criminal discovery procedure in the prosecution of that young man. *Id.* at 40:3-41:5. Given his reliance on a blanket policy of withholding all records before an investigation's closure, his not having read the requested records, and his conclusory statements, Mr. Smriga's testimony does not satisfy Respondent's burden to make an evidentiary showing of harm to the prospective law enforcement action.

Nor does Mr. Smriga's preference for a blanket refusal to release records before his work is complete. FOIA "does not require that an investigation be closed before disclosure is required," *Dep't of Pub. Safety*, 51 Conn. App. at 105, and the Commission has ordered

disclosure of records from ongoing investigations on many occasions. In *Department of Public Safety*, the Supreme Court upheld the FOIC's order requiring the state police to disclose investigative records related to a drowning that was the subject of an ongoing investigation. In doing so, the Court rejected respondent's claims that they had not reviewed the records and that they could not release anything until the investigation's end. *Id.* In *Schoenhorn*, the FOIC required respondent police chief to release the requested 911 calls and police radio transmissions because he had failed to make the required evidentiary showing of prejudice to a prospective law enforcement action. Instead, respondents had relied on a blanket policy of withholding all records before an investigation's completion, pursuant to a 2002 memorandum from the Hartford State's Attorney. The Commission rejected this policy of withholding records "merely because a representative of the State's Attorney's Office objects to disclosure on the grounds that the case is still pending," and declared the memorandum null and void. *Schoenhorn*, No. FIC 2007-520, para. 2; *see also Romitti*.

Chief Wardwell's testimony likewise fails to meet Respondent's burden. He offered no evidence of the harm that would flow from the disclosure of the police report, the officers' statements, or the memoranda in his files. Indeed, Respondent determined shortly after the hearing that these memoranda, along with the officers' restricted duty orders, would not prejudice the investigation and could be released. Chief Wardwell's blanket statements that no records could be released before the investigation's end, Transcript at 14:25-15:8, are, like Mr. Smriga's, inconsistent with state law. *See Dep't of Pub. Safety*, 51 Conn. App. At 105; *Schoenhorn*, No. FIC 2007-520 at paras. 33-36. Further, he echoes the dependence on the State's Attorney that the FOIC explicitly rejected in *Schoenhorn*:

Q (Attorney Barrett): And the position of New Britain, I take it, is that the sole reason that the records were not produced to Mr. Dowdell in response to Complainant's Exhibit A was because of the direction of the state's attorney? Is that correct?

A (Chief Wardwell): Yes, sir.

Q Is there any other reason why -- that is preventing you from releasing those records?

A No. That's what we're waiting on is that investigation to be completed.

Transcript at 29:24-30:9. Chief Wardwell offered no other evidence or testimony of concrete harms he foresees disclosure causing to the use-of-force investigation.

### **3. Mr. Smriga's Guesswork and Blanket Statements are Undermined By Public Disclosures of Information Relating to Zoe Dowdell's Killing**

Additionally, the fact that Respondent has publicly released information regarding Zoe Dowdell's shooting and the subsequent investigation to the public undermines Respondent's claims that it cannot release a single record for fear of prejudice to the use-of-force investigation. However, details of the shooting and Zoe Dowdell's death became public the day of its occurrence, with the NBPd making statements to the press and public. Transcript at 27; *see also*, e.g., R. Blair & S. Goode, "New Britain Chief: Five Officers Fired Their Guns In Fatal Police Shooting," *Hartford Courant*, Dec. 18, 2017; J. Carlesso, "Police Identify Driver Shot By New Britain Officers Thursday," *Hartford Courant*, Dec. 16, 2017; J. Lee & K. Naples, "Suspect Dead in New Britain Officer-Involved Shooting," *WFSB*, Dec. 14, 2017.

The NBPd's October 5 disclosure of memoranda and restricted duty orders further shows that even Respondent does not truly believe its assertions that all disclosures could prejudice the use-of-force investigations. The twelve pages of documents contain details on the incident, the names of the five NBPd officers involved, the steps NBPd was taking internally, and the terms of the officers' restricted duty orders. And in a FOIA case brought by *Hartford Courant* reporters Don Stacom and Matthew Kauffman, the NBPd released nine pages of documents, including the investigation report for Noah Young, one of the two young men in the car with Zoe Dowdell. *See*

Docket No. FIC 2018-001; Complainant's Ex. F; Transcript at 66:10-70:8. The report goes into detail on the car they were driving, the investigator's version of the events that occurred, Zoe Dowdell's death, and Mr. Young's arrest. Respondent has not contended that any of these disclosures have prejudiced the use-of-force investigation. It is likely that some of the withheld records are no more detailed than the statements and documents already released.

**C. Nothing in the Record Establishes that the Information Sought by Mr. Dowdell is Not Otherwise Available to the Public**

Because § 1-210 (b)(3)(D) only applies to records "not otherwise available to the public," Respondent must disclose any records that *are* available to the public. This includes dash cam footage of the incident during which Zoe Dowdell was killed, which has already been disclosed to Noah Young's attorney, Jessica Coderre, without a protective order as part of discovery in the prosecution of Mr. Young. *See* Complainant's Ex. C, Affidavit of Jessica Coderre. This leaves Ms. Coderre free to do with the footage as she wishes, including disseminate it to the press and public. Additionally, other withheld records are likely "otherwise available." NBPD released Mr. Young's investigation report in case FIC 2018-001, but not this one. Other records will be turned over to the attorneys for Mr. Young and Mr. Tisdol during discovery, potentially also without a protective order. The state police's files may also contain clippings of press reports, official press releases, court dockets, and similarly public documents. Any such otherwise-available records cannot be lawfully withheld.

**IV. Conclusion**

Respondent has failed to meet its burden of showing that disclosure of the requested records would harm a prospective law enforcement action. Instead, Respondent relies on the speculation of witnesses who did not personally read the requests at issue, did not personally conduct a search for responsive records, and may not have reviewed all of the records in

Respondent's custody. The Commission should therefore order Respondent to conduct a prompt, diligent search for the requested records, and order the disclosure of all such records.

If the Commission considers the dispute unripe for ordering disclosure of all responsive records, it should conduct an in camera inspection of the records. The Commission has full discretion to order an in camera inspection, not only in cases where the nature of the records is in dispute. Conn. Agencies Regs. § 1-21j-37(f)(1). Because "a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested," *City of New Haven*, 205 Conn. at 776, and Respondent has failed to make such a record, an in camera inspection would provide much-needed information on the records' contents. The NBPd's post-hearing disclosure of records it only recently decided were not exempt underscores the need for the FOIC to oversee this detailed review.

Finally, and regardless of whether it orders in camera inspection, the Commission should order the disclosure of any records that are otherwise available to the public, such as the dash cam footage and records released in response to other records requests.

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# **Attachment:**

Transcript of Record

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Dowdell v. New Britain Police Department  
Sasha Dudding  
Docket 2018136 and 2018168



1                   COMMISSIONER MATT STREETER: All right.  
2 We're back on the record in Dockets 2018-136 and  
3 2018-168. While we were off the record, we  
4 agreed to several documents that were mutually  
5 agreed to (indiscernible) Attorney Ross read  
6 those into the record.

7                   MS. ROSS: Okay. I just to note for  
8 the record that while we were off the record, the  
9 parties requested that the exhibits in both of  
10 these cases, which are 0136 and 0168, be marked  
11 sequentially together in once case, so the  
12 exhibit list that I've prepared contains -- the  
13 first three exhibits, A, B, and C actually  
14 pertain to 2018-0136 and the other two pertain to  
15 0168.

16                   I understand that the cases are  
17 consolidated and the parties should feel free to  
18 make reference to whatever exhibits they want and  
19 what the Commissioner may do is take  
20 administrative notice of the exhibits in one  
21 case, in the other case. So it's a little bit  
22 confusing, I think, as I say this out loud to do  
23 it that way, but we'll try that, see how that  
24 works.

25                   All right. So, okay. Complainant's

1 Exhibit A is a letter of request dated March 2nd,  
2 2018. Complainant's B is a letter from the  
3 respondents to the complainant dated March 6th,  
4 2018. C is an affidavit. D is a letter of  
5 request dated March 19th, 2018. And E is a  
6 letter dated March 28th, 2018. Have I marked  
7 those exhibits properly?

8 MR. BARRETT: Yes.

9 MR. SKELLEY: I'm good.

10 MS. ROSS: Attorney Sack, have I marked  
11 those exhibits correctly?

12 MR. SACK: Perfectly.

13 MS. ROSS: Thank you.

14 COMMISSIONER MATT STREETER: All right.  
15 So let the record show that the five exhibits  
16 that were taken off the record will now move on.  
17 (Indiscernible) swear in the witnesses. Do you  
18 have witnesses that are going to be --

19 MR. SACK: I'm going to call the same  
20 witnesses they're going to call, so...

21 MR. SKELLEY: Okay. And who were you  
22 going to call?

23 COMMISSIONER MATT STREETER: So why  
24 don't I just say, anybody that's going to be  
25 witnesses, if they could stand and take the oath.

1 MS. ROSS: Come forward, please, so the  
2 microphones can pick you up.

3 COMMISSIONER MATT STREETER: Do you  
4 sincerely affirm and declare that the evidence  
5 you shall give in the case now in question shall  
6 be the truth, the whole truth, and nothing but  
7 the truth, on pain and penalty of perjury?

8 MR. WARDWELL: I do.

9 MR. SMRIGA: I do.

10 COMMISSIONER MATT STREETER: Okay. If  
11 I could have your -- sir, if I could have your  
12 name for the record?

13 MR. WARDWELL: James Wardwell, W-A-R-D-  
14 W-E-L-L.

15 COMMISSIONER MATT STREETER: W-A-R-D...

16 MR. WARDWELL: W-A-R-D-W-E-L-L.

17 MS. ROSS: Wardwell? Wardwell. Thank  
18 you.

19 COMMISSIONER MATT STREETER: Okay. And  
20 the -- John Smriga, S-M-R-I-G-A? Is that  
21 correct?

22 MR. SMRIGA: Yeah.

23 COMMISSIONER MATT STREETER: Hasn't  
24 changed? Those are the two witnesses. At this  
25 time, we will have the respondents in the first

1 case, 136, begin -- I mean, the complainants in  
2 the first case, 136, begin.

3 MR. BARRETT: Thank you. Briefly, this  
4 dispute centers on the killing of Zoe Dowdell by  
5 New Britain employees on December 14th, 2017. As  
6 I understand it from both Complainant's Exhibit  
7 A, which is the request made on behalf of Mr.  
8 Dowdell and Complainant's D, which is the request  
9 made by Mr. Sack on behalf of Shireen Fagan, this  
10 entire dispute turns on a single provision of  
11 law. That is to say, the 1-210(b)(3)(d)  
12 exemption for records that may be prejudicial to  
13 future law enforcement action.

14 If there is another exemption afoot in  
15 the case, I don't know about it and I hope that  
16 Mr. Skelley will at this point interject to  
17 correct me, because I think we're only talking  
18 about one provisional one.

19 That being the case, for Mr. Dowdell's  
20 part, he does not bear the burden of establishing  
21 a record showing prejudice or refuting prejudice,  
22 and so I would leave it to Mr. Sack, if he has  
23 any direct, and for Mr. Dowdell's part, I think  
24 we would prefer that the city put on its case and  
25 then we be permitted to cross any witnesses.

1 COMMISSIONER MATT STREETER: Okay.

2 MR. SACK: I'd like to call the chief.

3 COMMISSIONER MATT STREETER: Well -- so  
4 you have no other witnesses? He's your witness?

5 MR. SACK: I'm calling the chief as my  
6 witness.

7 COMMISSIONER MATT STREETER: Oh, he's  
8 your witness. Okay. That's fine.

9 MR. SKELLEY: Can I just be heard  
10 briefly?

11 COMMISSIONER MATT STREETER: Oh, yeah,  
12 you have a response...

13 MR. SKELLEY: Well, it's true that we  
14 do have our main argument is one 1-210(b)(3)(d),  
15 but there are, within that section, other  
16 applicable sections which might apply depending  
17 on your (indiscernible) statement of witnesses,  
18 that type of thing.

19 So I don't want to be precluded from --  
20 you know, we don't have any statements, or rather  
21 any statements that were generated were generated  
22 by the Connecticut State Police, but there still  
23 is a FOI exemption for statement of witnesses in  
24 that (indiscernible).

25 MS. ROSS: I think it would be

1 important to really focus on the records that  
2 were created by the New Britain Police  
3 Department. Those records that were requested  
4 that your client created.

5 MR. SKELLEY: Created and --

6 MS. ROSS: As opposed to focusing on  
7 what the state police may have or what the  
8 state's attorney might now have.

9 MR. SKELLEY: Our documents created  
10 which were then transmitted --

11 MS. ROSS: Yeah.

12 MR. SKELLEY: -- to the state police.

13 MS. ROSS: Yeah.

14 MR. SKELLEY: Okay. Thanks. Where do  
15 you want the chief --

16 MS. ROSS: In the middle.

17 MR. SACK: He's been sworn, so ready to  
18 go?

19 DIRECT EXAMINATION OF JAMES WARDWELL

20 BY MR. SACK:

21 Q Chief, Gerry Sack. How are you today?

22 A Good, sir.

23 Q I just want to focus on what records were  
24 generated by the New Britain Police Department,  
25 and you're going to tell me whether -- I'm going

1 to give you a category of documents, tell me  
2 whether they were generated in connection with  
3 the shooting of Zoe Dowdell by the New Britain  
4 Police Department.

5 MS. ROSS: And before you do that, I'd  
6 like you to please identify yourself for the  
7 record.

8 MR. WARDWELL: I'm sorry, yes.

9 MS. ROSS: Who you are and what you do.

10 MR. WARDWELL: Yes. James Wardwell,  
11 chief of police, New Britain Police Department,  
12 City of New Britain.

13 MS. ROSS: Thank you.

14 Q Chief, were you the chief at the time of  
15 this incident?

16 A Yes, sir.

17 Q In connection with this incident, did the  
18 New Britain Police Department or its officers  
19 generate use of force reports?

20 A There were reports generated that evening  
21 under the direction of the state police and  
22 turned over to the state police.

23 Q Okay. My question was much easier than  
24 that. Were there use of force reports prepared  
25 by any officers within the New Britain Police

1 Department?

2 A They were police reports. The Connecticut  
3 State Police ran the investigation that night,  
4 sir. They generated all the primary documents.  
5 We have approximately, in memory, I believe 24  
6 pages of police reports that were generated that  
7 night under the direction of the state police and  
8 the state's attorney that were running the case.

9 Q And what are the 24 pages?

10 A Police reports that document what happened,  
11 documenting the use of force (indiscernible).  
12 Circumstances --

13 A I said use of force reports. You're  
14 agreeing. You have use of force reports;  
15 correct?

16 Q We have those 24 pages of reports.

17 A Okay.

18 Q They were generated by your officers within  
19 a reasonable period of time after this incident;  
20 correct?

21 A Yes, sir.

22 Q Okay. Do you have dashcam type videos?

23 A That was generated by the New Britain Police  
24 Department?

25 Q Yes.



1     A     Yes, sir.

2     Q     Do you have any body cam videos?

3     A     No, sir.

4     Q     Are there any CC TV type recordings from the  
5     area where this incident took place?

6     A     Yes, sir, I believe there was, that didn't  
7     catch the incident, but everything was turned  
8     over to the state.

9     Q     All right, but they were collected by your  
10    officers?

11    A     I don't believe so. I think they were  
12    collected by the state police.

13    Q     Are they within your records at this point?

14    A     No, I --

15    Q     Surveillance type videos.

16    A     I don't believe so.

17    Q     Okay. Audio recordings?

18    A     (Indiscernible). Audio recordings are part  
19    of the dashcam.

20    Q     Is there separate audio recordings, like 911  
21    calls or anything like that?

22    A     Okay, yes. Those weren't generated by New  
23    Britain Police Department, if I could just  
24    clarify, those are generated by a different city  
25    department. It's a dispatch center which is not

1 part of the police department.

2 Q But it's part of the City of New Britain?

3 A Yes, sir.

4 Q Okay. I think city is a party to this case,  
5 so --

6 A Yes, sir.

7 Q How about statements by the five officers  
8 that may have shot their guns?

9 A No. Not generated by us, no.

10 Q Police reports other than the 24 pages. Do  
11 you have anything else in your records that your  
12 police department generated?

13 A Yes, sir. I would've -- there's at least  
14 two memos from me to the deputy chief of police  
15 ordering an IA, and that IA is still open because  
16 we can't conclude it. There's memos from me to  
17 the five involved officers placing them on  
18 restricted duty.

19 Q Is that still in place?

20 A Yes, sir.

21 Q How about the internal affairs  
22 investigation? What documents exist with regards  
23 to that?

24 A What I have is the -- whatever memos are  
25 generated, so there were at least two that I

1 recall. There's a set of memos to each of the  
2 officers reporting on the original restricted  
3 duty. That restricted duty was modified slightly  
4 with more restrictions in January or February, so  
5 there's memos pertaining to that. And the five  
6 statements that were generated by the state  
7 police were turned over, actually one of the five  
8 tendered two statements to the state police, so I  
9 have copies of those in that IA file. That's all  
10 I have.

11 Q All right. So that's the universe of  
12 documents in the IA file; is that correct, that  
13 you just described?

14 A It's a variety of documents.

15 Q Okay. Do you have any records from the  
16 office of chief medical examiner including  
17 autopsy?

18 A No, sir.

19 Q Do you have any lab reports from any  
20 materials submitted to any state or local lab for  
21 testing?

22 A No, sir.

23 Q Do you know anything about that?

24 A No, sir.

25 Q How about any physical evidence? Do you

1 have any in your evidence lockers, any physical  
2 evidence from the scene?

3 A No, sir.

4 Q Is there anything else, other than what  
5 you've described, that the New Britain Police  
6 Department has in its custody and control at this  
7 time, relative to that incident in which Mr.  
8 Dowdell was killed?

9 A No, sir.

10 Q Okay. Now, could you articulate for me what  
11 the prospect of law enforcement action is that  
12 may justify the nondisclosure of these materials?

13 MR. O'NEILL: Objection to the form of  
14 the question. That's not his call. That's the  
15 state's call.

16 MR. SACK: I think that I can ask him.

17 MR. SKELLEY: It's not directed to the  
18 -- I mean, he said that he did it all at the  
19 direction of the state police, so now he's asking  
20 --

21 COMMISSIONER MATT STREETER: He can  
22 answer that.

23 MS. ROSS: If he knows.

24 A Yeah, statutorily everything was turned  
25 over to the state's attorney and I am following

1 his direction.

2 Q There's two criminal prosecutions pending;  
3 is that correct?

4 A Yes, sir.

5 Q Is your department still involved with  
6 either one of those?

7 A The current prosecutions, no, sir.

8 Q Okay. My question really is to you, you've  
9 described the reports that your department has in  
10 its custody and the city has in its custody. Are  
11 you claiming that they should not be disclosed  
12 because they may prejudice a prospective law  
13 enforcement investigation or proceeding?

14 A The way I understand it, yes, sir, because  
15 they were all turned over to the state police as  
16 part of their overarching investigation of us.

17 Q But what is the prejudice?

18 MR. SKELLEY: He's already answered the  
19 question.

20 COMMISSIONER MATT STREETER: I think he  
21 asked -- if you want to ask for clarification.

22 MS. ROSS: Can you --

23 MR. SACK: Yeah, I was --

24 MS. ROSS: Yeah, as him in another way.

25 Q How has disclosure been prejudiced in any

1 prospective law enforcement?

2 A So in no way, shape, or form do I want to do  
3 anything that's going to cast any bias or any  
4 unfair opinion -- or any opinion, actually -- on  
5 what Mr. Smriga has to accomplish. He's got a  
6 huge task in front of him. Any release of our  
7 documents that he does not want released might  
8 add to that bias, and I do not want that.

9 Q I understand that politically it would not  
10 be -- you don't want to get --

11 A I'm not talking politics. I'm talking right  
12 or wrong.

13 Q I'm still looking for a reason why and how  
14 the disclosure of these materials within the  
15 city's possession and control would prejudice a  
16 prospective law enforcement proceeding, and  
17 you're just telling me you don't want to do  
18 anything that would make Attorney Smriga upset.

19 A That's not what I said.

20 MR. SKELLEY: That's not -- that wasn't  
21 his entire answer. He said he didn't want to do  
22 anything which would prejudice the state's  
23 investigation.

24 MR. WARDWELL: Right.

25 MR. SACK: I'm looking for a reason.

1 A So the documents that I described --

2 MR. SKELLEY: -- have a ruling on that?

3 COMMISSIONER MATT STREETER: He  
4 answered that he didn't want to cast any bias or  
5 opinion to the state's attorney's office. He did  
6 not say that he was going to upset the state's  
7 attorney.

8 Q And is creating bias or opinion on -- you  
9 think disclosure of these to --

10 A Yeah.

11 Q -- people that have requested them would  
12 cause Mr. Smriga to have a different way to  
13 handle the case?

14 A So those police reports that were generated  
15 were the foundation of information that the state  
16 police used to launch their investigation. It  
17 was from -- those police reports were authored by  
18 other officers on scene and the statements are  
19 part and parcel of what they investigated.

20 Q Is there anything else you want to say to  
21 explain to me how disclosure -- for example the  
22 dashcam would prejudice a prospective law  
23 enforcement proceeding?

24 A That's a -- I know a piece of evidence that  
25 is being examined, has been examined by the state

1 police and now is being reviewed by Mr. Smriga.  
2 I know it's at the center of their investigation.  
3 Certainly --

4 Q Are you aware that's already been shown on  
5 TV?

6 MR. SKELLEY: Objection. Foundation for that.

7 Q Are you aware that the -- some body cam or  
8 dashcam video from this is something you can  
9 watch on the internet that's been released as  
10 part of the criminal discovery process? Are you  
11 aware of that?

12 A No, that's news to me.

13 Q Are you aware of what materials have been  
14 disclosed by the state's attorney's office in  
15 connection with any of the two proceedings that  
16 are ongoing?

17 A No.

18 Q Would it change your opinion if you learned  
19 that certain materials were disclosed to defense  
20 counsel in the criminal proceedings without any  
21 restriction whatsoever on how to use them?

22 A No.

23 Q Is there any other material that you're  
24 aware of that's been not sent to Attorney Smriga  
25 that bears on this investigation?



1 A No.

2 Q And are you -- is there a timeframe for the  
3 completion of the Internal Affairs investigation?

4 A I don't have a timeframe. It's not possible  
5 for me to complete it without the completed  
6 report from the state police to have the facts  
7 and Mr. Smriga's review, so it's tied to his  
8 timeline.

9 Q Chief, can you articulate any reason why the  
10 family should not be entitled to autopsy report  
11 of their deceased family member?

12 MR. SKELLEY: Objection. He doesn't  
13 have the autopsy. He's never seen it. He can't  
14 testify as to that. His opinion's not relevant.

15 MR. SACK: I'll withdraw the question.  
16 That's all I have. Thank you.

17 MR. SKELLEY: Okay.

18 MR. O'NEILL: Thank you.

19 CROSS EXAMINATION OF JAMES WARDWELL

20 BY MR. BARRETT:

21 Q Chief, I wonder if you would look at what's  
22 been marked as Complainant's Exhibit A. Have you  
23 ever seen this document before?

24 A Yes.

25 Q And when did you first see it?

1     A     I don't have a date. It's marked March 2nd,  
2     so I would assume sometime shortly after that. I  
3     don't know.

4     Q     And how did you come to see the document for  
5     the first time?

6     A     I don't have a particular recollection of  
7     this document, but typically they come in the  
8     mail to my office.

9     Q     Is it fair to say this document asks the  
10    City of New Britain to compile and produce police  
11    records for Mr. Dowdell?

12    A     It does.

13    Q     And did you attempt to compile those records  
14    for Mr. Dowdell?

15    A     Yeah. So what I did immediately is I  
16    alerted Attorney Skelley to the request, as I do  
17    with all FOI requests and any records that we  
18    have are made available to Attorney Skelley.

19    Q     How did you assemble the records that  
20    thought were responsive to the request?

21           MR. SKELLEY: If you did.

22           MR. BARRETT: (Indiscernible).

23           MR. SKELLEY: No, if you did.

24    A     Yeah --

25    Q     Let me (indiscernible) by asking you this.

1 Did you assemble the records responsive to the  
2 request?

3 A I did not.

4 Q Who did?

5 A Typically, my assistant would do that. I  
6 don't have a particular recollection of what  
7 happened that day or that week. Attorney Skelley  
8 is respondent and we follow his direction,  
9 whatever happens. I have no particular  
10 recollection of this FOI request.

11 Q Have you -- so can you tell us with any  
12 specificity who actually did a search for the  
13 records?

14 A Yeah, it would be within my office. There's  
15 really no other records to compile. It's a very  
16 small folder. It's not much work.

17 Q And when the person who assembled the  
18 records finished their work, did you look at the  
19 records?

20 A No --

21 MR. SKELLEY: That question assumes  
22 that the records were assembled.

23 MR. BARRETT: Okay.

24 Q Are you aware that anyone ever did a search  
25 for responsive records to this request?

1     A     No.   Not a particular recollection, sir.

2     Q     Okay.   Earlier, Mr. Sack had asked you some  
3     questions about some of the records that might be  
4     responsive to this request.   Do you remember  
5     those questions?

6     A     Yes, sir.

7     Q     And you answered that -- listed a variety of  
8     documents that you thought would be responsive to  
9     this request.   Do you recall that?

10    A     Yeah, the ones that he was asking were they  
11    generated by the city and/or the police  
12    department.

13    Q     And so on what do you base your testimony  
14    about the records that are responsive to this  
15    request if you did not do the search and you did  
16    not review the records that (indiscernible)?

17    A     I know what exists.

18    Q     How do you know it?

19    A     It's my office.   I know what file I have.

20    Q     Are you aware of every piece of information  
21    that's assembled for every police investigation  
22    conducted by your department?

23    A     No, but in this particular one, since  
24    everything was turned over to the state police.  
25    We have very little, so it's easy to keep track

1 of.

2 Q How do you know that you have very little?

3 A Because within -- the 15 minutes of the  
4 incident I was calling the state's attorney. We  
5 subsequently involved the state police and  
6 everything was turned over.

7 Q My base level of confusion is, is your  
8 testimony you did review all the responsive  
9 records and yet you're at the same time  
10 testifying that, quote, "everything was turned  
11 over." How can you testify both of those things  
12 at once?

13 A They're both true. I am aware of what  
14 records I have and the bulk of all evidence was  
15 turned over -- and paperwork, was turned over to  
16 the state police.

17 Q Is there anything not turned over to the  
18 state police? You said the bulk of the evidence.

19 A Yeah. I do not believe they would have my  
20 administrative memos, so there's -- if they  
21 request them, they can certainly have them.

22 Q What are your administrative memos?

23 A Calling for an Internal Affairs  
24 investigation.

25 Q How many of those are there?

1 A At least two. I'm sorry, in addition to the  
2 memos placing the officers on restricted duty.

3 Q A moment ago, Mr. Sack was asking you  
4 questions, you referred to an IA. Is that an  
5 Internal Affairs investigation?

6 A Yes.

7 Q Based on your experience as a New Britain  
8 police officer and police administrator, what  
9 reports does New Britain require its employees to  
10 produce following the use of force?

11 A Ordinarily, a use of force report. This was  
12 a little different in the sense that another  
13 agency was investigating. They documented --  
14 believe they did it -- there was an arrest report  
15 that night, but they did, and they ran the full  
16 investigation after my officers that were not  
17 directly involved who were on scene documented  
18 what happened.

19 Q How did they document what happened?

20 A Through the use of our -- New Britain police  
21 reports and I believe there's 24 pages of that.

22 Q Is New Britain's use of force report  
23 different from, for example, an incident report?

24 A Not particularly. It's -- not all incident  
25 reports are use of force reports, but all use of

1 force reports are incident reports.

2 Q In addition to use of force reporting from  
3 the night of December 14th, 2017, are there also  
4 incident reports?

5 A No. I think every report pretty much  
6 revolved around that one incident where there was  
7 use of force.

8 Q So is it -- do you know that there are no  
9 incident reports?

10 A Those are the incident reports.

11 Q Okay. My understanding is -- correct me if  
12 I'm wrong, there were also two arrests made at  
13 the scene that night; is that correct?

14 A That was by the state police.

15 Q New Britain police made no arrest that  
16 night?

17 A No, we did not.

18 Q Did New Britain police generate any arrest  
19 reports?

20 A No, we did not.

21 Q You mentioned when Mr. Sack was asking you  
22 questions about the records, you mentioned  
23 something of restricted duty. What is that?

24 A Restrict the officers from performing their  
25 normal duty, to restrict their access to the

1 public, something that I felt was necessary and I  
2 still feel is.

3 Q (Indiscernible) employees still on  
4 (indiscernible) leave?

5 A Yes, they are, sir.

6 Q And there are five employees; is that  
7 correct?

8 A Yes, sir.

9 Q Each of them was issued a restricted duty  
10 memo?

11 A Each of them was issued two. One was -- the  
12 initial one right after the incident and there  
13 was another one where I modified the restriction  
14 in early 2018.

15 Q And each employee got the modification as  
16 well?

17 A Yes, sir.

18 Q The information relating to the shooting of  
19 Zoe Dowdell, I think you testified earlier that  
20 you know everything that's in the file. I might  
21 not be quoting you directly. (Indiscernible).

22 A Yeah, you're fairly accurate.

23 Q Okay. Maybe talk about the file. In what  
24 form is that information stored by New Britain  
25 police?



1     A     Paper form.  It's my Internal Affairs file.  
2     That's the file I'm referring.

3     Q     Do New Britain police employees make reports  
4     electronically, for example, through the use of a  
5     laptop in their cruisers?

6     A     They (indiscernible).

7     Q     They do?

8     A     Yes, sir.

9     Q     Okay.  And those reports are stored  
10    electronically?

11   A     They wouldn't.

12   Q     Did you ever look for those reports in the  
13    electronic system in response to the request  
14    (indiscernible)?

15   A     No, sir, because I have them in paper form.

16   Q     How did they get to paper form?

17   A     They were printed out.

18   Q     I think earlier when you were testifying in  
19    response to Mr. Sack's questions, I'm positive  
20    that the release of any of the information  
21    related to the shooting of Mr. Dowdell would  
22    possibly prejudice the state's attorney's  
23    investigation.  Is that accurate?

24   A     It is.

25   Q     Do you take the position that each and every

1 piece of information relating to the incident  
2 could prejudice the state's attorney's  
3 investigation?

4 A Yes, sir.

5 Q Has the New Britain Police Department  
6 released any information relating to the incident  
7 since it occurred?

8 A No, just reporting -- there was a recent  
9 rally in our city. The only comment we made -- I  
10 made was supporting their right to protest.

11 Q Have the New Britain police ever revealed to  
12 the public the names of the five employees  
13 involved in the shooting?

14 A Yes, sir.

15 Q When did the New Britain police do that?

16 A I don't know.

17 Q Did you direct the police to do that?

18 A Yes, sir.

19 Q Did you think that the names of the  
20 employees would prejudice the state's attorney's  
21 investigation?

22 A No, sir.

23 Q Why not?

24 A They're names are -- has no impact on  
25 whether or not what they did was criminal or not

1 criminal. It's just their names.

2 Q Would it be fair to say that any information  
3 that has no impact on whether the shooting of Mr.  
4 Dowdell was criminal, therefore will not  
5 prejudice Mr. Smriga's investigation in your  
6 view?

7 MR. SKELLEY: Objection. You're asking  
8 him to comment on Attorney Smriga's  
9 investigation. He can't do that.

10 MR. BARRETT: I'm asking his own  
11 conception of what prejudice to a law enforcement  
12 investigation involves, since he's testified --

13 MR. SKELLEY: His opinion is irrelevant  
14 since the records have been provided to Attorney  
15 Smriga.

16 MS. ROSS: I think the objection should  
17 be overruled. I don't understand what you're  
18 saying. So you're --

19 MR. SKELLEY: He's asking Chief  
20 Wardwell whether in his opinion the release of  
21 these records would prejudice the investigation  
22 which is being done by Attorney Smriga.

23 Q So, I think the chief will correct me if I'm  
24 wrong, you testified that releasing the names of  
25 the New Britain employees who were involved in

1 the shooting would not be prejudicial because it  
2 had no bearing on whether or not criminality had  
3 occurred. If that's the case, I'm wondering if  
4 the chief would extrapolate more generally, then,  
5 any information that has no bearing on whether or  
6 not criminality occurred would, therefore, not be  
7 prejudicial to the law enforcement investigation.

8 A Yeah, I can. I'm not comfortable. With  
9 answering for someone else's investigation at  
10 all.

11 Q Solely in your own view.

12 A What I might think might have bearing or no  
13 bearing, oftentimes as the investigation moves  
14 forward, we find out that that shouldn't have  
15 been said that (indiscernible) released and it  
16 does have a bias. So I'm not comfortable  
17 extrapolating the way you asked.

18 Q But at least in the case of the names of  
19 five employees, you thought there would be no  
20 prejudice?

21 A That's right, because you are particularly  
22 and specifically identifying a piece of  
23 information. I can't speculate on anything.

24 Q Okay. And the position of New Britain, I  
25 take it, is that the sole reason that the records

1     were not produces to Mr. Dowdell in response to  
2     Complainant's Exhibit A was because of the  
3     direction of the state's attorney? Is that  
4     correct?

5     A     Yes, sir.

6     Q     Is there any other reason why -- that is  
7     preventing you from releasing those records?

8     A     No. That's what we're waiting on is that  
9     investigation to be completed.

10                 MR. BARRETT: Thank you.

11                 MR. SKELLEY: Thanks.

12                 CROSS EXAMINATION OF JAMES WARDWELL

13     BY MR. SKELLEY:

14     Q     Chief, you said you contacted the state  
15     attorney on the night of the incident?

16     A     Yeah. Yes, sir.

17     Q     And who was that? Who did you contact?

18     A     I contacted our local state's attorney  
19     fairly immediately after I understood exactly  
20     what was -- had occurred. That was Brian  
21     (indiscernible) out of New Britain judicial  
22     district.

23     Q     Do you have approximately how soon after you  
24     were made aware of the incident would you have  
25     contacted them, if you can recall?

1     A     About 15 minutes.

2     Q     Okay. And then what happened after that  
3     with regard to -- do you know what --

4     A     Things were -- I'm talking about 15 minutes  
5     from the time I was called, I immediately drove  
6     to the scene, so after arriving on scene, it was  
7     within five minutes, just a clarification. I had  
8     a couple commanders that also responded to the  
9     scene. I told them what I was doing under the  
10    direction of the state's attorney. Everything  
11    was secured until the arrival of the state  
12    police.

13    Q     So at some point, the state police arrived  
14    that night?

15    A     Yes, sir.

16    Q     And attorney Peter McShane also arrive that  
17    night?

18    A     Yes, sir.

19    Q     Okay. And were you asked by the state  
20    police to provide them with copies of the 24-page  
21    incident report that you referred to?

22    A     Yes, sir.

23    Q     Okay. And were they also provided with the  
24    dashcams, the audios, and 911 calls, that type of  
25    thing?

1 A Everything we had.

2 Q Okay. And since that night, has New Britain  
3 Police Department had anything to do with the  
4 investigation into the circumstances of the  
5 shooting of Zoe Dowdell?

6 A Other than our cooperation with every  
7 request, no.

8 Q Okay. Okay, but you haven't assisted in --  
9 you haven't done anything as part of the state's  
10 investigation?

11 A No, sir.

12 Q And you said you opened up an Internal  
13 Affairs file?

14 A Yes, sir.

15 Q At some point, you plan on conducting an  
16 Internal Affairs investigation once you receive  
17 the report from the state's attorneys?

18 A Yes.

19 Q And the five statements that you said are  
20 now in your file, were those provided by the  
21 state police or another party?

22 A They were supplied to me through the police  
23 union.

24 Q Okay. So you have the statements, but you  
25 haven't done anything with them, they're just in

1 your file?

2 A They were reviewed by the deputy chief.

3 Q Okay. But no action has been taken in  
4 connection with the investigation since then?

5 A No. There's no investigation that I can do  
6 without all the facts.

7 MR. SKELLEY: That's all I have. Thank  
8 you.

9 MR. SACK: I just have one followup  
10 question with your permission.

11 REDIRECT EXAMINATION OF JAMES WARDWELL  
12 BY MR. SACK:

13 Q I neglected to ask the Chief about the  
14 photographs. Were photographs taken by the New  
15 Britain Police Department?

16 A No, sir.

17 Q Videos? (Indiscernible) body camera, video  
18 --

19 A No, sir.

20 Q Like (indiscernible) take videos?

21 A No, sir.

22 MR. SACK: All right, thank you.

23 MR. BARRETT: And I just have one  
24 followup question based on Mr. Skelley's  
25 question, if I may.



1           RECROSS EXAMINATION OF JAMES WARDWELL

2       BY MR. BARRETT:

3       Q     Chief, I think you testified in response to  
4       Mr. Skelly's questions that on the night that Mr.  
5       Dowdell was killed, you were given instructions  
6       as to gathering up information. Is that fair?

7       A     No.

8       Q     No. Did you ever get instructions about  
9       gathering up information to give to the state  
10      police?

11      A     No. The instruction was hold the scene.

12      Q     Okay. At any time, did you receive an  
13      instruction to gather information for the state  
14      police?

15      A     No. there were conversations with the state  
16      when they arrived and Attorney McShane as to what  
17      they expected our officers to do or not to do.

18      Q     What were those instructions?

19      A     They wanted to know what happened, so I made  
20      our officers available to them to speak to.

21      Q     And over the course of the investigation, am  
22      I right that the New Britain police have produced  
23      information to the state police and/or the  
24      state's attorney's office, pursuant to this  
25      investigation?

1     A     Yes, sir.

2     Q     How does that happen?

3     A     They'd ask for statements from the five  
4     officers. Those five officers (indiscernible).  
5     Whatever is asked for. Sorry. So, yeah, any  
6     particular information that was asked for was  
7     provided, whether it was testimony or it was  
8     brought up -- some other material, earlier  
9     dashcams, whatever it was, it was provided.

10    Q     Was that provided all at once or in a series  
11    of requests and responses?

12    A     A series of requests, but it was fairly  
13    quick up front. Most of it was in those first  
14    few days.

15    Q     Were you the person who handled those  
16    requests from the state police and the state's  
17    attorney?

18    A     Not all of them, no.

19    Q     Who else handled those requests?

20    A     No the five officers, they were each  
21    represented by counsel and they dealt direct with  
22    counsel. The requests for dashcam, it was under  
23    my direction, but someone else provided it. I  
24    instructed that the hard drives be removed and  
25    turned over to the state police with the original

1 evidence. I directed the state police to it --  
2 the outside agency, the dispatch center which is  
3 not part of us, so -- the 911 calls and regular  
4 things, those are not under our control nor do we  
5 create them, so I just pointed them in the right  
6 direction.

7 Q When the state police and the state's  
8 attorney made subsequent requests over the course  
9 of the investigation, have those requests gone  
10 through you?

11 A No, they would've gone -- sometimes, they'd  
12 come through me, but they went through our  
13 captain of investigations, at times.

14 Q Have you been made aware of each request the  
15 state police and the state's attorney have made  
16 of the New Britain police during this  
17 investigation?

18 A I believe so.

19 Q When's the last time that the state police  
20 or the state's attorney has made such a request?

21 A It would've been first part of 2018, spring.  
22 No later than that.

23 Q So is it fair to say no later than May 2018?

24 MR. SKELLEY: I'm sorry, what was --

25 Q Is it fair to say no later than May 2018?

1       A       That would be my recollection, yeah.

2               MR. BARRETT:   Thank you.

3               MR. SKELLEY:   All set, Chief.   Thank  
4       you very much.

5               COMMISSIONER MATT STREETER: All right,  
6       thank you very much.

7               MS. ROSS:   Chief, one question.   Did  
8       you say that as part of the use of force report  
9       that the New Britain Police Department created,  
10      the five statements of the police officers are  
11      part of that report --

12              MR. WARDWELL:   No.

13              MS. ROSS:   -- that your office create,  
14      those statements?

15              MR. WARDWELL:   No.

16              MS. ROSS:   That was the state police?

17              MR. WARDWELL:   That was the state  
18      police.

19              MS. ROSS:   Thank you.

20              MR. SKELLEY:   (Indiscernible) the  
21      police union --

22              MR. SACK:   (Indiscernible) --

23              MR. SKELLEY:   -- statement --

24              MR. SACK:   Before you leave, that  
25      question prompted a question.

1 MS. ROSS: I didn't understand what you  
2 --

3 MR. SACK: My apologies.

4 REDIRECT EXAMINATION OF JAMES WARDWELL

5 BY MR. SACK:

6 Q You have copies of those five statements?

7 A Yes.

8 Q They were not created at your instance, but  
9 they are part of your records?

10 A Yes, sir.

11 MR. SACK: Okay. I'd like to call  
12 Attorney Smriga.

13 DIRECT EXAMINATION OF JOHN SMRIGA

14 BY MR. SACK:

15 Q Thank you. I apologize. I wasn't here  
16 during the prior hearing so to the extent I'm  
17 duplicating anything you said already, I'm sorry.

18 A I do this all day long, repeating myself.

19 Q It might be the most exciting part of your  
20 day. The status of the investigation is what?

21 A Pending. And --

22 Q Is there a timeframe?

23 A There is a timeframe, in that it started  
24 perhaps in the end of August when I believe that  
25 I received (indiscernible) I need to receive.

1 And I have noticed, you know, in the last almost  
2 a month that I'm not making as much progress.  
3 I've just recruited another person from my office  
4 to assist me to move things along. So because I  
5 haven't finished going through everything  
6 carefully, it's difficult for me to predict, but  
7 it has to be done along with everything else that  
8 I have to do, and that's one of the problems of  
9 this whole system is that there isn't someone  
10 that is dedicated to doing a report.

11 Q You don't have a date you're going to give  
12 us to say it'll be done by the 12/31 or January -  
13 -

14 A I don't have a date, but I can tell you that  
15 I understand that it's important to get done and  
16 I am making every effort to do that as quickly as  
17 possible.

18 Q Currently, there are two criminal  
19 proceedings; is that correct? Is your office --  
20 are you responsible for either one of those?

21 A Have nothing to do with either one of them.

22 Q Have you been in touch with the state's  
23 attorney's office that are handling those  
24 prosecutions?

25 A I have. I believe that Michael Gailor is

1     handling at least one of them and I have talked  
2     to him briefly about some aspects of the case.

3     Q     Are you aware that in the course of  
4     discovery proceedings in one or both of those  
5     criminal cases, certain materials have been  
6     disclosed?

7     A     Yes.

8     Q     And what is the category of materials that  
9     have been disclosed? Dashcam video --

10    A     I don't know the entirety of what has been  
11    disclosed, but I became aware of dashcam video  
12    that had been disclosed.

13    Q     How did you become aware of that?

14    A     Probably through -- I'm not sure if it was a  
15    phone call. It might've been news media or it  
16    might've been just someone telling me that they  
17    observed a person on the news talking about  
18    having seen it. And that prompted a call from me  
19    trying to figure out what those circumstances  
20    were to Mr. Gailor.

21    Q     That's out in the world, correct, the  
22    dashcam video?

23    A     My understanding is it's not out in the  
24    world, that it's been part of a disclosure  
25    pursuant to a prosecution. So I don't know

1     whether that -- I really don't know whether that  
2     was turned over or whether someone was allowed to  
3     observe it, but I don't believe it's been turned  
4     over to -- I don't think it's actually appeared  
5     in the press.

6     Q     Wasn't it something you could see on the  
7     internet by --

8     A     I

9     Q     -- himself?

10    A     That would be news to me.

11    Q     Okay. Did you look at the affidavit that  
12    Attorney Barrett submitted here on Jessica  
13    Coderre from the defense attorney --

14    A     Yes. Yes. I think I did.

15                 MR. SKELLEY: I'm showing just for --  
16    make it easier, exhibit -- Complainant's C.

17    Q     Any reason to dispute what she asserts under  
18    oath there?

19    A     I don't dispute it. I just -- I'm not clear  
20    exactly what it means.

21    Q     It seems to say that she has a copy of the  
22    dashcam video and she's under no restriction on  
23    how to use it.

24    A     It could be interpreted to mean that. I  
25    don't know that's what happened, that it was



1 physically turned over. I don't know that.

2 Q I mean, if you take it on her word under  
3 oath, she has a copy and she has no restrictions  
4 on how -- what to do with it.

5 A You could interpret it that way.

6 Q Under those circumstances, do you continue  
7 to have an objection to disclosure of the dashcam  
8 video?

9 A As I have stated at a previous hearing, this  
10 part of -- the dashcam video is an important  
11 piece of my investigation. I would -- I don't  
12 think it should be released publicly. There may  
13 be circumstances that are overriding legal  
14 requirements that it's disclosed to a person or  
15 another, but I do not think it should be released  
16 so that it would be public information at this  
17 point.

18 Q Well, let me ask it a different way. Given  
19 that if we take this affidavit on its own word,  
20 this attorney has a copy and she could do  
21 whatever she wants with it. Hasn't the train  
22 already left the station on the dashcam video?

23 A I just simply -- I have not seen it on --  
24 so I don't know that that's true. There may be  
25 some understanding. There could have been -- the

1 disclosure could have been some sort of qualified  
2 disclosure and I don't know what the  
3 circumstances are specifically.

4 Q Well, let's do hypothetically, there's no  
5 qualification that her affidavit is accurate.  
6 Under those circumstances, do you have any  
7 continued objection?

8 A Yes.

9 Q And for the same reason you already said,  
10 that you don't think it should be out there?

11 A It should not be out there at this point in  
12 time, and I'm trying to get to that point in time  
13 where it won't be a problem if -- and that  
14 depends on whether or not the police officers are  
15 going to be subject to arrest because if they're  
16 going to be on trial for this, again, as I've  
17 indicated previously, until that is used as  
18 evidence in Court, it would be problematic -- I  
19 would consider it problematic.

20 Q Why?

21 A Because A, it could -- it would create a  
22 situation where I would not know if witnesses  
23 came forward either to me directly or being  
24 presented by the defense as to whether they were  
25 actually witnesses or they were indicating that

1     they knew certain things and were pretending to  
2     be actual witnesses because they observed certain  
3     things on a video.

4             The second thing is that it would -- it  
5     could very easily -- the release of a video  
6     without the entire circumstances being known  
7     could influence a potential jury who had seen the  
8     video prior to it being introduced in Court.

9     Q     So you watch the news and see shootings by  
10    police taking place at various locations and --

11   A     I do.

12   Q     -- in almost every case, the video is  
13   disclosed. It's on the news. Why is your  
14   position different from all these other law  
15   enforcement officials who have authorized the  
16   disclosure of this evidence?

17             MR. SKELLEY: Objection to -- there's  
18   no foundation for the first part of this comment.

19             MR. SACK: I'll rephrase it.

20   Q     You have seen numerous reports of videos  
21   being disclosed of police shootings on a  
22   nationwide basis; correct?

23   A     I have seen those, yeah.

24   Q     And your position seems to be different from  
25   the chiefs and state's attorneys and prosecutors

1 in other jurisdictions --

2 A I'm not sure that it is, and I don't know  
3 the circumstances that allowed for that  
4 disclosure, but I can't imagine that any person  
5 who was serious about conducting a fair and  
6 impartial investigation would want evidence to be  
7 made public before they conclude their  
8 investigation.

9 Q And just to articulate in terms of the  
10 dashcam, you think that disclosure would somehow  
11 cause somebody out there to make up a story of  
12 what they saw?

13 A It would prevent --

14 Q (Indiscernible).

15 A -- a person who was trying to assess the  
16 credibility of an individual who came forward.  
17 It would interfere with that ability to assess  
18 that credibility.

19 Q Do you have any hard evidence to back up  
20 that (indiscernible) more than speculation?

21 A I have 38 years of experience trying  
22 criminal cases to back that up, and that would be  
23 --

24 Q Anything you want to give us as a concrete  
25 example?

1 A No, because it typically doesn't happen, so  
2 that we avoid the issue by not allowing it to  
3 happen, generally.

4 Q Do you think disclosure of the autopsy  
5 record would also prejudice the potential  
6 proceeding in any way?

7 A Well, when you -- disclosure of it to the  
8 public, I would have the same conclusion.

9 Q To the family.

10 A Personally, my concern would be publication  
11 of it. If there was some overriding need by a  
12 person who has a right to file a lawsuit who is -  
13 - where that right is being interfered with by  
14 not having that evidence, if there was a  
15 disclosure as long as it wasn't public, if it  
16 wasn't entered into pleadings or it wasn't put  
17 out onto some publicly available forum,  
18 personally I would not -- that would not disturb  
19 me.

20 Q How about the same question with respect to  
21 use of force reports? Any reason they could not  
22 be given to parties that would have a right to  
23 sue?

24 A Now, I think -- I mean, I think at some  
25 point, I think that the parties who have a right

1 to sue are going to be able to probably receive  
2 that, sooner rather than later. What I'm talking  
3 about is right now, and as we sit here today with  
4 an unfinished report. That's my concern. And  
5 that might change depending on whether or not  
6 police officers are eventually subject to arrest  
7 in this case.

8 Q Am I correct that assuming you choose not to  
9 request prosecution of any of the five officers,  
10 all these concerns disappear and you --

11 A Far as I'm --

12 Q -- objection?

13 A As far as I'm concerned, they disappear  
14 subject to any other continuing prosecutions in  
15 other jurisdictions.

16 Q And there -- again, just to be clear,  
17 there's nothing specific that you can offer me as  
18 a reason why there would be prejudice to the  
19 potential prosecution of the five officers --

20 A I thought my --

21 Q -- materials were disclosed?

22 A I thought that my response was specific.

23 Q I thought it was speculative, so --

24 MR. SKELLEY: Objection. It's argumentative.

25 MR. SACK: That's all I have. Thank you.

1 MR. BARRETT: Thank you.

2 CROSS EXAMINATION OF JOHN SMRIGA

3 BY MR. BARRETT:

4 Q First, I apologize. I've been a bad  
5 listener. Would you pronounce your last name for  
6 me?

7 A It's a little difficult. It's actually --  
8 everybody, it's pronounced, if you were in  
9 Czechoslovakia it would be Smriga, right?

10 Q Okay.

11 A Everybody calls me Smriga, so.

12 Q Which would you prefer I call you?

13 A Smriga. It's easier for everybody.

14 Q Thank you. I mean you no disrespect.

15 A All right.

16 Q Mr. Smriga, looking at Complainant's Exhibit  
17 A which is in front of you --

18 A Yes.

19 Q Have you ever seen this document before?

20 A I believe I saw it in a prior hearing today.

21 Q Prior to earlier today, had you ever seen  
22 it?

23 A I don't believe I have.

24 Q Do you know that it is a request for public  
25 records from the New Britain Police Department?

1     A     I don't know that it is.  I -- if you say it  
2     is, then I'll agree with you.

3     Q     Did you ever at any time become aware that  
4     there had been one or more requests for public  
5     records about the killing of Zoe Dowdell that was  
6     made to the New Britain Police Department?

7     A     Yes.

8     Q     When did you become aware of that?

9     A     I couldn't tell you exactly when.  As I  
10    testified previously, it was at some point prior  
11    to a previously scheduled hearing on this matter  
12    that was postponed.

13    Q     When you first became aware of the request,  
14    did you become aware of the exact language of the  
15    request --

16    A     No.

17    Q     -- precisely what was being asked?

18    A     No.

19    Q     Okay.  When you became aware of the request,  
20    did you undertake any search for responsive  
21    records?

22    A     No.

23    Q     Has anyone --

24    A     No, because it was -- I don't believe it was  
25    made to me, and as I said, also (indiscernible) I



1 didn't have any records until probably the middle  
2 of August.

3 Q But you think that since August, you may  
4 have come into possession of records responsive  
5 to this request in Exhibit A?

6 A I don't know what -- I don't know the  
7 subject to it. I assume that it's talking about  
8 police reports, et cetera, which I did not have  
9 until the middle of August, and I have since come  
10 into possession of police reports and other  
11 documents related to the investigation.

12 Q Was there at time at which you instructed  
13 the New Britain police not to produce records  
14 responsive to this request in Exhibit A?

15 A No.

16 Q Hang on a second, let's look at Exhibit B,  
17 if you would, Complainant's B. Have you ever  
18 seen that document before?

19 A No.

20 Q If you look at the document and my  
21 recollection is correct, the second full  
22 paragraph cites state's attorney's investigation  
23 as the reason for failing to -- well, refusing to  
24 produce documents. Is that a fair  
25 characterization of that paragraph?

1     A     We would say the document speaks for itself,  
2     so you can characterize it as you like.

3     Q     Is my recollection of what it says correct,  
4     though?

5     A     It mentions that -- I'll just read the  
6     document.

7     Q     Perfect. Thank you.

8     A     That Kevin Cain has directed Mr. McShane to  
9     conduct an investigation, and that the office of  
10    the corporation counsel has consulted with  
11    Attorney McShane regarding similar requests  
12    related to the same subject matter of your  
13    freedom of information request and has been  
14    advised that the release of any documents related  
15    to this incident on the date in question would be  
16    prejudicial to his pending investigation, et  
17    cetera.

18    Q     Did you ever speak with -- well, let me back  
19    up. (Indiscernible) covered it in the first  
20    hearing, but not in this one. Who's Mr. McShane?

21    A     Peter McShane is the former state's attorney  
22    for the judicial district of Middlesex.

23    Q     What was Mr. McShane's role, if any, in the  
24    investigation of the killing of Zoe Dowdell?

25    A     It's my understanding that he was designated

1 by the chief state's attorney to conduct the  
2 investigation that is required pursuant to  
3 statute.

4 Q As dome point, did you take over the  
5 investigation from Mr. McShane?

6 A I did.

7 Q When was that?

8 A Believe it was the middle of April.

9 Q Of 2018?

10 A Yes, sir.

11 Q At any time, did you discuss with Mr.  
12 McShane the request made to New Britain for  
13 records relating to the killing of --

14 A No.

15 Q -- Zoe Dowdell? So you, yourself, have  
16 never instructed New Britain to withhold records  
17 from a request for information about the  
18 investigation?

19 A No.

20 Q The investigation that you are running into  
21 the killing of Zoe Dowdell, is there a protocol  
22 or procedure for such investigation?

23 A There is a statute which requires it and  
24 it's the determination of what needs to be done  
25 is indicated in the statute, but not specifically

1 the method of the investigation.

2 Q Have you formulated your own protocol for  
3 conducting it in your own mind?

4 A Generally -- very generally, which is just  
5 to digest the material that's there, number one.  
6 And then depending on what we see, if there are  
7 things that unclear, things that require other  
8 work, then we head in that direction.

9 Q In terms of conducting the investigation, is  
10 one of the steps to interview witnesses?

11 A Yes.

12 Q And did you conduct that step yourself?

13 A No, I have not at this point, but it's  
14 possible that I will.

15 Q Have witnesses been interviewed in  
16 connection with the investigation?

17 A I believe so.

18 Q Who interviewed the witnesses?

19 A I'm specifically not -- I know the state  
20 police have interacted with witnesses and some of  
21 our statements were -- may have been reports from  
22 police officers who were there.

23 Q What other types of information would the  
24 investigation seek to uncover?

25 A Well, all types of information. It would be

1 all witnesses, all physical evidence that would  
2 relate to the matter, and that's pretty much all  
3 encompassing.

4 Q And what's the stage in the investigation  
5 right now as we sit here?

6 A It's in progress.

7 Q Has there been any investigative work done  
8 prior to August of 2018?

9 A Yes.

10 Q What was done prior to August of 2018?

11 A Well, the state police conducted their  
12 investigation.

13 Q Was the state police investigation complete  
14 as of August 2018?

15 A Well, they have submitted what they have to  
16 me at the -- at some point. I don't want to use  
17 that date specifically, but sometime in August,  
18 because there were some other things that they  
19 added to it at various times. So the question  
20 that you've asked is when is their investigation  
21 done. I cannot answer because it's very possible  
22 that if I see things that need to be done, I will  
23 ask them to do it, or we may do things ourselves  
24 from our own office.

25 Q I take it from that, that you have

1 investigators at your office who --

2 A We have inspectors that can -- that are  
3 sworn police officers.

4 Q Besides yourself and any investigators who  
5 may be working on the case, any other folks from  
6 your office working on the investigation in the  
7 killing of Zoe Dowdell?

8 A Yes.

9 Q Who else?

10 A One of my staff attorneys.

11 Q Who's that?

12 A Well, I have one person. I don't want to  
13 give you an answer and then have to take that  
14 person off and add somebody else, so it could be  
15 anybody on my staff.

16 Q I see. I'm sorry, so what's the reason  
17 you're not telling the name?

18 A Because I don't see the relevance of telling  
19 the name of the person because I may have to take  
20 her off of it at some point if she has on trial  
21 or something else, we use someone else. So it  
22 could be anybody in my office that would be  
23 assisting (indiscernible).

24 Q From the time that you took over the  
25 investigation this year until today, how many

1 lawyers other than yourself have worked on the  
2 investigation in your office?

3 A Just -- well, when you say "worked on,"  
4 there's one or two.

5 Q And the universe of information that either  
6 your office or the state police or some  
7 combination of the two has assembled about the  
8 killing of Zoe Dowdell, have you reviewed all of  
9 that information?

10 A No.

11 Q Has anyone in your office reviewed all that  
12 information?

13 A No.

14 Q Can you give us a sense of the number of  
15 documents involved? And here, I'm simply talking  
16 about paper records first.

17 A I cannot give you the number. I can give  
18 you an idea of the volume of it. I have -- it's  
19 in the form of several loose-leaf binders. It  
20 seems -- and in addition to whatever digital  
21 media is also there. So in terms of the printed  
22 material, it fits in one basic legal file box.

23 Q You also mentioned digital media. What did  
24 you mean by that?

25 A Exactly that.

1 Q Can you give me an example, in other words?

2 A A disc, a stick drive, a hard drive.

3 Q Okay, so we got paper records. We have  
4 digital media. Any other forms that the  
5 responsive records might take?

6 A Not that I can think of at this point.

7 Q Physical evidence, for example tissue  
8 samples or clothes?

9 A Yeah, there's -- I'm sure we have that. We  
10 have. I don't have that in my possession at this  
11 point.

12 Q Where is that information?

13 A The state police, I assume, have that.

14 Q So as I understand it from your testimony --  
15 and please correct me if I'm wrong. You yourself  
16 have never instructed the New Britain Police  
17 Department to withhold records from Mr. Dowdell  
18 or anybody else?

19 A No.

20 Q Would you give the New Britain Police  
21 Department that instruction, as you sit here  
22 today?

23 A Yes.

24 Q Why?

25 A For the reasons that I've stated, that we're



1 in the process of an investigation and the  
2 release of information could potentially  
3 complicate my investigation.

4 Q The investigation that you outlined for me,  
5 are you the ultimate authority on the  
6 investigation or is there anyone else who  
7 ultimately supervises your work in this  
8 investigation?

9 A No, actually the way the statute's set up,  
10 it gives me the ultimate authority.

11 Q You don't have to run your conclusions by  
12 anyone before announcing them?

13 A I don't have to.

14 Q Do you plan to?

15 A I usually alert the chief state's attorney's  
16 office prior to releasing a report.

17 Q You were sitting here earlier when Chief  
18 Wardwell was testifying; is that right?

19 A Yes, sir.

20 Q Did you hear his testimony?

21 A I heard some of it.

22 Q I know it's --

23 A -- very soft-spoken and I --

24 Q Yeah.

25 A -- did not hear all of it.

1 Q Did you hear the chief testify that he  
2 thought practically every piece of information  
3 responsive to the request could be prejudicial to  
4 a law enforcement investigation?

5 A I think I heard that, yeah.

6 Q Do you agree with that?

7 A To the extent that every piece of  
8 information could be, any piece -- I would change  
9 it. The answer I would agree with, any piece  
10 could be. Likely -- it's likely that not ever  
11 piece is actually, in reality.

12 Q How would you determine whether or not a  
13 piece of information is actually --

14 A I would have to look at it and give it my  
15 best estimate. That's why sometimes it's  
16 difficult to ever predict exactly what will be  
17 prejudicial, which is why it's important to not  
18 release things and try to make those distinctions  
19 before the matter is concluded.

20 Q But you and I would agree that the best way  
21 to make that determination would be to review the  
22 data in question and then make (indiscernible)?

23 A Right. That's not a process that generally  
24 occurs. You know, this is a criminal  
25 investigation. In every criminal investigation,

1     this is -- we don't release the information until  
2     there's a conclusion.

3     Q     Is your investigation important?

4             MR. SKELLEY: I'm sorry, important?

5             MR. SACK: Important.

6     A     Do I consider it to be important?

7     Q     Yes.

8     A     Extremely important.

9     Q     Why?

10    A     Well, why do I think that the investigation  
11    is important? Because it -- there are people's  
12    lives at stake. There's -- there are people who  
13    lost their lives. It's a matter of -- I think  
14    it's a matter of citizens' confidence in the  
15    system, that it has to be done in a thorough and  
16    fair and accurate manner to render a reasonable  
17    conclusion.

18             COMMISSIONER MATT STREETER: O'NEILL:  
19    Before you continue --

20             MR. SACK: Yes.

21             COMMISSIONER MATT STREETER: You know,  
22    we're running out of time here. (Indiscernible)  
23    you started asking about the importance --

24             MR. SACK: Last question, commissioner.  
25    I promise.

1 COMMISSIONER MATT STREETER: Get to the  
2 point where we got to either move it along or --

3 MR. SACK: We're moving along. Yes,  
4 sir.

5 COMMISSIONER MATT STREETER: You've  
6 reached my limitation when you start getting  
7 beyond where we're looking at these records.

8 MR. SACK: Thank you.

9 Q Last question. Do you think the public is  
10 interested in the details of whether and how a  
11 police officer killed a member of the public?

12 A I think that some people might be.

13 MR. SACK: Thank you.

14 MR. SKELLEY: I just have a couple of  
15 questions.

16 CROSS EXAMINATION OF JOHN SMRIGA

17 BY MR. SKELLEY:

18 Q Hello, young sir.

19 A Hello.

20 Q So you testified you were assigned the  
21 investigation in the middle of April of '18; is  
22 that correct?

23 A I believe so.

24 Q Okay. And Chief Wardwell had -- you  
25 previously heard his testimony that Attorney

1 McShane had been assigned the investigation on  
2 the day of the incident, which is December 14th -  
3 -

4 A Yes.

5 Q -- 2017? And while you may not have  
6 specifically directed either me or the New  
7 Britain Police Department to not release any of  
8 the documents related to your investigation, you  
9 don't know whether or not Attorney McShane  
10 directed our office or the New Britain Police  
11 Department --

12 A Not personally. Whether --

13 Q -- release the documents?

14 A Other than what I've read today.

15 Q Yeah. And you have no reason to dispute  
16 that that's --

17 A I don't.

18 Q -- accurate? Okay. Now, do you have an  
19 opinion whether the release of the reports  
20 generated by the New Britain Police Department  
21 regarding the December 14th incident -- 2017  
22 incident, release of the dashcam videos, release  
23 of the 911 recordings, release of the  
24 department's radio transmissions, and a release  
25 of any portion of the report generated by the

1 state police would be prejudicial to your pending  
2 investigation?

3 A Yes.

4 Q And what is your opinion?

5 A My opinion is that it could potentially be  
6 prejudicial and it would be inappropriate given  
7 the report that I have to generate.

8 Q And if your report, once you issue it,  
9 exonerates the police officers, you wouldn't have  
10 any objection to any of this information being  
11 public, provided you examined whether it could  
12 have an effect on the other two criminal  
13 prosecutions. Was that your testimony?

14 A What I would do at that point is I would let  
15 whoever's handling that prosecution to determine  
16 whether it would prejudice their investigation or  
17 there was some reason to object to it. I  
18 wouldn't make that determination (indiscernible)  
19 the effect on another prosecution.

20 MR. SKELLEY: All right, thank you,  
21 sir. I don't have any further questions.

22 MS. ROSS: Anybody else? I have a  
23 couple questions. Just following up on that  
24 question, because I think that raises an  
25 interesting point. So I think that you've

1 testified that you actually haven't seen the  
2 dashcam video or --

3 MR. SMRIGA: I've seen the dashcam  
4 video, at least one of them, and I have listened  
5 to some of the -- probably not all of the  
6 transmissions between cars.

7 MS. ROSS: Is it fair to say that those  
8 records would be the same records that the state  
9 police would have collected in connection with  
10 the investigation and the arrest of these other  
11 two individuals?

12 MR. SMRIGA: Not necessarily, because  
13 I'm not sure exactly the -- what the nature of  
14 the charges against the other individuals is, but  
15 I believe that they may relate to crimes that  
16 occurred prior to this incident.

17 MS. ROSS: I see.

18 MR. SMRIGA: Because the police were  
19 actually -- police claim that the people in the  
20 car were suspects in crimes that had occurred  
21 previously. That's why --

22 MS. ROSS: So the other dashcam video  
23 of perhaps those?

24 MR. SMRIGA: Well, it would -- well,  
25 all I'm saying is I wouldn't -- if it's possible

1     that it would not have any impact on the other  
2     prosecutions, I'm just saying that I -- because I  
3     don't know anything about those prosecutions, I  
4     would not want to make that -- I didn't want to  
5     answer the question that I would be able to make  
6     that -- give that opinion at this point.

7                 MS. ROSS:    Okay, thank you.

8                 MR. SACK:    I'd like to offer another  
9     exhibit.   I only have two copies.   It's the state  
10    police arraignment probable cause affidavit for  
11    Nosh Young.

12                MR. SKELLEY:  We don't have any  
13    objection.   We actually produced that in  
14    connection with the first case.

15                COMMISSIONER MATT STREETER:  Objection?

16                MR. SACK:    No objections.

17                COMMISSIONER MATT STREETER:  Would you  
18    like to see this?

19                MR. BARRETT:  I have no objection.

20                COMMISSIONER MATT STREETER:  Okay.  
21    Then (indiscernible).

22                MR. SKELLEY:  What's that, S?

23                MR. SACK:    An F.

24                MR. SKELLEY:  F.

25                COMMISSIONER MATT STREETER:  Yes.



1 MS. ROSS: Yeah. I just need to know  
2 which case this is in.

3 COMMISSIONER MATT STREETER: 168.

4 MS. ROSS: 168.

5 COMMISSIONER MATT STREETER: Do you  
6 have any more questions of the witness?

7 MR. SACK: Yeah, I do.

8 REDIRECT EXAMINATION OF JOHN SMRIGA

9 BY MR. SACK:

10 Q Mr. Smriga, have you seen this document  
11 before?

12 MR. SKELLEY: He's going to have to  
13 take a look at it.

14 A I don't recall reading this before.

15 Q I'm going to ask you to assume that  
16 disclosure of that document was authorized. Can  
17 you explain why disclosure of that document was  
18 authorized and yet you're objecting to disclosure  
19 of the dashcam video, the use of force report,  
20 the 24 pages from the New Britain Police  
21 Department, et cetera.

22 A It's just a matter of competing requirements  
23 here. So we have -- the disclosure requirements  
24 in the context of a criminal prosecution are  
25 extremely strict and unyielding and so I don't

1 really know what's in this document enough to  
2 say, but if it relates to the situation that  
3 we're dealing with here, it's unfortunate but  
4 it's something we have to live with because  
5 there's just no way around it. It's required.  
6 We can't prosecute somebody if we don't do proper  
7 disclosure.

8 Q You're assuming it was done -- this was  
9 disclosed in a criminal proceeding. That's not  
10 the case.

11 A I have no idea where it was disclosed.

12 Q The City of New Britain disclosed it.

13 A I have no -- I don't know.

14 Q You don't know that?

15 A I don't know that.

16 Q You've never seen this before?

17 A No.

18 Q And it gives a tremendous amount of detail  
19 about the alleged offense and circumstances.

20 Given that this document is out there in the  
21 world, doesn't that erase the prejudice argument  
22 you're using?

23 A No, because I think that -- no, if it's been  
24 released, it's just water over the dam but I  
25 don't see --

1 Q Right.

2 A -- any point in compounding the problem with  
3 additional information.

4 Q Nor is there any point in not disclosing it,  
5 given that this detailed arrest warrant and  
6 arraignment document details the entire  
7 circumstances of the (indiscernible).

8 MR. SKELLEY: Objection. Asked and --  
9 he already answered it. He just answered it with  
10 his last response.

11 MR. SACK: I was asking a different  
12 question.

13 COMMISSIONER MATT STREETER: Yeah.

14 A I'm not even sure what that is.

15 MR. SACK: I'll rephrase it, then.

16 Q Given that this document has been disclosed  
17 by the City of New Britain, doesn't that take  
18 away the strength of your argument you're afraid  
19 that there might be some prejudice to your  
20 theoretical prosecution?

21 A I don't believe it does.

22 COMMISSIONER MATT STREETER: Do you  
23 have a witness that can say that this was  
24 provided by the City of New Britain?

25 MR. SACK: I have a letter, actually.

1                   COMMISSIONER MATT STREETER:   Because  
2   this says this is from the state police.   This  
3   isn't --

4                   MR. SACK:   Yeah.

5                   COMMISSIONER MATT STREETER:   -- the  
6   City of New Britain.

7                   MS. ROSS:   How did you get that?

8                   MR. SACK:   It was sent --

9                   MR. SKELLEY:   From me.

10                  MR. SACK:   -- from Attorney Skelley.

11                  MR. SKELLEY:   In connection with the  
12   first hearing, we were provided with that  
13   document by Attorney McShane's office or his  
14   counsel's office who was directing the  
15   investigation at this time and had told us not to  
16   release anything, but then he said there had been  
17   an arrest.   You are authorized to release what I  
18   released.

19                  MR. O'NEILL:   (Indiscernible) as to  
20   Attorney Skelley, that was released, I believe,  
21   in response to New Britain's concerns under  
22   Connecticut General Statute 1-215.

23                  MS. ROSS:   That's what I was thinking.

24                  MR. O'NEILL:   Probable cause that  
25   needed to be established to justify the arrest.

1 COMMISSIONER MATT STREETER: Okay.

2 MS. ROSS: Thank you.

3 MR. SACK: So just for the record, we  
4 agree that the City of New Britain disclosed this  
5 document to me and others?

6 MR. SKELLEY: We do. Attorney Barrett  
7 also got it at that time. You didn't, because  
8 you weren't involved at the (indiscernible).

9 COMMISSIONER MATT STREETER: I just  
10 want to (indiscernible) you mentioned that  
11 (indiscernible) that report, and I think this was  
12 -- you were talking -- did this also have to do  
13 with the other hearing you were talking about?

14 MR. SKELLEY: Yes.

15 COMMISSIONER MATT STREETER: 2018  
16 (indiscernible)?

17 MR. SKELLEY: Yes, with  
18 (indiscernible).

19 COMMISSIONER MATT STREETER: Thank you.

20 MR. SACK: That's all I have.

21 COMMISSIONER MATT STREETER: That's all  
22 I wanted to bring up.

23 MR. SKELLEY: That's all we have.

24 COMMISSIONER MATT STREETER: Thank you  
25 very much.

1 MR. SKELLEY: Could we have our same  
2 briefing schedule that we had at the last  
3 hearing?

4 COMMISSIONER MATT STREETER: As far as  
5 the two weeks and three weeks?

6 MR. SKELLEY: Three weeks and then two  
7 weeks. Three weeks for them, two weeks --

8 COMMISSIONER MATT STREETER: It was  
9 actually three weeks and one week.

10 MS. ROSS: three weeks and one week?

11 COMMISSIONER MATT STREETER:  
12 (Indiscernible).

13 MR. SKELLEY: Yeah, two weeks and one  
14 week.

15 COMMISSIONER MATT STREETER: Yeah.

16 MS. ROSS: October 24th.

17 COMMISSIONER MATT STREETER: Yeah.

18 MR. SACK: Is there any objection if I  
19 join in their brief -- in Attorney Barrett's  
20 brief rather than file a separate brief?

21 COMMISSIONER MATT STREETER: No, that's  
22 fine.

23 MS. ROSS: Unless you have to...

24 MR. SACK: He has a big, strong back.

25 COMMISSIONER MATT STREETER:

1 (Indiscernible), is there anything the commission  
2 needs in the way of a closing argument or a  
3 summary?

4 MS. ROSS: You're entitled to do a  
5 closing argument, under the (indiscernible).

6 COMMISSIONER MATT STREETER: Yes.

7 MR. BARRETT: Or you can just include  
8 it in the --

9 MS. ROSS: But you don't have to.  
10 Yeah, well, you can do it in your brief.

11 MR. SACK: Is it fair enough to include  
12 it? You won't deem it waived?

13 MS. ROSS: No, no, no. You can do it  
14 now or you can do it in your brief.

15 MR. SACK: We'll do it in a brief.  
16 Thank you.

17 MR. SKELLEY: Ars.

18 COMMISSIONER MATT STREETER: Any other  
19 closing statement?

20 MR. O'NEILL: No.

21 COMMISSIONER MATT STREETER: All right,  
22 we'll close this hearing at 3:53. Thank you very  
23 much.

24 MR. SKELLEY: Thank you.

25 MR. SACK: Thank you.

MR. SKELLEY: (Indiscernible).

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certify that the  
foregoing transcript is a true and accurate  
record of the proceedings.

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# **Attachment:**

Records Surrendered by New Britain After Hearing





# CITY OF NEW BRITAIN

EST. 1871

CORPORATION COUNSEL

WWW.NEWBRITAINCT.GOV

Gennaro Bizzarro, Corporation Counsel  
Joseph E. Skelly, Jr., Assistant Corporation Counsel  
John F. Diakun, City Attorney  
Mary C. Pokorski, Associate City Attorney

## VIA ELECTRONIC MAIL ONLY

October 5, 2018

Mr. Dan Barrett, Legal Director  
ACLU  
765 Asylum Avenue  
Hartford, CT 06105

Gerald S. Sack, Esq.  
836 Farmington Avenue, Ste. 109  
West Hartford, CT 06119

Brian Austin, Jr. Esq.  
Executive Assistant State's Attorney  
Division of Criminal Justice  
Office of the Chief State's Attorney  
300 Corporate Place  
Rocky Hill, CT 06067

**Re: Docket No. FIC 2018-0136 – Shawn Dowdell**  
**Docket No. FIC 2018-0168 – Sherene Fagon**

Gentlemen:

As you know, Chief Wardwell testified at the October 3, 2018 consolidated hearing that in addition to a 24 page police report provided to the Connecticut Division of Public Safety and statements of the five police officers taken by the Division which were provided to him by the police union, his file also contained memos to the Deputy Chief of Police and to the five officers.

Following the hearing, I confirmed with Attorney Austin and Attorney Smirga that the release of these memos would not be prejudicial to or affect the integrity of the pending investigation and there is no objection to a release of those documents to the public.

I have attached copies of the following:

1. Memo from Chief Wardwell to Deputy Chief Chute dated December 22, 2017;

Page 2  
October 5, 2018  
Dan Barrett, Legal Director, ACLU  
Gerald S. Sack, Esq.  
Brian Austin, Jr. Esq.

2. Memo from Chief Wardwell to Deputy Chief Chute dated February 28, 2018;
3. Memos from Chief Wardwell dated December 15, 2017 and March 2, 2018 to A/Detective Kyle Jones, Detective Christopher Kiely, A/Detective Chad Nelson, Detective Marcin Ratajczak and A/Detective Michael Slavin.

Very truly yours,  
Office of Corporation Counsel



Joseph E. Skelly, Jr.  
Assistant Corporation Counsel

JES/tm  
Enclosure

cc: Attorney Kathleen Ross



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# CITY OF NEW BRITAIN

POLICE DEPARTMENT  
CHIEF JAMES PHILP WARDWELL



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**Date:** December 22, 2017

**To:** Deputy Chief Christopher Chute

**From:** Chief James Wardwell

**Subject:** ORDER IA17-37 – Internal Investigation of NBPD #17-36043

Deputy Chief Chute,

On December 14, 2017 Officer Michael Slavin, Officer Kyle Jones, Officer Chad Nelson, Detective Christopher Kiely, and Detective Marcin Ratajczak were involved in an incident in the area of Chapman St. and Chapman Ct. During that incident they encountered several felony suspects who were believed to be armed. While attempting to take the suspects into custody the officers did reportedly discharge their firearms in what is believed at this time to be an effort to end an imminent threat. This use of force was witnessed by several other officers and supervisors who were present. At least part of this incident was captured on NBPD MDRS equipment. Due to the totality of all circumstances and facts currently known to me, I have placed each of the personnel listed above on Restricted Duty. The officers are restricted to performing all their work within police headquarters until an Administrative Review of the incident is completed. There is a current active investigation of this incident being conducted by the Connecticut State Police under the direction of State's Attorney Peter McShane.

As we discussed, I am ordering a complete Administrative Investigation of this incident. I am ordering that you review all records and conduct interviews which are appropriately connected to determining the facts of this incident. I am requesting you determine if there were any violations of New Britain Police Department Rules of Conduct, Department Policy or identified training deficiencies. You may delegate tasks you deem necessary to complete this investigation, however due to the seriousness of the issue at hand I request that any such delegation be discussed with me. Please report your findings back to me. The New Britain Police Department Control Number assigned is IA17-37.

Please contact me if you have any questions.

Sincerely,

Chief James Wardwell

cc: Erin Stewart, Mayor City of New Britain  
Linda Guard, Human Resources Director City of New Britain  
Mary Pokorski, Associate City Attorney City of New Britain  
Officer Blain Rogozinski, President Local 1165



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# CITY OF NEW BRITAIN

POLICE DEPARTMENT  
CHIEF JAMES P. WARDWELL



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**Date:** February 28, 2018  
**To:** Deputy Chief Christopher Chute  
**From:** Chief James Wardwell  
**Subject:** Firearms Discharge Review Board – NBPD Case #17-36403 – Preliminary Review

---

Deputy Chief Chute,

I am requesting a preliminary review of NBPD Reports and involved officer statements relating to the December 14, 2018 incident on Chapman Street. I recognize at this point a full review of all information is not possible due full investigative reports and findings are not available to this department. I am asking for a review to give a preliminary finding of any current threat that may or may not be posed to the public by the involved officers. Your finding will not be accepted as a final finding, but will be used as a basis to determine if any modification to the officers' Restricted Duty is or is not warranted.


Pursuant to New Britain Police Policy 6.02 Section IV, I am ordering you to convene a Firearms Review Board to consider available information relating to NBPD Case #17-36403 for a preliminary review and recommendation of any threat to the public.

Please note that due to the ongoing nature of the external independent investigation, I do not recommend that any involved officer be directly questioned at this time. I do not want to do anything to interfere with that investigation. In cooperation with Union officials; obtain a copy of their statements and conduct the preliminary review from those documents as well as any available NBPD reports. Four sergeants were on scene at the time of the incident in December 2017; their observations should be considered.

A full Firearms Review Board examination of all evidence will be held on a future date when all material and testimony is available. A final finding will be expected at that time based on the full investigatory reports and will supersede any finding this preliminary review produces.

After your preliminary review is concluded, please forward your opinion in writing to me.

Thank you,

  
Chief James Wardwell

cc: Officer Blain Rogozinski, President Local 1165  
Mary Pokorski, Associate City Attorney



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# CITY OF NEW BRITAIN

POLICE DEPARTMENT  
CHIEF JAMES PHILP WARDWELL



WWW.NEWBRITAINCT.GOV

Date: December 15, 2017

To: A/Detective Kyle Jones

From: Chief James Wardwell

Subject: ORDER – Restricted Duty – NBPD Case #17-36403

A/Detective Kyle Jones,

On December 14, 2017 you were involved in an incident in the area of Chapman Street and Chapman Court and encountered several felony suspects. While attempting to take those suspects into custody you did reportedly discharge your firearm in an effort to end the imminent threat to yourself and others present. Several other officers also discharged their firearms at the same suspects who were believed to be armed and dangerous. Two suspects were injured and one suspect succumbed to his injuries. This use of force was witnessed by several officers and supervisors who were present.

Pursuant to New Britain Police Policy 6.02, Section IV, an Administrative Review of the use of the firearm will be conducted. I am placing you on restricted duty until the Administrative Review is completed. During this restricted duty period, you will be assigned your duties within your unit or other units of the Criminal Investigations Division as deemed appropriate. Overtime is permitted as long as your required duties are conducted within police headquarters or other appropriate activity which is approved by the Chief.

In no way is the restricted duty to be considered a form of discipline. You are not considered separated from the department during this period of restricted duty, but merely limited to the performance of your duties within police headquarters.

Sincerely,

Chief James Wardwell

cc: Officer Blain Rogozinski, President Local 1165  
Mary Pokorski, City of New Britain Corporation Counsel's Office  
Captain Thomas Steck  
Sergeant John Blackmore



# CITY OF NEW BRITAIN



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POLICE DEPARTMENT  
CHIEF JAMES PHILP WARDWELL

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**Date:** December 15, 2017

**To:** Detective Christopher Kiely

**From:** Chief James Wardwell

**Subject:** ORDER – Restricted Duty – NBPD Case #17-36403

Detective Chris Kiely,

On December 14, 2017 you were involved in an incident in the area of Chapman Street and Chapman Court and encountered several felony suspects. While attempting to take those suspects into custody you did reportedly discharge your firearm in an effort to end the imminent threat to yourself and others present. Several other officers also discharged their firearms at the same suspects who were believed to be armed and dangerous. Two suspects were injured and one suspect succumbed to his injuries. This use of force was witnessed by several officers and supervisors who were present.

Pursuant to New Britain Police Policy 6.02, Section IV, an Administrative Review of the use of the firearm will be conducted. I am placing you on restricted duty until the Administrative Review is completed. During this restricted duty period, you will be assigned your duties within the Detective Bureau. Overtime is permitted as long as your required duties are conducted within police headquarters or other appropriate activity which is approved by the Chief.

In no way is the restricted duty to be considered a form of discipline. You are not considered separated from the department during this period of restricted duty, but merely limited to the performance of your duties within police headquarters.

Sincerely,

Chief James Wardwell

cc: Officer Blain Rogozinski, President Local 1165  
Mary Pokorski, City of New Britain Corporation Counsel's Office  
Captain Thomas Steck  
Sergeant John Prisavage



EST. 1871

# CITY OF NEW BRITAIN

POLICE DEPARTMENT  
CHIEF JAMES PHILP WARDWELL



WWW.NEWBRITAINCT.GOV

Date: December 15, 2017

To: A/Detective Chad Nelson

From: Chief James Wardwell

Subject: ORDER – Restricted Duty – NBPD Case #17-36403

A/Detective Chad Nelson,

On December 14, 2017 you were involved in an incident in the area of Chapman Street and Chapman Court and encountered several felony suspects. While attempting to take those suspects into custody you did reportedly discharge your firearm in an effort to end the imminent threat to yourself and others present. Several other officers also discharged their firearms at the same suspects who were believed to be armed and dangerous. Two suspects were injured and one suspect succumbed to his injuries. This use of force was witnessed by several officers and supervisors who were present.

Pursuant to New Britain Police Policy 6.02, Section IV, an Administrative Review of the use of the firearm will be conducted. I am placing you on restricted duty until the Administrative Review is completed. During this restricted duty period, you will be assigned your duties within your unit or other units of the Criminal Investigations Division as deemed appropriate. Overtime is permitted as long as your required duties are conducted within police headquarters or other appropriate activity which is approved by the Chief.

In no way is the restricted duty to be considered a form of discipline. You are not considered separated from the department during this period of restricted duty, but merely limited to the performance of your duties within police headquarters.

Sincerely,

Chief James Wardwell

cc: Officer Blain Rogozinski, President Local 1165  
Mary Pokorski, City of New Britain Corporation Counsel's Office  
Captain Thomas Steck  
Sergeant John Blackmore



EST. 1871

# CITY OF NEW BRITAIN

POLICE DEPARTMENT  
CHIEF JAMES PHILP WARDWELL



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**Date:** December 15, 2017

**To:** Detective Marcin Ratajczak

**From:** Chief James Wardwell

**Subject:** ORDER – Restricted Duty – NBPD Case #17-36403

Detective Marcin Ratajczak,

On December 14, 2017 you were involved in an incident in the area of Chapman Street and Chapman Court and encountered several felony suspects. While attempting to take those suspects into custody you did reportedly discharge your firearm in an effort to end the imminent threat to yourself and others present. Several other officers also discharged their firearms at the same suspects who were believed to be armed and dangerous. Two suspects were injured and one suspect succumbed to his injuries. This use of force was witnessed by several officers and supervisors who were all present.

Pursuant to New Britain Police Policy 6.02, Section IV, an Administrative Review of the use of the firearm will be conducted. I am placing you on restricted duty until the Administrative Review is completed. During this restricted duty period, you will be assigned your duties within your unit or other units of the Criminal Investigations Division as deemed appropriate. Overtime is permitted as long as your required duties are conducted within police headquarters or other appropriate activity which is approved by the Chief.

In no way is the restricted duty to be considered a form of discipline. You are not considered separated from the department during this period of restricted duty, but merely limited to the performance of your duties within police headquarters.

Sincerely,

Chief James Wardwell

cc: Officer Blain Rogozinski, President Local 1165  
Mary Pokorski, City of New Britain Corporation Counsel's Office  
Captain Thomas Steck  
Sergeant Jonathan Webster





EST. 1871

# CITY OF NEW BRITAIN

POLICE DEPARTMENT  
CHIEF JAMES PHILP WARDWELL



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**Date:** December 15, 2017

**To:** A/Detective Michael Slavin

**From:** Chief James Wardwell

**Subject:** ORDER – Restricted Duty – NBPD Case #17-36403

A/Detective Michael Slavin,

On December 14, 2017 you were involved in an incident in the area of Chapman Street and Chapman Court and encountered several felony suspects. While attempting to take those suspects into custody you did reportedly discharge your firearm in an effort to end the imminent threat to yourself and others present. Several other officers also discharged their firearms at the same suspects who were believed to be armed and dangerous. Two suspects were injured and one suspect succumbed to his injuries. This use of force was witnessed by several officers and supervisors who were all present.

Pursuant to New Britain Police Policy 6.02, Section IV, an Administrative Review of the use of the firearm will be conducted. I am placing you on restricted duty until the Administrative Review is completed. During this restricted duty period, you will be assigned your duties within your unit or other units of the Criminal Investigations Division as deemed appropriate. Overtime is permitted as long as your required duties are conducted within police headquarters or other appropriate activity which is approved by the Chief.

In no way is the restricted duty to be considered a form of discipline. You are not considered separated from the department during this period of restricted duty, but merely limited to the performance of your duties within police headquarters.

Sincerely,

Chief James Wardwell

cc: Officer Blain Rogozinski, President Local 1165  
Mary Pokorski, City of New Britain Corporation Counsel's Office  
Captain Thomas Steck  
Sergeant Jonathan Webster



EST. 1871

# CITY OF NEW BRITAIN

POLICE DEPARTMENT  
CHIEF JAMES PHILP WARDWELL



WWW.NEWBRITAINCT.GOV

Date: March 2, 2018

To: A/Detective Kyle Jones

From: Chief James Wardwell

Subject: ORDER – Restricted Duty Modification

A/Detective Kyle Jones,

Earlier this week I had requested a preliminary review of available records pertaining to the December 14, 2017 incident in the area of Chapman Street and Chapman Court. This incident is still being independently investigated by the Connecticut State Police and the Middletown State's Attorney's Office. I requested a preliminary non-binding opinion on violations so I could reasonably evaluate any threat posed to the public related to a lack of understanding of training or policies. Based on the preliminary finding of no egregious violations and careful consideration of all facts specific to this particular incident, I am making the following modification to your Restricted Duty status:

1. Overtime is still permitted within police headquarters or other appropriate activity which is approved by the Chief.
2. Overtime is permitted for Traffic Posts (construction sites, utility work, parades, etc..) provided that you go directly to and from the Traffic Post, do not take calls for service, and immediately notify a supervisor should anything occur which requires your actions outside the assigned duty.

Please remember there has not yet been a full Administrative Investigation and therefore your Restricted Duty status does remain in effect. This restricted duty is not considered a form of discipline. You are not considered separated from the department during this period of restricted duty, but merely limited to the performance of your duties.

Sincerely,

Chief James Wardwell

cc: Officer Blain Rogozinski, President Local 1165  
Mary Pokorski, City of New Britain Corporation Counsel's Office  
Captain Jeanette Portalatin  
Sergeant John Blackmore



EST. 1871

# CITY OF NEW BRITAIN

POLICE DEPARTMENT  
CHIEF JAMES PHILP WARDWELL



WWW.NEWBRITAINCT.GOV

Date: March 2, 2018

To: Detective Christopher Kiely

From: Chief James Wardwell

Subject: ORDER – Restricted Duty Modification

Detective Christopher Kiely,

Earlier this week I had requested a preliminary review of available records pertaining to the December 14, 2017 incident in the area of Chapman Street and Chapman Court. This incident is still being independently investigated by the Connecticut State Police and the Middletown State's Attorney's Office. I requested a preliminary non-binding opinion on violations so I could reasonably evaluate any threat posed to the public related to a lack of understanding of training or policies. Based on the preliminary finding of no egregious violations and careful consideration of all facts specific to this particular incident, I am making the following modification to your Restricted Duty status:

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Sincerely,

Chief James Wardwell

cc: Officer Blain Rogozinski, President Local 1165  
Mary Pokorski, City of New Britain Corporation Counsel's Office  
Captain Jeanette Portalatin  
Sergeant John Prisavage



EST. 1871

# CITY OF NEW BRITAIN

POLICE DEPARTMENT  
CHIEF JAMES PHILP WARDWELL



WWW.NEWBRITAINCT.GOV

Date: March 2, 2018

To: A/Detective Chad Nelson

From: Chief James Wardwell

Subject: ORDER – Restricted Duty Modification

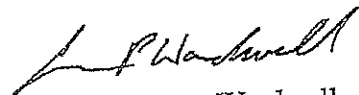
A/Detective Chad Nelson,

Earlier this week I had requested a preliminary review of available records pertaining to the December 14, 2017 incident in the area of Chapman Street and Chapman Court. This incident is still being independently investigated by the Connecticut State Police and the Middletown State's Attorney's Office. I requested a preliminary non-binding opinion on violations so I could reasonably evaluate any threat posed to the public related to a lack of understanding of training or policies. Based on the preliminary finding of no egregious violations and careful consideration of all facts specific to this particular incident, I am making the following modification to your Restricted Duty status:

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Sincerely,

  
Chief James Wardwell

cc: Officer Blain Rogozinski, President Local 1165  
Mary Pokorski, City of New Britain Corporation Counsel's Office  
Captain Jeanette Portalatin  
Sergeant John Blackmore



EST. 1871

# CITY OF NEW BRITAIN

POLICE DEPARTMENT  
CHIEF JAMES PHILP WARDWELL



WWW.NEWBRITAINCT.GOV

Date: March 2, 2018  
To: Detective Marcin Ratajczak  
From: Chief James Wardwell  
Subject: ORDER – Restricted Duty Modification

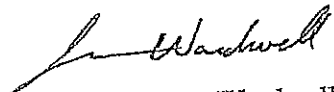
Detective Marcin Ratajczak,

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Please remember there has not yet been a full Administrative Investigation yet and therefore your Restricted Duty status does remain in effect. This restricted duty is not considered a form of discipline. You are not considered separated from the department during this period of restricted duty, but merely limited to the performance of your duties.

Sincerely,

  
Chief James Wardwell

cc: Officer Blain Rogozinski, President Local 1165  
Mary Pokorski, City of New Britain Corporation Counsel's Office  
Captain Jeanette Portalatin  
Sergeant Donald Anderson



EST. 1871

# CITY OF NEW BRITAIN

POLICE DEPARTMENT  
CHIEF JAMES PHILP WARDWELL



WWW.NEWBRITAINCT.GOV

Date: March 2, 2018

To: A/Detective Michael Slavin

From: Chief James Wardwell

Subject: ORDER – Restricted Duty Modification

A/Detective Michael Slavin,

Earlier this week I had requested a preliminary review of available records pertaining to the December 14, 2017 incident in the area of Chapman Street and Chapman Court. This incident is still being independently investigated by the Connecticut State Police and the Middletown State's Attorney's Office. I requested a preliminary non-binding opinion on violations so I could reasonably evaluate any threat posed to the public related to a lack of understanding of training or policies. Based on the preliminary finding of no egregious violations and careful consideration of all facts specific to this particular incident, I am making the following modification to your Restricted Duty status:

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Sincerely,

Chief James Wardwell

cc: Officer Blain Rogozinski, President Local 1165  
Mary Pokorski, City of New Britain Corporation Counsel's Office  
Captain Jeanette Portalatin  
Sergeant Donald Anderson