

*** CONFIDENTIAL ***

-----x

IN RE:

INDEPENDENT INVESTIGATION INTO THE
CITY OF ROCHESTER'S RESPONSE, et al.

-----x

December 11, 2020

9:32 a.m.

Videoconference deposition of PATRICK BEATH
taken via Zoom remote video conferencing software,
pursuant to Notice, before CELESTE A. GALBO, a
Registered Professional Reporter, Registered Merit
Reporter and Notary Public within and for the State
of New York.

HUDSON COURT REPORTING & VIDEO

1-800-310-1769

New York
212-273-9911

Hudson Court Reporting & Video
1-800-310-1769

New Jersey
732-906-2078

1 with an investigation of the Prude death?

2 A. I don't know.

3 Q. Okay. Well, do you think there was a
4 period of time when you were aware of that but he was
5 not?

6 A. I don't know.

7 Q. Do you know when --

8 A. I would -- you know, to the extent I
9 was aware of it by virtue of Stephanie's work on the
10 FOIL appeal, my understanding is that Tim was aware
11 of it as well at that point.

12 Q. Okay. As you sit here today,
13 Mr. Beath, do you have a view about whether the
14 existence of an Attorney General's investigation
15 would give rise to or be relevant to maybe is a
16 better way to put it -- let me re-ask the question so
17 we get it clear.

18 As you sit here today, do you believe
19 that the existence of the Attorney General's
20 investigation was relevant to whether or not the City
21 had an obligation to produce materials to Mr. Shields
22 in response to his FOIL request?

23 A. Yes.

24 Q. What's your view of that?

25 A. I think it is relevant. I think we

1 knew there was an open investigation and so we still
2 had an obligation to determine whether or not release
3 of materials would impede the investigation or, you
4 know, otherwise comprise folks' rights in the context
5 of that investigation.

6 Q. And do you recall there being a
7 discussion about whether the existence of an
8 investigation, law enforcement investigation being
9 conducted not by a city agency but by a state agency
10 would render the exemption not even subject to review
11 under FOIL, if you follow my question?

12 A. Would render the exemption --

13 Q. Bad question.

14 A. Yeah, yeah. Try again.

15 Q. Let me try again.

16 Do you recall there being a discussion
17 within the Law Department about the fact that since
18 there was no pending city law enforcement
19 investigation and only a state law enforcement
20 investigation, that the City did not have the
21 authority to withhold information under FOIL based on
22 the impact of release on the state investigation?

23 A. Yeah, there was a conversation about
24 that in the office.

25 Q. And who was that conversation with?

1 A. So it was me, Stephanie, and I don't
2 know if Tim was part of the conversation at any
3 point.

4 Q. And tell us about that conversation.

5 A. So, as I recall, Elliot Shields had
6 raised this point that we can't use the state AG's
7 investigation as a basis for a FOIL denial. We
8 looked into it and the FOIL law simply doesn't limit
9 the exemptions that are, you know, related to
10 interference with an investigation and folks' rights
11 in the context of the investigation to an
12 investigation that's being conducted by the FOILED
13 entity. So we determined that if release would
14 impede the AG's investigation, that that would be a
15 ground not to release. Discretionary of course, but
16 it's grounds within the FOIL law.

17 Q. Did Ms. Prince agree with that
18 conclusion?

19 A. I believe she did.

20 Q. Did Mr. Curtin agree with that
21 conclusion, do you know?

22 A. I don't remember if we ran it by them
23 or not. I don't remember if he was in the
24 conversation.

25 Q. Do you recall when approximately when

1 this conversation occurred?

2 A. I think it would have been in early
3 June sometime.

4 Q. All right. Well, as you sit here
5 today, Mr. Beath, do you believe that the City of
6 Rochester withheld information requested under FOIL
7 on the basis of the fact that there was a pending
8 investigation by the state Attorney General's Office
9 and that the exemption was otherwise satisfied?

10 A. No, I don't believe we withheld
11 anything on that basis.

12 Q. Okay. As you sit here today, do you
13 believe that you -- the City of Rochester delayed in
14 the product of information in response to a FOIL
15 request on that basis?

16 A. No.

17 Q. Okay. So the conversation that you
18 were talking about, this argument about whether the
19 state AG's investigation matters or doesn't matter,
20 would it be fair to say that had no impact on how the
21 City of Rochester responded to the FOIL request by
22 Mr. Shields?

23 A. I think the AG's office had expressed
24 some concerns that the release of the video could
25 have an impact on their investigation but they never

1 you noticed that. I didn't mean to mislead you in
2 any way. I was going to point that out.

3 Did you participate in any
4 conversations with anybody where it was discussed in
5 or about the June time period whether the release of
6 information pursuant to FOIL about the Prude incident
7 could have an impact on demonstrations in Rochester,
8 political demonstrations?

9 A. Political demonstration, no, I didn't
10 have that conversation.

11 Q. Well, did you have a discussion about
12 any kind of demonstration that might be impacted by
13 the release of this information?

14 A. There wasn't a discussion about
15 demonstrations. There were discussions about the
16 possibility of violence and property damage.

17 Q. Okay. Who participated in those
18 discussions?

19 A. Stephanie and Corporation Counsel and
20 myself.

21 Q. Anybody else?

22 A. I don't know if the Corporation Counsel
23 elevated it to anybody else. I think in this email
24 chain there is an invite -- is it in this one? Yeah,
25 they talk about setting up a Zoom meeting. We did

1 have a Zoom call, Tim and I, with the chief and
2 deputy chief and some concerns about potential
3 violence or rioting were raised in that conversation.

4 Q. When you say the chief and deputy
5 chief, you mean Chief Singletary and Deputy Chief
6 Simmons; is that right?

7 A. That's right.

8 Q. So we'll come back to that.

9 Tell me about any conversations you had
10 between yourself and Ms. Prince and Mr. Curtin about
11 the impact of releasing the information requested
12 pursuant to FOIL on the possibility of looting or
13 violence in Rochester.

14 A. I don't remember more specifics other
15 than that, that we had just seen looting and cars
16 burning and people being injured related to George
17 Floyd. And to release information publicly about a
18 death in custody, police death in custody we were
19 concerned about a risk for continued violence.

20 Q. What did Mr. Curtin say that led you to
21 conclude that he was concerned about that?

22 A. I believe more than once he said, "You
23 know, if this becomes publicly known, the city is
24 going to burn."

25 Q. And that was something he said to both

1 arrest, right?

2 A. That's right.

3 Q. So -- well, first of all, did the
4 release of that information have any impact so far as
5 you understood, violence, creating violence or
6 looting in the city as had been feared?

7 A. Well, when the materials were released
8 to the Prude family, they stayed with the Prude
9 family. As I think you know those materials weren't
10 made public by the Prude family until September. And
11 I don't recall when they were made public if it was
12 the video only that was made public or if it was also
13 some of the documentation. But following that public
14 release in September, there were wide scale, large
15 scale protests some of which did become violent.

16 Q. Fair enough. And you're right. That's
17 my understanding too but I wasn't there, you were. I
18 wanted to make sure I have the understanding
19 correctly.

20 Subsequent to the June 11th release of
21 paperwork information to the Prude family, were there
22 conversations with Mr. Curtin and/or the chiefs about
23 the release of the body-worn camera footage creating
24 an increased risk of violence or looting in
25 Rochester?

1 A. Not that I recall.

2 Q. So is it correct to say that the
3 comments that were made by Mr. Curtin and the chiefs
4 about the risk of violence being increased by the
5 release of information in response to FOIL, all of
6 those comments occurred prior to June 11th; is that
7 right?

8 A. Yeah. My recollection is that that is
9 right and that we decided to make the release but
10 there were some additional hurdles we needed to clear
11 before we could release the BWC footage in the format
12 that Elliot had wanted.

13 Q. We'll come to that.

14 Describe for me the conversation --
15 well, let me help you with this. So, if you look at
16 the message from Mr. -- from Chief Simmons at 12:55
17 to Mr. Curtin and others including you "Good
18 afternoon, gentlemen: Are you available tomorrow
19 morning to discuss the FOIL request for BWC video
20 footage surrounding the Jefferson Avenue in-custody
21 death. If so, please let me know your availability."

22 There was a -- was it a phone
23 conversation or was there a call that followed that?

24 A. It was a video call, as I recall. I
25 think it might have been a Microsoft Teams call.

1 Q. Okay. And who was present on that
2 call?

3 A. As I recall, it was just me, Tim, Chief
4 Singletary and Chief Simmons.

5 Q. So tell us what you recall about that
6 conversation.

7 A. I -- in sum and substance I remember,
8 you know, the chiefs both expressing concern about
9 the recent reaction we had seen to George Floyd and
10 that this release, you know, could potentially result
11 in the same sort of violence. And I think they gave
12 us just kind of an update as to, you know, the fact
13 that the AG's office was looking into it. Other than
14 that, I don't remember any specifics.

15 Q. Okay. Did Mr. Curtin respond in any
16 way to this information that was given to him by the
17 chiefs?

18 A. The only -- my recollection just is
19 that, you know, we both heard the chiefs out and Tim
20 responded saying okay, you know, we'll bear in mind
21 your concerns as we're deciding how to deal with the
22 FOIL request and we'll let you know what we do.

23 Q. Did Mr. Curtin say in that call, you
24 know, we're going to hold back the body-worn camera
25 footage until things calm down and we can release it

1 in a context where we're not going to have violence
2 or looting as a result?

3 A. I don't remember any specifics that Tim
4 said about body-worn camera footage.

5 Q. Okay. I'm asking generally did he
6 communicate that he was -- well, let me ask this
7 question. The call was about body-worn camera
8 footage, right?

9 A. Yeah, the inquiry says "Are you
10 available to discuss the FOIL request for the BWC
11 video footage," that's what the request says, yes.

12 Q. And so I guess my question is, in sum
13 and substance did Mr. Curtin or you communicate to
14 the chiefs that you were going to hold back on the
15 release and body-worn camera footage until it could
16 be done in a way that was not likely to increase the
17 risk of violence or looting in Rochester?

18 A. I don't remember. I didn't make any
19 representation of that sort. I don't remember Tim,
20 you know, expressly making a representation like
21 that, that we'd hold off for any -- I mean, I don't
22 remember Tim's specific response. His usual response
23 where we're consulting is that he'll take it under
24 advisement and let folks know how he's going to
25 handle it.