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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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REMOTE DEPOSITION of STEPHANIE PRINCE, taken  
by Defendants via Zoom on Friday, December 4, 2020,  
commencing at 9:36 a.m., before Pamela Grimaldi (by  
Zoom), a Registered Professional Reporter, Certified  
Realtime Reporter, Certified LiveNote Reporter, and  
Notary Public within and for the State of New York.

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2                   A        No.

3                   Q        Did he tell you what the conclusion of  
4 the Major Crimes unit investigation was?

5                   A        No.  And, again, the conclusion --  
6 those details would have been irrelevant for FOIL  
7 purposes in any case.

8                   Q        All right.  So is it correct that  
9 during this June 2 conversation, your goal was to  
10 determine whether there was an open investigation  
11 such that it might impact a FOIL response?

12                  A        Quite honestly, since I -- it was my  
13 understanding when I spoke with him that the City's  
14 investigation, that RPD's Major Crimes  
15 investigation, was concluded.  So my concern at this  
16 point was just receiving the case package so that I  
17 could prepare records for release.

18                  Q        And so once he told you that the RPD's  
19 Major Crimes unit investigation was concluded, in  
20 your mind that was an end of the matter with respect  
21 to your FOIL obligations; is that correct?

22                  A        That was -- in my mind at the time,  
23 that was the end of their -- that was -- there could  
24 at that point be no further question as to whether  
25 the open investigation justification could be used

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2           A        I suppose both, but mostly just the  
3 AG's office. I had not dealt with anyone in the  
4 AG's office before that point, so I was not exactly  
5 sure, you know, what their investigation was going  
6 to entail, you know, what they may need from the  
7 City. At this point it was just making sure that I  
8 had all the facts related to what they were doing  
9 and how that may or may not affect our FOIL  
10 response.

11           Q        Okay. Did you have any understanding  
12 of whether the investigation by a separate entity  
13 could impact the City of Rochester's FOIL disclosure  
14 obligations?

15           A        At the time I believed our obligation  
16 to be separate from any third-party's investigation.  
17 I didn't see the Public Officers Law 87(2)(e)(i)  
18 holding outside of a citywide criminal  
19 investigation. So it wasn't necessarily relevant.

20           Q        And is that still your view?

21           A        Yes.

22           Q        When did you learn that Mr. Prude's  
23 death had been classified as a death in custody?

24           A        I don't exactly remember. It likely  
25 would have been at some point while processing the

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2 appeal.

3 Q Was it your perception that Lieutenant  
4 Perkowski did not want you to release the FOIL  
5 records that were being requested by Mr. Shields?

6 A Yes, that was my perception.

7 Q And did he explain why he didn't want  
8 you to release the records?

9 A He may have. I don't remember. It  
10 likely related to the AG's investigation, but I  
11 don't want to assume.

12 Q At that point had there been any  
13 discussion about whether the release of the records  
14 would be problematic for any reason other than the  
15 open investigation rationale?

16 A I do not recall any discussion between  
17 Lieutenant Perkowski and myself about that.

18 Q Just before we move on to the next  
19 exhibit, did you have any conversation with Tim  
20 Curtin on June 2 about the fact that the AG had now  
21 opened an investigation into a matter that was the  
22 subject of a FOIL request to the City for which you  
23 were handling the appeal?

24 A No. I did not speak with him about  
25 that until after I spoke with Jennifer Sommers on

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2 June 4.

3 Q Okay. What about with Mr. Beath on  
4 June 2, did you speak with Mr. Beath about the AP --  
5 the AG's investigation vis-a-vis the appeal that you  
6 were handling?

7 A I don't recall.

8 Q You testified that your legal  
9 conclusion was that the AG's investigation was  
10 irrelevant to the City of Rochester's obligations  
11 under the Public Officers Law, and that that was  
12 your view then and that remains your view today.  
13 Did you ever discuss that issue with Mr. Curtin?

14 A Yes.

15 Q When did you discuss --

16 A I believe so.

17 Q I'm sorry.

18 A It would have been on or about June 4.  
19 Probably also after that point. It may have come up  
20 again after we received the Notice of Claim as well.

21 Q Okay. Did Mr. Curtin --

22 MS. COHEN: Before we go on, I know  
23 there's portions of this transcript we're  
24 going to have to mark privileged. It  
25 occurs to me this is part of it, the -- to

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2                   work product, attorney-client privilege.  
3                   It may be a lot more of the deposition,  
4                   but I just wanted to flag that.

5                   MS. ROSENFELD: All right. I think we  
6                   need to agree on a process once the  
7                   transcripts are ready for how to deal with  
8                   those kinds of issues, Carrie, so...

9                   MS. COHEN: Agreed.

10                  MS. ROSENFELD: That's fine. If you  
11                  want to put it on the record, or we can  
12                  just agree that we're going to have a  
13                  process after this deposition is over when  
14                  we look at the transcript and figure out  
15                  how to handle that.

16 BY MS. ROSENFELD:

17                  Q            So did Mr. Curtin agree with your view  
18                  that the AG's investigation was irrelevant to the --  
19                  Rochester's obligations to respond to the FOIL under  
20                  the Public Officers Law?

21                  A            Yes.

22                  Q            "Yes," you said?

23                  A            Yes, he agreed.

24                  Q            Okay. And what about Mr. Beath, did  
25                  you ever discuss this topic with Mr. Beath?

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2           A        I believe so.  And I believe he also  
3  agreed.

4           Q        Okay.  Was there any sort of  
5  back-and-forth legal discussion about this issue  
6  between the three of you --

7           A        There probably was.  I don't recall  
8  specifics there or time frame, but sure.

9           Q        Okay.  -- did you do any -- withdrawn.  
10                   Did anyone offer at any point a  
11  contrary legal view that the AG's investigation  
12  impacted -- did impact the City's obligations under  
13  the Public Officers Law with respect to  
14  Mr. Shields's FOIL?

15          A        I don't recall.

16          Q        But you and Mr. Curtin and Mr. Beath  
17  were the lawyers in the office who were involved in  
18  this appeal, correct?

19          A        Correct.

20          Q        And the three of you all agreed that  
21  the investigation had no impact on the City's  
22  obligations, the AG's investigation; is that  
23  correct?

24          A        Yes, that's my recollection.

25          Q        So let's go to Exhibit 8.

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2 Q Okay. So let me ask you this. You  
3 say, The footage at the hospital is almost all  
4 unreleasable (HIPAA). What's your understanding of  
5 how HIPAA applies to body-worn camera footage?

6 A HIPAA would have been the shorthand  
7 that I used, but essentially we're talking about the  
8 personal privacy exception.

9 Q Because HIPAA itself doesn't apply,  
10 correct?

11 A Without going into a complicated legal  
12 analysis, I couldn't really answer that one way or  
13 the other. Out of an abundance of caution, we try  
14 to protect people's personal privacy when they are  
15 receiving things like medical treatment in a  
16 hospital. Those are typically situations when  
17 people do not understand that that kind of  
18 information would be publicly releasable. So while  
19 HIPAA would have been the shorthand that I used, I  
20 was ostensibly referring to 87(2)(b), that's the  
21 public -- that's the personal privacy exception.

22 Q So I do want to look at that with you.  
23 I thought it was marked as an exhibit. Hang on one  
24 second.

25 Sorry. Just bear with me one second.



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2           A        No, go ahead.

3           Q        I have a copy of the Public Officers  
4 Law 87 up here which was supposed to have been  
5 marked as Exhibit 37, but I'm not sure it was.

6                   MS. ROSENFELD: So Carrie, we'll mark  
7 it later.

8           Q        I want to go down to -- so here we are  
9 at 87 (2), right, and that's the section we've been  
10 talking about; is that correct?

11          A        Yes.

12          Q        And so when you're talking about the  
13 HIPAA issue, are you referring to (2) (b)?

14          A        (2) (a) -- so HIPAA -- if something  
15 were not disclosable under HIPAA, that would be  
16 87(2) (a), specifically exempted from disclosure by  
17 state or federal statute. 87(2) (b) is the personal  
18 privacy exception. So even in this instance where  
19 someone is receiving medical treatment, you know,  
20 even where that -- even were HIPAA not applicable,  
21 it's still protected under 87(2) (b). Just out of an  
22 abundance of caution and for the sake of not  
23 providing unnecessary detail to other involved  
24 parties when you're processing a FOIL request, I was  
25 likely using a shorthand.

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2 Q And so let's look at HIPAA first. So  
3 not to hide the ball at all, this is Exhibit 2. And  
4 this is a U.S. DOJ Department of Health and Human  
5 Services document. I know you haven't seen it  
6 before. The reason that I'm sharing it with you is  
7 because it lays out that -- if you look, it says,  
8 HIPAA applies to health plans, health care  
9 clearinghouses, and health care providers that  
10 conduct certain health care transactions  
11 electronically.

12 So with respect to HIPAA, would you  
13 agree that HIPAA does not apply to the Rochester  
14 Police Department because it's not -- it's not a  
15 covered entity under HIPAA?

16 MS. COHEN: Katie, I'm just going to  
17 object. I don't want -- she's not an  
18 expert, and this is all legal -- if you  
19 want to ask her what her understanding of  
20 the law is, that's fine. Just be careful  
21 on the phrasing.

22 Q What I want to make sure that we  
23 separate is the issue of whether HIPAA was the basis  
24 for withholding versus the personal privacy issues  
25 that you flagged under 87(2). So just looking at

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2       HIPAA right now, is it your understanding that HIPAA  
3       applies to requests for body-worn camera footage or  
4       that it does not apply?

5               A       The HIPAA statute itself, no. Within  
6       the realm of the personal privacy exception, footage  
7       of medical treatment is protected.

8               Q       Okay. So when you -- so HIPAA is --  
9       you're using it as a shorthand for sort of medical  
10      privacy issues under the Public Officers Law; is  
11      that right?

12              A       Yes.

13              Q       But the federal HIPAA law, you would  
14      agree, does not apply to the RPD?

15              A       Yes.

16              Q       Now, with respect to the Public  
17      Officers Law privacy protections in 87(2)(b),  
18      what -- how did you go about parsing what would  
19      constitute an unwarranted invasion of personal  
20      privacy as the municipal attorney?

21              A       A review of the law, a review of the  
22      case law, and then some of it is just frankly  
23      logical.

24              Q       Well, you'd agree, right, that FOIL  
25      often poses attention between personal privacy and

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2 Q Uh-huh.

3 A I assume that's what he was referring  
4 to when he said "what is going on around the  
5 country."

6 Q Had you and Lieutenant Perkowski  
7 discussed the issue of Mr. Floyd or the protests  
8 around the country before he sent you this email at  
9 any point?

10 A I really don't remember discussing it,  
11 no. And more to the point, for FOIL-related  
12 purposes, public outcry isn't a reason to withhold  
13 records. So it would not have mattered to me  
14 regardless when it came to analyzing release of  
15 material under the law.

16 Q Did you -- did you feel that  
17 Lieutenant Perkowski was pressuring you not to  
18 release the body-worn camera footage at this point  
19 by June 3?

20 A He may have been. I can't remember  
21 whether I interpreted that to be pressure.

22 Q Well, as you sit here today and you  
23 look at these emails, do you remember if you felt  
24 pressure to find a reason not to release the footage  
25 given his comments and reluctance?

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2 you on June 4 at it looks like 1:28 p.m. that says,  
3 FYI, don't reach out to Elliot or Don Thompson on  
4 this yet.

5 Do you see that?

6 A I do.

7 Q "Elliot" meaning Elliot Shields?

8 A Yes.

9 Q And Don Thompson was another lawyer  
10 for the family of the Prudes, correct?

11 A Local counsel, yes.

12 Q Do you know why Mr. Beath emailed you  
13 at 1:28 that day and asked you -- forwarding you  
14 this chain from the police department involving  
15 Mr. Curtin and asking you not to reach out to the  
16 Prude family lawyers, the requesters?

17 A I mean, I believe so.

18 Q Okay. What's your belief?

19 A I believe it was also on the morning  
20 of June 4 I spoke with Jenn Sommers and discussed --  
21 just explained what our legal obligations were, that  
22 we believed we needed to release records. And she  
23 said that while she couldn't legally advise me, that  
24 they had found that release of material like the  
25 body-worn camera footage prior to the conclusion of

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2       their investigation interfered with their  
3       investigation. To the extent that we could hold off  
4       on release, that would be great. But obviously she  
5       couldn't legally advise me.

6                   And she said that in her experience,  
7       her office would reach out to plaintiff's counsel,  
8       like Mr. Shields and Don Thompson, and would offer  
9       to have them come into their office to review the  
10      footage. They could not receive copies, but that  
11      viewing the footage she found in most instances  
12      satisfied those attorneys.

13                  So I believe, prior to Patrick's email  
14      here, I had communicated that conversation in email  
15      and also over the phone or in person to both Tim  
16      Curtin and Patrick Beath, and I believe what he's  
17      asking me to do is to hold off on contacting either  
18      Elliot or Don until RPD command staff had an  
19      opportunity to meet with Tim -- I think Tim and/or  
20      Patrick. I can't remember. I think it might just  
21      have been Tim. I'm not sure. But I think that  
22      that's just all. I think everyone wanted to be in  
23      the loop as to what was going on before I took any  
24      further steps.

25                  Q       So I think what you're referring to is

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2 Q Did you initiate that conversation or  
3 did Mr. Curtin?

4 A I don't remember.

5 Q And you testified that you gave him  
6 your opinion that the FOIL materials needed to be  
7 released?

8 A Yes.

9 Q And you made that determination before  
10 you had reviewed them; is that correct?

11 A Yes.

12 Q And the reason you could make that  
13 determination was just that there was no open  
14 investigation, there would be no basis for a  
15 wholesale withholding; is that correct?

16 A Correct.

17 Q And so did Mr. Curtin ask you -- what  
18 did Mr. Curtin say to you in that conversation?

19 A I honestly don't remember specifics,  
20 but I do not recall him disagreeing with my  
21 assessment.

22 Q You say in this email, you say, This  
23 way the AG is making the file available to the  
24 family's attorney but we are not releasing anything  
25 to the public. And then you also later say, This

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2 way the City is not releasing anything pertaining to  
3 the case for at least a month, more like two, and it  
4 will not be publicly available.

5 Why did you -- why did you think that  
6 the footage should not be publicly available?

7 A To be clear, it's been my -- it's been  
8 my opinion -- it's been my legal determination  
9 throughout this process that everything that was  
10 requested in the FOIL request, as reasonably  
11 described in the FOIL request, needed to be  
12 released, that we didn't have a legal justification  
13 to withhold. But to the extent as an attorney I was  
14 then being asked whether there was an option to  
15 delay release based upon the concerns raised by RPD,  
16 I answered the question.

17 To the extent that Mr. Shields was  
18 going to be willing to enter into an agreement  
19 tolling the City's obligation to respond to his  
20 appeal within 10 business days, then we would  
21 effectively be delaying release of the material  
22 until the AG's investigation was concluded, which I  
23 think at the time I assumed I guess was going to be  
24 a month or two. That was all.

25 Q What was the -- who had the concern



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2 that the footage should not be publicly available?

3 A Based on that email chain, it appears  
4 to be the police department.

5 Q Did Tim Curtin tell you that the  
6 police department would be upset if the FOIL  
7 materials were released?

8 A I don't believe so. But after  
9 reviewing that email chain, I don't think it would  
10 have been necessary for him to.

11 Q Because it's obvious from the email  
12 that the police didn't want the footage released and  
13 that he was trying to accommodate that request?

14 A Just trying to determine whether we  
15 could legally.

16 Q And did you and Mr. Curtin ever  
17 discuss -- not ever -- let's say on June 4, why the  
18 police department did not want the footage released?

19 A No, I don't -- I honestly really don't  
20 recall whether or not we ever did.

21 Q Was there any discussion of the fact  
22 that the police department showed -- that the  
23 body-worn camera footage showed the police using  
24 excessive force on Mr. Prude and causing his death,  
25 and that that would make the police department look

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2 Q So in your mind, the protections of  
3 87(2)(b) required that you obtain this form from a  
4 representative of the family before you released the  
5 footage?

6 A No. I gave Mr. Shields the  
7 information in a FOIL response to get more fully  
8 redacted footage that would have redacted medical  
9 treatment and nudity under 87(2)(b). Or if he could  
10 provide me with a waiver, then we would send lesser  
11 redacted footage that did not redact those items.  
12 He opted to send a waiver, which I don't believe I  
13 received until I think close to the end of July.

14 Q All right. So we might go back to  
15 that.

16 Did you tell Mr. Curtin that you  
17 didn't think it was appropriate in response to his  
18 June 4 email to deny the request for the FOIL  
19 footage?

20 A I don't know that I ever used the word  
21 "appropriate," but I did have conversations that  
22 made clear that under the Public Officers Law it was  
23 my view that we needed to release the records.

24 Q And so this approach that is laid out  
25 here in this June 4 email, Exhibit 13, this is

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2 sent to Elliot on June 9 asking to discuss this  
3 matter.

4 So was this the email where -- did you  
5 send this email to initiate the discussion about  
6 whether he would be willing to use the viewing  
7 method suggested by the AG?

8 A Yes.

9 Q And did you speak to Elliot on June 9  
10 about that idea?

11 A I believe I did, yes.

12 Q So I'm just going to close the view of  
13 the exhibits that are up so it's a little easier to  
14 see.

15 So in your initial -- in the timeline  
16 that you generated that we looked at in the  
17 beginning, Exhibit 1, you have an entry, it says,  
18 June 9.

19 Do you see that, Ms. Prince?

20 A I do.

21 Q Okay. So does looking at your  
22 timeline refresh your memory that you did, in fact,  
23 speak with Elliot on -- Mr. Shields on June 9?

24 A Yes.

25 Q Okay. And can you just tell us what

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2 you remember about that conversation with  
3 Mr. Shields?

4 A I don't remember specifics. I  
5 remember that I conveyed the situation and the offer  
6 to him. I remember him saying that he would need to  
7 speak with his boss and his client and get back to  
8 me.

9 Q Have you --

10 A And as I recall -- I'm sorry. Go  
11 ahead.

12 Q No. You, please, finish your answer.

13 A I then remember he ultimately ended up  
14 refusing the offer via email.

15 Q Okay. Had you ever talked to  
16 Mr. Shields before June 9, 2020?

17 A Yes.

18 Q And had that been to discuss other  
19 FOIL requests he had made?

20 A Yes.

21 Q Did you find Mr. Shields difficult to  
22 deal with?

23 A On occasion, sure.

24 Q So in your timeline you note that you  
25 were seeking his consent to extend the City's

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2 statutory deadline to respond to the FOIL appeal in  
3 exchange for the ability to review the body-worn  
4 camera footage at the AG's office. So is it  
5 correct --

6 A Yes.

7 Q Thank you.

8 Is it correct that you needed  
9 Mr. Shields' consent to this arrangement because he,  
10 under the statute, at that point had a right to the  
11 footage? Is that correct?

12 A Correct.

13 Q And he ultimately refused to agree to  
14 this, right?

15 A Correct.

16 Q And this looks -- this is Exhibit 15.  
17 This looks to be a summary of your conversation with  
18 Elliot Shields that you sent to Mr. Beath on June 9;  
19 is that correct?

20 A Yes, that is correct.

21 Q When you say he wants the reports  
22 Thursday, are you speaking about the responsive  
23 documents to the FOIL?

24 A Yes, I believe so. And to the appeal  
25 deadline.

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2 access to the FOIL materials, how much time passed  
3 before you produced those FOIL materials to  
4 Mr. Shields?

5 A His email declining came in I think on  
6 the 10th and they were released on the 11th, so a  
7 day.

8 Q And then when was the body-worn camera  
9 footage released?

10 A A couple months later. August 12.

11 Q And we can go through it in more  
12 detail, and I know there are more emails about this,  
13 but what is -- what is the reason that it took  
14 several months from June 11 for him to get that  
15 body-worn camera footage?

16 A Mr. Shields agreed, following receipt  
17 of the appeal response, to provide a waiver, so I  
18 was waiting for receipt of the waiver before the  
19 footage was prepared. We finally received it  
20 towards the end of July, on or about July 23. The  
21 footage was prepared and then it went out a couple  
22 weeks later.

23 Q Did you consider providing the footage  
24 in the redacted form?

25 A I did. But, you know, at that

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2 point -- Mr. Shields is an attorney. If he had  
3 changed his mind, if he had decided that, you know,  
4 he did not want to provide a waiver, we would have  
5 prepared the more fully redacted footage and sent  
6 that out earlier. But he did not.

7 Q So are there other cases where you  
8 have required a requester to provide a HIPAA release  
9 in advance of providing body-worn camera footage?

10 A Not a HIPAA release, but some other  
11 form of authorization. So if -- some other  
12 authorization. Like let's say something is part of  
13 sealed records, we would require the appropriate  
14 release under I think it's CPL 160.50. So there are  
15 certainly other instances where we've required other  
16 documentation, sure.

17 Q Have you ever required someone to  
18 provide a HIPAA form like we had marked as the  
19 exhibit?

20 A That I don't specifically recall.

21 Q You had previously released body-worn  
22 camera footage, right?

23 A Yes.

24 Q And you can't recall any other  
25 occasion where you asked someone to provide a HIPAA

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2 87(2)(b) definitely would.

3 Q Okay. And what about -- did  
4 Lieutenant Perkowski tell you about anything else  
5 that was depicted on the body-worn camera footage  
6 that you felt might be a personal privacy issue  
7 other than the hospital footage and the nudity?

8 A I don't really recall. I don't  
9 believe so.

10 Q What are the personal privacy concerns  
11 with respect to nudity if the person is deceased?

12 A There are still next of kin and family  
13 to consider.

14 Q So just to make sure I'm clear, I  
15 understand this was the first time you were dealing  
16 with the body-worn camera footage involving a death  
17 in police custody. But are you aware of any other  
18 time that the law department has required somebody  
19 to provide a HIPAA form before releasing body-worn  
20 camera footage?

21 A I don't know.

22 Q Who would know the answer to that?

23 A I don't know.

24 Q So you had a conversation with  
25 Mr. Shields on June 9, and then he emailed you --



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2       I'm looking at this exhibit.   Sorry.   I'm looking at  
3       Exhibit 14.   And then he emailed you on the next  
4       day, on June 10, as you noted, and he said, We do  
5       not consent to the city withholding the body-worn  
6       camera videos until the Attorney General concludes  
7       its investigation.   Right?

8           A        Yes.

9           Q        And so -- okay.   And then he said, We  
10       consent to the limited redaction of the video solely  
11       for the purpose of redacting Mr. Prude's genitals.  
12       Right?

13          A        He does say that.

14          Q        So -- and so when you got this email,  
15       what did you do?

16          A        I prepared the records and forwarded  
17       them to, I believe, Tim and Patrick to review,  
18       prepared the appeal response and sent it out.

19          Q        Uh-huh.   Okay.   So it looks like --  
20       Elliot emailed you at 3:40 on June 10, right?

21          A        Yes.

22          Q        And then it looks like -- it looks  
23       like you had already emailed Perkowski that day.  
24       We're at Exhibit 9.   You had already emailed Mike  
25       Perkowski at 9:18 on Wednesday, June 10.

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2 think -- I don't see anything that could be redacted  
3 under any FOIL exemption.

4 Did you -- so he's making a  
5 distinction here between the body-worn camera videos  
6 at the scene and whatever may be at the hospital.  
7 Did you believe that you needed a HIPAA  
8 authorization to send the body-worn camera footage  
9 at the scene where Mr. Prude was restrained?

10 A As opposed to...

11 Q At the hospital.

12 A I mean, we asked for a HIPAA  
13 authorization out of an abundance of caution to  
14 ensure that privacy concerns were met. That likely  
15 included footage of any treatment at the scene as  
16 well.

17 Q Yeah. And I think that the email from  
18 Mr. Shields that we're looking at is saying -- which  
19 is what I was trying to get your view on -- that he  
20 doesn't believe that there's anything that needs to  
21 be redacted with respect to what is -- the footage  
22 from the scene.

23 A Right. I believe, though, the footage  
24 he received did not have anything redacted at the  
25 scene. So this was sort of a moot point. I already

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2       discussed, but I believe that came up, yes.

3                   Q           It came up that Lieutenant Perkowski  
4       had described the incident to you in April and that  
5       when you saw the video, the incident appeared in a  
6       very different light?

7                   A           I don't remember exactly how it was  
8       phrased or what I said, but the fact that I had a  
9       different understanding of the incident in April  
10      versus my understanding following viewing the  
11      video --

12                  Q           Okay.

13                  A           -- I believe came up.

14                  Q           Okay. So at the August 4 meeting, did  
15      Mr. Curtin ask you to delay producing the video to  
16      Elliot further?

17                  A           Following the August 4 meeting, it was  
18      my understanding that he wanted to -- I think he  
19      wanted to follow up with the mayor and the deputy  
20      mayor regarding the fact that the footage was going  
21      to be released through FOIL. But at the end of the  
22      day, it was released like approximately a week  
23      later.

24                  Q           So were you present for any  
25      conversations with the mayor about the body-worn

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2 the AG on August 4 and check on the status of the  
3 investigation?

4 A Yes.

5 Q What was the purpose of that inquiry,  
6 to the best of your understanding?

7 A I believe he just wanted to know about  
8 the status of the investigation.

9 Q Was it in support of making the  
10 argument that the footage couldn't be released  
11 because the AG's investigation was open?

12 A I don't know.

13 Q All right. On August 4 did Mr. Curtin  
14 ask your view about whether the footage could be  
15 withheld from the requester on the basis of the AG's  
16 ongoing investigation?

17 A I believe that came up around that  
18 time, and my answer was the same as it was in June.

19 Q So there was -- after the initial  
20 conversation about this in June, at some time in  
21 early August there was a second conversation with  
22 you and Mr. Curtin about whether an ongoing AG  
23 investigation could justify a withholding under the  
24 Public Officers Law?

25 A I think it did [verbatim].

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2           from the FOIL?

3                   A           My recollection is that the issue came  
4           up and that my answer was the same.

5                   Q           Okay.  And so Ms. Sommers answered you  
6           on August 4 about an hour later and she said, yep,  
7           the matter's still ongoing, continuing, and then she  
8           updated you that she had met with and showed the  
9           attorneys the video.  I did not give a copy.

10                               So on August 14 you also -- I'm sorry.  
11           On August 4 you also that afternoon emailed Elliot  
12           and said that all of the footage was too large to  
13           send via file transfer and that you would mail it to  
14           his office tomorrow.  Is that right?

15                   A           I did send that email.

16                   Q           But hadn't Mr. Ehlers told you that it  
17           could be uploaded to the file share and sent you --  
18           in 72 hours and sent you that link?

19                   A           That was just the body-worn camera  
20           footage.  It did not also encompass the surveillance  
21           footage, the photos, and the other materials that  
22           were left to be sent, combined with the fact that  
23           the City's email system does not always function the  
24           way that it should.

25                   Q           Okay.  And so then Mr. Shields asks

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2 you the same day to email it, I guess he means mail  
3 it to him, at an actual physical address, correct?

4 A Yes.

5 Q Okay. And then he's emailing you  
6 again August 12, so that's a week later, and saying,  
7 What's going on; is that right?

8 A Yes.

9 Q All right. Do you know why the  
10 footage hadn't been mailed to Mr. Shields between --  
11 or why he hadn't received the footage by August 12  
12 at that point?

13 A Well, I mean, I think it was actually  
14 sent out from our office on I think it might have  
15 been the 11th. I don't remember the exact date.  
16 But in addition to that fact, you know, there was  
17 also a lag in USPS at the time.

18 Q Were you part of any conversations  
19 after August 24 within the law department about  
20 slowing down the pace of the production of the  
21 body-worn camera footage to Mr. Shields?

22 A Slowing down? I mean, I -- on August  
23 4 after Patrick Beath reviewed the footage and sent  
24 it along to Tim Curtin who spoke with the mayor and  
25 the deputy mayor and the chief of police, I did hold

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2       off for I think it was a couple of days just to make  
3       sure that there was no further confusion before it  
4       was mailed out. But then it was ultimately mailed  
5       out early the next week. Otherwise -- you know, I  
6       mean that just is what it is.

7                   Q       Do you know -- so this is an email,  
8       Exhibit 22, on August 7 when you and Patrick Beath  
9       are emailing about the HIPAA release. Are you  
10      familiar with this email?

11                  A       I mean, I see it.

12                  Q       Yeah. So why were you trying to  
13      determine whether the HIPAA release was valid on  
14      Friday, August 7?

15                  A       The question -- I mean, this reads  
16      like the question had clearly come up, someone had  
17      asked. It looks like I followed up and that was it.  
18      I mean, I don't really recall any more specifics  
19      than that.

20                  Q       Did Mr. Beath ask you to determine  
21      whether the HIPAA release was valid?

22                  A       He may have. I don't remember who.

23                  Q       And you'd had the HIPAA release and  
24      determined that you were going to make the  
25      production for some weeks at that point, correct?

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2                   A        Yes.

3                   Q        So is it fair to -- go ahead.  Sorry.  
4  Were you going to say something?

5                   A        No.

6                   Q        Is it fair to infer that somebody had  
7  asked you to confirm that the HIPAA release was  
8  valid before the footage went out?

9                   A        I think that's a fair assumption.

10                  Q        And you have no memory of who asked  
11 you or any conversation that led to this email?

12                  A        I really don't.  It might have been  
13 Tim, it might have been Patrick.  I might just have  
14 been confirming it.

15                  Q        And as part of this inquiry into the  
16 validity of HIPAA, was there any discussion between  
17 you and Mr. Beath that HIPAA didn't actually apply  
18 to the records that you were being asked to release?

19                  A        I don't really recall that issue  
20 coming up at the time.

21                  Q        This email reads like you're analyzing  
22 the validity of the release under HIPAA.  Do you  
23 agree?

24                  A        I do.

25                  Q        You don't mention the personal privacy



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2 the law department was not authorized to release the  
3 body-worn camera footage by the Attorney General.

4 Do you believe that's an accurate statement?

5 A I'm sorry, would you repeat that one  
6 more time?

7 Q Sure.

8 Mr. Curtin says in that press  
9 conference that the law department was not  
10 authorized to release the body-worn camera footage  
11 by the Attorney General. Do you think that that is  
12 an accurate statement by Mr. Curtin?

13 A No.

14 Q And he also said that you -- that the  
15 law department had declined to release the footage  
16 as a result of the Attorney General's direction. Do  
17 you believe that's an accurate statement?

18 A I actually think that's a reference to  
19 release to the public, not release through FOIL. I  
20 think the two are getting -- were getting conflated.  
21 I don't think he was referring to the FOIL request  
22 there.

23 Q Okay.

24 A But in any case, it would not have  
25 been for the law department to decide whether or not

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2           to release to the public.  We don't release  
3           documents directly to the public.

4                   Q           Okay.  Were you part of any  
5           conversations about the fact that there had been a  
6           death in custody that -- and that information had  
7           not been shared with the public?

8                   A           No.  I was really just involved in the  
9           FOIL request.

10                  Q           What about the fact of the Attorney  
11           General's investigation, were you told that that was  
12           information that could not be disclosed to the  
13           public?

14                  A           That the investigation existed?

15                  Q           Correct.

16                  A           I don't really remember anyone ever  
17           saying that I could not.  But, I mean, that was --  
18           you know, I certainly had conversations with  
19           Mr. Shields related to the investigation, so, you  
20           know...

21                  Q           Uh-huh.  So just to go back to  
22           Mr. Curtin's statement that you said is inaccurate,  
23           that the Attorney General -- that the law department  
24           was not authorized to release this footage, had you  
25           heard Mr. Curtin say that or some version of that