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**ATTORNEY CLIENT COMMUNICATION**

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**TO:** Domenic J. Sarno, Mayor  
**FROM:** Edward M. Pikula, City Solicitor  
**DATE:** April 10, 2019  
**RE:** Update and Clarification of Ongoing Nathan Bill's Grand Jury Investigation

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I am writing to report to update you and clarify the ongoing Nathan Bill's Grand Jury Investigation.

I spoke with Attorney Kimberly West, head of the Criminal Bureau in the Office of the Attorney General on Thursday April 4, 2019 with regard to the Grand Jury Investigation relative to the Nathan Bill's incident. I again requested copies of the phone record documentation obtained through the Grand Jury as well as videos relative to the date of the incident which occurred on or about April 8, 2015.

She informed me that the records would not be made available at this time. She indicated that the Grand Jury is active and on-going. As you know, 12 Officers were issued notices of disciplinary charges relative to this matter. The first group of charge letters went out on August 4, 2015 (eleven officers). Further investigation identified another individual and he received a charge letter dated September 8, 2015 but served on September 18, 2015. The officers exercised the Constitutional rights to remain silent, as such, we have limited ability to prosecute the misconduct charges without the Grand Jury evidence.

I had previously informed her that Acting Commissioner Clapprod had requested that Labor Relations attempt to move forward prior to the termination of the criminal cases. I suggested that, if the City could obtain documents and transcripts, perhaps the need for testimony could be eliminated as meeting the standards which require proof of "just cause" for discipline be based on substantial evidence. She suggested that I continue contacting her office to determine if the circumstances change as some point when documents and witnesses could be available. In summary, this reiterated the information conveyed to Attorney Mahoney and myself from Independent Counsel Tom Kokonowski relaying that, in his contacts with the AG's office to move forward, it was requested that the City "stand down". As such, the Labor Relations Department will hold off until such time as we are assured by the AGO that a hearing on the misconduct would not interfere with the criminal proceedings.

In addition, I provide the following clarification with regard to the Press Release issued by Councilor Hurst which is the subject of a news article in this morning's paper. In my opinion, the City Council is not the proper agency to summons private cell phone records of any criminal suspect. The proper means would be through the DA, AG, or US Atty. The City has fully cooperated with each of those agencies and my understanding is that those agencies have agreed that the AG take the lead on the case. According to the Atty General's office they have the phone records in question.

As to the City's possession of the phone records in question, in February of 2016, Attorney Towles in the Labor Relations Department contacted me seeking guidance as to issuing a subpoena for phone and other records related to the Nathan Bill's incident. I informed him that the case was being reviewed by the District Attorney for potential criminal charges, and I did not believe the City had authority to issue a subpoena for the records that were the subject of a criminal investigation considering the potential impact.

As you know, the Law Department handles civil suits against officers and officials, Labor Relations represents SPD management in the prosecution administrative disciplinary cases before the CPHB, Civil Service, and in Arbitrations. Attorney Towles was working on the Nathan Bills matter prior to Labor Relations retaining outside, independent counsel. I referred Atty. Towles to review the Massachusetts Civil Service laws for guidance, as well as a contact in State HRD to request guidance and assistance as to the ability to obtain the records. HRD indicated that they did not believe the records could be obtained administratively without a judge authorizing it, but suggested contacting the phone company to ask if they would voluntarily provide them. I believe this may have been the method used, as Atty Towles had previously been employed by the phone company.

Thereafter, I was informed in May of 2016 by Labor Relations Director Mahoney that Labor Relations had subpoenaed records and had received some cell phone records. I did not have possession of the records or have any personal knowledge of their contents. Attorney Mahoney informed me that the Union Lawyer, Attorney Kevin Coyle, complained that the records were not subpoenaed, nor could they be, in accord with M.G.L. Ch. 31 sec. 72 authorizing Civil Service to issue subpoenas. Attorney Mahoney informed me that they were not obtained pursuant to any statutory authority. He asked if I would advise Labor Relations to withdraw the subpoena, whether I had any advice as to how to handle any records we have already received, in light of the Union demand that any copies of records received be destroyed.

I discussed the situation with Attorney Mahoney. Under the circumstances, ethically, I could not see how we obtained copies of the phone company records, how we could use them without facing a lawsuit for invasion of privacy from the officers, and potentially, jeopardizing their use in a criminal case and agreed that the Union demand that they be destroyed be met. The actual records were in the possession of the phone company, as such, no evidence was being destroyed; only copies that we had illegally obtained.

In November of 2016, I learned from Deputy Cheetham, who was in charge of IIU, that the records obtained had placed 12 officers in a text or call chain in the timeframe of the Nathan Bills incident. According to the communication from Deputy Cheetham, the improperly obtained records had been obtained by Attorney Towles and Attorney Maite Parsi of Labor

Relations was also aware. According to Deputy Cheetham this information was conveyed to the District Attorney's office. I did not review the records.

In the course of cooperating with the AG's grand jury investigation, I was informed that the copies of records in the City's possession were disposed of in accordance with the Union complaint and agreement that the method of obtaining the records was improper and the copies should be destroyed. As I indicated, while the copies of private records obtained by Attorney Towles were apparently destroyed, no evidence was lost as the phone company retained the actual business records.

As indicated, while the City cooperated with the DA, AG, and AUSA offices on the criminal case, and the City continues to attempt to obtain the records. However, the Attorney General, as previously indicated, have apparently designated the AG to take the lead on the case. The AG's office has told me that nothing will be provided at this time for us to pursue the disciplinary charges. Eventually, the records will become available and the disciplinary process can go forward. In the meantime, the criminal case is the top priority.

It should be noted that neither Councilor Hurst, nor the reporter who wrote this morning's story, contacted me to discuss the issues.

As to the other aspects of the timeline, I offer the following information supplied to me by Deputy Cheetham.

CPHB review took place on 1/22/16. That was the their only review and it was done by Mr. Albert Trangese of the Community Police Hearing Board  
Captain David Martin reviewed it on 1/25/2016  
Deputy Chief William Cochrane reviewed it on 1/27/2016  
Commissioner John Barbieri reviewed it on 1/29/2016

All recommended that a disciplinary hearing be held.

Further investigation identified another individual officer, and he received a charge letter dated September 8, 2015 but served on September 18, 2015

All officers filed waivers of the 60 day date for a hearing. The waivers are dated September 8, 2015 through September 17, 2015. The officer who was served on September 18, 2015 also filed a waiver but it is not dated.

The waivers allowed for the investigation to be thoroughly completed and that is one reason why there is a supplemental report dated 6/22/2016.

Captain Larry Brown spoke with ADA Fitzgerald in July of 2016, just before the IIU supplemental was sent on July 21, 2016.

Captain Brown stated that he and others met with ADA Fitzgerald in early November 2016 and were informed that they would have an answer in two weeks whether there was going to be any criminal charges against any or all of the officers involved. However, there was no decision at the time of the November 23, 2016 communication to me from Deputy Cheetham.

Thereafter, the DA issued a report in February 2017 indicating the case would not be criminally prosecuted.

In March of 2017, the City contracted with retired Judge Bertha Josephson to assist the CPHB to hear the case.

In April of 2017, Attorney Thomas Kokonowski was retained as an Independent Counsel to prosecute the disciplinary charges.

In January 2018, the City was notified by the AGO that a grand jury was being convened on the Nathan Bill's incident.

The Indictments of 12 Springfield Officers was made public March 27, 2019.

As indicated, the grand jury investigation is active and ongoing.

If you need any more information, please let me know.