

PASHMAN STEIN WALDER HAYDEN

A Professional Corporation
 Court Plaza South
 21 Main Street, Suite 200
 Hackensack, NJ 07601
 (201) 488-8200
 CJ GRIFFIN (#031422009)
 Attorneys for Plaintiff,
Richard Rivera, LLC

RICHARD RIVERA, LLC,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: HUDSON COUNTY
Plaintiff,	:	
	:	DOCKET NO:
v.	:	
	:	
CITY OF JERSEY CITY, AMANDA	:	<u>Civil Action</u>
BRANSKY, in her official capacity as Records	:	
Custodian for Jersey City, HUDSON COUNTY	:	VERIFIED COMPLAINT
PROSECUTOR'S OFFICE, and JOHN P.	:	
LIBRETTI, ESQ., in his capacity as Records	:	
Custodian for Defendant Hudson County	:	
Prosecutor's Office,	:	
	:	
Defendants.	:	

Plaintiff, Richard Rivera, LLC, through its undersigned counsel, Pashman Stein Walder Hayden, A Professional Corporation, complains against the Defendants as follows:

PARTIES

1. Plaintiff Richard Rivera, LLC, is a limited liability corporation owned and operated by Richard Rivera with a principal place of business at 408-59th Street, West New York, NJ 07093.
2. Defendant City of Jersey City is a public agency formed under the laws of the State of New Jersey. Defendant has its principal place of business at 280 Grove Street, Jersey City, New Jersey 07302.

3. Defendant Amanda Bransky, upon information and belief, is the custodian of records for Jersey City. She is being sued in her professional capacity. Upon information and belief, she also maintains a principal office at 280 Grove Street, Jersey City, New Jersey 07302.

4. Defendant Hudson County Prosecutor's Office ("HCPO") is a government agency organized pursuant to the laws of the State of New Jersey. HCPO has a principal mailing address at 595 Newark Avenue, 6th Floor, Jersey City, New Jersey 07306.

5. Defendant John P. Libretti, Esq., is, upon information and belief, the custodian of records for OPRA requests for the HCPO and is being sued in his professional capacity. He maintains a principal office at 595 Newark Avenue, 6th Floor, Jersey City, New Jersey 07306.

6. Jersey City "ma[kes], maintain[s] or ke[eps] on file," or "receive[s] in the course of...its official business" government records, and is thereby subject to OPRA.

7. HCPO "ma[kes], maintain[s] or ke[eps] on file," or "receive[s] in the course of...its official business" government records, and is thereby subject to OPRA

VENUE AND JURISDICTION

8. Venue is properly laid in Hudson County because Defendants Jersey City is located in Hudson County and because the cause of action arose in Hudson County. R. 4:3-2(a).

9. This Court has subject matter jurisdiction pursuant to N.J.S.A. 47:1A-6.

FACTUAL ALLEGATIONS

About Plaintiff

10. Plaintiff Richard Rivera, LLC is a company that provides expert witness services and consultations regarding police practices and policies. It is owned by Richard Rivera, a retired municipal police officer, private consultant, civil rights advocate, and expert witness in police practices and policies.

11. On a regular and ongoing basis since 2008, Mr. Rivera volunteers his time and resources to the Latino Leadership Alliance of New Jersey, a community advocacy organization, where he co-chairs the Civil Rights Protection Project. Mr. Rivera monitors civil rights issues, particularly those involving police activity, statewide. He regularly meets with law enforcement executives and county prosecutors throughout the state regarding current trends in police practices and provides *pro bono* expert advice to them on compiling and analyzing report data to improve accountability and supervision while reducing liability.

12. As a police practices expert consultant, he has reviewed specific actions by police officers, supervisors and policymakers in more than 900 completed internal affairs (“IA”) investigations and disciplinary actions. Over the years, he has reviewed hundreds of employee personnel files. His ongoing research in the law enforcement field includes compiling and analyzing over 1,300 Internal Affairs Annual Summary Reports (“IAASR”) and more than 8,500 Use of Force Reports. He has authored numerous studies, including co-authoring a 2009 report by the ACLU of New Jersey called “*The Crisis Inside Police Internal Affairs.*”

13. Mr. Rivera often provides the records he receives from OPRA requests to the media and is frequently quoted by the state and national media in news stories about police matters. See, e.g., Joe Atmonavage, “*Aggressive Cops Are ‘Out Of Control’ In This N.J. City, Insiders Say, Costing Taxpayers Millions.*” NJ ADVANCE MEDIA (Jan. 8, 2019); Sara Barchenger, “*Ocean County's Top Cop to Lakewood: Fix Police Internal Affairs.*” ASBURY PARK PRESS (June 5, 2018); Ryan Ross, “*Police Misconduct: Former Cop, Whistleblower Weighs in on NJ's Internal Affairs Failures.*” ASBURY PARK PRESS (Jan. 19, 2018); Isaac Avilucea, “*Mercer County Assistant Prosecutor Suspended After DWI Arrest,*” THE TRENTONIAN (Sept. 11, 2017); David Hutchinson, “*Police Must Name Officers, Release Video in Fatal Shooting, Judge Rules.*” NJ.COM (Feb. 7,

2017); Suzanne Russel, “*Former Cop Looks To Analyze Diahlo Grant Use-Of-Force Reports*,” MYCENTRALNJ.COM (Feb 7 2017).

The Police Shooting

14. On July 1, 2019, three Jersey City police officers fired their weapons in a shooting incident that left two men wounded and community leaders demanding answers. See “*Fireworks Involved In Jersey City Police Shooting That Left 2 Wounded; Prosecutor*,” NJ.COM (Jul. 2, 2019), available at <https://www.nj.com/hudson/2019/07/fireworks-involved-in-jersey-city-police-shooting-that-left-2-wounded-prosecutor.html>.

15. According to the HCPO, a lieutenant and two police officers assigned to the Arlington Gardens public housing complex were on patrol when the incident unfolded around 10:15 p.m.

16. While the preliminary investigation suggests fireworks were being shot in the area of the incident when police opened fire, the circumstances surrounding the shooting remain under investigation. Id.

17. Witnesses report that the men were shooting fireworks when police responded. Id.

18. Jersey City spokeswoman Kimberly Wallace-Scalcione reported that there were no indications of violations of Attorney General guidelines on the officers’ part but failed to respond to questions surrounding how authorities made that determination. Id.

19. The men were reportedly unarmed, did not pose a threat to the police officers, and were walking away from the officers when they were shot. See “*More Than A Week Later, Events Surrounding Police Shooting In Jersey City Are Disputed*,” NJ.COM (Jul. 9, 2019), available at <https://www.nj.com/hudson/2019/07/more-than-a-week-later-events-surrounding-police-shooting-in-jersey-city-are-disputed.html>.

20. However, according to the attorneys representing the police officers, the officer's actions were justified under the law. Id.

21. Recently, members of the community attended a meeting seeking answers from officials, including HCPO Prosecutor Esther Suarez and Jersey City Mayor Steve Fulop, however few questions were answered. Id.

The OPRA Request to Jersey City

22. On July 11, 2019, Plaintiff filed an OPRA request (through counsel) with Jersey City seeking the following records:

On behalf of a client, I seek the following records relating to the shooting of Davante Moore and Shaquan Rush by JCPD on or about July 1, 2019:

1. All NJSA 47:1A-3b information, including the names of the officers, which is required by law to be produced within 24 hours of this request.
2. All Use of Force Reports
3. Body Camera Footage
4. Dash Camera Footage
5. JCPD's Use of Force Policy
6. The Use of Force Training certificates (or proof of completion) for the officers involved in the shooting for the years 2016 to present date.

[Attached hereto as **Exhibit A** is a true and accurate copy of the July 11, 2019 OPRA request to Jersey City and all responsive communications.]

23. On July 22, 2019, Jersey City advised Plaintiff that "two additional weeks are needed for the processing of your request." Id.

24. Plaintiff objected immediately, stating: "Item 1 was due within 24 hours. There is a significantly public interest in these records, so they should be produced without delay." Id.

25. On August 5, 2019, the new deadline set by Jersey City, no responsive records were produced, and Plaintiff received another communication from Jersey City stating, “two additional weeks are needed for the processing of your request.” Id.

26. On August 20, 2019, the day after the new deadline set by Jersey City, no responsive records were produced, and Plaintiff received another communication from Jersey City stating, “two additional weeks are needed for the processing of your request.” Id.

27. It has been almost seven weeks since Plaintiff made its OPRA request on July 11, 2019 and Jersey City has not produced any of the requested records responsive to Plaintiff’s request. In that time, Jersey City has unilaterally taken three extensions of time to respond to Plaintiff’s request for records, one of which (the Section 3(b) information) is required by law to be produced within 24 hours of the request. Moreover, none of the extension requests provide any explanation for why the extensions were required.

28. Jersey City’s untimely compliance with OPRA is deeply troubling given the significant public interest in transparency regarding police-involved shootings.

29. Jersey City has engaged in a pattern and practice of violating OPRA’s statutory timeframes and is essentially ignoring Plaintiff’s OPRA requests.

30. Plaintiff is aware of at least two other lawsuits in which Jersey City has engaged in this same pattern and practice of repeatedly taking two-week extensions for months and months in response to an OPRA request. See Coombs v. Jersey City, Docket No. HUD-L-002317-19; Duff v. Jersey City, Docket No. HUD-L-001771-19.

The OPRA Request to HCPO

31. On July 11, 2019, the Plaintiff filed an OPRA request (through counsel) with HCPO seeking the following records:

On behalf of a client, I seek the following records relating to the shooting of Davante Moore and Shaquan Rush by JCPD on or about July 1, 2019:

1. All NJSA 47:1A-3b information, including the names of the officers, which is required by law to be produced within 24 hours of this request.
2. All Use of Force Reports
3. Body Camera Footage
4. Dash Camera Footage
5. Police Use of Deadly Force-Attorney General Notification Report
6. 2017 and 2018 Annual reports submitted by Jersey City Police Department to the Prosecutor summarizing use of force within that agency, pursuant to the AG Use of Force Policy which states: "For all situations involving the use of physical, mechanical or deadly force, county and municipal law enforcement agencies shall report at least annually to the county prosecutor in a manner established by the prosecutor."

Please also consider access under the common law. The Supreme Court has stated that the public has a significant interest in reviewing records relating to police-involved shootings. My client is a civil rights advocate.

[Attached hereto as **Exhibit B** is a true and accurate copy of the July 11, 2019 OPRA request to HCPO.]

32. On July 22, 2019, John P. Libretti, Esq., responded to Plaintiff's OPRA request as follows:

Attached written notes listing the names, ages, genders and ethnic background of the Jersey Police Officers involved in the events of July 11, 2019.

Use of Force Reports from the Jersey City Police Department delivered to the HCPO for the years 2017 and 2018.

Concerning the balance of your OPRA requests, under OPRA, specifically N.J.S.A. 47:1A-1.1, Definitions, a government record shall NOT include, amongst other items, the following information which is deemed to be confidential:

Criminal Investigatory Records

Further, pursuant to N.J.S.A. 47:1A-3, Access To Records of Investigation in Progress, access to such records may be denied if the inspection of such records “shall be inimical” to the public interest. The access shall also be denied where examination of the investigatory records may jeopardize the investigation or would be harmful to a “bona fide law enforcement purpose”. **As the alleged incident is currently under investigation by the HCPO, the HCPO has determined that the information you request, specifically body and dash camera video footage, is exempt from access and/or disclosure for the reasons set forth herein.**

The Hudson County Prosecutor’s Office also reserves the right to raise any other ground for denial note raised in this response. The failure of the Hudson County Prosecutor’s Office to assert an exception or privilege does not act as a waiver of any ground for denial. You have a right to appeal a decision that a document or documents are not public records. You may take your appeal to the Government Records Council or to the New Jersey Superior Court as provided by N.J.S.A. 47:1A-6 and 7.

[Attached hereto as **Exhibit C** is a true and accurate copy of HCPO’s response (emphasis added)].

33. Plaintiff challenges HCPO’s denial of Plaintiff’s request for Use of Force Reports (item #2), Body Camera Footage (item #3), Dash Camera Footage (item #4), and Police Use of Deadly Force-Attorney General Notification Report (item #5).

34. HCPO has violated OPRA by failing to provide the Use of Force Reports and Police Use of Deadly Force-Attorney General Notification Report, which are required to be made pursuant to the Attorney General’s Use of Force Policy and are therefore not criminal investigatory records. [Attached hereto as **Exhibit D** is a true and accurate copy of Attorney General’s Use of Force Policy].

35. Furthermore, HCPO has violated OPRA by failing to provide the Body Camera Footage, which is required by law to be made, maintained, and kept on file pursuant to the Attorney General Directive 2015-1 and are therefore not criminal investigatory records. [Attached hereto as **Exhibit E** is a true and accurate copy of AG Directive 2015-1]

36. HCPO has violated the common law by failing to provide the Dash Camera Footage, as the Supreme Court has ruled that such videos should be released “shortly after the incident” after those who have observed the incident have been interviewed. See North Jersey Media Group, Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017).

37. HCPO’s position is also contrary to the Attorney General Enforcement Directive No. 2018-1, which orders police videos involving police use of deadly force to be released to the public when upon “substantial completion of the initial investigation, generally such initial investigation should be concluded within 20 days of the use-of-force event.” [Attached hereto as **Exhibit F** is a true and accurate copy of AG Directive 2018-1].

38. Given the rising tension within the community surrounding the July 1, 2019 shooting, Plaintiff requested the information to learn more about the shooting and determine whether the use of force was lawful.

39. Plaintiff files this lawsuit to obtain the Section 3(b) information, Use of Force Reports, Police Use of Deadly Force-Attorney General Notification Report, Body Camera Footage, and Dash Camera Footage related to the July 1, 2019 Jersey City shooting.

FIRST COUNT
(Violation of OPRA as to Jersey City and Amanda Bransky)

40. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.

41. Pursuant to N.J.S.A. 47:1A-1, all government records must be “readily accessible” to the citizens of this State unless exempted by law.

42. The records requested by Plaintiff are “government records” as that term is defined by OPRA because they were “made, maintained or kept on file in the course of [Jersey City’s] official business.” N.J.S.A. 47:1A-1.1.

43. Plaintiff made a valid request for “government records” that are subject to access under OPRA no later than seven business days after the request. N.J.S.A. 47:1A-5(i).

44. Moreover, Plaintiff also requested Section 3(b) information, which must be produced within 24 hours of a request. N.J.S.A. 47:1A-3(b).

45. The failure to timely respond to a request is considered a “deemed denial” of that request pursuant to N.J.S.A. 47:1A-5.

46. Jersey City’s repeated unilateral extensions have denied Plaintiff access to the records he seeks and represent a pattern and practice of violating OPRA’s statutory timeframes.

47. Accordingly, Jersey City and Amanda Bransky have violated OPRA by:

a. Failing to make the records requested “readily accessible for inspection, copying, or examination” in violation of N.J.S.A. 47:1A-1;

b. Failing to grant access to government records within seven business days, in violation of N.J.S.A. 47:1A-5(g);

c. Failing to grant access to certain information about investigations within 24 hours, in violation of N.J.S.A. 47:1A-3(b);

d. Failing to produce non-exempt portions of government records, in violation of N.J.S.A. 47:1-5(g); and

e. Failing to prove that the denial of access is authorized by law, in violation of N.J.S.A. 47:1A-6.

WHEREFORE, Plaintiff demands judgment against Defendants:

a. Declaring said actions of Defendants to be in violation of OPRA, N.J.S.A. 47:1A-1 et seq., by failing to provide lawful access to the requested records;

b. Directing Defendants to release the requested records to Plaintiff forthwith;

- c. Ordering Defendants to preserve the requested records pending resolution of these proceedings or as otherwise required by law;
- d. Awarding counsel fees and costs pursuant to N.J.S.A. 47:1A-6; and
- e. For such other relief as the Court may deem just and equitable.

SECOND COUNT
(Violation of OPRA as to HCPO and John P. Libretti, Esq.)

48. Plaintiffs repeat and incorporate by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.

49. Pursuant to N.J.S.A. 47:1A-1, all government records must be “readily accessible” to the citizen of this State unless specifically exempt by law.

50. The records requested by Plaintiffs are government records subject to OPRA because they were “made, maintained or kept on file,” or “received in the course of ... [Defendant’s] official business.” N.J.S.A. 47:1A-1.1.

51. Defendants refused to produce the requested records, despite the fact that they are not subject to any exemption.

52. The criminal investigatory records exemption does not apply because (1) Use of Force Reports and Police Use of Deadly Force-Attorney General Notification Report are required to be made, maintained, or kept on file pursuant to the Attorney General’s Use of Force Policy and (2) Body Camera Footage is required by law to be made, maintained, and kept on file pursuant to the Attorney General Directive 2015-1.

53. The ongoing investigation exemption does not apply because release of the requested information would not be inimical to the public interest. In fact, the Supreme Court has made it clear that such records should be released to the public within days of a police-involved shooting because the public has a significant interest in transparency in police-involved shootings.

54. Plaintiff also requested Section 3(b) information, which must be produced within 24 hours of a request. N.J.S.A. 47:1A-3(b).

55. Defendants did not respond to Plaintiff's OPRA request within 24 hours and, when it did respond, it did not produce all of the responsive Section 3(b) information.

56. Therefore, Defendants should have produced the requested records in response to Plaintiff's valid OPRA requests.

57. A public agency has the burden of proving that any denial of access is authorized by law. N.J.S.A. 47:1A-6. Defendants cannot meet that burden.

58. Accordingly, Defendants have violated OPRA by:

- a) Failing to make the records "readily accessible for inspection, copying, or examination," in violation of N.J.S.A. 47:1A-1;
- b) Failing to grant access to government records within seven business days, in violation of N.J.S.A. 47:1A-5(g);
- c) Failing to timely release information about an investigation, in violation of N.J.S.A. 47:1A-3(b).
- d) Failing to provide a lawful basis for denying access to government records and information in violation of N.J.S.A. 47:1A-5(g); and
- e) Failing to base a denial of access upon a bases "authorized by law" in violation of N.J.S.A. 47:1A-6.

WHEREFORE, Plaintiffs demand judgment against HCPO and John P. Libretti, Esq.:

- a) Declaring said actions of Defendants to be in violation of OPRA, N.J.S.A. 47:1A-1 et seq. by failing to provide access to the requested records;
- b) Directing Defendants to grant access and release the requested records to

Plaintiff forthwith;

- c) Ordering Defendants to preserve the requested records pending resolution of these proceedings or as otherwise required by law;
- d) Awarding counsel fees and costs pursuant to N.J.S.A. 47:1A-6; and
- e) For such other relief as the Court may deem just and equitable

THIRD COUNT
(Common Law Right of Access)

59. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.

60. The public has a significant interest in learning about police-involved shootings.

61. The public's need for access to these records is far greater than Defendants' need for secrecy.

62. Defendants' failure to disclose the requested government records violated Plaintiff's common law right of access.

WHEREFORE, Plaintiff demands judgment against Defendants:

- (a) Declaring said actions of Defendants to be unlawful and invalid;
- (b) Directing Defendants to release the requested records to Plaintiff forthwith;
- (c) Awarding counsel fees and costs; and
- (d) Granting such other relief as the Court may deem just and equitable.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation,
Attorneys for Plaintiff,
Richard Rivera, LLC

Dated: August 27, 2019

By: /s CJ GRIFFIN

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff, by its attorney, hereby certifies that the matter in controversy is not the subject of any other action pending in any Court and is likewise not the subject of any pending arbitration proceeding. Plaintiff further certifies that it has no knowledge of any contemplated action or arbitration regarding the subject matter of this action and that Plaintiff is not aware of any other parties who should be joined in this action.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation,
Attorneys for Plaintiff,
Richard Rivera, LLC

Dated: August 27, 2019

By: /CJ GRIFFIN

VERIFICATION

Richard Rivera, of full age, deposes and says:

1. I am the owner of Richard Rivera, LLC, the Plaintiff in the foregoing Verified Complaint.

2. I have read the Verified Complaint. The allegations of the Verified Complaint contained are true and I asked my attorney to file the OPRA request on Richard Rivera LLC's behalf. The said Verified Complaint is based on personal knowledge and is made in truth and good faith and without collusion, for the causes set forth herein.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Richard Rivera

Dated: August 27, 2019

VERIFICATION

CJ Griffin, of full age, deposes and says:

1. I am Attorney in the State of New Jersey and I represent the Plaintiff in this lawsuit.
2. I have read the Verified Complaint. At Mr. Rivera's request, I personally filed the OPRA request on behalf of Plaintiff and certify that the facts alleged in Paragraphs 10-36 are true and accurate. The attached OPRA requests and OPRA responses are true and accurate copies of those documents.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s CJ GRIFFIN

Dated: August 27, 2019

EXHIBIT A

✉ On 7/11/2019 10:24:50 AM, Jersey City OPRA Center wrote:

Dear CJ Griffin:

Thank you for your interest in open public records of Jersey City OPRA Center. This will serve to acknowledge receipt of your Open Public Records Act (OPRA) request. Your request was received in this office on 7/11/2019. Kindly refer to the reference number R002078-071119 when communicating with our office in this regard. Your request mentioned:

On behalf of a client, I seek the following records relating to the shooting of Davante Moore and Shaquan Rush by JCPD on or about July 1, 2019:

1. All NJSA 47:1A-3b information, including the names of the officers, which is required by law to be produced within 24 hours of this request.
2. All Use of Force Reports
3. Body Camera Footage
4. Dash Camera Footage
5. JCPD's Use of Force Policy
6. The Use of Force Training certificates (or proof of completion) for the officers involved in the shooting for the years 2016 to present date.

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

You can track and monitor the progress of your request at the link below and you'll receive an email when your request has been completed. Again, thank you for using the Jersey City OPRA Center.

Jersey City, NJ

To monitor the progress or update this request please log into the [Jersey City OPRA Center](#).

✉ On 7/11/2019 10:24:49 AM, CJ Griffin wrote:

Request was created by customer

✉ On 7/22/2019 8:25:41 AM, Jersey City OPRA Center wrote:

Subject: [Records Center] Open Public Records Act :: R002078-071119

Body:

RE: OPEN PUBLIC RECORDS REQUEST of July 11, 2019, Reference # R002078-071119

CJ Griffin:

The City received a public information request from you on July 11, 2019. Your request mentioned:

On behalf of a client, I seek the following records relating to the shooting of Davante Moore and Shaquan Rush by JCPD on or about July 1, 2019:

1. All NJSA 47:1A-3b information, including the names of the officers, which is required by law to be produced within 24 hours of this request.
2. All Use of Force Reports
3. Body Camera Footage
4. Dash Camera Footage
5. JCPD's Use of Force Policy
6. The Use of Force Training certificates (or proof of completion) for the officers involved in the shooting for the years 2016 to present date.

Reference is made to your OPRA request captioned above.

Please note that two additional weeks are needed for the processing of your request. Thank you for your patience.

Sincerely,

Amanda Bransky

RMC, CMR

Office of City Clerk

✉ On 8/5/2019 2:54:16 PM, Jersey City OPRA Center wrote:

Subject: [Records Center] Open Public Records Act :: R002078-071119

Body:

RE: OPEN PUBLIC RECORDS REQUEST of July 11, 2019, Reference # R002078-071119

CJ Griffin:

The City received a public information request from you on July 11, 2019. Your request mentioned:

On behalf of a client, I seek the following records relating to the shooting of Davante Moore and Shaquan Rush by JCPD on or about July 1, 2019:

1. All NJSA 47:1A-3b information, including the names of the officers, which is required by law to be produced within 24 hours of this request.
2. All Use of Force Reports
3. Body Camera Footage
4. Dash Camera Footage
5. JCPD's Use of Force Policy
6. The Use of Force Training certificates (or proof of completion) for the officers involved in the shooting for the years 2016 to present date.

Reference is made to your OPRA request captioned above.

Please note that two additional weeks are needed for the processing of your request. Thank you for your patience.

Sincerely,

Amanda Bransky

RMC, CMR

Office of City Clerk

↩ On 7/22/2019 9:15:14 AM, CJ Griffin wrote:

Item 1 was due within 24 hours. There is a significantly public interest in these records, so they should be produced without delay.

R002078-071119 - Open Public Records Act

Message History (6)

✉ On 8/20/2019 3:19:54 PM, Jersey City OPRA Center wrote:

Subject: [Records Center] Open Public Records Act :: R002078-071119

Body:

RE: OPEN PUBLIC RECORDS REQUEST of July 11, 2019, Reference # R002078-071119

CJ Griffin:

The City received a public information request from you on July 11, 2019. Your request mentioned:

On behalf of a client, I seek the following records relating to the shooting of Davante Moore and Shaquan Rush by JCPD on or about July 1, 2019:

1. All NJSA 47:1A-3b information, including the names of the officers, which is required by law to be produced within 24 hours of this request.
2. All Use of Force Reports
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5. JCPD's Use of Force Policy
6. The Use of Force Training certificates (or proof of completion) for the officers involved in the shooting for the years 2016 to present date.

Reference is made to your OPRA request captioned above.

Please note that two additional weeks are needed for the processing of your request. Thank you for your patience.

Sincerely,

Amanda Bransky

RMC, CMR

Office of City Clerk

EXHIBIT B

8/20/2019

Gmail - OPRA REQUEST



PSWH OPRA <pswhopra@gmail.com>

OPRA REQUEST

1 message

PSWH OPRA <pswhopra@gmail.com>

Thu, Jul 11, 2019 at 10:31 AM

To: OPRA@hcopo.org

On behalf of a client, I seek the following records relating to the shooting of Davante Moore and Shaquan Rush by JCPD on or about July 1, 2019:

1. All NJSA 47:1A-3b information, including the names of the officers, which is required by law to be produced within 24 hours of this request.
2. All Use of Force Reports
3. Body Camera Footage
4. Dash Camera Footage
5. Police Use of Deadly Force-Attorney General Notification Report
6. 2017 and 2018 Annual reports submitted by Jersey City Police Department to the Prosecutor summarizing use of force withing that agency, pursuant to the AG Use of Force Policy which states: "For all situations involving the use of physical, mechanical or deadly force, county and municipal law enforcement agencies shall report at least annually to the county prosecutor in a manner established by the prosecutor."

Please also consider access under the common law. The Supreme Court has stated that the public has a significant interest in reviewing records relating to police-involved shootings. My client is a civil rights advocate.

Please email responsive records to this address.

CJ Griffin

EXHIBIT C

8/20/2019

Gmail - OPRA response



PSWH OPRA <pswhopra@gmail.com>

OPRA response

1 message

Libretti, John <jlibretti@hcopo.org>
To: "pswhopra@gmail.com" <pswhopra@gmail.com>

Mon, Jul 22, 2019 at 11:25 AM

Attorney Griffin

Attached please find the response by the Hudson County Prosecutor's Office to your recent OPRA request.

If you have any questions, please feel free to call the undersigned.

Thank you.

JPL

John P. Libretti, Esq.
Chief of Civil Litigation
Office of the Hudson County Prosecutor
595 Newark Avenue, 6th Floor
Jersey City, New Jersey 07306
201-795-6400 Ext. 6533
201-795-3365 (F)

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96K



OFFICE OF THE HUDSON COUNTY PROSECUTOR

**595 NEWARK AVENUE
JERSEY CITY, NEW JERSEY 07306**

**ESTHER SUAREZ
PROSECUTOR**

**TELEPHONE: (201) 795-6400
FAX: (201) 795-3365**

July 19, 2019

VIA E MAIL pswhopra@gmail.com

CJ Griffin, Esq.
Pashman Stein Walder Hayden, P.C.
Court Plaza South
21 Main Street #200
Hackensack, NJ 07601

Re: OPRA Request

Dear Attorney Griffin:

The Hudson County Prosecutor's Office (HCPO) acknowledges receipt of your OPRA request requesting information in connection with the shooting by Jersey City Police Officers of Davante Moore and Shaquan Rush on or about July 1, 2019 in Jersey City, New Jersey.

The HCPO responds to your requests, in the order made, as follows:

Attached written notes listing the names, ages, genders and ethnic background of the Jersey Police Officers involved in the events of July 1, 2019.

Use of Force reports from the Jersey City Police Department delivered to the HCPO for the years 2017 and 2018.

Concerning the balance of your OPRA requests, under OPRA, specifically N.J.S.A. 47:1A-1.1, Definitions, a government record shall NOT include, amongst other items, the following information which is deemed to be confidential:

Criminal Investigatory Records

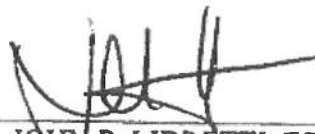
CJ Griffin, Esq.
July 19, 2019
Page 2

Further, pursuant to N.J.S.A.47:1A-3, Access To Records of Investigation in Progress, access to such records may be denied if the inspection of such records "shall be inimical" to the public interest. The access shall also be denied where examination of the investigatory records may jeopardize the investigation or would be harmful to a "bona fide law enforcement purpose". As the alleged incident is currently under investigation by the HCPO, the HCPO has determined that the information you request, specifically body and dash camera video footage, is exempt from access and/or disclosure for the reasons set forth herein.

The Hudson County Prosecutor's Office also reserves the right to raise any other ground for denial not raised in this response. The failure of the Hudson County Prosecutor's Office to assert an exception or privilege does not act as a waiver of any ground for denial. You have a right to appeal a decision that a document or documents are not public records. You may take your appeal to the Government Records Council or to the New Jersey Superior Court as provided by N.J.S.A. 47:1A-6 and 7.

Respectfully submitted,
ESTHER SUAREZ
Prosecutor of Hudson County

BY:



JOHN P. LIBRETTI, ESQ.
CHIEF, CIVIL LITIGATION

015 7/1/2019 - involved
officers

①

Lt. Crisant Berquette

38 yoa, hired 7/2/2009.

Black male

②

PO Michael Jacobo #3017

38 yoa, hired 1/12/2015

Hispanic male

③

PO Raymond Vazquez #3068

29 yoa, hired 10/30/2015

Hispanic male

AMENDED

OFFICE OF THE HUDSON COUNTY PROSECUTOR

Use of Force Reporting Form

TRACKING FORM

Agency:

Jersey City Police Department (I.A.U.)

Date Submitted:

January 31, 2019

Year

2018

Submitting Officer:

Louis Michalski Jr.

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Year End
Number	38	89	68	72	267

AMENDED

OFFICE OF THE HUDSON COUNTY PROSECUTOR

Use of Force Reporting Form

TRACKING FORM

Agency: Jersey City Police Department (I.A.U.) Date Submitted: January 29, 2019

Year: 2017 Submitting Officer: Louis Michalski

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Year End
Number				31	31

EXHIBIT D

USE OF FORCE

Attorney General's Use of Force Policy

Issued April 1985
Revised June 2000

Preface

The provisions of this revised policy are a product of the collective efforts and judgment of the New Jersey Use of Force Advisory Committee. Throughout the deliberation process, each member of the committee worked conscientiously to reach a consensus in this area of critical importance to law enforcement officers and the citizens of this state. The New Jersey Use of Force Advisory Committee realized that the law alone could not achieve the goal of properly guiding the use of force by the police. The letter of the law needed to be supplemented with clear policy guidance designed to prepare officers to react appropriately when confronted with a use of force situation.

Policy

Sworn law enforcement officers have been granted the extraordinary authority to use force when necessary to accomplish lawful ends. That authority is grounded in the responsibility of every sworn law enforcement officer to comply with the laws of the State of New Jersey regarding the use of force and to comply with the provisions of this policy. Equally important is law enforcement's obligation to prepare individual officers in the best way possible to exercise that authority.

In situations where law enforcement officers are justified in using force, the utmost restraint should be exercised. The use of force should never be considered routine. In determining to use force, the law enforcement officer shall be guided by the principle that the degree of force employed in any situation should be only that reasonably necessary. Law enforcement officers should exhaust all other reasonable means before resorting to the use of force. It is the policy of the State of New Jersey that law enforcement officers will use only that force which is objectively reasonable and necessary.

This policy reinforces the responsibility of law enforcement officers to take those steps possible to prevent or stop the illegal or inappropriate use of force by other officers. Every law enforcement officer is expected and required to take appropriate action in any situation where that officer is clearly convinced that another officer is using force in violation of state law. Law enforcement officers are obligated to report all situations in which force is used illegally by anyone. This policy sends a clear message to law enforcement officers that they share an obligation beyond the requirements of

Attorney General's Use of Force Policy

the law. Officers are encouraged to do whatever they can to interrupt the flow of events before a fellow officer does something illegal and before any official action is necessary. Law enforcement officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately.

Deciding whether to utilize force when authorized in the conduct of official responsibilities is among the most critical decisions made by law enforcement officers. It is a decision which can be irrevocable. It is a decision which must be made quickly and under difficult, often unpredictable and unique circumstances. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decisionmaking in the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, this policy is intended to provide the best guidance and direction possible to police officers throughout this state when called upon to confront and address the most difficult of situations. Law enforcement officers whose actions are consistent with the law and the provisions of this policy will be strongly supported by the law enforcement community in any subsequent review of their conduct regarding the use of force.

Definitions

A. Constructive Authority

1. Constructive authority does not involve actual physical contact with the subject, but involves the use of the law enforcement officer's authority to exert control over a subject.
2. Examples include verbal commands, gestures, warnings, and unholstering a weapon.
3. Pointing a firearm at a subject is an element of constructive authority to be used only in appropriate situations.

B. Physical Contact

1. Physical contact involves routine or procedural contact with a subject necessary to effectively accomplish a legitimate law enforcement objective.
2. Examples include guiding a subject into a police vehicle, holding the subject's arm while transporting, handcuffing a subject and maneuvering or securing a subject for a frisk.

Attorney General's Use of Force Policy

C. Physical Force

1. Physical force involves contact with a subject beyond that which is generally utilized to effect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject's physical resistance to the exertion of the law enforcement officer's authority, or to protect persons or property.
2. Examples include wrestling a resisting subject to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation.

D. Mechanical Force

1. Mechanical force involves the use of some device or substance, other than a firearm, to overcome a subject's resistance to the exertion of the law enforcement officer's authority.
2. Examples include the use of a baton or other object, canine physical contact with a subject, or chemical or natural agent spraying.

E. Deadly Force

1. Deadly force is force which a law enforcement officer uses with the purpose of causing, or which the officer knows to create a substantial risk of causing, death or serious bodily harm.
2. Purposely firing a firearm in the direction of another person or at a vehicle, building or structure in which another person is believed to be constitutes deadly force.
3. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the officer's purpose is limited to creating an apprehension that deadly force will be used if necessary, does not constitute deadly force.

F. Reasonable Belief

1. Reasonable belief is an objective assessment based upon an evaluation of how a reasonable law enforcement officer with comparable training and experience would react to, or draw

Attorney General's Use of Force Policy

inferences from, the facts and circumstances confronting and known by the law enforcement officer at the scene.

G. Imminent Danger

1. Imminent danger describes threatened actions or outcomes that may occur during an encounter absent action by the law enforcement officer. The period of time involved is dependent on the circumstances and facts evident in each situation and is not the same in all situations.
2. The threatened harm does not have to be instantaneous, for example, imminent danger may be present even if a subject is not at that instant pointing a weapon at the law enforcement officer, but is carrying a weapon and running for cover.

H. Substantial Risk

1. Any discharge of a firearm entails some risk of an unintended outcome. A substantial risk exists when a law enforcement officer disregards a foreseeable likelihood that innocent persons will be endangered.
2. For example, firing a weapon into a confined space (room, vehicle, etc.) occupied by innocent persons exposes those persons to a substantial risk of harm.

I. Law Enforcement Officer

1. Any person sworn to enforce the criminal laws of the State of New Jersey, who is certified by the Police Training Commission, or is currently employed by a public safety agency and is authorized to carry a firearm under *N.J.S.A. 2C:39-6*.

I. Authorization and Limitations

A. Use of Force

1. A law enforcement officer may use physical force or mechanical force when the officer reasonably believes it is immediately necessary at the time:

Attorney General's Use of Force Policy

- a. to overcome resistance directed at the officer or others; *or*
- b. to protect the officer, or a third party, from unlawful force; *or*
- c. to protect property; *or*
- d. to effect other lawful objectives, such as to make an arrest.

B. Use of Deadly Force

- 1. A law enforcement officer may use deadly force when the officer reasonably believes such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.
- 2. A law enforcement officer may use deadly force to prevent the escape of a fleeing suspect
 - a. whom the officer has probable cause to believe has committed an offense in which the suspect caused or attempted to cause death or serious bodily harm; *and*
 - b. who will pose an imminent danger of death or serious bodily harm should the escape succeed; *and*
 - c. when the use of deadly force presents no substantial risk of injury to innocent persons.
- 3. If feasible, a law enforcement officer should identify himself/herself and state his/her intention to shoot before using a firearm.

C. Restrictions On The Use of Deadly Force

- 1. A law enforcement officer is under no obligation to retreat or desist when resistance is encountered or threatened. However, a law enforcement officer shall not resort to the use of deadly force if the officer reasonably believes that an alternative to the use of deadly force will avert or eliminate an imminent danger of death or serious bodily harm, and achieve the law enforcement purpose at no increased risk to the officer or another person.
- 2. A law enforcement officer shall not use deadly force to subdue

Attorney General's Use of Force Policy

persons whose actions are only destructive to property.

3. Deadly force shall not be used against persons whose conduct is injurious only to themselves.
4. Under current state statutes the discharge of any projectile from a firearm is considered to be deadly force, including less lethal means such as bean bag ammunition or rubber bullets. For that reason, these and similar less lethal means of deadly force can only be used when an officer reasonably believes such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.
5. A law enforcement officer shall not discharge a weapon as a signal for help or as a warning shot.
6. While any discharge of a firearm entails some risk, discharging a firearm at or from a moving vehicle entails an even greater risk of death or serious injury to innocent persons. The safety of innocent people is jeopardized when a fleeing suspect is disabled and loses control of his or her vehicle. There is also a substantial risk of harm to occupants of the suspect vehicle who may not be involved, or involved to a lesser extent, in the actions which necessitated the use of deadly force.
 - a. Due to this greater risk, and considering that firearms are not generally effective in bringing moving vehicles to a rapid halt, officers shall not fire from a moving vehicle, or at the driver or occupant of a moving vehicle unless the officer reasonably believes:
 - (1) there exists an imminent danger of death or serious bodily harm to the officer or another person; *and*
 - (2) no other means are available at that time to avert or eliminate the danger.
 - b. A law enforcement officer shall not fire a weapon solely to disable moving vehicles.

D. Exhibiting a Firearm

1. A law enforcement officer shall not unholster or exhibit a firearm

Attorney General's Use of Force Policy

except under any of the following circumstances:

- a. For maintenance of the firearm;
- b. To secure the firearm;
- c. During training exercises, practice or qualification with the firearm;
- d. When circumstances create a reasonable belief that it may be necessary for the officer to use the firearm;
- e. When circumstances create a reasonable belief that display of a firearm as an element of constructive authority helps establish or maintain control in a potentially dangerous situation in an effort to discourage resistance and ensure officer safety.

II. Training Requirements

- A. Every law enforcement agency is required to conduct and document semi-annual training for all officers on the lawful and appropriate use of force and deadly force. This training must be designed to reflect current standards established by statutory and case law, as well as statewide, county and individual agency policy. It should include but not necessarily be limited to the use of force in general, the use of physical and mechanical force, the use of deadly force, and the limitations that govern the use of force and deadly force.

III. Use of Force Reports

- A. In all instances when physical, mechanical or deadly force is used, each officer who has employed such force shall complete
 - 1. Any reports made necessary by the nature of the underlying incident; *and*
 - 2. Use of Force Report (Attachment A or agency required format)

IV. Notifications and Reporting

- A. Immediate Notifications

Attorney General's Use of Force Policy

1. County and municipal law enforcement agencies shall immediately notify the county prosecutor when the use of physical, mechanical or deadly force results in death or serious bodily injury, or when injury of any degree results from the use of a firearm by a law enforcement officer.
2. County prosecutor's offices shall immediately notify the Division of Criminal Justice when a member of their agency uses physical, mechanical or deadly force which results in death or serious bodily injury, or when injury of any degree results from the use of a firearm by agency personnel.
3. State law enforcement agencies shall immediately notify the Division of Criminal Justice when the use of physical, mechanical or deadly force results in death or serious bodily injury, or when injury of any degree results from the use of a firearm by a law enforcement officer.

B. Reporting

1. County prosecutors shall within 24 hours report to the Division of Criminal Justice all situations where the use of deadly force by a law enforcement officer results in death or serious bodily injury, or in situations where any injury results from the use of a firearm by a law enforcement officer.
2. For all situations involving the use of physical, mechanical or deadly force, county and municipal law enforcement agencies shall report at least annually to the county prosecutor in a manner established by the prosecutor.
3. For all situations involving the use of physical, mechanical or deadly force, state law enforcement agencies shall report at least annually to the Division of Criminal Justice in a manner established by the Director of the Division of Criminal Justice.

Attorney General's Use of Force Policy

Attachment A

Model Use of Force Report

POLICE DEPARTMENT
USE OF FORCE REPORT

A. Incident Information

Date	Time	Day of Week	Location	INCIDENT NUMBER
<u>Type of Incident</u> <input type="checkbox"/> Crime in progress <input type="checkbox"/> Domestic <input type="checkbox"/> Other dispute <input type="checkbox"/> Suspicious person <input type="checkbox"/> Traffic stop <input type="checkbox"/> Other (specify)				

B. Officer Information

Name (Last, First, Middle)	Badge #	Sex	Race	Age	Injured Y / N	Killed Y / N
Rank	Duty assignment	Years of service	On-Duty Y / N	Uniform Y / N		

C1. Subject 1 (List only the person who was the subject of the use of force by the officer listed in Section B.)

Name (Last, First, Middle)	Sex	Race	Age	Weapon Y / N	Injured Y / N	Killed Y / N
<input type="checkbox"/> Under the influence <input type="checkbox"/> Other unusual condition (specify)	Arrested Y / N	Charges				
<u>Subject's actions</u> (check all that apply) <input type="checkbox"/> Resisted police officer control <input type="checkbox"/> Physical threat/attack on officer or another <input type="checkbox"/> Threatened/attacked officer or another with blunt object <input type="checkbox"/> Threatened/attacked officer or another with knife/cutting object <input type="checkbox"/> Threatened/attacked officer or another with motor vehicle <input type="checkbox"/> Threatened officer or another with firearm <input type="checkbox"/> Fired at officer or another <input type="checkbox"/> Other (specify)	<u>Officer's use of force toward this subject</u> (check all that apply) <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Compliance hold <input type="checkbox"/> Hands/fists <input type="checkbox"/> Kicks/feet <input type="checkbox"/> Chemical/natural agent <input type="checkbox"/> Strike/use baton or other object <input type="checkbox"/> Canine <input type="checkbox"/> Other (specify) </div> <div> Firearms Discharge <input type="checkbox"/> Intentional <input type="checkbox"/> Accidental Number of Shots Fired _____ Number of Hits _____ [Use 'UNK' if unknown] </div> </div>					

C2. Subject 2 (List only the person who was the subject of the use of force by the officer listed in Section B.)

Name (Last, First, Middle)	Sex	Race	Age	Weapon Y / N	Injured Y / N	Killed Y / N
<input type="checkbox"/> Under the influence <input type="checkbox"/> Other unusual condition (specify)	Arrested Y / N	Charges				
<u>Subject's actions</u> (check all that apply) <input type="checkbox"/> Resisted police officer control <input type="checkbox"/> Physical threat/attack on officer or another <input type="checkbox"/> Threatened/attacked officer or another with blunt object <input type="checkbox"/> Threatened/attacked officer or another with knife/cutting object <input type="checkbox"/> Threatened/attacked officer or another with motor vehicle <input type="checkbox"/> Threatened officer or another with firearm <input type="checkbox"/> Fired at officer or another <input type="checkbox"/> Other (specify)	<u>Officer's use of force toward this subject</u> (check all that apply) <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Compliance hold <input type="checkbox"/> Hands/fists <input type="checkbox"/> Kicks/feet <input type="checkbox"/> Chemical/natural agent <input type="checkbox"/> Strike/use baton or other object <input type="checkbox"/> Canine <input type="checkbox"/> Other (specify) </div> <div> Firearms Discharge <input type="checkbox"/> Intentional <input type="checkbox"/> Accidental Number of Shots Fired _____ Number of Hits _____ [Use 'UNK' if unknown] </div> </div>					

➤ If this officer used force against more than two subjects in this incident, attach additional USE OF FORCE REPORTS.

Signature:	Date:
Print Supervisor Name:	Supervisor Signature:

EXHIBIT E



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO Box 080
TRENTON, NJ 08625-0080

JOHN J. HOFFMAN
Acting Attorney General

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2015-1

TO: Director, Division of Criminal Justice
Superintendent, New Jersey State Police
All County Prosecutors
All County Sheriffs
All Chief Law Enforcement Executives

FROM: John J. Hoffman, Acting Attorney General

DATE: July 28, 2015

SUBJECT: Law Enforcement Directive Regarding Police Body Worn Cameras (BWCs)
and Stored BWC Recordings

In recent months, law enforcement agencies have begun to equip their officers with body worn cameras ("BWCs"). A small number of police departments in New Jersey already deploy BWCs, while others plan to do so and currently are balancing the costs and benefits of these devices. New grant programs will incentivize departments to acquire BWCs by helping to defray costs.

In light of the proliferation of BWCs across the State, it is appropriate for the Attorney General, as the State's chief law enforcement officer, to provide guidance to police departments on how to make the best possible use of electronic recording technology. See N.J.S.A. 52:17B-98 (Attorney General is responsible for general oversight of law enforcement, and for ensuring the uniform and efficient enforcement of the criminal laws and the administration of criminal justice). It is decidedly in the public interest to establish foundational statewide standards with respect to certain critical policy issues, such as how an agency explains its BWC policy to the general public, when officers are required to activate their BWCs, when officers are permitted to turn off the recording device during an ongoing police-civilian encounter, and when and for what purposes law enforcement agencies and officers are authorized to access, view, copy, or disseminate stored BWC recordings. Although the statewide standards will establish basic requirements that all police departments must satisfy, these standards also should permit agencies to account for local community needs and interests, and should encourage agencies to develop and share best practices as they gain experience in using these devices.

Accordingly, I, John J. Hoffman, Acting Attorney General of the State of New Jersey,



pursuant to the authority granted to me by the Constitution of the State of New Jersey and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, hereby DIRECT that all law enforcement agencies and officers shall implement and comply with the following procedures, standards, and practices concerning the use of body worn cameras and recordings.

1. GOVERNING PRINCIPLES

1.1 Establishing Uniform Statewide Standards While Permitting Departmental Policies to Address Local Concerns.

The policies and standards established in this Directive are designed to help police departments achieve an optimal balance between potentially competing interests. For example, it is necessary to balance the need to promote police accountability and transparency on the one hand, against the need to respect the privacy interests of persons whose images and home interiors will be captured in a BWC recording on the other. So too, it is necessary to balance the benefits achieved by electronically recording evidence that might help to solve a crime and successfully prosecute an offender against the costs incurred if a BWC were to chill a victim or witness from providing a camera-equipped officer with information necessary to solve a crime and convict the offender.

This Directive does not mandate the acquisition or deployment of BWCs. Rather, the decision to acquire these devices, and the decision as to when and in what circumstances officers will be equipped with them, is left to each law enforcement agency. If a department decides to equip an officer with a BWC, this Directive provides guidance on how the device is to be used, when it will be activated, when it might be de-activated in the course of an unfolding police-civilian encounter, and when a BWC recording may be accessed, viewed, copied, disseminated, or otherwise used. In providing such guidance, this Directive establishes certain foundational requirements that all police departments must satisfy. Law enforcement agencies nonetheless are expressly authorized to impose additional requirements beyond – but not inconsistent with – those established in this Directive. In this way, police agencies are afforded an opportunity to tailor their BWC policies and procedures to address local concerns and needs.

Although police executives are afforded some flexibility in developing departmental policies and practices that address local needs and community concerns, this Directive makes clear that all policies must limit the discretion of individual officers in the field. The decision to activate a BWC must be based on objective criteria (e.g., the initiation of a specified type of police action, such as a consensual field inquiry, or the start of an officer's duty shift). Furthermore, in any circumstance where an officer is afforded discretion in deciding whether to de-activate a BWC, the reasons for exercising that discretion must be documented to permit supervisory review.

1.2 Recognizing the Multitude of Reasons for Deploying BWCs.

It is widely recognized that BWCs can play an important role in addressing public concerns about police use of force. A BWC recording of a police-involved shooting or other use-of-force event provides objective evidence of what occurred. The practical utility of BWCs, however, lies not only in their ability to record objectively the circumstances of a police-civilian confrontation, but also in their capacity to discourage both officers and civilians from engaging in inappropriate conduct. Thus, for example, a BWC operating during a police-civilian encounter can deter the officer from using force inappropriately, while at the same time deter a civilian from engaging in provocative conduct that might prompt the officer to use force. These devices also can serve to discourage both law enforcement and civilian witnesses from providing false information about the circumstances of the encounter; a BWC recording not only can vindicate an officer who is falsely accused of misconduct, and do so very quickly, but also will discourage a person from making false allegations against the officer in the first place.

The foregoing benefits provide ample reason for police departments to consider deploying BWCs. The practical utility of these recording devices, however, is not limited to those rare occasions when police employ force, or are accused by civilians of misconduct. BWC recordings will be used far more routinely to document visual and aural evidence learned in the course of conducting police investigations. Not only will BWC recordings preserve accurate visual depictions of physical evidence, such as weapons and illicit drugs and paraphernalia, but also will document where and how physical evidence was found, thereby helping to establish the facts that must be presented in Fourth Amendment suppression hearings. BWCs also will record the physical appearance of suspects and crime victims, preserving evidence of any apparent injuries. The audio portion of BWC recordings, meanwhile, will document witness and suspect statements, preserving not only the substantive content of those statements, but also showing whether officers had complied with Miranda and other legal requirements.

Although BWCs record events accurately and objectively, they do not replace the need for complete and accurate police reports and testimony. The fact that a BWC is not activated to record an encounter or event does not, of course, preclude an officer from testifying as to the circumstances of the encounter or event, or affect the admissibility of evidence. Nor does it suggest that the officer's written report or testimony is inaccurate or incomplete. However, a BWC recording can supplement and corroborate the accuracy of written reports and testimony, which is one of the significant benefits of deploying these devices.

1.3 Practical and Policy-Related Differences Between BWCs and Vehicle-Mounted Video Cameras.

Many police departments have been using vehicle-mounted dashboard cameras ("dash cams") for years. Those departments already have well-established and reliable procedures in place for downloading electronic video/audio data securely, for preserving recordings, and for making

them available for discovery in criminal prosecutions.

Police officers in jurisdictions that deploy dash cams have developed expertise in using these electronic recording devices to preserve evidence and to protect themselves against false allegations of misconduct. Our State's longstanding experience with dash cams is important and must be integrated into the development of sound BWC practices and procedures. But it is not enough simply to copy and apply existing dash cam policies to this new form of electronic recording device. The inherent differences between dash cams and BWCs require a careful analysis of existing policies, practices, and procedures, recognizing that BWCs will record events that transpire during a much broader range of police-civilian encounters than traditionally have been recorded by dash cams. Vehicle-mounted cameras, of course, record events that occur out on the street, where there is a reduced expectation of privacy as compared to police-civilian encounters that occur, for example, inside private homes. An activated BWC, in contrast to a dash cam, will record events occurring during any type of police-civilian encounter occurring in any setting. BWCs thus raise privacy issues and other complex issues that dash cam policies have not had to address.

Accordingly, it is appropriate and necessary by means of this Directive to provide guidance to police departments on how best to balance competing interests and values to make the best possible use of this new law enforcement technology.

2. DEFINITIONS

For purposes of this Directive:

- a. "Activate" means to actuate the recording mode/function of a body worn camera.¹
- b. "Body worn camera" ("BWC") means a device worn by a law enforcement officer that makes an electronic audio/video recording of activities that take place during any law enforcement action. The term does not include a mobile video recording device when mounted inside a police vehicle (*i.e.*, a dash cam). The term also does not include any form of electronic recording device worn by a law enforcement officer while acting in an undercover capacity. Nor does the term include an electronic recording device when used to comply with the requirements of Rule 3:17 (electronic recording of station house custodial interrogations).

1

Some BWC models may be turned on and remain in a standby or buffering mode, during which the device does not make a permanent record of images/sounds unless the officer activates the recording mode/function. With respect to these models, when the officer activates the recording mode/function, the device automatically preserves an electronic recording of the events that transpired a fixed period of time (*e.g.*, 30 seconds) before the recording mode/function was activated. This time-delay or "buffering" feature allows the device to capture data concerning the event/circumstances that prompted the officer to activate the BWC. When an officer does not activate the recording mode/function, data captured while the device is in standby/buffering mode is overwritten automatically.

- c. "Constructive authority" shall have the same meaning as defined in the Attorney General's Use of Force Policy, except that the term shall apply only to constructive authority directed against a person who is subject to an investigative detention or arrest (e.g., "show me your hands," "get out of the vehicle," etc.), or directed against any person if the officer has un-holstered a firearm or a conducted energy device (e.g., "move out of the way," "get down," etc.).
- d. "Force" shall have the same meaning as defined in the Attorney General's Use of Force Policy. The term "force" shall include physical, mechanical, enhanced mechanical, and deadly force.
- e. "Investigation of a criminal offense" means any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, or petty disorderly offense, including but not limited to responding to a report of a possible criminal offense; an investigative detention based on or leading to reasonable and articulable suspicion to believe that a criminal offense has been or is being committed; an arrest for a criminal offense; an interview of a potential witness to a criminal offense; or canvassing an area, neighborhood, or premises for potential witnesses to a criminal offense.
- f. "Law enforcement agency," "agency," or "department" means a law enforcement agency operating under the authority of the laws of the State of New Jersey.
- g. "Law enforcement officer" or "officer" means a sworn officer employed by a law enforcement agency.
- h. "School" means an elementary or secondary school.
- i. "Youth facility" means a facility where children assemble under adult supervision for educational or recreational purposes, such as day-care centers, youth camps, etc.

3. POLICE DEPARTMENT POLICIES GOVERNING DEPLOYMENT AND USE OF BWCs AND RECORDINGS

3.1 Promulgation of Police Department Policies and Procedures.

Within 60 days of the issuance of this Directive, every law enforcement agency that already has equipped any of its officers with a BWC shall promulgate and enforce a policy, standing operating procedure, directive, or order, in a form as may be appropriate given the customs and practices of the agency, which shall comply with the policies, standards, and requirements of this Directive. In the event that an agency has not deployed BWCs prior to the issuance of this Directive, the agency shall not deploy or use BWCs without first promulgating a policy, standing operating

procedure, directive, or order in accordance with this paragraph.

Any policy, standing operating procedure, directive, or order promulgated by an agency pursuant to this Directive shall provide that: 1) a law enforcement officer employed by the agency only may use a BWC system that has been issued and approved by the agency; 2) an officer equipped with a BWC must comply at all times with the requirements established in this Directive and in the agency's policy, standing operating procedure, directive, or order issued pursuant to this Directive; 3) a BWC shall be used only in performance of official police duties and not for personal purposes; 4) no BWC recording shall be accessed, viewed, copied, disseminated, or otherwise used by a sworn officer or civilian employee of the agency except for an official purpose specified in this Directive; and 5) any sworn officer or civilian employee of the agency who knowingly violates the requirements of this Directive or the agency's policy, standing operating procedure, directive, or order shall be subject to discipline.

3.2 Officers Authorized to Wear/Use BWCs.

The chief law enforcement officer of the department shall determine which officers will be equipped with BWCs, and shall determine the type(s) of duty assignments (e.g., uniformed patrol, plainclothes detective, special/tactical operations deployments, etc.) when those officers will wear BWCs. In the case of a task force, team, or unit composed of officers from more than one law enforcement agency, the chief law enforcement officer of the agency overseeing the task force, team, or unit (e.g., the County Prosecutor in the case of a countywide task force) shall determine whether and in what circumstances officers assigned to the task force, team, or unit will wear BWCs.

An officer shall not wear a BWC unless he or she: 1) has been authorized to do so by the chief law enforcement officer of the department, or by the chief law enforcement officer of the agency overseeing a multi-agency task force, team, or unit; and 2) has received training on the proper care and use of the device in accordance with the requirements of this Directive and the policy, standing operating procedure, directive, or order promulgated pursuant to section 3.1. Nothing in this Directive shall be construed to require that officers assigned to any particular type of duty assignment will be equipped with BWCs. That decision is left to the department. Rather, this Directive provides foundational standards governing the use of BWCs by officers who have been directed by their agency to wear the device. Nothing in this Directive shall be construed to prevent an agency from developing a pilot program to determine when and in what circumstances/duty assignments the deployment of BWCs would be most efficacious.

3.3 Duty to Inspect and Report Malfunctions.

An officer equipped with a BWC shall be responsible for determining that the device is fully functional and that its battery is adequately charged at the start of the officer's duty shift and before going into the field. If a malfunction is detected, the officer shall report the malfunction to a supervisor before going into the field. If the BWC malfunctions while out in the field, the

malfunction upon its discovery shall be reported to the officer's supervisor as soon as it is safe and practicable to do so.

3.4 Applicability of and Compliance with Attorney General Law Enforcement Directive No. 2005-1.

The decision to activate or de-activate a BWC is a police action subject to the rule established in Attorney General Law Enforcement Directive No. 2005-1, which strictly prohibits any form of racially-influenced policing.

3.5 Training.

Every department that deploys BWCs shall designate one or more training officers and shall establish a training program to ensure that officers equipped with BWCs and officers and civilian employees who access or handle BWC recordings are familiar with the provisions of this Directive and the policy, standing operating procedure, directive, or order promulgated by the agency pursuant to section 3.1.

4. NOTICE THAT BWCs ARE DEPLOYED/ACTIVATED

4.1 General Policy Considerations.

Eventually, BWCs are likely to become commonplace such that private citizens will expect that uniformed police officers are equipped with these devices, just as citizens today understand that patrol officers carry two-way radios, firearms, flashlights, o.c. spray, batons, and handcuffs as standard equipment. But until such time as the use of BWCs becomes that universal, it is appropriate to provide some form of notice to citizens so that they understand that anything said to a BWC-equipped officer may be electronically recorded, and that the images and sounds of the police-civilian interaction will be stored and accessible for future law enforcement use in accordance with the provisions of this Directive. Such notice to the public that BWCs are in use will help to achieve the above-noted benefits of discouraging persons from engaging in conduct that might provoke the use of law enforcement force, and discouraging persons from filing false complaints against police.

4.2 General Public Notice.

Every police department that acquires/deploys BWCs shall take reasonable steps to inform the citizenry of the agency's decision to deploy this technology. The department shall publish a statement that it deploys BWCs on its internet web site or, if the department does not have its own web site, then on the municipality's web site when feasible. The County Prosecutor may assist departments in providing general public notice of their deployment of BWCs pursuant to this section. The web site posting shall include a picture showing what the device looks like, and how it is to be

worn by uniformed officers or plainclothes detectives so that citizens will be able to determine whether an officer is equipped with the device.

4.3 Specific Notice to Certain Individuals During an Encounter.

When an officer equipped with a BWC is required to activate the device during an encounter 1) with a civilian occurring inside the person's residence, or 2) with a person reasonably believed to be a victim of a criminal offense, the officer shall verbally notify the person(s) with whom the officer is conversing that the BWC has been activated unless it is unsafe or infeasible to provide such notification. If the officer decides not to provide notification of BWC activation because it is unsafe or infeasible to do so, the officer shall document the reasons for that decision in a report and/or by narrating the reasons on the BWC recording. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence. See section 15 (non-enforceability by third parties). Nothing herein shall preclude a department from adopting a policy, standing operating procedure, directive, or order that requires a BWC-equipped officer to provide verbal notification in other specified circumstances, and/or that requires that an indicator light be illuminated when the BWC is activated.

4.4 Truthful Response to Specific Inquiries.

If a civilian inquires of an officer whether the officer is equipped with a BWC, or inquires whether the device is activated, the officer shall answer truthfully unless the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, has expressly authorized the officer to make a covert electronic recording. Cf. section 2(a) (Directive does not apply to officers while operating in an undercover capacity, or while conducting/participating in a station house custodial interrogation electronically recorded in accordance with Rule 3:17). Nothing in this section shall be construed to establish a basis for suppressing a statement or other evidence. See section 15 (non-enforceability by third parties).

5. **STANDARDS GOVERNING THE ACTIVATION OF BWCs**

5.1 BWCs Used Only in Performance of Official Duties.

A BWC shall be activated only while in performance of official police duties and for the purpose of recording incidents, investigations, and police-civilian encounters involving those law enforcement activities specified in this Directive, or specified in a department's policy, standing operating procedure, directive, or order promulgated pursuant to this Directive. A BWC shall not be activated while the officer is on break or otherwise is not actively performing law enforcement functions (e.g., while eating meals, while in a restroom, etc.). A BWC shall not be activated or used by an officer for personal purposes, or when engaged in police union business. Nor shall a BWC be used to record conversations involving counseling, guidance sessions, personnel evaluations, or any similar supervisory interaction.

5.2 Circumstances When Activation by a Uniformed Officer Generally is Required.

Except as otherwise expressly provided in section 7 or any other provision in this Directive, a uniformed officer equipped with a BWC shall be required to activate the device in any of the following circumstances² as soon as it is safe and practicable to do so:

- a) the officer initiates an investigative detention (e.g., a Delaware v. Prouse traffic stop, a Terry v. Ohio criminal suspicion stop, or a checkpoint or roadblock stop);
- b) the officer is responding to a call for service and is at or near the location to which the officer has been dispatched;
- c) the officer is conducting a motorist aid or community caretaking check;
- d) the officer is interviewing a witness in the course of investigating a criminal offense;
- e) the officer is conducting a custodial interrogation of a suspect, unless the interrogation is otherwise being recorded in accordance with Rule 3:17 (electronic recordation of station house interrogations);
- f) the officer is making an arrest;
- g) the officer is conducting a protective frisk for weapons;
- h) the officer is conducting any kind of search (consensual or otherwise);
- i) the officer is engaged in a police response to any type of civil disorder in circumstances where the officer is engaged with or in the presence of civilians and the officer or any other officer on the scene may be required to employ constructive authority or force;
- j) the officer uses constructive authority or force, or reasonably believes that

2

Two or more of the below-listed activities are likely to occur during a single encounter or event. For example, a frisk ordinarily occurs after an officer already has initiated an investigative detention (i.e., a “stop”), and a custodial interrogation typically occurs after the officer has arrested the person being interrogated. Although these specified activities often will co-occur and overlap, they are presented in this section to ensure complete coverage of the circumstances when a BWC must be activated. The specified activity that occurs first during an unfolding encounter will trigger the obligation to activate a BWC. As explained in section 5.4, once activated based upon the initiation of any of the listed police activities, the BWC generally must remain in operation until the police-civilian encounter is concluded (i.e., until the officer is no longer interacting with or in the presence of the civilian), and not just while the officer is engaged in the specified activity that required activation.

constructive authority or force may be used in any encounter or situation not otherwise listed in this subsection based on specific and articulable facts warranting heightened caution that are documented by narration on the recording and/or in any investigation or incident report;³

- k) the officer is transporting an arrestee to a police station, county jail, or other place of confinement, or a hospital or other medical care or mental health facility; or
- l) the officer reasonably believes that any other officer on the scene has undertaken or is engaged in any of the foregoing police actions/activities.

5.3 Authority to Specify Additional Police Activities When Uniformed Officers Must Activate BWCs.

Subject to the provisions of sections 5.1, 7, and 12 of this Directive, an agency may promulgate a policy, standing operating procedure, directive, or order that requires uniformed officers to activate a BWC when conducting a specified law enforcement activity not listed in section 5.2. For example, a department may require uniformed officers to electronically record consensual field inquiries (i.e., police-civilian interactions where an officer approaches a person under circumstances where a reasonable person would believe that he/she is free to leave and is under no obligation to converse with the officer), or may require uniformed officers to electronically record any police action where the officer would be required by departmental policy to file a report or to make a notation in the officer's official patrol log. A department also might choose to require that BWCs be activated during a uniformed officer's entire duty shift (excluding circumstances specified in sections 5.1 and 7 of this Directive). In that event, the department may specify circumstances when the BWC may be de-activated, provided that the department's policy does not authorize de-activation in circumstances where this Directive requires that the BWC remain activated.

To ensure that all citizens are treated uniformly when officers decide to electronically record an encounter, the department's policy, standing operating procedure, directive, or order must limit

3

See State v. Smith, 134 N.J. 599 (1994) (requiring "specific and articulable facts that would warrant heightened caution" before exercising police discretion to remove a passenger from a lawfully detained vehicle); see also note 1 (discussing a time-delay or "buffering" feature on some BWC models). When circumstances necessitating the use of constructive authority or force arise suddenly during the course of swiftly-developing events, it may not be safe and practicable for an officer to activate a BWC before employing constructive authority or force. Nothing in this Directive should be construed or applied in a manner that jeopardizes officer safety by distracting the officer's attention from the immediate need to use such constructive authority or force. It should be noted that in many circumstances where the need to use constructive authority or force arises, the officer already would have initiated a police activity, such as a motor vehicle stop, "Terry" stop, or response to a call for service, that would have triggered the requirement to activate the BWC; see note 2 (recognizing that two or more police activities enumerated in this section often will co-occur during the course of a single police-citizen encounter).

the discretion of officers in the field. When a department chooses to expand the list of specified law enforcement activities set forth in section 5.2, it shall clearly establish the objective circumstances that require activation. A department is not permitted under this section to authorize uniformed officers to exercise discretion based upon subjective factors. A department may not, for example, authorize an officer to activate a BWC “when otherwise appropriate,” or “when the officer deems it prudent.” Rather, the obligation to activate a BWC must be based on a specified type of police action or an objective event (e.g., going into the field, conversing with a civilian during a consensual field inquiry, etc.). When the officer initiates the specified form of law enforcement activity, the officer automatically shall be required to activate his or her BWC as soon as it is safe and practicable to do so, subject to the exceptions and limitations set forth in this Directive.

5.4 Continuous Recording Pending Completion of Encounter.

To ensure that the entire encounter/event/episode is recorded, when feasible, a BWC should be activated before a uniformed officer arrives at the scene of a dispatched call for service or other police activity listed in section 5.2. See also note 1. However, the officer need not begin recording at the moment he or she receives instructions from a dispatcher to respond to a call for service. Rather, the officer may delay activation until he or she is near the destination.

Except as otherwise expressly provided in section 6 or any other provision of this Directive, when a BWC is required to be activated by a uniformed officer pursuant to this Directive, the device must remain activated throughout the entire encounter/event/episode and shall not be de-activated until it is concluded (e.g., the BWC-equipped officer has left the scene; all civilians involved in the encounter have left the scene; the officer has informed the dispatcher or a supervisor that the event has concluded; the event is “closed” on the department’s computer-aided dispatch (“CAD”) system, etc.).

When a BWC is activated pursuant to section 5.2(k) (transport of arrestee), whether by an officer in uniform or in plain clothes, it shall remain activated at all times while the BWC-equipped officer is in the presence of the arrestee and until the arrestee is secured in the holding cell or processing room, or until custody of the arrestee has been transferred to county jail personnel, or until the arrestee is with hospital/medical/mental health personnel and the officer is no longer in the presence of the arrestee.

5.5 Provisions Governing Use of BWCs by Plainclothes Officers.

Recognizing that detectives and other plainclothes officers perform different functions than uniformed officers, this Directive affords flexibility to agencies in determining when and in what circumstances plainclothes officers will wear and use BWCs, provided that the agency limits the discretion of individual officers in deciding when to activate/de-activate a BWC. Subject to the provisions of sections 5.1, 7, and 12 of this Directive, if an agency authorizes an officer to wear a BWC while in a plainclothes duty assignment, the agency’s policy, standing operating procedure,

directive, or order promulgated pursuant to section 3.1 shall specify the circumstances when a BWC-equipped plainclothes officer shall be required to activate the device, which shall include the circumstances specified in section 5.2 (j) and (k) and section 5.6 (i.e., situations involving use of constructive authority or force, transport of an arrestee, deadly force events, and responses to emergency assistance requests). The agency's policy, standing operating procedure, directive, or order also shall specify the circumstances when a plainclothes officer may de-activate the device.

5.6 Special Activation Rules Governing Deadly-Force Incidents and Other Exigent Circumstances Where Officers Are in Danger.

Notwithstanding any other provision of this Directive, when an officer equipped with a BWC is dispatched to or otherwise goes to the scene of an incident knowing or reasonably believing that police deadly force has been or is being employed, or to a scene where an officer has requested emergency assistance (e.g., an officer in distress, shots fired, etc.), the officer shall activate the BWC before arriving at the scene when feasible. Notwithstanding any other provision of this Directive, an officer while at the scene of a police deadly-force event or the on-scene investigation of that event shall not de-activate the BWC unless instructed to do so by the assistant prosecutor or assistant or deputy attorney general supervising the investigation of the deadly-force incident pursuant to Attorney General Law Enforcement Directive No. 2006-5, or his or her designee. Such instruction may be given telephonically by the assistant prosecutor, assistant or deputy attorney general, or designee supervising the investigation.

6. STANDARDS GOVERNING THE DE-ACTIVATION OF BWCs UPON THE REQUEST OF A CIVILIAN, WHEN DISCUSSING INVESTIGATION STRATEGY/PLANNING, OR ON INSTRUCTION OF A PROSECUTOR

6.1 De-Activation at the Request of a Civilian Providing Information/Cooperation.

Notwithstanding section 5.4, and unless the agency adopts a policy that prohibits or restricts de-activation as may be authorized by this section, an officer may de-activate a BWC when a civilian conversing with the officer requests that the device be turned off under circumstances where it reasonably appears that the person will not provide information or otherwise cooperate with the officer unless that request is respected.⁴ The officer shall not suggest to the person that the BWC should be de-activated; nor shall the officer ask the person whether he or she would prefer that the BWC be de-activated. Rather, the request for de-activation must be self-initiated by the civilian. The officer may explain the consequences of de-activation (e.g., evidence relevant to a criminal investigation will not be recorded). In deciding whether to de-activate the BWC, the officer shall

4

Cf. R. 3:17(b)(iv) (explaining that station house custodial interrogations must be electronically recorded unless "a statement is made during a custodial interrogation by a suspect who indicated, prior to making the statement, that he/she would participate in the interrogation only if it were not recorded; provided however, that the agreement to participate under that condition is itself recorded").

consider the privacy and safety interests of the person requesting de-activation, whether the encounter is occurring in the person's residence, and the need for the information or assistance that the person will provide only if the de-activation request is honored.

6.2 De-Activation at the Request of a Person Seeking Emergency Medical Assistance.

Notwithstanding section 5.4, and unless the agency adopts a policy that prohibits or restricts de-activation as may be authorized by this section, an officer may de-activate a BWC when a person, other than an arrestee, is seeking emergency medical services for him or herself or another and requests that the BWC be de-activated. In deciding whether to de-activate the BWC, the officer shall consider the privacy interests of the person requesting de-activation and the person in need of medical assistance.

6.3 Procedures for De-Activation Upon a Civilian's Request.

When an officer de-activates a BWC pursuant to section 6.1 or 6.2, the following procedures shall be followed: 1) the colloquy between the officer and the civilian concerning the request for de-activation shall be electronically recorded; 2) the officer before de-activating the BWC shall narrate the circumstances of the de-activation (e.g., "I am now turning off my BWC as per the victim's request."); 3) the officer shall report the circumstances concerning the de-activation to his or her superior as soon as is practicable; and 4) the officer shall document the circumstances of the de-activation in any investigation or incident report concerning the incident under investigation. See also section 9.3 (notations (i.e., "tagging") to indicate BWC recordings that raise special privacy or other issues).

6.4 Decision to Decline a Civilian's De-Activation Request.

If an officer declines a request to de-activate a BWC pursuant to section 6.1 or 6.2, the reasons for declining the request (e.g., the officer believes that there is a reasonable possibility that it may be necessary to use constructive authority or force during the encounter) must be documented and shall be reported to the officer's superior as soon as it is safe and practicable to do so, unless the agency's policy prohibits de-activation authorized by section 6.1 or 6.2.

In the event that the officer declines a de-activation request, the officer immediately shall inform the person making the request of that decision. An officer shall be prohibited from misleading the person making the de-activation request pursuant to section 6.1 or 6.2 into believing that the BWC has been turned off when in fact it is operating unless the County Prosecutor or designee or the Director of the Division of Criminal Justice or designee expressly has authorized covert recording.

6.5 De-Activation During Criminal Investigation Strategy/Planning Discussions.

Notwithstanding section 5.4, and subject to the requirements of section 5.6, unless the agency adopts a policy that prohibits or restricts de-activation as may be authorized by this section, a BWC-equipped officer may de-activate a BWC while participating in a discussion pertaining to criminal investigation strategy and planning (e.g., to consider what investigative techniques to pursue, such as what questions to pose to a suspect or witness, whether to summon a drug/explosives detection canine, whether to apply for a search warrant, whether to request permission to conduct a consent search, or to conduct another type of warrantless search, etc.), provided that the strategy/planning discussion is not conducted in the immediate presence of a civilian (i.e., under circumstances where a civilian might overhear the strategy discussion), and further provided that the BWC-equipped officer is not actively engaged in the collection of physical evidence (i.e., conducting a search). When an officer de-activates a BWC pursuant to this section, the officer shall narrate the circumstances of the de-activation (e.g., "I am now turning off my BWC to discuss investigative strategy with my supervisor.").

6.6 De-Activation on Instruction From Prosecutor.

Notwithstanding section 5.4, an officer may de-activate a BWC when specifically authorized to do so by an assistant prosecutor or assistant or deputy attorney general for good and sufficient cause as determined by the assistant prosecutor or assistant or deputy attorney general. When an officer de-activates a BWC pursuant to this section, the officer shall narrate the circumstances of the de-activation indicating the assistant prosecutor or assistant or deputy attorney general who authorized the de-activation (e.g., "I am now turning off my BWC as per the instruction of assistant prosecutor (insert name).").

6.7 Re-activation When Reason for De-Activation No Longer Exists.

In any instance where a BWC was de-activated pursuant to section 6.1, 6.2, 6.5, or 6.6, the device shall be re-activated as soon as it is safe and practicable to do so if and when the circumstances justifying de-activation no longer exist (e.g., the interview of the person requesting de-activation is completed), and the officer would otherwise be required to activate the BWC (e.g., where the officer proceeds to other investigative activities that are required to be recorded pursuant to this Directive).

6.8 Re-Activation When Actual Law Enforcement Force is Authorized.

Notwithstanding any other provision of this Directive, in any instance where a BWC was de-activated pursuant to section 6.1, 6.2, 6.5, 6.6, or any other provision of this Directive, or de-activated pursuant to any policy, standing operating procedure, directive, or order issued by a department, if the circumstances develop so that an officer is authorized to use force, the BWC shall be re-activated as soon as it is safe and practicable to do so.

7. CIRCUMSTANCES WHEN BWC ACTIVATION/USE IS SUBJECT TO SPECIAL CONDITIONS/RESTRICTIONS

7.1 Special Restrictions When Recording in Schools, Healthcare/Treatment Facilities, and Places of Worship.

Notwithstanding sections 5.2 and 5.3 of this Directive, and except as otherwise required by section 5.6, unless the officer is actively engaged in investigating the commission of a criminal offense, or is responding to an emergency, or reasonably believes that he or she will be required to use constructive authority or force, the officer shall not activate a BWC, or shall de-activate a BWC that has been activated, while the officer: 1) is in a school or youth facility or on school or youth facility property under circumstances where minor children would be in view of the BWC; 2) is in a patient care area of a healthcare facility, medical office, or substance abuse treatment facility under circumstances where patients would be in view of the BWC; or 3) is in a place of worship under circumstances where worshippers would be in view of the BWC. See also section 9.3 (notation (i.e., “tagging”) of certain events/encounters raising privacy or other special issues).

If an officer is required to de-activate the BWC in accordance with the provisions of this section, the officer shall narrate the reason for de-activation (e.g., “I am entering a school building where children are present.”). The BWC shall be re-activated as soon as it is safe and practicable to do so if and when the circumstances requiring de-activation no longer exist (e.g., the officer is conversing with an adult as part of a criminal investigation while in a place within the school where children would not be in view of the BWC).

In the event that a BWC captures the image of a patient in a substance abuse treatment facility, the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, shall be notified to ensure compliance with all applicable federal laws and regulations providing for the confidentiality of substance abuse treatment information. See 42 U.S.C. § 290dd-2, 42 C.F.R. §23.1 to 23.41. The recording shall not be accessed without the permission of the County Prosecutor or designee, or Director or designee. (Note that destruction of the recording would be inappropriate until it has been determined that it had not captured exculpatory information that must be provided to a defendant in discovery.)

7.2 Special Restrictions When Undercover Officers or Confidential Informants May Be Recorded.

Notwithstanding the provisions of sections 5.2 and 5.3 of this Directive, and except as otherwise required by section 5.6, an officer shall not activate a BWC, or shall de-activate a BWC that has been activated, if the officer knows or reasonably believes that the BWC would capture the image of an undercover officer or confidential informant or otherwise would pose a risk to the safety of an undercover officer or confidential informant, unless such activation is expressly authorized by a supervisor, or unless the exigency of the situation and danger posed to an officer (e.g., active

shooter, actual use of police force, officer in distress, etc.) require that the encounter/incident be recorded, in which event the officer shall inform his or her supervisor that the image of an undercover officer or confidential informant was recorded. See also section 9.3 (notation or “tagging” to indicate a BWC recording that raises special issues), and section 9.5 (prosecutor’s authority to seek protective order when complying with discovery obligations). Notwithstanding the foregoing general rule prohibiting the recording of an undercover officer or confidential informant, in the event of a planned arrest/search warrant execution where it is expected that an undercover officer or confidential informant would be present (e.g., a raid where the undercover operative will be arrested to preserve his or her cover), the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, may provide specific instruction to any BWC-equipped officers participating in the operation on whether to activate their devices.

The BWC shall be activated/re-activated as soon as it is safe and practicable to do so if and when the risk of capturing the image of an undercover officer or confidential informant no longer exists.

7.3 Special Precautions When a BWC Recording May Reveal Tactical Operations Information.

In the event that a BWC worn during the execution of tactical operations (e.g., “Special Operations” or “SWAT” operations, execution of arrest and/or search warrant, etc.) records confidential tactical information the disclosure of which might jeopardize future operations or officer safety (e.g., verbal codes or hand signals used to communicate information or instructions, techniques for interior movements and clearing rooms, techniques to convince persons to open doors, etc.), the recording shall be “tagged” in accordance with section 9.3. See N.J.S.A. 47:1A-1.1 (exempting from disclosure under the Open Public Records Act “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons”); N.J.A.C. 13:1E-3.2 (2) (exempting records that may reveal “surveillance, security, tactical, investigative, or operational techniques”); see also section 9.5 (prosecutor’s authority to seek protective orders when complying with discovery obligations).

7.4 Special Restrictions on Recording in Courtrooms.

An officer shall not activate a BWC while in a courtroom during court proceedings, unless the officer is responding to a call for service or is authorized to use constructive force or authority, or unless such activation is expressly authorized by the judge.

7.5 De-Activation/Removal of BWC From Alcohol Breath Testing Area.

If the BWC model selected by a department produces radio-frequency interference while activated or while in standby mode, see note 1, the device shall be de-activated while in the area where an electronic alcohol breath testing device is being used, or, as necessary, shall be removed from the area where such device is being used. Nothing herein shall be construed to preclude the

use of a BWC to record the behavior of a person arrested for driving while intoxicated other than while the person is in the breath-testing area while the electronic breath testing device is being operated. If this provision requires de-activation of a BWC, the officer shall narrate the reasons for de-activation (e.g., "I am de-activating the BWC because the suspect is about to take a breath test."), and the BWC shall be re-activated when safe and practicable to do so following the completion of the breath testing operation.

7.6 Restrictions on Using BWCs With Enhanced Audio/Visual Capabilities.

Subject to the provisions of Section 12 of this Directive, if a department acquires a BWC with enhanced audio/video capabilities that allow it to record an image or conversation that could not be seen or heard by the officer wearing the device (e.g., infrared night vision or thermal imaging, sound amplification that would record conversations occurring at a remote distance), that feature/capability shall not be used without the express approval of the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, in accordance with any applicable legal requirements.

8. **RETENTION OF BWC RECORDINGS**

The policy, standing operating procedure, directive, or order promulgated by a law enforcement agency pursuant to section 3 of this Directive shall specify the period of time during which a BWC recording shall be retained. The retention period shall not be less than 90 days, and shall be subject to the following additional retention periods:

- a) when a BWC recording pertains to a criminal investigation or otherwise records information that may be subject to discovery in a prosecution, the recording shall be treated as evidence and shall be kept in accordance with the retention period for evidence in a criminal prosecution.
- b) when a BWC records an arrest that did not result in an ongoing prosecution, or records the use of police force, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer and/or agency.
- c) when a BWC records an incident that is the subject of an internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation and any resulting administrative action.

9. STANDARDS TO ENSURE SECURE STORAGE AND ACCESSIBILITY OF BWC RECORDINGS

9.1 Procedures to Protect Integrity of BWC Recordings.

Every department that deploys BWCs shall establish and maintain a system and procedures to ensure the integrity and proper handling and storage of all BWC recordings. This system shall include provisions to: 1) ensure that all recordings are uploaded to a secure data storage system in a timely fashion; 2) prevent tampering with or deletion of recorded data both before and after downloading from the BWC and uploading to the storage system; 3) prevent unauthorized access to stored BWC recordings; 4) document all instances where BWC recordings are accessed, viewed, copied, disseminated, or deleted; and 5) permit auditing of all instances where BWC recordings are accessed, viewed, copied, or deleted.

9.2 Capacity to Locate Specific BWC Recordings.

Every department that deploys BWCs shall establish and implement a system that permits the agency to locate and retrieve all recordings associated with a specific incident/event, investigation, case, or criminal charge. Accordingly, every department deploying BWCs shall be required to develop and maintain a BWC control ledger or log, which may be computerized.

Every department that deploys BWCs shall establish and implement a system to ensure that relevant BWC recordings are provided in discovery in a timely fashion. The system established by the agency should include a provision to ensure that police arrest/incident/continuation reports indicate whether the incident or investigative activity described in the report was electronically recorded by a BWC. Police reports should, when feasible, indicate the corresponding BWC control ledger/log number, and the BWC control ledger/log should cross-reference the incident case number. Copies of BWC recordings made for the purpose of complying with the State's discovery obligations shall be provided to the prosecutor in a readily available media format approved by the Director of the Division of Criminal Justice in consultation with the Administrative Office of the Courts.

The best practices developed pursuant to section 13 of this Directive shall include recommended practices and procedures to address the logistical issues that may arise in fulfilling the requirements of this section.

9.3 Provisions to Identify ("Tag") Recordings That Raise Special Privacy or Safety Issues.

To identify BWC recordings that may raise special privacy or safety issues, every department that deploys BWCs shall establish and implement a system that permits a notation (i.e., "tagging") to be made when the recording: 1) captures the image of a victim of a criminal offense; 2) captures the image of a child; 3) was made in a residential premises (e.g., a home, apartment, college dormitory room, hotel/motel room, etc.), a school or youth facility, a healthcare facility or medical

office, a substance abuse or mental health treatment facility, or a place of worship; 4) captures a conversation with a person whose request to de-activate the BWC was declined; 5) captures a special operations event or execution of an arrest and/or search warrant where confidential tactical information (e.g., verbal codes and hand signals used to give direction to officers, techniques for interior movements and clearing rooms during execution of a warrant, techniques for convincing persons to open doors during warrant execution, etc.) may have been recorded; 6) captures the image of an undercover officer or confidential informant; or 7) captures the screen of a police computer monitor that is displaying confidential personal or law enforcement sensitive information. See also section 7.1 (requiring notice to the prosecutor when a BWC captures the image of a patient at a substance abuse treatment facility).

Subject to the provisions of section 12 of this Directive, an agency's policy, standing operating procedure, directive, or order issued pursuant to section 3.1 may specify additional circumstances when a BWC recording will be "tagged."

9.4 Approval for Access to "Tagged" BWC Recordings.

A BWC recording tagged pursuant to section 9.3 shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the permission of the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee. Except for recordings tagged pursuant to section 7.1 (when a BWC captures the image of a patient at a substance abuse treatment facility), and subject to the requirements of section 11.1 (requiring notice to County Prosecutor or Director prior to complying with a subpoena, court order, or request for records under the Open Public Records Act or the common law right to know), the County Prosecutor or Director may authorize the chief of the department, and one or more superior officers or duty positions (e.g., head of the detective bureau) identified by the chief of the department, to grant permission pursuant to this section to access, view, copy, disseminate, or otherwise use BWC recordings tagged pursuant to section 9.3. See also section 10.1 (specifying the purposes for which access to a BWC recording is permitted).

9.5 Compliance with Discovery Obligations Relating to BWC Recordings That Might Expose Officers or Other Persons to Danger.

If disclosure of a BWC recording as part of the State's discovery obligations in a prosecution might present a danger to any officer or civilian (e.g., reveal an undercover officer, confidential informant, surveillance site, etc.), or might reveal confidential tactical information the disclosure of which might jeopardize future operations or officer safety (e.g., verbal codes or hand signals used to communicate information or instructions, techniques for interior movements and clearing rooms during execution of warrant, techniques for convincing persons to open doors during warrant execution, etc.), the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee in cases prosecuted by the Division, shall, in the exercise of sound prosecutorial discretion, take such steps as are appropriate and authorized by law and/or Court Rule to protect the

information from disclosure, such as by seeking a protective order from the court. See section 7.3 (“tagging” of such BWC recordings).

10. RESTRICTIONS ON ACCESS TO, USE, AND DISSEMINATION OF BWC RECORDINGS

10.1 Specified Authorized Purposes for Accessing/Using Stored BWC Recordings.

No law enforcement officer or civilian employee of a law enforcement agency shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose as specified in this section. Access to and use of a stored BWC recording is permitted only:

- a) when relevant to and in furtherance of a criminal investigation or prosecution;
- b) when relevant to and in furtherance of an internal affairs investigation;
- c) when relevant to and in furtherance of a management review process to identify circumstances indicating possible police misconduct or to determine the existence of a pattern or practice of possible misconduct;
- d) to assist the officer whose BWC made the recording in preparing his or her own police report, subject to the restrictions established in section 10.2;
- e) when relevant to a supervisor’s review of an officer’s actions as part of the supervisory process authorized by the agency;
- f) to show to a civilian who intends to file a complaint against an officer to demonstrate what actually occurred during the encounter so that the person can make an informed decision whether to file the complaint;
- g) to comply with the State’s discovery obligations in prosecutions pursuant to the Rules of Court;
- h) to comply with any other legal obligation to turn over the recording to a person or entity;⁵
- i) to show or disseminate the recording to a civilian or a non-law enforcement entity,

5

When responding to a subpoena or court order, or a request pursuant to the Open Public Records Act or common law right to know, disclosure of a BWC recording under this paragraph is permitted only after providing notice to the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, pursuant to section 11 of this Directive.

or to disseminate it to the public, where the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, determines that disclosure to that particular person/entity or the public is warranted because the person's/entity's/public's need for access outweighs the law enforcement interest in maintaining confidentiality;

- j) for training purposes, provided that the recording is edited so that the identity of individuals depicted in the recording cannot be determined by persons viewing the training video unless the depicted individuals have consented to the recording being used for training purposes;
- k) to conduct an audit to ensure compliance with this Directive and a department's policy, standing operating procedure, directive, or order promulgated pursuant to this Directive;
- l) to enhance officer and public safety by providing intelligence information in preparation for a raid/warrant execution (e.g., by providing information about the layout of a premises to be searched), when such use is approved by the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee; or
- m) any other specified official purpose where the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording.

10.2 Authorization for Access to BWC Recordings Related to Use-of-Force Investigations.

The assistant prosecutor or assistant or deputy attorney general overseeing a police use-of-force investigation pursuant to Attorney General Law Enforcement Directive No. 2006-5, or his or her designee, may in the exercise of sound discretion authorize a civilian or law enforcement witness to be given access to or view a BWC recording of the incident under investigation. To ensure the integrity of investigations of police-involved shootings and other use-of-force incidents and to avoid possible contamination of a witness's personal recollection of events that could undermine his or her credibility as a witness, notwithstanding any other provision of this Directive, no civilian or law enforcement witness, including the principal(s) of the investigation, shall be given access to or view a BWC recording of the incident, or a BWC recording of the response or on-scene investigation of the incident, without the express prior approval of the assistant prosecutor, assistant or deputy attorney general, or designee.

10.3 Documenting Access to Stored BWC Recordings.

Each department that deploys a BWC shall maintain a record of all access to stored BWC

recordings pursuant to this Directive. The department's record keeping system shall document the following information:

- a) the date and time of access;
- b) the specific BWC recording(s) that was/were accessed;
- c) the officer or civilian employee who accessed the stored BWC recording;
- d) the person who approved access, where applicable; and
- e) the reason(s) for access, specifying the purpose or purposes for access authorized pursuant to section 10.1 or section 10.2, and specifying the relevant case/investigation number, where applicable.

11. PUBLIC DISCLOSURE OF BWC RECORDINGS

11.1 Notice to Prosecutor of Subpoena, Court Order, or OPRA/Common Law Request.

Any agency receiving a subpoena, court order, or request pursuant to the Open Public Records Act, or the common law right to know, for a BWC recording shall, within one business day of receipt of such subpoena, court order, or request, and before complying with it, provide notice to the County Prosecutor, or to the Division of Criminal Justice where the recording was made by a state-level law enforcement agency. Such notice shall state clearly the deadline by which a response must be made.

11.2 Disclosure of BWC Recordings Pertaining to Criminal Investigations.

Except as otherwise provided in section 10.1, a BWC recording of an event or encounter that involves an investigation of a criminal offense as defined in section 2(e) shall not be shared with or provided or shown to any person, entity, or government agency, other than a law enforcement agency or officer or authorized civilian employee of such agency, unless such disclosure is required by the Rules of Court governing discovery in prosecutions, or by a court order, or unless the law enforcement agency in consultation with the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, determines that the person's/entity's/non-law enforcement agency's/public's need for access outweighs the law enforcement interest in maintaining confidentiality.

12. AUTHORITY OF COUNTY PROSECUTOR TO IMPOSE ADDITIONAL REQUIREMENTS

Nothing in this Directive shall be construed to in any way limit the authority of a County

Prosecutor to issue directives or guidelines to the law enforcement agencies subject to his or her supervisory authority, setting forth additional procedural or substantive requirements or restrictions concerning BWCs and BWC recordings, provided that such directives or guidelines do not conflict with any explicit provision of this Directive. For example, a County Prosecutor may: specify additional circumstances when a municipal police department BWC must be activated; impose limits on the authority of a municipal police department to specify additional circumstances when a BWC must be activated; categorically prohibit the use of BWCs with enhanced audio/visual capabilities such as infrared night vision (cf. section 7.6, which requires prosecutorial approval to use such features); and specify additional circumstances when a BWC recording will be “tagged,” etc.

13. ADVISORY GROUP TO REPORT ON IMPLEMENTATION AND SHARE BEST PRACTICES

The Director of the Division of Criminal Justice shall establish a Body Worn Camera Advisory Group consisting of members of the community and representatives from law enforcement as the Director deems appropriate. The Advisory Group will meet on a quarterly basis to review implementation of this Directive and to advise the Attorney General on the need for any revisions. The Advisory Committee also shall identify, study, and share best practices to facilitate the uniform and efficient implementation of this Directive, and shall study and advise the Attorney General on issues relating to the public dissemination of BWC recordings pursuant to this Directive.

14. VIOLATIONS

Any willful or repetitive violations of this Directive shall be reported promptly to the appropriate County Prosecutor and to the Director of the Division of Criminal Justice. The County Prosecutor and Director are authorized to take such actions as are reasonable and necessary to ensure compliance with this Directive and to prevent future violations.

15. NON-ENFORCEABILITY BY THIRD PARTIES

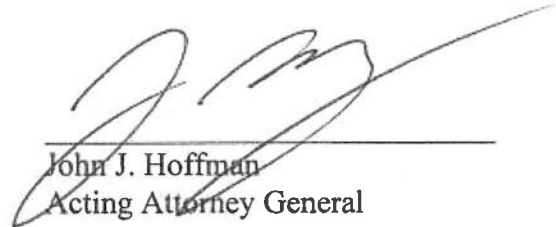
This Directive is issued pursuant to the Attorney General’s authority to ensure the uniform and efficient enforcement of the laws and the administration of criminal justice throughout the State. This Directive imposes limitations on the exercise of law enforcement discretion that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any promises or any rights beyond those established under the Constitutions, statutes, and regulations of the United States and the State of New Jersey. The provisions of this Directive are intended to be implemented and enforced by law enforcement agencies that deploy BWCs, and these provisions do not create any promises or rights that may be enforced by any other persons or entities.

16. QUESTIONS

Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or designee.

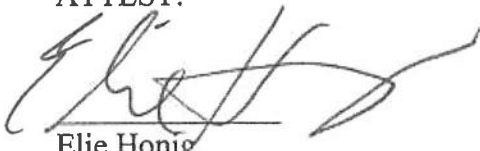
17. EFFECTIVE DATE

This Directive shall take effect 60 days after it is issued in order to provide an opportunity for law enforcement agencies to prepare to comply with its requirements and to develop and issue policies and procedures consistent with the policies, standards, and procedures established herein. Once effective, this Directive shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.



John J. Hoffman
Acting Attorney General

ATTEST:



Elie Honig
Director, Division of Criminal Justice

Issued on: July 28, 2015

Effective on: September 26, 2015

EXHIBIT F



State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO Box 080
TRENTON, NJ 08625-0080

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

GURBIR S. GREWAL
Attorney General

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2018-1

TO: All Law Enforcement Chief Executive Officers

FROM: Gurbir S. Grewal, Attorney General

DATE: February 26, 2018

SUBJECT: Law Enforcement Directive Concerning Public Release of Video Recordings Depicting Police Deadly Force Incidents

This Directive instructs that, in any case involving police use of deadly force as defined in Attorney General Directive 2006-5, law enforcement agencies presumptively will make available, upon formal request by the media or other public requestor, video footage captured by body-worn cameras ("BWCs") and patrol vehicle dashboard-mounted cameras ("dash-cams") once the initial investigation of the use-of-force incident is substantially complete. This typically will occur within 20 days of the incident itself. As discussed in Section 3 below, this Directive does not take effect unless and until the Advisory Committee on Professional Conduct advises that such public release comports with applicable Rules of Professional Conduct.

1. BACKGROUND

A. Balancing the Benefits of Transparency Against the Need for Confidentiality

Records generated during a criminal investigation generally are not made available to the public. Increasingly, and with financial and policy support from the Attorney General's Office, police officers in New Jersey are being equipped with BWCs and/or dash-cams that capture investigative activities in real time. Questions have arisen as to whether, when, and to what extent the public will have access to these recordings depicting police activity.

Particular interest is focused on videos of incidents in which police officers use deadly force. Some advocate that such videos are unique and should, for the sake of transparency, be released immediately. In any criminal investigation, however, if video evidence is released before witnesses are interviewed, the public availability of this evidence may taint witnesses' recollections of the incident and compromise the integrity of the investigation – whether that investigation pertains to a law enforcement officer, a civilian, or both. In any context other than the rare instances in which police officers use deadly force, little or no dispute would exist that a grand jury should be able to carry out its important work confidentially, without piecemeal



public release of evidence. In the special case of police uses of lethal force, however, the law enforcement community must take special care to foster public confidence that the incidents will be investigated impartially, thoroughly, and expeditiously. Law enforcement must balance the public's interest in transparency with the interest of the government and of the individuals subject to criminal investigation in fostering a fair criminal investigatory and judicial process.

B. OPRA and the Common Law Right of Access

The starting point for this analysis is the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., pursuant to which the public may request many kinds of government records. OPRA exempts "criminal investigatory records" from disclosure if such records (1) are not required by law to be made, maintained, or kept on file by a law enforcement agency, and (2) pertain to any criminal investigation. In North Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 569 (2017), the Supreme Court agreed with the Appellate Division's finding that, "when an officer turns on a mobile-video recorder to document a traffic stop or pursuit of a suspected criminal violation of law, that recording may pertain to a 'criminal investigation,' albeit in its earliest stages." The Supreme Court held that, under OPRA, the media was not entitled to access to dash-cam video recordings of police officers' high-speed pursuit and subsequent fatal shooting of a civilian, because the recordings were not required by law to be made or maintained and they pertained to a criminal investigation. Thus, under Lyndhurst, BWC and dash-cam footage that records potential criminal offenses are exempt from OPRA.

However, the Court in Lyndhurst ultimately granted access to the dash-cam footage under the common law right of access, a second legal basis under which the public may seek access to government records. Under the common law, once a requestor establishes a cognizable interest in the records requested, courts balance the requestor's interest in disclosure against the government's interest in confidentiality. Courts at all levels have acknowledged that both the government and the public retain a strong interest in criminal investigations being conducted thoroughly and reliably, without the taint of early disclosure of investigative details. Despite that interest, "the public's interest in transparency is heightened when governmental action leads to the death of a civilian." Lyndhurst at 580. Accordingly, the Lyndhurst Court found that the media was entitled to the dash-cam footage under the common law because the public's interest in disclosure of the recordings outweighed the State's interest in preventing disclosure. Such footage could "inform the public's strong interest in a police shooting that killed a civilian . . . without placing potential witnesses and informants at risk," and could be "released without undermining the integrity of an investigation once investigators, shortly after an incident, have interviewed the principal witnesses . . .". Id.

This Directive therefore assumes, consistent with the Supreme Court in Lyndhurst, that BWC and dash-cam footage depicting police officers' investigations of crimes — including, but by no means limited to, video showing officers' use of deadly force — falls within OPRA's exemption for criminal investigatory records and therefore could be subject to compelled disclosure, if at all, only pursuant to the common law right of access.

C. Building on Ongoing Initiatives to Improve Police-Community Relations

On July 28, 2015, the then-Acting Attorney General issued a Law Enforcement Directive Regarding Police Body-Worn Cameras and Stored BWC Recordings ("BWC Directive"). The

BWC Directive encourages police departments to equip patrol officers with these electronic recording devices, and establishes uniform statewide standards governing use of BWCs and access to BWC footage. That same day, the then-Acting Attorney General also issued a Supplemental Directive Amending Attorney General Law Enforcement Directive No. 2006-5 (“2015 Independent Prosecutor Directive”). The 2015 Independent Prosecutor Directive ensures that all police uses of deadly force are thoroughly investigated by specialized teams that have no relationship with the subject officers; that all lethal force incidents involving a municipal police officer are investigated by the County Prosecutor, and that the police department employing the subject officer is excluded from the investigation; that all such cases are presented to a grand jury, unless the Attorney General or Director of the Division of Criminal Justice (“Director”) determines that the justifiability of force is not in material dispute; that the Attorney General’s Office, through the Division of Criminal Justice, supervises and reviews *de novo* the County Prosecutor’s investigation and any determination that a case should be closed without grand jury presentation; and that the investigating agency issue a detailed public statement of facts at the conclusion of every case. Both the BWC Directive and the 2015 Independent Prosecutor Directive embrace a common overarching theme: for law enforcement agencies to fulfill their core mission, they must earn and retain the trust, respect, and support of the communities they protect and serve.

Police BWCs raise special privacy concerns. BWCs will capture images of crime victims in the moments after they have been victimized, and images of witnesses to those crimes. BWCs will capture images of the interior of private residences. They will capture images of police incident-response tactics and communications protocols, the release of which could put officers and members of the public in danger. We recognize, however, that where police video equipment records an event of extraordinary public significance, the common-law balancing test may tip in favor of disclosure at some point. Recordings of officers’ use of deadly force may be one such category of video where, at least in some cases, courts may compel disclosure under the common law, finding that the public has a strong interest in ensuring that police deadly force is used appropriately and that investigations are conducted transparently and fairly.

Accordingly, pursuant to my authority under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, I hereby DIRECT all law enforcement agencies and officers to implement and comply with the following procedures, standards, and practices concerning the public disclosure of police deadly-force BWC and dash-cam recordings.

2. GUIDANCE TO LAW ENFORCEMENT

A. General Rule: Presumptive Disclosure Upon Substantial Completion of Initial Investigation

When an investigation is conducted pursuant to Attorney General Law Enforcement Directive No. 2006-5 and/or the 2015 Independent Prosecutor Directive, it shall be the responsibility of the Director or the County Prosecutor to determine on a case-by-case basis whether and when a deadly-force recording will be made publicly available.¹ Unless the

¹ This Directive applies to all force incidents as defined in Paragraph 1 of Directive 2006-5, specifically: “[A]ny use of force by a law enforcement officer involving death or serious bodily

Director, or the County Prosecutor with the Director's express approval, finds specific and compelling reasons to delay public disclosure of a deadly-force recording, such recording shall be issued publicly (1) upon substantial completion of the initial investigation and (2) upon formal request by a member of the public or media (pursuant to the common law right of access).²

It shall be within the discretion of the Director or County Prosecutor to determine precisely when the initial investigation is substantially complete. Typically, this will occur after principal, material eyewitnesses to a use-of-force event have been interviewed and after physical and documentary evidence most relevant to the actual use of force has been gathered. This does not, however, mean that the entire investigation must be substantially complete before disclosure of a deadly-force recording.

While it is impossible to place precise temporal parameters on substantial completion of the initial investigation, generally such initial investigation should be concluded within 20 days of the use-of-force event. The initial investigation may in some cases be substantially complete before 20 days after the event. In such cases, the Director or County Prosecutor may, in his or her discretion, authorize release of the deadly-force recording sooner than 20 days after the incident occurred.

Conversely, in some cases, it may take more than 20 days to substantially complete the initial investigation. In such cases, the Director or County Prosecutor may decline to authorize release of a deadly-force recording until such initial investigation is substantially complete. The Director or County Prosecutor must document the reasons that additional time is necessary, and an estimate of when substantial completion will be achieved. Such documentation must be submitted for approval to the Attorney General or designee. The written memorialization of reasons is confidential and privileged attorney work product. Appropriate reasons for an extension beyond the 20-day period include but are not limited to: the need to review and/or redact videos to protect the privacy of victims or other persons depicted; and the need to complete interviews with principal eyewitnesses or to complete other essential aspects of initial investigation.

B. Consultation With Persons Depicted In a Recording or Their Families

Before releasing a deadly-force recording, the Director or County Prosecutor should consult with persons appearing in the recording (not including bystanders or people appearing only in the background) or, in the case of decedents, with their families. For example, if a video

injury to a person, or where deadly force is employed with no injury, or where any injury to a person results from the use of a firearm by a law enforcement officer."

² As the Lyndhurst Court held, video footage of police lethal force incidents is not subject to OPRA because it falls within the "criminal investigatory records" exemption. However, as the Lyndhurst Court also opined, the common law right of access stands on different footing, and may (depending on the circumstances of a given case) weigh in favor of public disclosure. In all cases, the media or a member of the public must formally request access to trigger the potential release of lethal-force video footage by the County Prosecutor or Director, upon substantial completion of the initial investigation.

tends to show that a decedent acted with the intent to cause police officers to end that decedent's life, the decedent's family members may prefer that the video not be released. Prosecutors may and should take those wishes into account in deciding how to proceed. Although this Directive permits the Director or County Prosecutor to authorize digital obscuring of civilians or of police officers who use deadly force, Prosecutors may take into account objections from affected persons, including law enforcement officers, that such steps will not adequately protect them. Where public release of a video would unduly compromise the safety or privacy of any person, including a law enforcement officer, the Prosecutor may seek approval from the Attorney General or a designee not to release the recordings, or to release at a later date.

C. Editing Disclosed Copies of Deadly-Force Recording to Protect Privacy Rights

As necessary and within the discretion of the Director or County Prosecutor, the copy of any deadly-force recording publicly released pursuant to this Directive may be digitally modified to obscure the identity of any person, including (but not limited to) any law enforcement officer who is the subject of a criminal investigation, unless the identity of such person or officer already has been officially disclosed or confirmed. The editing shall be done in a way that does not conceal any actions by any person constituting the use of force. Further, and as made clear in the 2015 Independent Prosecutor Directive, under no circumstances may any person alter in any manner the master copy of any recording.

D. Notification to County Prosecutors and Attorney General

Law enforcement officials who receive OPRA or common-law requests for BWC or dash-camera videos must, per existing policies (including the BWC Directive at Section 11.1), notify the County Prosecutor or Director of such requests within one business day of receipt. In cases involving requests for disclosure of police deadly-force recordings, the County Prosecutor (or the State Police, if it receives such a request) shall notify the Attorney General, the Director, or a designee within 24 hours of receiving the request.

3. ETHICAL CONSIDERATIONS AND EFFECTIVE DATE

New Jersey Rule of Professional Conduct 3.6 prohibits an attorney from "mak[ing] an extrajudicial statement that the lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding." Rule of Professional Conduct 3.8(f) provides that a prosecutor must "refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused." In its March 16, 1989 notice to the bar concerning extrajudicial statements, the Supreme Court noted that "the public production of any physical evidence" is "inappropriate." And in a February 17, 2017 opinion, the Advisory Committee on Professional Ethics ("Advisory Committee") held that "extrajudicial statements featuring displays of seized drugs, weapons, or other contraband do not accord with the Rules of Professional Conduct 3.6 and 3.8 and are not permitted." (Op. at 1).

Public release by prosecutors of BWC or dash-cam footage of police lethal-force incidents upon substantial conclusion of the initial investigation implicates similar but not identical ethical concerns as public display of seized contraband. Every police lethal force case will result in a criminal investigation – of the involved police officer, of a civilian, or in some instances, both. By releasing video footage upon substantial completion of the initial

investigation, the prosecutor will make public evidence that relates to a criminal case that has not yet been tried or, in most instances, charged.

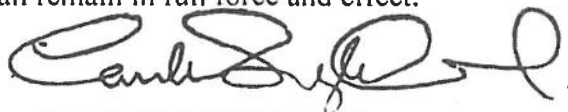
To ensure that prosecutors stay well within the bounds of ethical conduct, my Office has submitted a request to the Advisory Committee seeking clarification on whether the public release of lethal-force recordings upon substantial completion of the initial investigation complies with applicable Rules of Professional Conduct. In that submission, my Office argues that such a public release does not conflict with any Rule of Professional Conduct. It is impossible to know in advance, of course, how the Advisory Committee will rule on this request. Therefore, this Directive does not take effect unless and until the Advisory Committee advises that such public release comports with all applicable Rules of Professional Conduct.

4. PRESERVATION OF PRIVILEGE TO MAINTAIN CONFIDENTIALITY AND NON-ENFORCEABILITY BY THIRD PARTIES

This Directive is issued pursuant to the Attorney General's constitutional and statutory authority to ensure the uniform and efficient enforcement of criminal justice throughout the State. Neither this Directive, nor the release of any recording pursuant to this Directive, shall constitute a waiver of any privilege to maintain the confidentiality of a record that a law enforcement agency may have under OPRA, any other statute, or the common law right of access. This Directive does not create any new requirement that any record be made, maintained or kept. Nothing in this Directive shall be construed to create any promises or any rights beyond those established under the Constitution, statutes, regulations, and decisional law of New Jersey. This Directive is to be implemented by the Division of Criminal Justice and County Prosecutors, and creates no promises or rights that other persons or entities may enforce.


5. SUPERSEDURE

Any provision of the BWC Directive or the 2015 Independent Prosecutor Directive that is inconsistent with any provision of this Directive is hereby superseded to the extent of such inconsistency. All provisions of the BWC Directive and the 2015 Independent Prosecutor Directive that are not inconsistent with this Directive shall remain in full force and effect.



Gurbir S. Grewal
Attorney General

ATTEST:



Elie Honig
Director, Division of Criminal Justice
Dated: February 26, 2018