

IN THE IOWA PUBLIC INFORMATION BOARD

IN THE MATTER OF:)	15 FC:0030 and 15 FC:0034
)	
Burlington Police Department and)	
Department of Public Safety,)	
Division of Criminal Investigation,)	PETITION
)	
Respondents.)	
)	
)	

The Iowa Public Information Board (“IPIB”) for its petition states:

PARTIES, JURISDICTION, AND VENUE

The Iowa Public Information Board (“IPIB”) has jurisdiction of case numbers 15 FC:0030 and 15 FC:0034 pursuant to Iowa Code Chapters 22 and 23.

Respondents are Burlington Police Department and Department of Public Safety, Division of Criminal Investigation (“DCI”), together (“Respondents”). Respondents are government bodies in the State of Iowa pursuant to Iowa Code §§22.1 and 23.2 and are custodians of public records pursuant to Iowa Code §§22.1 and 23.2.

The Complainant in 15 FC:0034 is Adam Klein, an attorney in Atlanta, Georgia, who is also a person pursuant to Iowa Code §23.2. The Complainant in 15 FC:0030 is The Hawk Eye, a newspaper headquartered in Burlington, which is a person pursuant to Iowa Code §23.2.

Complainants make essentially the same allegations against the DCI, and the complaint of Adam Klein against the Burlington Police Department arises from the same circumstances. This petition is filed to initiate a contested case on the complaints.

A contested case hearing will be held in these consolidated cases before an administrative law judge on the ____ day of _____, 2016 at 8:30 o’clock a.m., at the Wallace Building, 502 East 9th Street, Des Moines, Iowa 50319.

STATEMENT OF FACTS

On January 6, 2015, a Burlington police officer responded to a report of a domestic dispute at a local Burlington address of 104 S. Garfield. The officer was equipped with a body camera which he activated. While at the scene, an incident occurred in which the officer shot and killed Autumn Steele, who lived in the residence at the address. The Burlington Police Department possesses public records relating to the shooting incident. The DCI also possesses public records relating to the incident.

Complainant Alan Klein is an attorney for Autumn Steele's husband and other family members. On February 27, 2015, he filed two requests for release of certain records. One request was addressed to the Burlington Police Department, and the other was addressed jointly to the Des Moines County Attorney and to the DCI. He requested "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." Specific records determined to be within the custody of each respondent were also requested. Certain information from officer Hill's personnel file was provided to Mr. Klein by the Burlington Police Department, but the department declined to release other public records on the ground that they were police officer investigative reports protected against disclosure by Iowa Code section 22.7(5). The DCI provided only the twelve-second segment of the bodycam video. Iowa Code §22.7(5) was cited by the police department and DCI as authority for refusing to produce additional public records.

On March 2 and 3, 2015, a news reporter employed by The Hawk Eye submitted an open records request to both the Burlington Police Department and DCI seeking to obtain copies of all public records involving the Autumn Steele homicide including, but not limited to, investigative reports by the DCI and Burlington Police. The only requested public document provided by the

DCI in response to the request was a twelve-second segment of the video from an officer's body camera. The DCI cited Iowa Code §22.7(5) in refusing to provide the requested public records.

STATEMENT OF CHARGES: FAILURE TO PROVIDE OPEN RECORDS

1. The IPIB charges the Respondents Burlington Police Department and DCI with violation of Iowa Code §22.2.
2. On January 6, 2015, a Burlington, Iowa, police officer responded to a report of a domestic dispute at 104 S. Garfield in Burlington.
3. During the course of his response to the incident, the officer shot and killed Autumn Steele who had lived at that residence.
4. The shooting and its aftermath were recorded on the officer's body camera.
5. The incident was investigated by the Burlington Police Department and the DCI.
6. The DCI possessed public records regarding the shooting incident, including at least witness statements, investigative notes, and video camera footage from at least one officer's body-mounted recording device.
7. The Burlington Police Department possessed public records that included at least initial reports, body camera videos of two police officers, and 911 calls relating to the shooting.
8. In his subsequent public records requests, Complainant Adam Klein requested copies of all public records involving the Autumn Steele homicide, including, but not limited to, the files of the Burlington Police Department and DCI, and which were broad enough to include any police audio, body camera videos, and 911 calls. In its subsequent public records requests, Complainant The Hawk Eye requested copies of all public records regarding the shooting incident in the possession of the DCI.
9. The Burlington Police Department did not produce any of the public records relating to the incident that it possessed.

10. The DCI produced a twelve-second segment of a body camera video to Complainants, but refused to produce any other public records responsive to the requests.

11. The DCI in a response to The Hawk Eye requests denied that it had prepared a report based on its investigation.

12. Even though Respondents contend they disclosed “the date, time, specific location, and immediate facts and circumstances surrounding the . . . incident,” they did not produce any requested public record in support of that assertion other than the twelve-second video segment. They kept the other public records confidential in violation of Iowa Code §22.2.

13. The body camera videos were not “peace officers’ investigative reports” within the meaning of §22.7(5). No investigation had occurred at the time of the 911 call, body cam video, or shooting. No peace officers’ investigative report existed at the time of the shooting incident. Respondents breached Code §22.2 by refusing to produce the bodycam videos.

14. The 911 calls possessed by the Burlington Police Department were not peace officers’ investigative reports. Respondents breached Code §22.2 by refusing to produce the 911 calls.

15. As of the date of this Petition, Respondents have not provided the documents they withheld from Complainants on the contention they are confidential pursuant to Iowa Code §22.7(5).

16. Among the public records that were requested but which Respondents have wrongfully refused to produce are the following: the recording and transcripts of 911 calls, bodycam videos taken by the officers, videos taken by dashboard cameras, records showing “the date, time, specific location, and immediate circumstances surrounding the . . . incident,” and emails regarding the Autumn Steele homicide from and to representatives of the City of Burlington in correspondence with Autumn Steele’s family members. The records that


Respondents have refused to produce are public records, and Respondents have not met their burden to establish a basis for refusing their disclosure.

17. If found in violation of Iowa Code §22.2, each Respondent may owe statutory damages of not less than \$100 and not more than \$500 pursuant to Iowa Code §22.10.

18. If found to have knowingly violated Iowa Code §22.2, each Respondent may owe statutory damages of not less than \$1,000 and not more than \$2,500 pursuant to Iowa Code §22.10.

WHEREFORE, IPIB respectfully requests that, the two cases be consolidated and that a contested case hearing be set and upon hearing an appropriate order be entered finding Respondents have violated Iowa Code Chapter 22 in the respects alleged and that an appropriate order be entered to ensure Respondents' compliance with Iowa Code Chapter 22, including statutory damages and a requirement that Respondents produce the documents that have been withheld for examination and copying without cost to Complainants.

Filed this ____ day of November, 2016.



Mark McCormick, Prosecutor

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