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May 15, 2015

W. Charles Smithson
Executive Director, Iowa Public Information Board
Wallace Building, Third Floor
502 East 9th Street
Des Moines, IA 50319

sent via email to charlie.smithson@iowa.gov

Dear Mr. Smithson,

Enclosed please find a complaint pursuant to Iowa Code § 23.5(1), *et seq.*, against the Burlington Police Department, Des Moines County Attorney, and Iowa Department of Criminal Investigation.

I have also submitted an abbreviated complaint via the online form on IPIB's web site.

If you have any questions or need any additional information, please don't hesitate to contact me.

Sincerely,

Adam Klein

Attorney at Law

Law Offices of Adam J. Klein, LLC

ADAM KLEIN,
GABRIEL STEELE,
G.S., A MINOR (by and through his parent and guardian, Gabriel Steele),
SEAN SCHOFF,
K.S., A MINOR (by and through his parent and guardian, Sean Schoff),
GINA COLBERT,
Complainants

v.

BURLINGTON POLICE DEPARTMENT
(custodians Doug Beaird and Kristin Eland),
DES MOINES COUNTY ATTORNEY'S OFFICE
(custodian Amy Beavers, Des Moines County Attorney),
IOWA DEPARTMENT OF CRIMINAL INVESTIGATIONS
(custodian Rick Rahn, Special Agent in Charge, Zone 4)
Respondents

IOWA PUBLIC INFORMATION BOARD COMPLAINT

1.

This complaint is brought before the Iowa Public Information Board pursuant to Iowa Code § 23.5(1), *et seq.*, on the grounds that the Respondents have to comply with Chapter 22 of the Iowa Code, commonly known as the Open Records Act.

Complainants

2.

Autumn Steele, a resident of Burlington, Iowa, was shot and killed by Jesse Hill, a police officer employed by the Burlington Police Department, on January 6, 2015.

3.

Gabriel Steele is the widower of Autumn Steele and the father and guardian of G.S.; he is a resident of Burlington, Iowa.

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4.

G.S. is the minor child of Autumn Steele; he is a resident of Des Moines County, Iowa and is represented in this complaint by his father, Gabriel Steele.

5.

K.S. is the minor child of Autumn Steele; he is a resident of Muscogee County, Georgia and is represented in this complaint by his father, Sean Schoff.

6.

Sean Schoff is the father and guardian of K.S.; he is a resident of Muscogee County, Georgia.

7.

Gina Colbert is the mother of Autumn Steele; she is a resident of Muscogee County, Georgia.

8.

The undersigned Adam Klein is counsel for Sean Schoff and K.S. and was the signatory of the Open Records requests which are the subject of this complaint.

Respondents / Custodians

9.

Doug Beaird is the Chief of Police for the Burlington Police Department (hereinafter "BPD"), and is a legal custodian of its records pursuant to Iowa Law.

10.

Kristin Eland is the Records Supervisor for BPD, and is a legal custodian of its records pursuant to Iowa Law.

11.

Amy Beavers is the County Attorney for Des Moines County, Iowa (hereinafter "DMCA"); she is a legal custodian of its records under Iowa law.

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12.

Rick Rahn is a Special Agent of the Iowa Department of Criminal Investigations (hereinafter "DCI") and was the Agent in Charge of DCI's investigation into Autumn Steele's shooting. Mr. Rahn is a legal custodian of DCI's records under Iowa law.

The Autumn Steele Shooting and its Investigation

13.

On January 6, 2015, Autumn Steele was shot and killed by Jesse Hill, an on-duty police officer employed by the City of Burlington Police Department, outside her home and in front of her husband and three-year-old son.

14.

The shooting was referred to DCI for investigation; DCI Special Agent Rick Rahn was assigned to lead the investigation.

15.

Upon completion of its investigation, DCI forwarded the results, including its conclusions and all supporting evidence (hereinafter the "DCI Report"), to DMCA.

16.

On February 27, 2015, Ms. Beavers issued a press release (hereinafter the "Beavers Statement") stating that she had reviewed the evidence, including the DCI Report, and had determined that Ofc. Hill would not be charged with a crime in connection with Autumn Steele's shooting. (A copy of the Beavers Statement is attached hereto as Exhibit 1).

17.

In the Beavers Statement, Ms. Beavers informed DCI that "I will return the case file to you", indicating that, at the time the Statement was released, Ms. Beavers was still in possession of the DCI Report and other evidence responsive to Complainants' request.

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Complainants' Open Records Requests

18.

On February 27, 2015 at approximately 4:40 P.M. (Burlington time), Complainants jointly submitted Open Records Requests (hereinafter "Complainants' Requests") to Respondents for information relating to Autumn Steele's shooting.

19.

Complainants' requests asked for "all public records relating to the shooting of Autumn Steele by Burlington PD Officer Jesse Hill at 104 S Garfield, Burlington, on January 6, 2015 at approximately 10:25 A.M., its aftermath, and the incident which prompted the officer to be dispatched," as well as an itemized, non-exclusive list of specific records believed to be in the possession of each agency.

20.

Identical requests were sent to DCI (to custodian Rick Rahn) and DMCA (to custodian Amy Beavers). (A copy of the request DCI and DMCA to is attached hereto as Exhibit 2.)

21.

The request to DMCA was sent to Ms. Beavers via email (to beaversa@dmcatty.org), fax (to 319-753-8219), and U.S. Mail, Certified, return receipt requested (Item No. 7014 1200 0002 0559 1195).

22.

The copy of the request to DMCA sent by certified mail was delivered by the U.S. Post Office on March 3, 2015; the copies sent by fax and email were confirmed to have been received at the time that they were sent.

23.

The request to DCI was sent via email (to dcinfo@dps.state.ia.us) and U.S. Mail, Certified, return receipt requested (Item No. 7014 1200 0002 0559 1188).

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24.

The copy of the request to DCI sent by certified mail was delivered by the U.S. Post Office on March 3, 2015; the copy sent by email was confirmed to have been received at the time that it was sent.

25.

A separate request was sent to BPD (to custodian Kristin Eland). (A copy of the request to BPD is attached hereto as Exhibit 3.)

26.

The request to BPD was sent via email (to elandk@burlingtoniowa.org) and U.S. Mail, Certified, return receipt requested (Item No. 7014 1200 0002 0559 1171).

27.

The copy of the request to BPD sent by certified mail was delivered by the U.S. Post Office on March 3, 2015; the copy sent by email was confirmed to have been received at the time that it was sent.

28.

None of the Respondents adequately responded to Complainants' Chapter 22 requests.

DCI's Response to Complainants' Request

29.

DCI responded to Complainant's request in an email from Jeffrey Peterzalek, Assistant Attorney General, on March 18, 2015 (a copy is attached as Exhibit 4).

30.

In response to Complainants' Request, DCI's provided a 12-second excerpt from Ofc. Hill's body camera video, a copy of the Beavers Statement (which had already been released to the public), and copies of DCI's press releases regarding the investigation, which had previously been published on its website.

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31.

This constitutes the entirety of the records produced by DCI in response to Complainant's request; DCI claimed that "other materials would be protected from disclosure under Iowa's open records laws."

DMCA's Response to Complainants' Request

32.

DMCA responded to Complainants' requests as follows:

33.

On March 10, 2015, Ms. Beavers informed the undersigned counsel via email that she was in "the process of responding to your request in good faith" by coordinating with DCI (a copy of this email has been attached as Exhibit 5).

34.

On March 16, 2015, Ms. Beavers informed the undersigned counsel via email that, as of March 16, the only records in her possession responsive to the request was the Beavers Statement, and that she had sent all other "investigative items in [her] possession ... to the DCI" (a copy of this email has been attached as Exhibit 6).

35.

On March 16, 2015, the undersigned counsel responded to Ms. Beavers, asking when the Records had been returned to DCI; to date, DMCA has not provided the date when the records were returned or otherwise responded to Complainants' email.

BPD's Response to Complainants' Request

36.

BPD responded in a letter dated March 19, 2015, in which they refused to provide the vast majority of the requested records, claiming that they were privileged as peace officers'

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investigative reports pursuant to Iowa Code § 22.7(5) (a copy of the BPD letter has been attached as Exhibit 7).¹

LEGAL ARGUMENT AND AUTHORITY

The Confidentiality of Police Investigative Reports Is a Qualified Privilege and the Public Interest in This Case Demands Disclosure

37.

DCI and BPD have refused to provide the DCI report and other evidence into the Steele Shooting on the basis that the records are “peace officers’ investigative reports,” which are privileged from disclosure pursuant to Iowa Code § 22.7(5).

38.

However, the immunity from disclosure of such reports is not absolute. Iowa Code § 22.7(5) provides only a *qualified* privilege; the records are exempt only if “the public interest would suffer by disclosure”. *Hawk Eye v. Jackson*, 521 N.W.2d 750, 754 (Iowa, 1994).

39.

Under § 22.7(5), the courts, and this Board, are required to apply a balancing test to determine “where the line falls between public harm and public good requires weighing the relative merits of the interests at stake.” *Id.* If the public interest in disclosure outweighs the public interest in secrecy, the records must be released.

40.

Recent Iowa jurisprudence, arising from *Gabrilson v. Flynn*, has narrowed the “balancing test” requirement in certain cases, and held that many of the exceptions to disclosure enumerated in § 22.7 are not subject to such a test. See *Gabrilson v. Flynn*, 554 N.W.2d 267 (Iowa, 1996); *ACLU v. Atlantic Community School District*, 818 N.W.2d 231 (Iowa, 2012).

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¹ In addition to citation of § 22.7(5), BPD refused to provide some information from Ofc. Hill’s personnel file pursuant to Iowa Code 22.7(11); Complainants are not challenging this refusal at this time.

41.

However, *Gabrilson* and its progeny retain the balancing test requirement for certain § 22.7 exceptions, including the “investigative report” exception expressed in § 22.7(5).

42.

In fact, *Gabrilson* expressly declined to overrule *Hawk Eye*; instead, it holds that the statutory language of § 22.7(5), unlike some other exceptions to the Open Records disclosure, “expressly requires” the courts to apply a balancing test and weigh the public interest in disclosure:

There is no indication that the legislature sought a balancing of policy interests when construing section 22.7(19), as plaintiff proposes. Cf. *Hawk Eye v. Jackson*, 521 N.W.2d 750, 753 (Iowa 1994) (holding **language of section 22.7(5) exception expressly requires a three part balancing test**). -*Gabrilson*, *supra*, at 273, citing *Hawk Eye*, *supra*. [emphasis added]

43.

Despite the Iowa Supreme Court’s holdings in *Gabrilson* and *Atlantic Community School District*, *Hawk Eye* continues to be good law, and the balancing test is required to shield police investigative reports from disclosure under § 22.7(5).

44.

Once a balancing test is applied and the public interest is considered, it is clear that the circumstances of this case mandate disclosure.

45.

The present case involves nearly identical facts and *the same parties* as *Hawk Eye*. In *Hawk Eye*, a Burlington City police officer was accused of excessive force and investigated by DCI. The DCI investigation was turned over to the Des Moines County Attorney, who declined to bring criminal charges. The involved agencies refused to release the DCI’s investigative file, claiming immunity under § 22.7(5), and the *Hawk Eye*, the Burlington newspaper, filed a mandamus action against the County Attorney to compel its release.

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46.

The *Hawk Eye* court held that “the unique facts of this case” strongly mandated disclosure, on the grounds that “any public harm created by the disclosure of the DCI investigatory report is far outweighed by the public harm accruing from its nondisclosure.” *Hawk Eye* at 754.

47.

If anything, the public interest in disclosure in this case is *more* significant than in *Hawk Eye*. Where *Hawk Eye* involved mere allegations of injury as a result of police brutality, the police actions here resulted in the death of a Burlington citizen. Where *Hawk Eye* involved only press requests, in this case, the city is hiding the truth about Autumn’s death from her own family.

48.

The public interest in uncovering the truth about Autumn’s shooting, DMCA’s failure to charge Ofc. Hill, and his subsequent reinstatement without any discipline by BPD, is obvious and compelling. “There can be little doubt that allegations of leniency or cover-up with respect to the disciplining of those sworn to enforce the law are matters of great public concern.” *Hawk Eye* at 754.

49.

By contrast, the public interest in continued secrecy is nonexistent. The investigation is closed. Officer Hill has been reinstated. There are no evident concerns about witness confidentiality (the primary eyewitness to the shooting has already identified himself and given public testimony at the Animal Control Board hearing). There is no reason to believe that the report would contain hearsay, rumor, or libelous content, or any other material which would justify Respondents’ continued efforts to conceal the truth.

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50.

Respondents have failed *even to argue* that their actions are in the public interest; they have provided no basis for their refusal besides their own naked self-interest.

DMCA Claimed No Privilege but Instead Disposed of Responsive Records

51.

In contrast to DCI and BPD, DMCA has made no claims regarding privilege or confidentiality to accompany its refusal to produce the requested records.

52.

Instead, on March 16 (more than two weeks after Complainants' requests were received) Ms. Beavers responded to Complainants' request by claiming that DMCA was no longer in possession of any responsive records because it had sent them to DCI (see Exhibit 6).

53.

However, Ms. Beavers' response did not indicate *when* the records had been sent to DCI. The relevant question here is not whether DMCA had custody of responsive records on March 16, but whether such records were in its custody when the Complainants' request was submitted to DMCA on February 27, 2015, at 4:40 P.M.

54.

Although DMCA has not clearly stated when it purged the records from its office, the vast weight of the evidence indicates that the purge occurred *after* Complainants' request was sent and that DMCA was in possession of the DCI Report and other records responsive to Complainant's Request at the time the request was made and received.

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55.

The evidence that DMCA *did* possess the records at the time the request was made on February 27, 2015 includes:



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- (1) Ms. Beavers' public statement (in the form of an open letter to DCI agent Matthew George) on February 27, 2015, the day Complainants' Requests were submitted, that she (future tense) "*will return* the case file" to DCI (see Exhibit 1).
- (2) Ms. Beavers' email to undersigned counsel of March 10, 2015, in which she stated that she was "the process of responding to your request in good faith" (see Exhibit 5). If DMCA had, in fact, sent all copies of responsive records to DCI before February 27, no such "process" would be necessary.
- (3) Ms. Beavers' failure to disclose the date when it had, in fact, returned the records to DCI, even in response to the direct requests of undersigned counsel.

56.

Even if DMCA had already "returned" the evidence to DCI at the time Complainants' Request was made, it is exceedingly unlikely that DMCA expunged every responsive record from its custody. It is almost inevitable that some responsive records, such as copies generated by DMCA's staff in the course of their analysis or emailed documents still residing on DMCA's servers, remained in the possession or control of DMCA. It does not appear that Ms. Beavers made any attempt to determine whether any responsive records remained in her custody after the file was sent to DCI.

57.

A public agency cannot be permitted to evade its legal obligations under Chapter 22 by disposing of the requested records by destroying them or sending them to another agency. To permit this sort of conduct by public officials would turn the Open Records Act into an institutionalized shell game, allowing agencies to indefinitely avoid disclosure by transferring records amongst themselves and rendering the law toothless and ineffectual.

CONCLUSION

58.

Iowa law clearly mandates the release of the records in this case.

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59.

Since DCI and BPD have asserted the “investigative report” privilege, this Board is required by Iowa law to apply the *Hawk Eye* balancing test and weigh the public interest in continued secrecy against the public interest in disclosure. The balance in this case clearly tips toward disclosure.

60.

DMCA has asserted no privilege or exclusion from disclosure, instead claiming that all responsive records were sent to DCI. She has not, however, provided any supporting evidence to show that (1) the records had already been sent to DCI at the time Complainant’s request was made, or (2) that the records sent to DCI did, in fact, represent *all* copies of the records in her office’s custody. Without such evidence, DMCA has demonstrated no legal basis for its willful refusal to comply with Chapter 22.

61.

Complainants respectfully request that this Board:

- (1) Conduct an investigation as to the facts and circumstances underlying this complaint, and
- (2) Find that the requested records are not exempt from disclosure under Iowa Code § 22.7(5), and
- (3) Order Respondents to fully disclose all records responsive to Complainants’ request, and
- (4) Find that Respondents willfully failed to comply with Chapter 22, and
- (5) Impose civil fines on Respondents as directed by Chapter 22 and 23, and
- (6) Expedite the proceedings under this complaint as much as possible, and
- (7) Order Respondents to pay Complainants’ reasonable attorneys’ fees in connection with this complaint (pursuant to its authority under Iowa Code § 23.10(3)(b)(3)), and

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(8) Provide such other relief as the Law may provide.

Respectfully submitted on this day, May 15, 2015.



Adam Klein
as an aggrieved party and
as Attorney for Sean Schoff and K.S.
Georgia Bar No. 425032

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IPIB Complaint - Autumn Steele Shooting

February 27, 2015

TO: DCI - AGENT MATTHEW GEORGE

RE: OFFICER INVOLVED SHOOTING OF MRS. AUTUMN STEELE
OFFICER INVOLVED – OFFICER JESSE HILL

Dear Agent George,

I am writing to you to advise that I have completed my review of the DCI investigation involving the fatal shooting of Mrs. Autumn Steele by City of Burlington, Iowa Police Officer Jesse Hill that occurred on January 6, 2015. My findings are as follows:

Code Of Iowa Section 331.756(1) provides that a county attorney shall diligently enforce or cause to be enforced in the county, state laws and county ordinances, violations of which may be commenced or prosecuted in the name of the state, county, or as county attorney, except as otherwise provided.

The Iowa DCI investigated the shooting incident, and forwarded the details of the investigation to me, pursuant to my statutory duties as Des Moines County Attorney, to determine whether criminal charges are warranted against Officer Hill. In the course of my review, I, along with one of my Victim/Witness Coordinators and the DCI, met with Mr. Gabriel Steele and his attorney, Mr. Trent Henkelvig. Mr. Steele was a witness to the incident, as well as the spouse of Mrs. Steele.

In summary, the facts are as follows:

On or about January 5, 2015, Autumn Steele was arrested and charged with Serious Domestic Abuse Assault in Des Moines County Cause No. SRIN022279 for an assault on Gabriel Steele. Autumn Steele appeared before the Court on the morning of January 6, 2015, at which time a No Contact Order was entered prohibiting her from making/ having contact with Mr. Steele, preliminary hearing was scheduled, and she was released by the Court from custody.

At some time in the morning after being released from custody on January 6, 2015, Autumn Steele went to the residence she and Gabriel Steele share at 104 South Garfield Street,

Burlington, Des Moines County, Iowa. There was snow on the ground on this date. Gabriel Steele called 911 to report a domestic assault occurring involving Autumn Steele and further advised Dispatch that she had been arrested the previous day.

Officer Jesse Hill responded from the Indian Terrace area to the Steele residence. As Officer Hill was arriving, he observed a man (Gabriel Steele) coming out of the house walking fast with a child in his hands. He observed Autumn Steele outside running behind Gabriel Steele, grabbing the back of Gabriel Steele's shirt, pulling him down, and hitting Gabriel Steele in the back of the head. Officer Hill advised Police Dispatch that the two individuals were outside fighting. He opened the door of his police vehicle, activated his body camera video, and ran over to where Autumn and Gabriel Steele were.

Upon approaching, Officer Hill made contact with Autumn Steele to try to pull her away from Gabriel Steele and split them up, as she was then punching and slapping Gabriel Steele. Officer Hill moved a couple steps with Autumn Steele, and a dog owned by the Steeles started growling and ultimately bit Officer Hill on the thigh. Photographs were taken of Officer Hill's injury. The dog is an adult, male German Shepherd named Sammy.

Officer Hill had advised the Steeles to get the dog, but the dog continued toward Officer Hill. Officer Hill drew his duty weapon, the dog continued toward Officer Hill, and Officer Hill fired his weapon as he fell backwards. Officer Hill fired his weapon a second time as he fell backwards into the snow.

Officer Hill was unaware he had shot Autumn Steele, and was advised by Gabriel Steele that she had been shot. An ambulance was requested through Dispatch for Autumn Steele. Officer Merryman arrived at the scene and began to provide assistance. Officers could not locate a gunshot wound on Autumn Steele. Officers performed chest compressions on Autumn Steele while awaiting an ambulance. Gabriel Steele was asked to put the dog away, and he remained on scene. Autumn Steele and the Steele's dog sustained gunshot wounds. The wound to the dog appeared to the veterinarian to be a grazing injury – no projectile was recovered from the dog.

There are two independent witnesses who reported the following:

1. A neighbor reported that he saw the dog running and jumping up and down at the Steeles as they came outside of their residence in an argument. He observed Autumn Steele swinging and "wailing" on Gabriel Steele. He reported that he "saw the dog and thought it was going to be a mess." He reported that the dog saw the officer running, the dog came running toward the officer, and the dog jumped on the officer's back. He stated that the officer probably did not see the dog until then. The officer spun around and tried to back peddle away, and started falling backward. In a matter of seconds, he believed one shot was fired before the officer fell and was 100% certain that one shot was fired while the officer was falling. The neighbor did not personally know the Steeles. This statement was audio recorded.

2. A second witness was driving by the residence going south at the time of the incident. She observed two people come out of the residence, one was punching the other on the back and in the face. She observed a dog that was "riled up" and following the two individuals. She observed the officer run up to the individuals. At this time, she passed by and then heard gunshots. She saw the dog and a person on the ground. This statement was audio recorded.

Autumn Steele was subsequently pronounced deceased, and an autopsy was conducted by Dr. Dennis Firchau, M.D. at the University of Iowa Hospitals and Clinics. Autopsy revealed a gunshot wound to her right arm and a gunshot wound to her chest. The gunshot wound to her chest was determined to be the cause of death. The manner of death was homicide. Homicide in the medical sense is a death at the hands of another, and not the legal criminal definition of homicide. The legal criminal elements are discussed below.

Alcohol and drug tests were negative for both Autumn Steele and Officer Hill. It was determined that Officer Hill fired two gunshots.

The above-described facts are corroborated in the body camera video evidence, witness statements, reports and documentation provided in the DCI investigation.

Additionally, in a separate incident on October 11, 2014, Officer Hill responded to 110 North Garfield Street, Burlington, Iowa on a call of a pit bull running loose. Dispatch advised Officer Hill that the dog had been vicious in the past. Upon arrival, Officer Hill observed a red and white pit bull in between the houses at 110 N. Garfield and 114 N. Garfield. The complainant at 110 N. Garfield reported to Officer Hill that the pit bull had attacked her dog a couple of weeks prior. Officer Hill proceeded to 114 N. Garfield to speak with the dog's owner. A female exited that residence with a black and white pit bull mix named Ram. She was advised to put that dog back inside the residence. Ram barked a couple times as she was doing so, and the red and white pit bull that was loose (named Raw) ran to Ram and began to attack Ram. Raw was biting Ram on the neck and back areas. Efforts to separate the dogs were unsuccessful. Officer Hill asked the female to get herself and her child out of the way, and he then deployed a cartridge from his taser, striking Raw. After the charge, Raw ran to the back yard of 114 N. Garfield.

ANALYSIS:

Code of Iowa Chapter 707 (2015) sets out Homicide and Related Crimes.

Section 707.1 defines Murder as follows:

A person who kills another person with malice aforethought either express or implied commits murder.

The Iowa Jury Instruction defining "Malice Aforethought" states the following:

"Malice is a state of mind which leads one to intentionally do a wrongful act [to the

injury of another] [in disregard of the rights of another] out of actual hatred, or with an evil or unlawful purpose. It may be established by evidence of actual hatred, or by proof of a deliberate or fixed intent to do injury. It may be found from the acts and conduct of the defendant, and the means used in doing the wrongful and injurious act. Malice requires only such deliberation that would make a person appreciate and understand the nature of the act and its consequences, as distinguished from an act done in the heat of passion.

"Malice aforethought" is a fixed purpose or design to do some physical harm to another which exists before the act is committed. It does not have to exist for any particular length of time."

Section 707.2 sets out the crime of Murder in the First Degree:

1. A person commits murder in the first degree when the person commits murder under the following circumstance:
 - a. The person willfully, deliberately, and with premeditation kills another person.

There is no evidence that would show that Officer Hill willfully, deliberately, and with premeditation killed Autumn Steele. Officer Hill did not know Autumn Steele, he made no threats towards her, and was unaware that he had shot her.

Section 707.3 sets out the crime of Murder in the 2nd Degree:

1. A person commits murder in the second degree when the person commits murder which is not murder in the first degree.

A charge of Murder in the 2nd Degree must also be supported by evidence of malice aforethought consistent with Section 707.1. The facts do not show that Officer Hill acted with an evil or unlawful purpose directed at Autumn Steele. There is no proof of a deliberate act by Officer Hill to do injury to Autumn Steele. There is nothing in the investigation that would suggest or show that Officer Hill had a design to kill Autumn Steele before he fired his weapon.

There is no evidence that supports a finding that Officer Hill intended to use deadly force against Autumn Steele. The evidence shows that Officer Hill drew and fired his duty weapon in response to the unconfined dog to protect himself from injury. One of the two shots fired appears to have been fired as a result of Officer Hill falling down into the snow.

Therefore, a Murder charge is not warranted against Officer Hill.

Iowa Code Section 707.4 provides for Voluntary Manslaughter:

A person commits voluntary manslaughter when that person causes the death of another person, under circumstances which would otherwise be murder, if the person causing the death acts solely as the result of a sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a person and there is not an interval between the provocation and the killing in which a person of ordinary reason and temperament would regain control and suppress the impulse to kill.

In analyzing the matter to determine if a charge of Voluntary Manslaughter is warranted, Officer Hill did cause the death of another person, but for the reasons stated above, the circumstances would not otherwise be murder. Autumn Steele was engaged in a physical domestic assault against her husband at the time of Officer Hill's response. Officer Hill did not cause her death as a result of a sudden, violent, and irresistible passion resulting from serious provocation by Autumn Steele.

Officer Hill fired his weapon in response to the unconfined dog to protect himself from injury. The facts do not show that he fired his weapon at Autumn Steele in response to provocation from her or that he had a violent, irresistible passion as a result.

Iowa Code Section 707.5 provides for Involuntary Manslaughter:

A person commits voluntary manslaughter when the person unintentionally causes the death of another person by the commission of a public offense other than a forcible felony or escape.

The facts do show that Officer Hill unintentionally caused the death of Autumn Steele. For a charge of Involuntary Manslaughter to be warranted, Officer Hill must have been committing a public offense at the time he caused her death.

Officer Hill was responding to the 911 call from Gabriel Steele for assistance in a domestic assault. Officer Hill was not committing a public offense, he was there to investigate a public offense. In the course of that response, Officer Hill essentially engaged in two acts: (1) Officer Hill acted to separate Autumn and Gabriel Steele as Autumn Steele was physically assaulting Gabriel Steele, and (2) Officer Hill fired two shots from his duty weapon to protect himself from injury from the dog.

The first act is not a public offense.

The second act resulted in the death of Autumn Steele, but also injury to the dog.

In considering whether the act of injuring the dog constitutes a public offense, Iowa Code Section 717B.2, Animal Abuse, provides:

A person is guilty of animal abuse if the person intentionally injures, maims, disfigures or destroys an animal owned by another person, in any manner, including intentionally poisoning the animal. This section shall not apply to:

(9) A person reasonably acting to protect a person from injury or death caused by an unconfined animal.

By firing the first shot, it can be inferred that Officer Hill likely intended to injure the dog. The second shot appears to have been fired as a result of Officer Hill falling into the snow, and not done intentionally. The question becomes whether Officer Hill reasonably acted to protect a person from injury or death caused by an unconfined animal when he fired the first shot.

Clearly the dog was unconfined. This is corroborated by the independent witnesses, Mr. Steele, and Officer Hill.

Iowa Criminal Jury Instructions set forth "Reasonable Belief" as follows:

The defendant was not required to act with perfect judgment. However, [he] [she] was required to act with the care and caution a reasonable person would have used under the circumstances which existed at that time. If in the defendant's mind the [danger] [danger of loss of property] [need to use force to prevent (name of forcible felony)] was actual, real, imminent or unavoidable, even though it did not exist, that is sufficient if a reasonable person would have seen it in the same light.

Therefore, was Officer Hill's act of firing the first shot reasonable?

The facts are:

1. The dog attacked Officer Hill.
2. The neighbor reported that the dog jumped on Officer Hill's back.
3. Officer Hill advised the Steeles to get the dog.
4. Neither Gabriel nor Autumn Steele restrained the dog.
5. The dog again attacked Officer Hill and bit Officer Hill on his thigh.
6. The dog caused Officer Hill to fall backwards, and Officer Hill ultimately fell into the snow. This caused Officer Hill to fire a second shot.
7. This was a physical domestic assault situation in which witnesses observed Autumn Steele punching, hitting, and slapping Gabriel Steele.
8. Officer Hill was alone responding to a volatile situation.
9. This was the second call of a domestic assault involving the Steeles in a 2-day period.
10. Autumn Steele was at the residence in violation of a No Contact Order that was issued that morning before she was released from custody.
11. The neighbor made a statement to DCI that once he saw the dog, he thought it was going to be a mess.
12. Officer Hill had responded to a vicious animal complaint in October, 2014 in which even though he had deployed his taser, the pit bull in that matter was able to run off.

Based upon all of the factors described in this review, Officer Hill's actions could be determined to be reasonable under the circumstances to protect himself from injury.

Therefore, based upon my review of the case with the Iowa Division of Criminal Investigation and a full review of the facts and circumstances provided to me concerning the death of Mrs. Autumn Steele, it is determined that no criminal charges against Officer Jesse Hill are supported by the evidence. Officer Hill was faced with the decision to shoot in an instant. He had to process the situation alone, and made the decision at the time the threat was occurring.

Finally, although this was not a deciding factor in my determination, it is unknown which gunshot struck Autumn Steele first, but it was the gunshot to the chest that resulted in her

death. It is possible that it was the second gunshot that went to Autumn Steele's chest. It is without saying that her death was tragic.

No criminal charges will be filed against Officer Jesse Hill. If you need further assistance or have any questions, please do not hesitate to contact me. I will return the case file to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'AKB', with a stylized flourish extending from the end.

Amy K. Beavers

Des Moines County Attorney



Adam J. Klein
Attorney-at-Law
6 Concourse Parkway
Suite 2920
Atlanta, Georgia 30328
(678) TALK-LAW
(404) 475-3091 (fax)
aklein@adamkleinlaw.com

February 27, 2015

SAC Rick Rahn
Iowa Department of Criminal Investigations, Zone 4
22365 20th Avenue
Stockton, Iowa 52769
via U.S. Mail, Certified, Return Receipt Requested, Item No. 7014 1200 0002 0559 1188
CC via email to dcinfo@dps.state.ia.us

Amy Beavers
Des Moines County Attorney
201 Jefferson Street Suite 202
Burlington, Iowa 52601
via U.S. Mail, Certified, Return Receipt Requested, Item No. 7014 1200 0002 0559 1195
CC via fax to (319) 753-8219
CC via email to beaversa@dmccatty.org

CHAPTER 22 PUBLIC RECORDS REQUEST

Dear Agent Rahn and Ms. Beavers,

The following is a request under the Iowa Open Records Law (Iowa Code § 22, *et seq.*) for copies of all public records relating to the shooting of Autumn Steele by Burlington PD Officer Jesse Hill at 104 S Garfield, Burlington, on January 6, 2015 at approximately 10:25 A.M., its aftermath, and the incident which prompted the officer to be dispatched (hereinafter collectively "the Incident").

The requesting parties are counsel for Autumn Steele's husband, mother, and two minor children. Pursuant to Iowa Code § 22, *et seq.*, we hereby request copies of any and all public records regarding the Incident, including, but not limited to:

1. the investigative report of the Iowa Department of Criminal Investigation into the Incident, in its entirety, including any and all supporting evidence;
2. original or supplemental incident reports, and any other investigative reports;
3. audio or video regarding the Incident or the scene, including squad car and body cameras from Ofc. Hill and any other responding officers;
4. audio recordings or transcripts of communication by law enforcement personnel regarding the Incident, including all police radio dispatch;
5. reports of any ballistic or forensic investigation into the Incident;
6. any photographs relating to or depicting the incident or the scene, or any part thereof;
7. the report of Ms. Steele's autopsy, including any photographs, audio, video, or other supplemental evidence;

8. audio or video, as well as transcripts, of any interview of Ofc. Hill, or any other person, relating to the Incident;
9. records of any investigation into the dog who allegedly attacked Ofc. Hill, including all supporting evidence;
10. records, photographs, or other documentation of the alleged attack on Ofc. Hill by a dog during the Incident, as well as any injuries received by Ofc. Hill;
11. the names and contact information for any witnesses to the Incident;
12. any written statement provided by witnesses to the Incident;
13. any audio or video recording of any interview with witnesses to the Incident;
14. any and all notes, memoranda, or other written records generated in the course of the investigation of the Incident;
15. any other information regarding the Incident or its investigation within your possession or control;

For each requested item, if there are no such records within your possession or control, please say so. If such records exist but you are declining to provide them, please state the legal basis for your failure to provide them.

We are aware that many of the requested records may be in the possession and control of both the Iowa Department of Criminal Investigations and the Des Moines County Attorney's office. Where this is the case, we would be happy to coordinate with your agencies to avoid unnecessary duplication of efforts. However, the request to each agency *is not limited* to items generated by that agency; we are requesting any records within your physical possession or control, regardless of their source. The Iowa public records law "generally permits public access to writings held by [public officers] in their official capacities, regardless of origin." *Howard v. Des Moines Register & Tribune Co.*, 283 N.W.2d 289 (Iowa 1979), cert. denied, 445 U.S. 904 (1980). Records originating with other agencies may be obtained from the "government body currently in physical possession of the public record". Iowa Code § 22.1.

Please provide a response to this request within 10 to 20 business days as required by Iowa law.

The requesting parties can be reached at the following addresses:

Adam Klein

Counsel for Kai Schoff (son of Autumn Steele)

6 Concourse Parkway, Suite 2920

Atlanta, Georgia 30328

(770) 408-1258

(404) 429-7981 (cell)

aklein@adamkleinlaw.com

Trent Henkelvig

Counsel for Gabe and Gunner Steele (husband and son of Autumn Steele)

405 Trulaine Drive

Danville, Iowa 52623

(319) 572-2706

TAHenkelvig@iabar.org

J. Mark Shelnett

Counsel for Gina Colbert (mother of Autumn Steele)

1022 Second Avenue

PO Box 469

Columbus, Georgia 31901

(706) 324-4343

jms@shelnettlaw.com

We request that the records be delivered electronically wherever possible by email to Mr. Klein. Where electronic records are too large to transmit via email, please contact Mr. Klein to facilitate electronic transfer of the files.

Records which must be delivered physically may be mailed to Mr. Klein or picked up by Mr. Henkelvig. For any records which must be physically inspected or picked up, please contact Mr. Henkelvig.

If there is a fee involved in copying or sending the records, or if you have any questions, please contact Mr. Klein. Thank you for your help.

Sincerely,



Adam Klein

Attorney at Law

Law Offices of Adam J. Klein, LLC



Adam J. Klein
Attorney-at-Law
6 Concourse Parkway
Suite 2920
Atlanta, Georgia 30328
(678) TALK-LAW
(404) 475-3091 (fax)
aklein@adamkleinlaw.com

February 27, 2015

Kristin Eland, Records Supervisor
Burlington Police Department
424 North 3rd Street
Burlington, Iowa 52601
via U.S. Mail, Certified, Return Receipt Requested, Item No. 7014 1200 0002 0559 1171
CC via email to elandk@burlingtoniowa.org

CHAPTER 22 PUBLIC RECORDS REQUEST

Dear Ms. Eland,

The following is a joint request under the Iowa Open Records Law (Iowa Code § 22, *et seq.*) for copies of all public records relating to the shooting of Autumn Steele by Burlington PD Officer Jesse Hill at 104 S Garfield, Burlington, on January 6, 2015 at approximately 10:25 A.M., its aftermath, and the incident which prompted the officer to be dispatched (hereinafter collectively “the Incident”).

The requesting parties are counsel for Autumn Steele’s husband, mother, and two minor children. Pursuant to Iowa Code § 22, *et seq.*, we hereby request copies of any and all public records regarding the Incident, including, but not limited to:

1. Ofc. Hill’s complete personnel file;
2. Records of any training Ofc. Hill has received;
3. Records of any disciplinary history taken against Ofc. Hill at any time;
4. Records of any citizen complaints filed against or involving Ofc. Hill;
5. Records of any internal affairs investigations regarding or involving Ofc. Hill;
6. Records of any internal investigation regarding the Incident or Ofc. Hill’s conduct during the Incident;
7. Records of any investigation into the dog who allegedly attacked Ofc. Hill, including all supporting evidence;
8. Records, including photographs, documenting any injuries received by Ofc. Hill during the Incident, and/or the treatment of any such injuries;
9. Any code of procedure, handbook, memorandum, communication, documentation of internal procedure, or document of any sort which identifies or describes proper procedure or conduct of Burlington Police Department officers and/or employees, particularly with respect to:
 - a. The use of force, including but not limited to deadly force;
 - b. The use of firearms or other weapons;

- c. Domestic violence;
 - d. Response to a threat or perceived threat to an animal;
 - e. Officer-involved shootings;
 - f. Providing first aid or other medical care to injured civilians; and
 - g. Communication with dispatch or supervisory personnel by officers in the field
- 10. Dispatch logs, audio recordings transcripts, or any other records of communication by law enforcement personnel regarding the Incident, including all police radio dispatch;
 - 11. Transcripts or audio recordings of any 911 call, emergency call, or other call to law enforcement regarding the Incident.
 - 12. All records regarding the vicious animal complaint in October 2014 in which Ofc. Hill deployed a taser against a pit bull (see Statement of Amy Beavers, attached, p. 6), including, but not limited to:
 - a. the incident report and any and all supplemental reports
 - b. any records of injuries received by Ofc. Hill of treatment thereof

For each requested item, if there are no such records within your possession or control, please say so. If such records exist but you are declining to provide them, please state the legal basis for your failure to provide them.

Please note that this request applies to any record within your possession or control, and is not limited to records generated by your agency. The Iowa public records law “generally permits public access to writings held by [public officers] in their official capacities, regardless of origin.” *Howard v. Des Moines Register & Tribune Co.*, 283 N.W.2d 289 (Iowa 1979), cert. denied, 445 U.S. 904 (1980). Records originating with other agencies may be obtained from the “government body currently in physical possession of the public record”. Iowa Code § 22.1.

Please provide a response to this request within 10 to 20 business days as required by Iowa law.

The requesting parties can be reached at the following addresses:

Adam Klein

Counsel for Kai Schoff (son of Autumn Steele)

6 Concourse Parkway, Suite 2920

Atlanta, Georgia 30328

(770) 408-1258

(404) 429-7981 (cell)

aklein@adamkleinlaw.com

Trent Henkelvig

Counsel for Gabe and Gunner Steele (husband and son of Autumn Steele)

405 Trulaine Drive

Danville, Iowa 52623

(319) 572-2706

TAHenkelvig@iabar.org

J. Mark Shelnett

Counsel for Gina Colbert (mother of Autumn Steele)

1022 Second Avenue

PO Box 469

Columbus, Georgia 31901

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jms@shelnettllaw.com

We request that the records be delivered electronically wherever possible by email to Mr. Klein. Where electronic records are too large to transmit via email, please contact Mr. Klein to facilitate electronic transfer of the files.

Records which must be delivered physically may be mailed to Mr. Klein or picked up by Mr. Henkelvig. For any records which must be physically inspected or picked up, please contact Mr. Henkelvig.

If there is a fee involved in copying or sending the records, or if you have any questions, please contact Mr. Klein. Thank you for your help.

Sincerely,

A handwritten signature in blue ink, appearing to read 'A. Klein', with a stylized flourish at the end.

Adam Klein

Attorney at Law

Law Offices of Adam J. Klein, LLC



IPIB Complaint - Autumn Steele Shooting

Klein, Adam <aklein@adamkleinlaw.com>

Burlington Open Records Request Conference Call

Peterzalek, Jeffrey [AG] <Jeffrey.Peterzalek@iowa.gov>

Wed, Mar 18, 2015 at 4:31 PM

To: "Klein, Adam" <aklein@adamkleinlaw.com>

Adam:

While you folks sort out finding someone to talk to I can have DCI send you the material we are sending in response to media open records request. That would include the County Attorney's Letter regarding charges, DCI press releases and a link to some of the body camera footage. That would be the same things we would provide to you in response to your open records request. Other materials would be protected from disclosure under Iowa's open records laws. Hopefully we can continue our previous discussions once someone from the other side is identified. If you want to speak more specifically about open records issues please feel free to give me a call.

Jeff Peterzalek

Assistant Attorney General

Hoover State Office Building

Des Moines, IA 50319

515-281-4213

Fax 515 281-7551



IPIB Complaint - Autumn Steele Shooting

Klein, Adam <aklein@adamkleinlaw.com>

Chapter 22 Public Records Request

Amy Beavers <beaversa@dmccatty.org>

Tue, Mar 10, 2015 at 3:17 PM

To: "Klein, Adam" <aklein@adamkleinlaw.com>

Cc: Trent Henkelvig <TAHenkelvig@iabar.org>, "J. Mark Shelnutt" <jms@shelnuttlaw.com>

Mr. Klein,

I am in the process of responding to your request in good faith. I was informed that your preference is coordination with DCI rather than duplication. Therefore, I am working with the DCI to properly respond to your request.

Thank you,

Amy Beavers

From: Klein, Adam [mailto:aklein@adamkleinlaw.com]

Sent: Tuesday, March 10, 2015 10:23 AM

To: beaversa@dmccatty.org

Cc: Trent Henkelvig; J. Mark Shelnutt

Subject: Re: Chapter 22 Public Records Request

Ms. Beavers,

Could you please give me an update on the status of the Steele family's Open Records request for the evidence relating to her shooting?

As you know, the 10-business-day window for the ordinary fulfillment of the request will end this upcoming Friday, March 13. Given the nature of the request and the possible need to coordinate with other agencies, we would prefer to work out the logistics as as soon as possible to ensure a smooth delivery.

I can be reached at my office at 770-408-1258 or by email.

Thank you for your help.

Sincerely,

Adam Klein



IPIB Complaint - Autumn Steele Shooting

Klein, Adam <aklein@adamkleinlaw.com>

Open Records Requests - 10 Business Days

Amy Beavers <beaversa@dmccatty.org>

Mon, Mar 16, 2015 at 9:33 AM

To: "Klein, Adam" <aklein@adamkleinlaw.com>

Dear Mr. Klein,

I was in contact with Attorney General's Office late last week. My understanding is that you, the Attorney General's Office, and the attorney for the City of Burlington will be discussing the request in a conference call Wednesday this week. The only item that I have that is part of your request is my determination letter. I am happy to provide that to you if you would like to receive a copy from me. I was working with the Attorney General's Office pursuant to your request to avoid duplication. Once I completed my review, all investigative items in my possession were returned to the DCI.

If you would like to receive a copy of the determination letter from me, please advise and I will be happy to mail it to you.

Thank you,

Amy

From: Klein, Adam [mailto:aklein@adamkleinlaw.com]

Sent: Friday, March 13, 2015 1:58 PM

To: Amy Beavers

Subject: Open Records Requests - 10 Business Days

Dear Ms. Beavers,

I am writing to check the status of the Open Records Requests which I submitted to your office on February 27, 2015.

As you know, the Iowa Open Records law does permit good faith, reasonable delay in responding to such requests, but mandates that any such delay "shall not exceed twenty calendar days and ordinarily should not exceed ten business days". Iowa Code § 22.8(4). Today is the tenth business day following the submission of the requests.

Please let me know the status of your responses to the requests and when you anticipate the requested records will be made available.

If there are any other issues you would like to discuss in connection with the requests, please don't hesitate to contact me.

I can be reached by email or by phone at my office at (770) 408-1258 or on my cell at (404) 429-7981.

ALEX J. ANDERSON
CORINNE R. BUTKOWSKI
HOLLY A. CORKERY
EMILY K. ELLINGSON
STEPHEN B. JACKSON, SR.
STEVEN C. LEIDINGER
JON M. McCRIGHT
SCOTT E. McLEOD
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CYNTHIA A. M. PARKER
AMY L. REASNER
KYLE A. SOUNHEIN
WILFORD H. STONE
DAVID L. WENZEL

H. EDWARD BEATTY
1934 - 2014

MAILING ADDRESS:
P.O. Box 2457
Cedar Rapids, IA 52406-2457

March 19, 2015

VIA E-MAIL AND US MAIL

Adam Klein
6 Concourse Parkway, Suite 2920
Atlanta, GA 30328

Trent Henkelvig
405 Trulaine Drive
Danville, IA 52623

J. Mark Shelnuitt
1022 Second Avenue
PO Box 469
Columbus, GA 31901

Re: City of Burlington Open Records Request

Dear Mr. Klein, Mr. Henkelvig, and Mr. Shelnuitt,

The City is in receipt of your February 27, 2015 letter. In that letter, you requested several items pursuant to Iowa Code Chapter 22. While the goal of Chapter 22 is to provide public access to governmental bodies' records, Chapter 22 also provides several exceptions for confidential records. Please be advised that several of the records you have requested are confidential records and are indicated as such below. The City cannot produce these confidential records pursuant to your open records request.

Additionally, according to Chapter 22, the City may provide a reasonable fee for its services in supervising the examination of and/or the copying of public records. The costs of copying each public record you have requested are set out below. The City must receive payment before these records will be provided.



IPIB Complaint - Autumn Steele Shooting

LYNCH DALLAS, P.C.

Adam Klein
Trent Henkelvig
J. Mark Shelnutt

Page 2

March 19, 2015

Please consider this the City of Burlington's response to your request. Each item that you requested is addressed as follows:

- Requested Items Nos. 1, 2, and 3:

Each of these items, if they exist, are found in Officer Hill's personnel file. Officer Hill's personnel file is confidential pursuant to Iowa Code Section 22.7(11), with the exception of the following non-Confidential Personnel Record Information Pursuant to Iowa Code § 22.7(11)(a)(1)–(5):

1. Name: Jesse L. Hill III
2. Compensation: \$21.49/hour
3. Dates of Hire: August 23, 2013–Present
4. Positions held: Probationary Officer (August 23, 2013–August 24, 2014);
Patrol Officer (August 24, 2014–Present)
5. Educational Institutions Attended: Iowa Wesleyan College
 - a. Degrees earned: Bachelor of Arts
6. Names of individual's previous employers, positions previously held, and dates of previous employment:
 - a. Health Source Chiropractic; Rehab Manager; October 2008–(final date of employment not ascertainable from personnel file)
 - b. Keokuk High School; Head Freshman Basketball Coach; October 2011–(final date of employment not ascertainable from personnel file)
 - c. Hoerner YMCA; Assistant Program Director; May 2008–(final date of employment not ascertainable from personnel file)
 - d. Ames Contracting; Laborer; November 2007–January 2008
 - e. Wells Carey Elementary; Teachers' Assistant; February 2008–May 2008
 - f. Keokuk Middle School; Assistant Junior Varsity Basketball Coach; October 2007–March 2008
 - g. Iowa Wesleyan College; Weight Room Supervisor; During the academic years August 2002–May 2007

- Requested items Nos. 4 and 5:
These records do not exist.

LYNCH DALLAS, P.C.

Adam Klein
Trent Henkelvig
J. Mark Shelnutt

Page 3

March 19, 2015

- Requested Items Nos. 6, 7, 8, 10, 11, and 12:

The City has one (1) public record related to the October, 2014 vicious animal complaint as you requested in your Request No. 12. This public record is a public notice provided for the vicious animal public hearing in that matter. The City can provide that record to you for \$10.00.

The City also has five (5) public records related to the dog that attacked Officer Hill as you requested in your Request No. 7. These public records are public notices provided for the vicious animal public hearing in that matter. The City can provide those public records to you for \$10.00/record.

All other items you requested in your Requests Nos. 6, 7, 8, 10, 11, and 12 are peace officers' investigative reports and therefore are confidential records pursuant to Iowa Code Section 22.7(5), except for the date, time, specific location, and immediate facts and circumstances surrounding the incident. Iowa Code 22.7(5) (2014); see also *Neer v. State*, 798 N.W.2d 349 (Iowa Ct. App. 2011).

The date, time, specific location, and immediate facts surrounding the Ms. Steele's death on January 6, 2015, are contained in the County Attorney's memorandum which has been provided to the public and is enclosed with this letter.

The date, time, specific location, and immediate facts surrounding the vicious animal complaint in October, 2014 are as follow:

1. Date: October 11, 2014
2. Time: 19:17
3. 114 N. Garfield, Burlington, Iowa
4. Pitbull/Labrador mix dog left its residence with its owner. Pitbull dog standing on the back of the 114 N. Garfield residence's porch, ran at and attacked mix dog. Owner attempted to separate dogs, and, when owner was unsuccessful Officer Hill deployed his taser on Pitbull so that he would cease attacking.

LYNCH DALLAS, P.C.

Adam Klein
Trent Henkelvig
J. Mark Shelnutt

Page 4

March 19, 2015

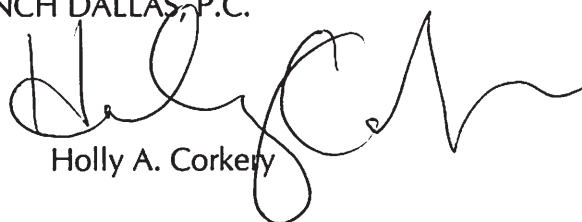
- Requested item No. 9

The City has located provisions from the Burlington Police Department Policy and Procedures related to body worn video; discharge of firearm; domestic violence; officer training and evaluation; and use of force. The charge for these records is \$50.00.

Very truly yours,

LYNCH DALLAS, P.C.

By:

A handwritten signature in black ink, appearing to read 'Holly A. Corkery', written over the printed name.

Holly A. Corkery

HAC:rms