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ENCLOSURE MEMORANDUM

TO: Judy Emken
George Laughrun
Daniel P. Roberts
Michael Greene
Andrew Murray

FROM: Jon E. Buchan

DATE: January 26, 2017

SUBJECT: In the Matter of: Doug Miller Petition for Release of a Law Enforcement Agency
Recording – 17-CvS-553

ENTERED
JAN 27 2017
BY: PAU

ENCLOSURE: Signed Order Directing Release of Law Enforcement Agency Recording

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

ENTERED

2017 JAN 26 PM 2:46

17-CvS-553

JAN 27 2017

MECKLE. BURG CO., C.S.C.

BY: PAJ

In The Matter Of:)	ORDER DIRECTING RELEASE OF
Doug Miller)	LAW ENFORCEMENT AGENCY
Petition for Release of a Law Enforcement)	RECORDING
Agency Recording)	
_____)	

THIS MATTER came on for hearing on January 23, 2017 before the undersigned Superior Court Judge presiding in Courtroom 6310 in Mecklenburg County on the Petition for Release of a Law Enforcement Agency Recording which was filed January 12, 2017 by Doug Miller pursuant to N.C.G.S. § 132-1.4A.

The Petition sought access to the recordings in the possession of the Charlotte-Mecklenburg Police Department ("CMPD") related to a July 2, 2012 incident in which CMPD Officer A.J. Holzauer fatally shot Michael Laney in Charlotte, North Carolina.

Petitioner, the deputy city editor and investigations editor of the *The Charlotte Observer*, was represented at the hearing by Jonathan E. Buchan. Also appearing were Judy Emken, counsel for CMPD; Michael Greene, counsel for A.J. Holzauer, whose voice and/or image is contained in the recordings; Dan Roberts, counsel for Officer Ryan Shields, whose voice and/or image is contained in the recordings; and George Laughrun, counsel for an unnamed CMPD official whose voice is audible on the recordings. Also appearing were Ernestine Laney, the mother of Michael Laney and Antoine Laney, the brother of Michael Laney.

The Court, having reviewed the recordings provided to the Court by CMPD as well as the provisions of N.C. G. S. §132-1.4A(g) and having heard statements and argument from counsel for the parties and in-court statements of Ernestine Laney and Antoine Laney, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. CMPD has provided to the Court for its review pursuant to N.C.G.S. §132-1.4A(g) a memory stick with the recordings from dashboard cameras from CMPD vehicles assigned on July 2, 2012 to Officer Holzauer and to Officer Shields, and the Court has carefully reviewed those recordings. The recording from the Shields vehicle is referred to herein as the "Shields Recording," and the recording from the Holzauer vehicle is referred to herein as the "Holzauer Recording."
2. These recordings relate to the July 2, 2012 attempted arrest and pursuit by these two officers of Michael Laney, a suspect in a then-recent armed robbery. This encounter

resulted in the death of Michael Laney from a gunshot wound to the head fired by Officer Holzhauser.

3. Mr. Miller seeks release of these recordings pursuant to N.C.G. S. §132-1.4A (g).
4. The parties required to be served under this statute were properly served and received notice of this hearing.
5. Ernestine Laney, who is the mother of Michael Laney and acted as administratrix of his estate, and Antoine Laney, the brother of Michael Laney, support release of the recording to Mr. Miller and to the public.
6. The CMPD does not object to release of the recordings in light of the fact that there are no civil or criminal proceedings pending or anticipated, and in light of the necessary scrutiny under which law enforcement functions and CMPD's interest in fostering transparency regarding its operations.
7. The District Attorney for the 26th Prosecutorial District was served with a copy of the Petition and a notice of this hearing, but did not appear in person. Ms. Emken, counsel for CMPD, informed the Court that she had spoken with Assistant District Attorney Bill Stetzer, who had authorized her to inform the Court that the District Attorney's Office does not object to the release of the recordings.
8. Officer Shields does not object to the release of the recordings, and the unnamed CMPD official represented by Mr. Laughrun does not object to the release of the recordings.
9. Officer Holzhauser does not object to the release of the recordings, with the exception of the release of the portions of the recordings which include: (1) Officer Holzhauser's telephone conversation with his mother that occurred subsequent to the shooting, (2) the name of his mother, and (3) the mother's telephone number if it is included on the recording. This information is found at approximately time 23:35:09 (11:35:09 p.m.) on the Holzhauser Recording. Officer Holzhauser contends that release of these portions of the recordings would disclose information that is of a highly sensitive and personal nature and may jeopardize the safety of the officer's mother.
10. The Court noted the presence on the Shields Recording of a telephone number of a police officer which should also be redacted pursuant to N.C.G.S. §132-1.7(b1).
11. Petitioner does not object to the redaction from the recordings of the name of Officer Holzhauser's mother or of her telephone number if it appears on the recording but does object to the redaction of any portions of the recordings containing the telephone conversation between Officer Holzhauser and his mother. Petitioner does not object to the redaction of the telephone number of the police officer on the Shields Recording.
12. On or about August 20, 2012, the District Attorney for the 26th Prosecutorial District released his office's review of the investigation surrounding the death of Michael Laney which determined that there was no evidence that Officer Holzhauser acted unlawfully in

connection with the July 2, 2012 shooting incident. There are, therefore, no pending criminal actions regarding this incident.

13. There are no pending civil actions arising from the July 2, 2012 shooting of Michael Delaney.

CONCLUSIONS OF LAW

1. Pursuant to N.C.G.S. §132-1.4A(g), Mr. Miller is a "person" with standing to file a Superior Court action seeking an order directing release of dashboard camera recordings.
2. In applying the balancing test set forth in N.C.G.S. §132-1.4A(g), I have concluded as follows:
 - (a) The recordings at issue, related to an officer-involved shooting that occurred approximately four and one-half years ago, arise from a matter of significant public interest, and release is necessary to advance a compelling public interest. This factor weighs in favor of release of the recordings.
 - (b) The recordings at issue are, pursuant to N.C.G.S. §132-1.4A, not public records or personnel records, and are exempt from disclosure except as provided by the statute. Because this statute specifically provides for release of such recordings in accordance with the statutory procedures which have been followed in this matter, this factor is neutral.
 - (c) The Petitioner is not seeking release of the recordings in order to obtain evidence to determine legal issues in a current or potential court proceeding. This factor is, therefore, a neutral factor.
 - (d) The recordings contain information that is of a highly sensitive personal nature, in that they: (1) involve the shooting death of Michael Laney, and (2) involve at least one of the responding officer's reactions and emotional state at the time of the incident. This factor therefore weighs both against release from the standpoint of the officer and in favor of release from the standpoint of the Petitioner, particularly in light of the support of the Petition by Ernestine Laney and Antoine Laney.
 - (e) Release of the recordings would not harm the reputation of any individual. Release of the Holzauer Recording in its entirety could, however, jeopardize the safety of Officer Holzauer's mother to the extent that her name and telephone number are released. This factor weighs in favor of release of the recordings, but against release of the specific portions of the Holzauer Recording that identify Officer Holzauer's mother and her telephone number.

- (f) Release of the recordings would not create a serious threat to the fair, impartial and orderly administration of justice, in light of the fact that the District Attorney has declined to bring criminal charges against Officer Holzauer, and the fact that there is no civil action pending or anticipated arising from this incident. This factor weighs in favor of release of the recordings.
 - (g) Confidentiality of the recordings is not necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation. This factor weighs in favor of release.
 - (h) There is good cause shown to release the recordings, as noted in Paragraph (a) above. This factor weighs in favor of release of the recordings.
3. Having considered the factors specifically required or otherwise permitted to be considered by the Court pursuant to N.C.G.S. §132-1.4A(g), I have concluded that the recordings should be released in their entirety with the exception of the following:
- (a) The portions of the Holzauer Recording that appear at approximately time 23:35:09 (11:35:09 p.m.) and contain the name and/or the telephone number of Officer Holzauer's mother. Those specific portions, but not the portions that contain the telephone conversation between Officer Holzauer and his mother, shall be redacted prior to release of the recordings. If CMPD is unable to redact just these specified portions, the Court will hear all parties to this proceeding to discuss alternative arrangements.
 - (b) The portion of the Shields Recording that appears at approximately time 00:14:49 (12:14:49 a.m.) on that recording and contains a telephone number of a CMPD officer.
4. Copies of the recordings, as redacted, shall be released to Petitioner and CMPD, who may, among other uses they deem appropriate, post the recordings on their websites and provide copies to other media entities who request them.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. Charlotte-Mecklenburg Police Department, the custodian of the July 2, 2012 dashboard camera recordings here at issue, shall release to Petitioner within five days of the entry of this Order copies of the Holzauer Recording and the Shields Recording, redacted to remove only (1) the name of Officer Holzauer's mother and/or her telephone number, and (2) the telephone number of the CMPD officer found on the Shields Recording. Those portions to be redacted appear at approximately time 23:35:09 (11:35:09 p.m.) of the Holzauer Recording and at approximately time 00:14:49 (12:14:49 a.m.) of the Shields Recording.
2. The portions of the recordings that contain the telephone conversation between Officer Holzauer and his mother shall not be redacted from the recordings.

3. CMPD and Petitioner are authorized to use these recordings as they deem appropriate, including the posting of the recordings on their websites and the providing of copies of the recordings to other media.

This the 26 day of January, 2017.

A handwritten signature in cursive script, appearing to read "Lisa C. Bell", written over a horizontal line.

Lisa C. Bell

Superior Court Judge Presiding

CERTIFICATE OF SERVICE FILED

The undersigned hereby certifies that a copy of the above and foregoing ORDER DIRECTING RELEASE OF LAW ENFORCEMENT AGENCY RECORDING was deposited in the United States Mail, First Class, postage prepaid, and via email addressed to the following:

BY _____

Judy Emken
The Charlotte Mecklenburg Police
Department
601 East Trade Street
Charlotte, NC 28202
*Counsel for Charlotte Mecklenburg
Police Department*

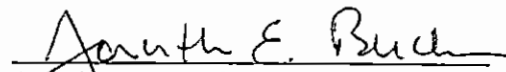
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This the 26th day of January, 2017


Jonathan E. Buchan