

# **Sommers Response**

**ROCHESTER CITY COUNCIL**  
*IN RE INDEPENDENT INVESTIGATION INTO  
THE CITY OF ROCHESTER'S RESPONSE TO AND  
HANDLING OF THE RPD'S MARCH 23, 2020 USE  
OF FORCE AGAINST DANIEL PRUDE*

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**RESPONSES TO WRITTEN QUESTIONS TO JENNIFER SOMMERS**

1. Prior to September 2, 2020, did you ever convey to the City of Rochester, including in a telephone conversation on June 4, 2020 with Stephanie Prince, that release of body-worn camera footage depicting the Prude Incident in response to a FOIL request would interfere with the Office of the New York Attorney General's (OAG) investigation of the Prude Incident?

**Response:** I do not recall if I specifically used the word "would" in answering Stephanie Prince's question to me on June 4, 2020, about the potential impact of releasing the body-worn camera footage depicting the Prude Incident in response to a FOIL on the OAG's investigation of the Prude Incident. I did tell her that releasing the video "could" affect the investigation, but that I could not and would not direct the city not to do so.

My substantive discussion with the City of Rochester about whether the FOIL exemption applied to the pending FOIL request was limited to Stephanie Prince and we only spoke on one date—June 4, 2020. After that date, we only communicated by email.

On June 3, 2020, Sgt. Zenelovic of the Rochester Police Department and a supervisor overseeing the Prude investigation for Rochester PD, advised me that Stephanie Prince, a Municipal Attorney for the City of Rochester, wanted to discuss a FOIL request her office had received for body-worn camera footage of the Prude incident. I told Sgt. Zenelovic that he could provide my contact information to Ms. Prince.

Stephanie Prince called me the morning of June 4, 2020. Ms. Prince informed me that she was the City of Rochester Municipal attorney handling a FOIL request made by the attorneys for the Prude family seeking body-worn camera footage of the Prude Incident. Ms. Prince explained that the purpose of her call was to ask me about the status of the OAG investigation so she could determine whether the FOIL exemption regarding ongoing investigations applied. I told her that the OAG investigation was not complete. In response to her inquiry, I informed Ms. Prince that the practice of OAG's SIPU was not to release incident video during a pending investigation, but that I would not tell the City of Rochester that it could not do so. I have no authority whatsoever over the City of Rochester. I told Ms. Prince that OAG SIPU practice was to allow civil attorneys and family members to review video footage of incidents in our office while investigations were pending as a way of remaining transparent while maintaining the integrity of our investigations. I informed her that I would reach out to attorney Donald Thompson, one of the attorneys for the Prude family, later that day to schedule a time for him to review the video with any members of Mr. Prude's family who wished to view it. This was in no way unique to the Prude case and I told Ms. Prince that it was our standard practice. In fact, in 2020, I met with attorneys on each of my pending SIPU cases to review the body-worn camera footage, notwithstanding the pandemic.

That same afternoon, June 4, 2020, I received an email from Ms. Prince. In her email, Ms. Prince asked me if I had reached out to Mr. Thompson and if I had not, if I could wait until I hear back from her before I did. I replied to her email informing her that I had already reached out to Mr. Thompson, and asked for her cell phone number so that I could contact her from the road. (I was in Buffalo that day working on a separate, unrelated SIPU case). Ms. Prince immediately replied, providing me with her cell phone number. Later that

afternoon, before I had an opportunity to call her, Ms. Prince emailed me again, indicating that that I didn't need to contact her. She wrote "we're all set now" and asked me to let her know if Mr. Thompson had agreed to view the video in my office. While in my car driving back to Rochester, and before I had seen Ms. Prince's latest email, I called her at her cell phone number. During this conversation, I restated that I had not yet spoken to Mr. Thompson or scheduled his review of the video, but that I would let her know when I did.

On June 8, 2020, Ms. Prince sent me another email. She asked if I had spoken to Mr. Thompson. I replied that Mr. Thompson was away from his office and that I had not had a chance to speak with him yet. I reiterated to her that the practice of the OAG SIPU was to show the body-worn camera video to plaintiffs' attorneys in our office and that's what I proposed to do in this matter.

In the afternoon of June 10, 2020, I emailed Ms. Prince, as she had previously requested, to let her know that I had spoken with Mr. Thompson and he was scheduled to come to my office to review the body-worn camera video on Friday, June 12, 2020.

On August 4, 2020, Ms. Prince emailed me requesting an update on the OAG investigation. I replied that same evening, notifying her that the investigation was still ongoing. At that time, I also notified her that I had met with both attorneys for the Prude family (Donald Thompson and Elliot Shields) as well as Mr. Prude's family and had allowed them to review the body-worn camera footage, but that I had not provided a copy to them.

Relative to the release of video, the Prude case was handled no differently than other cases handled by the OAG's SIPU up to that point.

2. Prior to September 2, 2020, did you ever convey to the City of Rochester, including in a telephone conversation on June 4, 2020 with Stephanie Prince, that the existence or status

of the OAG's investigation of the Prude Incident could serve as a basis to deny a FOIL request for body-worn camera footage depicting the Prude Incident?

**Response:** No. When Ms. Prince called me on June 4, 2020, I was aware that Ms. Prince was the person at the City Corporation Counsel that handled FOIL because Sgt. Zenelovic had told me that on June 3, 2020. During the call on June 4, 2020, Ms. Prince asked me if the OAG had an ongoing investigation. I did not "convey" to her that the existence or status of the OAG's investigation of the Prude Incident could serve as a basis to deny a FOIL request for body-worn camera footage depicting the Prude Incident.

3. Prior to September 2, 2020, did you ever convey to the City of Rochester, including in a telephone conversation on June 4, 2020 with Stephanie Prince, that the existence or status of the OAG's investigation of the Prude Incident could serve as a basis to delay the release of body-worn camera footage depicting the Prude Incident in response to a FOIL request?

**Response:** No. See response to No. 2.

4. Prior to September 2, 2020, did you ever convey to the City of Rochester, including in a telephone conversation on June 4, 2020 with Stephanie Prince, that the City of Rochester was prohibited by law from releasing body-worn camera footage depicting the Prude Incident in response to a FOIL request?

**Response:** No.

5. Prior to September 2, 2020, did you ever convey to the City of Rochester, including in a telephone conversation on June 4, 2020 with Stephanie Prince, that the City of Rochester was not authorized by law, absent permission from the OAG, to release body-worn camera footage depicting the Prude Incident in response to a FOIL request?

**Response:** No.

6. Prior to September 2, 2020, did you ever convey, including in a telephone conversation on June 4, 2020 with Stephanie Prince, a request to the City of Rochester that it delay the release of body-worn camera footage depicting the Prude Incident?

**Response:** No.

7. Prior to September 2, 2020, did you ever convey, including in a telephone conversation on June 4, 2020 with Stephanie Prince, a suggestion to the City of Rochester that it delay the release of body-worn camera footage depicting the Prude Incident?

**Response:** No.

8. Prior to September 2, 2020, did you ever convey, including in a telephone conversation on June 4, 2020 with Stephanie Prince, a request to the City of Rochester that it ask counsel to the Prude family to agree to delay receipt of body-worn camera footage of the Prude Incident in response to his FOIL request?

**Response:** No.

9. Prior to September 2, 2020, did you ever convey, including in a telephone conversation on June 4, 2020 with Stephanie Prince, a suggestion to the City of Rochester that it ask counsel to the Prude family to agree to delay receipt of body-worn camera footage of the Prude Incident in response to his FOIL request?

**Response:** No.

10. Prior to September 2, 2020, did you ever convey, including in a telephone conversation on June 4, 2020 with Stephanie Prince, to the City of Rochester that, in return for the City of Rochester delaying or denying the FOIL request submitted by counsel to the Prude family, the OAG would offer counsel to the Prude family an opportunity to view the body-worn camera footage of the Prude Incident at the office of the SIPU?

**Response:** No. I did not advise the City of Rochester to delay or deny the FOIL request, as explained in response to request No. 1. I did offer counsel to the Prude family an opportunity to view the body-worn camera footage—an offer that both attorneys for the family accepted—the first time on June 12, 2020, and then again (with members of the Prude family) on July 21, 2020. This offer was not conveyed “in return for the City of Rochester delaying or denying the FOIL request submitted by counsel to the Prude family.” The offer was made as a regular matter of practice as detailed above.

On July 21, 2020, while in my office reviewing the body-worn camera video, Mr. Shields told me that he would soon be receiving the videos directly from the city, once appropriate redactions had been made. I relayed this fact to OAG SIPU investigator Patricia McCune, who mentioned it in an email to Sgt. Zenelovic two days later, on July 23, 2020. I did not advise Ms. Prince of my meeting with Mr. Shields until I responded to her August 4, 2020 email, nor did I ask her or any other employee or official of the City of Rochester not to release the video footage to Mr. Shields upon hearing that he was about to receive it.

11. Prior to September 2, 2020, did you ever convey to the City of Rochester, including in a telephone conversation on June 4, 2020 with Stephanie Prince, that the City of Rochester or its public officials were prohibited from releasing information to the public about the Prude Incident, including but not limited to information describing: the fact of and/or a description of the circumstances surrounding the March 23, 2020 arrest of Mr. Prude; the fact that body-worn camera footage of the arrest existed; the fact that the Monroe County Medical Examiner had ruled the death of Mr. Prude a homicide, and/or a description of the Medical Examiner’s basis for that ruling; the fact that body-worn camera footage of the arrest had been requested pursuant to FOIL; the fact that a criminal investigation had been launched and/or was

underway arising from the circumstances of Mr. Prude's arrest, and/or a description of any such criminal investigation; and/or the fact that an internal Rochester Police Department (RPD) investigation had occurred or was ongoing arising from the circumstances of Mr. Prude's arrest, and/or a description of any such internal investigation?

**Response:** No.

12. Prior to September 2, 2020, did you ever convey to the City of Rochester, including in a telephone conversation on June 4, 2020 with Stephanie Prince, that Rochester City officials were not authorized by law, absent permission from the OAG, to release information to the public about the Prude Incident, including but not limited to information describing: the fact of and/or a description of the circumstances surrounding the March 23, 2020 arrest of Mr. Prude; the fact that body-worn camera footage of the arrest existed; the fact that the Monroe County Medical Examiner had ruled the death of Mr. Prude a homicide, and/or a description of the Medical Examiner's basis for that ruling; the fact that body-worn camera footage of the arrest had been requested pursuant to FOIL; the fact that a criminal investigation had been launched and/or was underway arising from the circumstances of Mr. Prude's arrest, and/or a description of any such criminal investigation; and/or the fact that an internal RPD investigation had occurred or was ongoing arising from the circumstances of Mr. Prude's arrest, and/or a description of any such internal investigation?

**Response:** No.

13. Prior to September 2, 2020, did you ever convey, including in a telephone conversation on June 4, 2020 with Stephanie Prince, a request to the City of Rochester that it not release information to the public about the Prude Incident, including but not limited to information describing: the fact of and/or a description of the circumstances surrounding the



March 23, 2020 arrest of Mr. Prude; the fact that body-worn camera footage of the arrest existed; the fact that the Monroe County Medical Examiner had ruled the death of Mr. Prude a homicide, and/or a description of the Medical Examiner's basis for that ruling; the fact that body-worn camera footage of the arrest had been requested pursuant to FOIL; the fact that a criminal investigation had been launched and/or was underway arising from the circumstances of Mr. Prude's arrest, and/or a description of any such criminal investigation; and/or the fact that an internal RPD investigation had occurred or was ongoing arising from the circumstances of Mr. Prude's arrest, and/or a description of any such internal investigation?

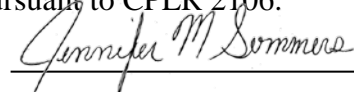
**Response:** No.

14. Prior to September 2, 2020, did you ever convey, including in a telephone conversation on June 4, 2020 with Stephanie Prince, a suggestion to the City of Rochester that it not release information to the public about the Prude Incident, including but not limited to information describing: the fact of and/or a description of the circumstances surrounding the March 23, 2020 arrest of Mr. Prude; the fact that body-worn camera footage of the arrest existed; the fact that the Monroe County Medical Examiner had ruled the death of Mr. Prude a homicide, and/or a description of the Medical Examiner's basis for that ruling; the fact that body-worn camera footage of the arrest had been requested pursuant to FOIL; the fact that a criminal investigation had been launched and/or was underway arising from the circumstances of Mr. Prude's arrest, and/or a description of any such criminal investigation; and/or the fact that an internal RPD investigation had occurred or was ongoing arising from the circumstances of Mr. Prude's arrest, and/or a description of any such internal investigation?

**Response:** No.

**VERIFICATION:** I, Jennifer Sommers, an attorney licensed in the State of New York, affirm the foregoing under penalty of perjury pursuant to CPLR 2106.

Dated: 2/12/2021

  
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JENNIFER SOMMERS