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Attorneys for Plaintiff

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Clerk of the Trial Courts

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BLACK CAUCUS,)
)
Plaintiff,)
)
vs.)
)
MUNICIPALITY OF ANCHORAGE,)
)
Defendant.)

Case No. 3AN-23-65743 CI

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. Nationwide, between 2015 and 2021, police officers fatally shot at least 135 unarmed Black people, including but not limited to Michael Brown, Walter Scott, Philando Castile, Stephon Clark, Botham Jean, Breonna Taylor, Andre Hill, and Jordan Edwards. In addition to these shooting victims, the police have recently killed many more unarmed Black people for various miscellaneous acts, including for selling cigarettes without a license (Eric Garner); for allegedly having a counterfeit \$20 bill (George Floyd); and for running a stop sign (Tyre Nichols).

2. Alaska has seen its share of dangerous police encounters. Between 2015

and August 2020, there were at least 43 incidents in which Alaska law enforcement officers killed a person. At least 30 percent of these killings were of Alaska Native people. And at least three of these killings were of completely unarmed Alaskans. During this same period, the Anchorage Police Department (“APD”) was involved in 12 fatal shootings.

3. In 2021, the citizens of Anchorage spoke up and voted to equip the APD with body cameras. In the Municipality of Anchorage’s (“MOA”) April 6, 2021 election, voters passed Proposition No. 4, which funded body cameras for the APD.

4. The APD is coming late to the party, nationally: By 2016, **over 79% of large police departments** in the United States had already acquired body cameras for their officers.

5. The APD is also coming late to the party, statewide: Since **2015**, various other police departments in Alaska – like the Kenai Police Department, the police department at the University of Alaska Anchorage, the Nome Police Department, the Fairbanks Police Department, the Juneau Police Department, and the Alaska State Troopers (within a year) – have equipped their officers with body cameras.

6. Unfortunately, since Anchorage’s citizens voted in 2021, the MOA and APD have collectively thwarted the will of the voters. They have done so by coming up with one excuse after another that prevents them from doing what over 7,200 other police departments around the country have already done.

7. The excuses proffered to the public by the APD and the MOA (e.g., it is too complicated and challenging to equip officers with body cameras) do not pass

the straight-faced test and are contradicted by the actual facts which all Alaskans are aware of: at least 7,200 other police departments in the country have done the impossible, as have many police departments in Alaska. But here, two years after Anchorage citizens voted so that the APD would equip itself with body cams, the APD and MOA keep coming up with excuses as to why this is impossible for them to do and are thwarting the will of the people.

8. This lawsuit is meant to give voice to the will of the voters and to stop the APD's and the MOA's undermining of Proposition 4.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this case under AS 22.10.020(c) and (g).

10. Venue is proper under AS 22.10.030 and Alaska Civil Rule 3(c).

PARTIES

11. The Alaska Black Caucus ("ABC") is a non-profit organization that works to support and to give voice to the interests of Black people in Alaska. ABC's members would have standing to sue in their own right on the issues; the interests ABC seeks to protect are germane to the organization's purpose; and neither the claims asserted nor the relief requested requires the participation of individual ABC members in the lawsuit.

12. The MOA is a home rule municipality in the State of Alaska.

13. The APD is the entity that provides law enforcement in the MOA.

GENERAL ALLEGATIONS

14. Body cameras are small and transportable devices that can be worn by

police officers in order to record their interactions with the public.

15. After Minneapolis police officers murdered George Floyd in 2020, and after global protests ensued about police accountability in the wake of that killing, the then-APD Police Chief, Justin Doll, announced that the APD would finally pursue body cameras for its officers.

16. At that time, then-Chief Doll claimed that the APD had previously gone without body cameras because of their cost.

17. To remedy this alleged hurdle, the MOA asked the people of Anchorage to raise their own taxes in order to pay for body cameras for the APD.

18. The MOA held an election on April 6, 2021.

19. One item on the ballot in that election was Proposition No. 4.

20. Proposition No. 4 asked Anchorage voters whether they would approve an increase in taxes – of up to \$1.84 million – so that the APD would start using body cameras.

21. In the MOA's April 6, 2021 election, a majority of Anchorage voters supported Proposition No. 4. In other words, a majority of voters in Anchorage voted to approve an increase in taxes – of up to \$1.84 million – in order to pay for, among other things, body cameras for the APD.

22. After the April 2021 election, the MOA announced that it planned to equip APD officers with body cameras by the end of 2021.

23. However, this did not happen.

24. Instead, the MOA and the APD repeatedly delayed taking any action to

effectuate the will of Anchorage's voters.

25. For months, the MOA claimed that privacy concerns about body camera footage were delaying the rollout of body cameras for APD officers.

26. In a February 18, 2022 meeting, APD Chief Michael Kerle stated:

I'm embarrassed that we've sat here and said a year ago that we expected body cameras at the end of 2021, where we're here a year later and today, the truth is we're not that much closer to having body cameras.

27. After that, Chief Kerle later claimed that he would submit a final policy about body cameras to the police union in March 2022.

28. However, this never happened. Instead, for months, the MOA and the police union failed to even begin negotiating about this policy.

29. Then, in fall of 2022, the MOA announced that it would instead have an arbitration with the union about the policy. In November 2022, the MOA's municipal attorney, Blair Christiansen, claimed that the arbitration would likely wrap up within six months. However, this did not happen either.

30. Instead, on April 5, 2023, the MOA announced that the arbitration was being pushed back to the fall of 2023. The MOA has not explained why the arbitration is being pushed back.

31. It is not even clear that this arbitration is necessary or proper. In fact, the MOA will not even explain what this arbitration is about. Before the arbitration was inexplicably delayed, one of plaintiff's attorneys asked the MOA to simply provide the documents that the MOA or the APD had filed in the arbitration. The MOA refused to disclose those basic documents, claiming – again

without explanation – that keeping these documents secret was necessary for successful collective bargaining.¹

32. Then, after the arbitration was delayed, one of plaintiff’s attorneys made a simpler public records request, just asking the MOA to provide the very basic “request for arbitration” document that started the arbitration. However, the MOA engaged in more mindless stonewalling: refusing to produce anything and claiming, again, that keeping this document secret is somehow necessary for successful collective bargaining.²

33. Meanwhile, the plaintiff, the Alaska Black Caucus, has even tried to help speed the process along, by creating and providing a detailed policy for the MOA to enact regarding the treatment of body camera footage.

34. Indeed, on February 6, 2023, the plaintiff officially petitioned the APD, pursuant to AMC 3.40.035 to adopt a policy.³ The law (AMC 3.40.035) provides that, within 30 days of the receipt of this petition for regulation, the MOA “shall initiate rule making procedures or notify the petitioner in writing as to its reasons for not doing so.” However, the MOA simply disregarded this law too: more than two months later the MOA has neither initiated rule making procedures or notified the petitioner in writing as to its reasons for not doing so. In other words, the MOA is acting as if the law does not apply to it.

¹ The denial of this public records request is attached as Exhibit 1.

² The denial of this public records request is attached as Exhibit 2.

³ This petition is attached as Exhibit 3.

35. The upshot of the above is that, more than two years after Anchorage citizens voted to equip the APD with body cameras, the MOA and the APD are thwarting the process by proffering one excuse after another, with no end in sight.

CLAIMS FOR RELIEF:

COUNT I – DECLARATORY AND INJUNCTIVE RELIEF

36. The plaintiff repeats and incorporates by reference the allegations of fact and law in each of the preceding paragraphs.

37. The right to vote is a constitutionally protected right. The right to vote is meaningless if, after the public speaks and votes, the government effectively ignores the will of the voters. But this precisely what is occurring here.

38. The plaintiff is entitled to an order compelling the defendants to abide by the will of the voters and begin equipping the APD with body cameras with all due haste. If this is beyond the competency of the current management of the APD and the MOA, and it appears that this is the case, this Court should appoint a special master that will oversee and implement the equipping of the APD with body cameras with all due haste.

WHEREFORE plaintiff prays that this Court:

1. A declaration that defendants must comply with the will of the voters;
2. An injunction requiring defendants to begin equipping the APD with body cameras, with all due haste. If this is beyond the competency of the current management of the APD and the MOA, this Court should appoint a special master that will oversee and implement the equipping the of the APD with body cameras

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with all due haste.

3. The costs and expenses of litigation, including full attorney's fees.

4. For such other and further compensatory or equitable relief as this Court may deem just under the circumstances.

5. All other proper relief.

DATED this 19th day of April, 2023

NORTHERN JUSTICE PROJECT, LLC
Attorneys for Plaintiff

By: /s/ James J. Davis, Jr.

James J. Davis, Jr., AK Bar No. 9412140
Nicholas Feronti, AK Bar No. 2106069

RE: Public Records Request

From: Willoughby, Jessica B. (jessica.willoughby@anchorageak.gov)

To: nferonti@njp-law.com

Date: Thursday, February 16, 2023 at 03:23 PM AKST

Nick:

Your request:

- All requests for arbitration that the Municipality of Anchorage has received from the Anchorage Police Department Employees Association concerning the Anchorage Police Department's body worn camera policy.
- All documents that the Municipality of Anchorage has filed in any arbitration with the Anchorage Police Department Employees Association concerning the Anchorage Police Department's body worn camera policy.
- All documents that the Anchorage Police Department Employees Association has filed in any arbitration with the Municipality of Anchorage concerning the Anchorage Police Department's body worn camera policy.

Upon review of your request, it has been determined that any responsive record(s) would be exempt from public records requirements pursuant to AMC 3.90.040H., "Information which municipal governments engaged in collective bargaining regularly consider to be privileged or confidential for purposes of successful collective bargaining."

The MOA and APDEA have a CBA in effect and publicly available (https://www.muni.org/Departments/employee_relations/Pages/apdea.aspx). It outlines grievance procedures and when grievances cannot be resolved, when arbitration is appropriate (see pages 7-12). As such, any records related to your request are elements of the collective bargaining process and remain confidential for purposes of successful collective bargaining.

See also AMC 3.70.090B., Union negotiations are private unless agreed to by the parties. When negotiations do take place, the Assembly receives updates and may make such reports public. Id.

As you may be aware, the Anchorage Police Department has spoken about this process. Refer here: <https://alaskapublic.org/2022/11/02/anchorage-police-department-and-union-to-settle-body-camera-debate-in-arbitration-next-year/>; and <https://www.alaskasnewssource.com/2023/01/05/anchorage-police-chief-provides-update-body-cameras/>.

The Department of Law considers this request closed.

Jessica

From: Nick Feronti <nferonti@njp-law.com>
Sent: Thursday, February 9, 2023 11:06 AM
To: Willoughby, Jessica B. <jessica.willoughby@anchorageak.gov>
Subject: Re: Public Records Request

[EXTERNAL EMAIL]

Thanks.

Nick Feronti

Northern Justice Project, LLC

406 G Street, Suite 207

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<https://njp-law.com/>

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On Thursday, February 9, 2023 at 10:59:20 AM AKST, Willoughby, Jessica B. <jessica.willoughby@anchorageak.gov> wrote:

Okay – Law will review what may be responsive. If you don't hear from me within a week, feel free to follow up. But I will try and get back to you before then.

Jessica

From: Nick Feronti <nferonti@njp-law.com>
Sent: Thursday, February 9, 2023 10:55 AM
To: Willoughby, Jessica B. <jessica.willoughby@anchorageak.gov>
Subject: Re: Public Records Request

[EXTERNAL EMAIL]

Thank you for your email.

I still desire the information or records.

Nick Feronti
Northern Justice Project, LLC
406 G Street, Suite 207
Anchorage, AK 99501
Tel: (907) 308-3395
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On Thursday, February 9, 2023 at 10:40:59 AM AKST, Willoughby, Jessica B. <jessica.willoughby@anchorageak.gov> wrote:

The Department of Law is in receipt of your public records request received on 2/8/23 via email.

Your request:

- All requests for arbitration that the Municipality of Anchorage has received from the Anchorage Police Department Employees Association concerning the Anchorage Police Department's body worn camera policy.
- All documents that the Municipality of Anchorage has filed in any arbitration with the Anchorage Police Department Employees Association concerning the Anchorage Police Department's body worn camera policy.
- All documents that the Anchorage Police Department Employees Association has filed in any arbitration with the Municipality of Anchorage concerning the Anchorage Police Department's body worn camera policy.

Per the Anchorage Municipal Code 3.90.060, "All municipal officers and employees shall, consistent with the orderly conduct of municipal business, make a good faith and diligent effort to provide a rapid and intelligible response to requests for inspection of records made pursuant to this chapter."

And AMC 3.90.060C.: "If the records and information cannot be located in time to make a response within two working days of the request, the requesting party shall be promptly advised, and, if the requesting party still desires the information or records, a reasonable and diligent search shall be made for it"

This records request cannot be fulfilled within two working days. If you still desire the information or records, please respond in the affirmative.

This records request cannot be fulfilled within two working days. If you still desire the information or records, please respond in the affirmative.

FEES.

Anchorage Municipal Code of Regulation (AMCR) 3.90.004 states that “municipal agencies may establish a charge for published records not exceeding the cost of preparing the records.” Per AMCR 3.90.005, “in addition to the fee for copying a record, a municipal agency may charge a fee for employee time to search for, retrieve and redact as necessary, the record at a rate not exceeding \$40.00 per hour.”

There may be an associated cost in order to furnish the records you have requested.

PROCESS.

Once you have confirmed you are interested in the records and assuming there are responsive records, Law will send a cost estimate of the time it will take to process this request (EMPLOYEE TIME x HOURLY RATE + COST OF COPIES = ESTIMATE). Then once Law is in receipt of your payment, we will begin to fulfill your request. If the estimate is less than 15 minutes, there is no cost and the request will be processed.

Please note, you may receive all, partially redacted, or no copies of the record(s). It is through the request process, which begins after payment has been successfully processed, that Law may identify exemptions as listed in AMC 3.90.040 or as otherwise set forth in law.

NEXT STEPS.

Again, this records request cannot be fulfilled within two working days. If you still desire the information or records, please respond in the affirmative.

If you have any additional questions concerning the contents of this letter or what is being asked of you, please reach out to:

Jessica Willoughby

Assistant Municipal Attorney

Department of Law

From: Nick Feronti <nferonti@njp-law.com>

Sent: Wednesday, February 8, 2023 4:58 PM

To: Municipal Attorney <MunicipalAttorney@ci.anchorage.ak.us>; Christensen, Blair M. <blair.christensen@anchorageak.gov>

Subject: Public Records Request

[EXTERNAL EMAIL]

To Whom It May Concern:

Attached please find a public records request. Please confirm receipt of this request. Thank you.

Nick Feronti
Northern Justice Project, LLC

406 G Street, Suite 207
Anchorage, AK 99501
Tel: (907) 308-3395
Fax: (866) 813-8645
<https://njp-law.com/>

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RE: DOL PRR 2023-10

Willoughby, Jessica B. <jessica.willoughby@anchorageak.gov>
To: Nick Feronti <nferonti@gmail.com>
Cc: Mayor Bronson <Mayor@muni.org>

Wed, Apr 12, 2023 at 2:34 PM

The Department of Law is in receipt of your public records request received on 4/10/23 via email.

Your request, DOL PRR 2023-10:

A. "All requests for arbitration that the Municipality of Anchorage has received from the Anchorage Police Department Employees Association concerning the Anchorage Police Department's body worn camera policy."

B. "All requests for arbitration that the Municipality of Anchorage has sent to the Anchorage Police Department Employees Association concerning the Anchorage Police Department's body worn camera policy."

Per the Anchorage Municipal Code 3.90.060, "All municipal officers and employees shall, consistent with the orderly conduct of municipal business, make a good faith and diligent effort to provide a rapid and intelligible response to requests for inspection of records made pursuant to this chapter."

Upon review of your request, it has been determined that any responsive record(s) would be exempt from public records requirements pursuant to AMC 3.90.040H., "Information which municipal governments engaged in collective bargaining regularly consider to be privileged or confidential for purposes of successful collective bargaining." Communications including requests for arbitration are included in such "information."

The MOA and APDEA have a CBA in effect and publicly available (https://www.muni.org/Departments/employee_relations/Pages/apdea.aspx). It outlines grievance procedures and when grievances cannot be resolved, when arbitration is appropriate (see pages 7-12). As such, any records related to your request are elements of the collective bargaining process and remain confidential for purposes of successful collective bargaining.

See also AMC 3.70.090B., union negotiations are private unless agreed to by the parties. When negotiations do take place, the Assembly receives updates and may make such reports public. Id.

As you may be aware, the Anchorage Police Department has spoken about this process. Refer here: <https://alaskapublic.org/2022/11/02/anchorage-police-department-and-union-to-settle-body-camera-debate-in-arbitration-next-year/>; <https://www.alaskasnewssource.com/2023/01/05/anchorage-police-chief-provides-update-body-cameras/>; and <https://www.adn.com/alaska-news/crime-courts/2023/04/08/timeline-for-long-overdue-anchorage-police-body-cameras-remains-unclear-as-officials-postpone-arbitration/>.

Note, I believe this request is substantially similar to the request made 2/8/2023 (DOL PRR 2023-05). As you can see, the Department of Law's position has not changed. I understand from below that you don't agree with the Department of Law's position. Pursuant to AMC 3.90.060B., you may appeal to the Mayor's Office and a written reply will be given within seven working days.

I have CC'd the Mayor's Office for convenience.

Jessica

From: Nick Feronti <nferonti@gmail.com>
Sent: Sunday, April 9, 2023 12:01 PM
To: Willoughby, Jessica B. <jessica.willoughby@anchorageak.gov>; Municipal Attorney <MunicipalAttorney@ci.anchorage.ak.us>
Cc: Volland, Daniel R. <Daniel.Volland@anchorageak.gov>; Constant, Christopher <christopher.constant@anchorageak.gov>; Dern, Robin <Robin.Dern@anchorageak.gov>; Cross, Kevin <kevin.cross@anchorageak.gov>; Quinn-Davidson, Austin <austin.quinn-davidson@anchorageak.gov>; Perez-Verdia, Kameron <kameron.perez-verdia@anchorageak.gov>; Rivera, Felix <felix.rivera@anchorageak.gov>; Zaletel, Meg <meg.zaletel@anchorageak.gov>; Sweet, Joey <Joey.sweet@anchorageak.gov>; Petersen, Pete <pete.petersen@anchorageak.gov>; LaFrance, Suzanne <suzanne.lafrance@anchorageak.gov>; Sulte, Randy <randy.sulte@anchorageak.gov>; alexandria.yelverton@gray.tv; Williams, T <twilliams@adn.com>; wearly@alaskapublic.org
Subject: Simple Public Records Request re: Request(s) for Arbitration about Body Worn Camera Policy

[EXTERNAL EMAIL]

To Whom It May Concern:

Attached please find a public records request. Please confirm receipt. As you will note, I seek only two very, very basic documents:

(1) "All requests for arbitration that the Municipality of Anchorage has received from the Anchorage Police Department Employees Association concerning the Anchorage Police Department's body worn camera policy."

(2) "All requests for arbitration that the Municipality of Anchorage has sent to the Anchorage Police Department Employees Association concerning the Anchorage Police Department's body worn camera policy."

Please note that I am well aware that the Anchorage Municipal Code, under 3.90.040H, exempts documents from disclosure if they are "Information which municipal governments engaged in collective bargaining regularly consider to be privileged or confidential for purposes of successful collective bargaining." And I am well aware that, in the past, the municipality has unfortunately relied on an expansive reading of this exemption in order to hide arbitration documents from the public.

However, please note that this exemption does not apply to my very basic requests. Not even close. For one, this arbitration is happening *pursuant to* a collective bargaining agreement, but is not collective bargaining *in itself*. Regardless, there is also no way that these documents -- i.e. a simple request for arbitration -- could be privileged or confidential for the purpose of successful collective bargaining. That would make zero sense. No court will agree with that.

Public access to such basic documents should be foundational to a good and transparent government. As such, I hope to promptly receive a full and fair response to my request. And I hope to secure this information without needless litigation. Indeed, I think that it would be a great shame to waste municipal resources (i.e. my own tax dollars), and to waste court system resources, litigating about a very basic public records request that should be fulfilled as a routine matter.

Thank you for your time. I am cc'ing the assembly so that they are advised of this simple request, as well as some of the reporters who have done the important work of trying to keep the public informed about body camera delays in Anchorage.

Best,

Nick Feronti



February 6, 2023

Via Email: Michael.kerle@anchorageak.gov

Chief of Police Michael Kerle
Anchorage Police Department
716 W. 4th Ave.
Anchorage, AK 99501

Re: PETITION FOR REGULATION, AMC 3.40.035

A Regulation Providing for the Automatic Release of Anchorage Police Department Body-Worn Camera Critical Incident Video Records

Dear Chief Kerle,

Pursuant to Anchorage Municipal Code (AMC) 3.40.035,¹ and the petition clause of the Alaska Constitution,² the undersigned respectfully petition the Anchorage Police Department (APD) for the issuance of a regulation providing for the automatic public release of body-worn camera critical incident video records.

The petitioners, Alaska Black Caucus, NAACP Anchorage Branch, and the Northern Justice Project are organizations devoted to community-based advocacy and civil rights in Alaska. The petitioners and their members have been involved in the years-long process to adopt and implement body-worn cameras as a policy and practice of the APD.

¹ Under AMC 3.40.035, “Any person may petition an agency for issuance of a regulation.”

² Alaska Const., art. I, § 6 (“The right of the people to assemble, and to petition the government shall never be abridged.”).

Body-worn cameras are an important step toward increasing transparency and accountability within the APD—the state’s largest law enforcement agency.³ On April 6, 2021, Municipality of Anchorage voters approved Proposition 4, authorizing a special property tax to fund the APD’s purchase of body-worn cameras and related technology. Since then, the APD has developed and released several versions of its proposed “Body Worn Cameras” policy. Throughout that process, the APD has solicited public comments and held public listening sessions regarding the draft policies. The final policy was adopted on March 30, 2022, and is now included in the APD’s Policies and Procedures Manual.⁴

Importantly, despite repeated demands from members of the public, including the petitioners, the APD’s final policy failed to incorporate an essential provision requiring the automatic public release of critical incident body-worn camera footage.⁵ Under the APD’s final policy, body-worn camera “footage *may* be released in accordance with Anchorage Municipal Code 3.90 (Access to Public Records).”⁶ However, as discussed below, the APD’s reliance on AMC 3.90 as the sole mechanism for releasing critical incident videos is woefully inadequate and undermines the most important goal of body-worn cameras—to enhance the public’s trust in the APD through increased transparency and accountability.⁷ As the Anchorage Daily News correctly pointed out, “[body-worn] cameras can be a meaningful tool in helping police do their jobs well and maintaining trust between officers and the public—but only if the public has faith that they can see what the cameras capture.”⁸

³ See www.joinapd.org.

⁴ See APD Operational Procedure 3.10.110.

⁵ See, e.g., Memorandum from Michael Garvey, ACLU of Alaska, to Anchorage Police Department, Re: Anchorage Police Department Body-worn Camera Policy (Jul. 6, 2021) (“APD’s policy must ensure the timely public release of body camera footage in showing police use of force or alleged police misconduct.”).

⁶ APD Operational Procedure 3.10.110(E)(3) (emphasis added).

⁷ See APD Operational Procedure 3.10.110(I)(A) (“The Anchorage Police Department has adopted the use of [body-worn cameras] to accomplish the following objectives . . . (6) To enhance the public’s trust by preserving factual representations of officer-citizen interactions in the form of video and audio recordings.”).

⁸ See Editorial, [*Is the Anchorage Police Department Backing Away From Body Camera Transparency?*](#) Anchorage Daily News (Mar. 12, 2022).

Therefore, the petitioners request that the APD adopt a regulation pursuant to AMC 3.40.010(B) providing that all critical incident body-worn camera videos shall be made public within 10 days of the incident. The text of the proposed regulation is attached to this petition.⁹ The proposed regulation provides a definition of “critical incident,” which includes any event in which the use of force by an APD officer results in hospitalization or death. That definition was intended to ensure that video footage showing police using force against members of the public is available for the public to review in a timely and predictable manner.¹⁰ There is an overwhelming public interest in publishing those particular video records. The public has a compelling need to know whether the APD is treating everyone appropriately and with dignity.

The proposed regulation also provides two exceptions to the requirement that all critical incident videos be released within 10 days. First, the proposed regulation recognizes that redacting or blurring portions of critical incident footage is necessary in certain circumstances, including when the footage would infringe on individual privacy rights. Second, the proposed regulation authorizes the chief of police to delay the public release of certain critical incident video records for up to 30 days if it is in the public interest and necessary for specific law enforcement purposes.

The petitioners strongly urge the APD to adopt the proposed regulation and to implement the final body-worn cameras as a policy and practice of the APD without further delays. The petitioners request a public hearing on the proposed regulation pursuant to AMC 3.40.035.

I. Reasons for the Proposed Regulation

Body-worn cameras are an important way for the APD to foster transparency and accountability. But the cameras alone cannot achieve that goal if the footage is not available for public review. The proposed regulation should be adopted as a municipal regulation

⁹ See AMC 3.40.035 (“The petition shall state clearly the substance or nature of the regulation, amendment or repeal requested.”).

¹⁰ See Memorandum from Michael Garvey, ACLU of Alaska, to Crystal Kennedy and Kameron Perez-Verdia, Co-Chairs, Public Safety Committee, Anchorage Assembly, Re: Concerns With Updated Draft of Anchorage Police Department Body-Worn Camera Policy (Nov. 2, 2021) (noting the policy lacked a “commitment to release video footage when an officer kills, shoots, or uses excessive force on a member of the community”).

because the public expects critical incident video footage to be disclosed and the current provision for public release of body-worn camera records under AMC 3.90 is inadequate.

First, the proposed regulation is consistent with the public's expectations for transparency and accountability when voters opted for a tax increase to fund body-worn cameras.¹¹ The APD's decision to implement body-worn cameras was a direct response to demands from the public, advocacy groups, and the Anchorage Assembly for increased transparency and accountability from the APD in the wake of George Floyd's murder by Minneapolis police officers. Anchorage is not immune from the systemic issues of social injustice and implicit bias in policing that tragic incidents throughout the country have highlighted recently. According to data disclosed by the APD in 2020, 36% of officer-involved shootings in Anchorage since 2010 involved Alaska Natives and black people—a disproportionate rate to those groups' share of the Anchorage population (21%).¹² The APD is overwhelmingly white (83% of officers compared to 63% of the population) and Anchorage officials have known for nearly a decade that APD shootings have disproportionately affected black people, Alaska Natives, and other minorities;¹³ however, there have been no concrete policy changes from the APD to address that clear problem.

In June 2020, amid community protests that were part of a nationwide movement to address use of force issues and complaints against the police, the mayor and then-Chief Justin Doll held a public forum in which they both expressed support for body-worn cameras. Chief Doll explained that the APD was working on a body-worn cameras proposal to submit to the Anchorage Assembly.¹⁴ The following spring, Anchorage voters authorized funding for the APD to purchase body-worn cameras.

¹¹ See Editorial, [Anchorage Deserves Action on Police Body Cameras](#), Anchorage Daily News (Aug. 27, 2022).

¹² Nat Herz, [Have Questions About Police Accountability and Use of Force in Alaska? We've Got Some Answers](#), Alaska Public Media (June 16, 2020).

¹³ See *id.*; Troy C. Payne, [Officer-Involved Shootings in Anchorage 1993-2013](#), Prepared for the Anchorage Police Department, University of Alaska Anchorage, Justice Center (Dec. 11, 2013); Troy C. Payne et al., [Alaska Police Officer Use of Deadly Force: Data Quality Assessment and Casefile Review 2010-2020](#), University of Alaska Anchorage, Justice Center (2021).

¹⁴ See Aubrey Wieber, [Anchorage Mayor, APD Leaders Call for Open Dialogue on Local Police Practices Amid National Cry for Reform](#), Anchorage Daily News (June 10, 2020).

The public and the APD understood that cultures of secrecy within police departments lead to distrust and hinder the police’s ability to protect the community. Body-worn cameras are an important way of providing insight into how the APD’s interactions with the public can be improved and ensuring that inappropriate and abusive police behavior is properly addressed. Studies demonstrate that police wearing body-worn cameras had 87.5% fewer incidents of use of force and 59% fewer complaints than police without body-worn cameras.¹⁵ But body-worn cameras are only effective if the public has confidence that police conduct shown in the videos will be disclosed with consequences for improper police actions.

Automatic release provisions for critical incident videos are considered a best practice for law enforcement agencies and are necessary for providing the accountability and transparency that Anchorage voters expect. At an August 18, 2021 Public Safety Advisory Committee meeting, then-Chief Ken McCoy stated that it was his preference to include an automatic release provision for critical incidents.¹⁶ Chief McCoy acknowledged that the APD had worked with the U.S. Department of Justice (DOJ) specifically to review and improve the APD’s draft policy. In fact, in May 2021, the DOJ provided suggestions to improve the APD’s draft policy, including sending the APD examples of critical incident release policies that have been adopted by the Austin, Atlanta, Baltimore, Baton Rouge, Los Angeles, New Orleans, New York, and San Francisco police departments.

The APD’s decision to ignore the DOJ’s recommendation for a critical incident release provision is indefensible. Of the nearly half of all police departments in the country that have body-worn cameras, many have followed the DOJ’s guidance and adopted automatic release provisions for critical incidents.¹⁷ Two notable examples are Salt Lake City and New Orleans—cities with comparable population sizes to Anchorage. Those cities and others recognize that the “community has an undeniable interest in being informed, in

¹⁵ President’s Task Force on 21st Century Policing at 32 (2015) (available at https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

¹⁶ See also Editorial, [*Is the Anchorage Police Department Backing Away From Body Camera Transparency?*](#) Anchorage Daily News (Mar. 12, 2022).

¹⁷ See, e.g., New Orleans Police Department, [Public Release of Critical Incident Records](#) (“[I]t is the policy of the City and the NOPD to facilitate the prompt release of audio and video recordings of critical incidents involving the NOPD so long as the release is consistent with the legitimate needs of ongoing law enforcement operations.”); see also Cal. Govt. Code § 6254(f) (requiring disclosure of critical incident videos from all police departments in California).

a timely fashion and based on the most accurate information available, about incidents where officers use lethal force, or where the use of force by the police results in the serious bodily injury of another.”¹⁸ There is no reason why the increased transparency and accountability that results from automatically releasing critical incident videos should be considered any less important in Anchorage.

Second, the proposed regulation is the only way to ensure the timely, efficient, and predictable release of critical incident video records. The APD’s final policy relies on Anchorage’s existing public records ordinance, AMC 3.90, which is completely inadequate for enabling the public to review the most important footage that body-worn cameras capture. In contrast, the proposed regulation will make releasing critical incident video footage automatic, thus increasing the public’s trust in the APD.

In Anchorage, public records requests are governed by AMC 3.90 and the Alaska Public Records Act, AS 40.25.100 *et seq.* Although the Alaska Public Records Act includes a specific 10-day timeline for state agencies to respond to requests,¹⁹ and does not allow agencies to charge fees for employee time spent reviewing records,²⁰ the Municipality treats all public records requests under AMC 3.90. Anchorage’s ordinance has no time limits for responses and authorizes fees for searching, reviewing, and redacting public records before their release.²¹ Thus, in practice, the Municipality’s responses to public

¹⁸ Austin (Texas) Police Department, General Order 117, Critical Incident – Public Release (available at https://www.austintexas.gov/sites/default/files/files/Police/General_Orders.pdf).

¹⁹ 2 AAC 96.325.

²⁰ *Fuller v. City of Homer*, 113 P.3d 659, 666 (Alaska 2005).

²¹ See AMC 3.90.050; Anchorage Municipal Regulation 3.90.002(T) (establishing fees of \$100 per hour for “research, review, redact” APD video recordings); Anchorage Municipal Regulation 3.90.005 (“In addition to the fee for copying a record, a municipal agency may charge a fee for employee time to search for, retrieve, and redact as necessary, the record at a rate not exceeding \$40 per hour.”). Unlike the Alaska Public Records Act, the Municipality does not honor public interest fee waivers for records that “are likely to contribute significantly to the public’s understanding of the operations or activities” of the government. 2 AAC 96.370(a).

records requests have become characterized by lengthy delays and exorbitant costs, often in violation of state law.²²

In particular, public records requests to the APD have become totally impractical. Records requests to the APD may take up to a year to receive a response and cost the requesters thousands of dollars in illegal fees.²³ Even though the APD has filled vacant positions in its records department, the APD treats all requests on a first-come, first-served basis and does not differentiate among different types of public records requests. Thus, records requests from the media, advocacy groups, or individuals seeking important video records of potential police abuses must wait in the same queue as every routine request for a police report submitted by an insurance company.

Moreover, once a records request for video records is processed, the APD has indicated that it may take multiple levels of internal review, including up to the Chief of Police, before the videos would be released. At each stage of that review, the requester is charged hourly fees.²⁴ The APD's intentionally difficult process for responding to records requests—combined with long wait times and the APD's demands for advance payment of excessive fees—is designed to discourage access to public records. That process is incompatible with the goals of transparency and accountability and is unacceptable for ensuring that the public can view critical incident body-worn camera videos, especially when the public has an immediate and overwhelming interest in reviewing the videos.²⁵

²² See *Anchorage Daily News v. Municipality of Anchorage*, No. 3AN-85-01254CI (Alaska Super. Ct. May 1, 1985) (“[T]he Municipality may not delay or otherwise manipulate the release of public records, the disclosure of which is required under [AS 40.25.100 *et seq.*] or AMC 3.90.110 *et seq.*, for political or other extralegal purposes of the Municipal administration, public officials, or third parties.”).

²³ See, e.g., Daniella Rivera, [From \\$6,400 to about \\$11: APD's Price Tag on Public Records](#), Alaska's News Source (May 25, 2021) (“An effort to fact check statements the Anchorage Police Department posted on Facebook in January has revealed the department has been charging what multiple attorneys classify as unlawful fees for public records.”).

²⁴ *But see Fuller*, 113 P.3d at 662 (holding that municipalities may *not* charge fees for privilege reviews for records requests under the Alaska Public Records Act).

²⁵ See *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584, 591 (Alaska 1990) (recognizing the public has a “fundamental” right to access public records).

A more troubling problem with relying on the APD’s current implementation of public records laws is the Municipality’s position that certain APD video records would not be released at all pursuant to AMC 3.90. In a federal lawsuit involving the APD shooting of Bishar Hassan, a young black man, the Municipality explained that the APD in-car video of the shooting would not have been released completely pursuant to AMC 3.90. “While the video could be requested in a public records request, the Municipality would have redacted the graphic portions of the video in order to protect [the victim’s] and his family’s privacy.”²⁶

Importantly, the Municipality’s reliance on alleged privacy concerns to justify redactions—even when the victim or victim’s family requests the video’s release—demonstrates that the APD cannot be trusted to ensure the full release of critical incident body-worn camera videos under AMC 3.90 alone. Although redacting certain portions of critical incident videos may sometimes be appropriate—as the proposed regulation recognizes—the Municipality’s position in Hassan’s case indicates that the APD would continue to hide the most important parts of critical incident videos under any circumstances. For example, when the video of Hassan’s shooting was eventually released by his family, it showed that APD officers fired at Hassan immediately upon making contact with him and failed to provide first aid to Hassan for at least two minutes after the shooting.²⁷ Because critical incident videos often depict embarrassing or inappropriate conduct by police, relying on AMC 3.90 under the Municipality’s current implementation of that ordinance would undermine the public’s ability to completely and accurately comprehend the events captured by body-worn cameras.

Anchorage voters clearly expected that body-worn cameras worn by the APD would increase transparency and accountability, and burgeon public trust in the APD. That can only happen if the public is able to view critical incident videos. Unfortunately, the current public records laws, as implemented by the APD, do not support that goal. The proposed regulation is necessary to ensure that all critical incident videos are automatically released to the fullest extent possible.

²⁶ Motion Restricting Further Pretrial Publicity at 2 n.1, *The Estate of Bishar Ali Hassan v. Municipality of Anchorage*, No. 3:21-cv-00076-SLG (D. Alaska) (DE-13, Feb. 11, 2022).

²⁷ Deon J. Hampton, [Dash Camera Video Shows Anchorage Police Officers Fatally Shooting Man](#), NBC News (Feb. 10, 2022).

II. There Are No Legal Reasons Why the Proposed Regulation Cannot be Adopted by the APD.

Former Chief Ken McCoy emphasized that his preference was to include an automatic release provision for all critical incident videos. Despite that intended direction, municipal officials and APD representatives have raised potential legal issues that they claim weigh against including an automatic release provision in the final policy. But none of those legal issues applies to the proposed regulation.

A. The Proposed Regulation Is Authorized by AMC 3.40.035.

During the draft policy's development, APD officials questioned whether a requirement to automatically release critical incident videos was appropriate for inclusion in the APD's policies and procedures, which apply only to internal APD operations.²⁸ Regardless of whether an automatic release provision could be included in the APD's policies and procedures, it is an appropriate subject for a municipal regulation and the APD has the authority to adopt the proposed regulation.

Under AMC 3.40, municipal departments may adopt regulations "to implement, interpret or make specific the law enforced or administered."²⁹ A "regulation" means a "rule, regulation, or standard of general applicability" adopted by a municipal agency. Although policies or standards of conduct governing only the internal management of an agency are not regulations, the proposed regulation applies to the APD's interactions with the public and interprets how the APD will apply AMC 3.90 and other laws. Thus, there are no procedural reasons why the proposed regulation cannot be adopted by the APD.

All proposed regulations must be approved by the Assembly before they become effective.³⁰ Alternatively, the Assembly may simply decide to adopt the proposed regulation as a municipal ordinance, as it has done for other proposed regulations.

²⁸ See APD Operational Procedure 1.01.005-.015.

²⁹ AMC 3.40.010(B).

³⁰ AMC 3.40.040.

B. The Privacy Clause Does Not Prohibit the APD From Adopting the Proposed Regulation.

Finally, the APD’s primary reason for not including an automatic release provision for critical incident videos was based on the Municipal Attorney’s flawed interpretation of the Alaska Constitution. According to the Municipal Attorney’s office, “individual privacy rights in relation to the release of government records” prohibit the APD from automatically releasing critical incident videos.³¹ But that interpretation of Alaska’s privacy clause is simply wrong. There is no federal or Alaska case law that would prevent the APD from adopting the proposed regulation.

The privacy clause in Article I, section 22 of the Alaska Constitution provides broad privacy protections against government intrusion, especially in private homes,³² but the right to privacy is not absolute.³³ Individual privacy interests must be balanced against the public’s interest in disclosure.³⁴ “When a matter does affect the public, directly or indirectly, it loses its wholly private character, and can be made to yield when an appropriate public need is demonstrated.”³⁵

The Alaska Supreme Court applies a three-part test to determine whether the disclosure of public records violates the right to privacy:

- (1) does the party seeking to come within the protection of the right to [privacy] have a legitimate expectation that the materials or information will not be disclosed?

³¹ Wesley Early, [As APD Continues to Draft Policy for Body-worn Cameras, Legal Hiccups Over Access to Footage Have Advocates Concerned](#), Alaska Public Media (Mar. 4, 2022) (quoting Anchorage Department of Law officials).

³² *Ravin v. State*, 537 P.2d 494, 504 (Alaska 1975).

³³ *State v. Erickson*, 574 P.2d 1, 21 (Alaska 1978).

³⁴ *See State v. Porche*, 485 P.3d 1010, 1016 (Alaska 2021).

³⁵ *Int’l Ass’n of Fire Fighters, Local 1264 v. Municipality of Anchorage*, 973 P.2d 1132, 1134 (Alaska 1999) (quoting *Ravin*, 537 P.2d at 504)).

- (2) is disclosure nonetheless required to serve a compelling state interest?
- (3) if so, will the necessary disclosure occur in a manner which is least intrusive with respect to the right to [privacy]?^[36]

Thus, even if the subjects of APD body-worn camera videos can demonstrate that they had a reasonable expectation of privacy, the public interest in disclosure of the videos may overcome that privacy right. The Court has recognized that with respect to police records there “is perhaps no more compelling justification for public access” than “preserving democratic values and fostering the public’s trust in those charged with enforcing the law.”³⁷ The case law in Alaska weighs heavily in favor of releasing critical incident body-camera videos,³⁸ and in fact, an Alaska court has already rejected an argument that the privacy clause prohibits police body-worn camera video disclosure.

In *Kodiak Public Broadcasting Corporation v. City of Kodiak*, the superior court ordered the release of body-worn camera videos showing police using excessive force.³⁹ In that case, the city argued unsuccessfully that disclosing the videos would violate the right to privacy of witnesses, the suspect, and even the police officers depicted in the footage. But according to the court, none of the video subjects could assert a reasonable expectation of privacy. Criminal suspects and witnesses who knowingly engage with police officers generally have no reasonable expectation of privacy in their conversations.⁴⁰ And public officials, like police officers, “certainly must recognize that their public lives,

³⁶ *Id.* (quoting *Alaska Wildlife Alliance v. Rue*, 948 P.2d 976, 980 (Alaska 1980)).

³⁷ *Jones v. Jennings*, 788 P.2d 732, 738 (Alaska 1990).

³⁸ *See id.* at 735-36 (“The cornerstone of a democracy is the ability of its people to question, investigate and monitor the government. . . . True to these principles, the Anchorage Assembly carefully crafted the public access ordinances to guarantee complete access with only a minor limitation.” (citing AMC 3.90.010)).

³⁹ No. 3KO-15-0277CI, 2015 WL 13105977 (Alaska Super. Ct. Dec. 22, 2015).

⁴⁰ *Id.* at * 13-14 (citing *State v. Murtagh*, 169 P.3d 602, 605 (Alaska 2007) (Fabe, C.J., concurring in part and dissenting in part)); *see also City & Borough of Juneau v. Quinto*, 684 P.2d 127, 129 (Alaska 1984) (concluding that citizens have no reasonable expectation of privacy when dealing with uniformed police officers in the course of their duties).

carried out in the service of the public’s safety and recorded by video cameras, will likewise be subject to scrutiny.”⁴¹ Thus, in light of the *Kodiak Public Broadcasting Corporation* court’s analysis, there is simply no basis to conclude that a regulation requiring critical incident videos to be released would constitute a *per se* violation of the privacy clause.

Here, the proposed regulation strikes a careful balance between protecting individual privacy rights and ensuring that the public has access to important information. The proposed regulation would require the APD to automatically release all critical incident video records, but it provides an exception “to protect the reasonable expectations of privacy of victims, witnesses, confidential sources, or other persons.” The chief of police must make disclosure determinations on a case-by-case basis, including whether to redact or blur portions of videos in certain special circumstances that presumptively implicate privacy rights, such as footage depicting juveniles or domestic violence victims. By establishing a general rule in favor of disclosure but allowing the APD to make case-by-case determinations to protect privacy rights, the proposed ordinance will ensure that the public has access to important public information in a timely and transparent manner while respecting the constitutional protections embodied in Alaska’s privacy clause.

* * *

For the foregoing reasons, the petitioners respectfully request that the APD adopt the proposed regulation pursuant to AMC 3.40.035. A public hearing on the proposed regulation is requested. Please direct any questions and the required response within 30 days to Andy Erickson, andy@lbblawyers.com.

⁴¹ *Kodiak Pub. Broad. Corp.*, No. 3KO-15-0277CI at * 10.

Respectfully submitted this 6th day of February 2023.

ALASKA BLACK CAUCUS

NAACP ANCHORAGE BRANCH

By: Celeste Hope Jordan

By: [Signature]

NORTHERN JUSTICE PROJECT

By: [Signature]

cc: Mayor Dave Bronson, dave.bronson@anchorageak.gov
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Encl.: Regulation 3.XX – Public Release of Anchorage Police Department Critical Incident Video Records

Regulation 3.XX – Public Release of Anchorage Police Department Critical Incident Video Records.

3.XX.001 - Policy.

Public release of video footage depicting police officers using force enhances transparency and promotes accountability and public trust in police departments. Therefore, it is the policy of the Anchorage Police Department to publicly release all video records of critical incidents in a timely manner and to the greatest extent possible while balancing individual privacy concerns and the need to comply with applicable federal, state, and municipal laws.

3.XX.005 - Definitions.

- A. *Critical incident* means an event in which
1. an officer uses force resulting in hospitalization or death;
 2. an officer discharges a firearm at a person or an animal;
 3. a police vehicle pursuit results in hospitalization or death; or
 4. a person dies while in the custody of the Anchorage Police Department.
- B. *Force* means any physical strike or instrumental contact with a person; any intentional attempted physical strike or instrumental contact that does not take effect; and any significant physical contact that restricts the movement of a person. “Force” includes the discharge of a firearm, pointing a firearm at a person, use of chemical spray, vascular restraints, hard empty hand control techniques, use of an electronic control weapon, taking of a subject to the ground, or the deployment of a canine.
- C. *Video records* means video and audio recordings captured by Anchorage Police Department body-worn cameras, in-car video/audio systems, or other cameras, including drone cameras.

3.XX.010 – Automatic Public Release of Critical Incident Video Records.

- A. Within 10 days of a critical incident, the Anchorage Police Department will release all video records of the critical incident to the public. The public release will include all relevant video records of the actions and events leading up to and including the critical incident. The public release may be accompanied by additional information to provide context, including relevant portions of 911 calls, computer-aided dispatch notes, or dispatch recordings, if the chief of police determines that such additional information is necessary and in the public interest.
- B. The public release of critical incident video records may occur through news conference, media availability, or direct distribution to news outlets or journalists. In addition, the Anchorage Police Department will post and maintain on its website all critical incident video records for at least one (1) year after the public release.
- C. The Anchorage Police Department will make reasonable efforts to provide notification prior to the public release of critical incident video records to the following:
 - 1. any private citizen(s) who is the subject(s) of the critical incident, or next of kin if the subject(s) is deceased, or the parent/guardian if the subject(s) is a juvenile;
 - 2. legal counsel representing the subject(s) of the critical incident;
 - 3. Anchorage Police Department employees who are identifiable on the critical incident video records;
 - 4. the municipal attorney;
 - 5. the district attorney;
 - 6. other law enforcement agencies involved in the critical incident or investigation of the critical incident.

3.XX.015 – Exceptions.

A. Redactions.

1. Portions of critical incident video records may be redacted or blurred prior to public release if the chief of police determines, through a written decision explaining the reasons, that it is in the public interest and necessary to protect the reasonable expectations of privacy of victims, witnesses, confidential sources, or other persons.
2. The chief of police will give due consideration to privacy rights in special circumstances and will presumptively redact or blur portions of critical incident video records depicting:
 - a. the location or interior of residences or other places where there is a reasonable expectation of privacy;
 - b. intimate images;
 - c. images of a person receiving medical attention;
 - d. images of a person who is seriously injured or deceased;
 - e. images of a juvenile; or
 - f. images of a victim of a sex crime or domestic violence.
3. In all cases, the chief of police will ensure that any redaction or blurring does not interfere with the viewer's ability to completely and accurately comprehend the events captured in the critical incident video records. Video records may not be otherwise edited or altered prior to the public release.

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B. Delayed Public Release.

1. Notwithstanding 3.XX.010(A), the chief of police may delay the public release of certain critical incident video records for up to 30 days beyond the 10-day automatic public release period if it is in the public interest and necessary to
 - a. maintain public order;
 - b. ensure the safety and security of all persons involved in the critical incident; or
 - c. prevent the destruction or loss of evidence required for the investigation of the critical incident, but only if the public release of the critical incident video records would substantially interfere with the investigation.
2. A decision by the chief of police to delay the public release of certain critical incident video records under this subsection shall be issued in writing and explain the reasons for the decision.
3. In no case shall the public release of critical incident video records be delayed for longer than 40 days after the critical incident, unless required by court order.

C. The exceptions to automatic public release of critical incident video records contained in this section (redaction and delayed public release) shall be construed narrowly consistent with the presumption in AMC 3.90.010 in favor of full disclosure of all public records.