



# Steamboat Springs Police Services

September 10, 2015

To Matt Stensland,

As the official custodian for the City of Steamboat Springs Police Department for criminal records under the CCJRA, the following serves to respond to your request for all reports prepared by investigator Katherine Nuanes.<sup>1</sup> As you are aware, the City has received six reports from Ms. Nuanes related to her police department investigations. I have already responded with my analysis regarding Reports No. 1 and 2 and the City has already released some information related to Report No. 6.

The CCJRA, as opposed to CORA, is what governs criminal justice records. Reports No. 3, 4, 5 and 6 were made for, and are maintained and kept by, the City's Police Department. The reports are the findings of Police Department internal affairs investigations, which were conducted in accordance with the applicable Police Department Policies. For these and other reasons I believe that the records are properly classified as criminal justice records. Under the CCJRA, the custodian of records for the criminal justice agency is tasked with conducting a balancing test related to records requests. As the interim Chief of Police, I am the Police Department's custodian of records and as such, I have been designated to review in detail each of these reports and conducted a balancing test, as described below. I have fulfilled my legislative responsibility.

As the current custodian of the criminal justice records for the Steamboat Springs Police Department, I have conducted the balancing test for Reports No. 3, 4, 5 and 6 as set out in the CCJRA and considered the following:

1. The privacy interest of the individuals who may be impacted by a decision to allow inspection;
2. The agency's interest in keeping confidential information confidential;
3. The agency's interest in pursuing ongoing investigations without compromising them;
4. The public purpose served by inspection; and,
5. Any other consideration relevant to the particular request.

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<sup>1</sup> Your records request was limited to Reports. However, I nonetheless have reviewed the documents referenced and/or related to the investigative reports and find that they are so intertwined with the reports and its content that, even if requested, the same balancing test set forth below would apply and govern.

In looking at each of these interests and each of the reports individually I found the following:

As to Report No. 3, there are a variety of privacy interests associated both with witnesses and the individual investigated, which would be negatively impacted by a decision to allow inspection of Report No. 3. Each of the numerous witnesses who were interviewed as part of this investigation were given *Garrity* advisements and thus their participation in the investigation was compelled. They were also advised by the investigator that the information they provided would be held in strict confidence. I have also been personally in contact with multiple individuals who were witnesses and have been advised that if the confidential, personnel information they provided were to become public, it would violate what they believe are their rights, as well as cause substantial harm to the operation and functioning of the Police Department. Violating that confidentiality may also affect the comraderies and trust within the Department, which is so important in law enforcement. I have also been advised that the subject of this report's investigation has claimed privacy and liberty interest rights as well associated with it. As a result, the subject, as well as witnesses who were interviewed as part of this investigation have claimed privacy interests and have indicated an adverse action or result if a decision to allow inspection were to occur. They have also specifically indicated that they had an expectation of privacy with respect to the information they provided and that they provided honest and complete information in response to the questions posed because, at least in part, they believed their privacy rights would be upheld and the confidentiality of the investigation maintained.

As a result, it is clear to me that factor 1 of the balancing test weighs in favor of not disclosing this report. Further, I do not believe, based upon my own review of the report, that there is a way to provide any substantive information, while maintaining the confidentiality and privacy expectations of the witness and the subject of the investigation. The reports are written in such a manner that specific information is provided as to each witness' statements and information.

As to factors 2 and 3, I believe they also weigh in favor of not disclosing Report No. 3. In order for there to be fair impartial investigations within the police department and for witnesses to provide complete and truthful information, confidentiality is a key component. If each individual knew that their information related to personnel matters would not be kept confidential, they may not be as forthcoming in investigations, which would hamper the City's ability to fully investigate police and related matters. Additionally, I am still in the process of evaluating the findings in Report No. 3 and determining whether additional action by the Police Department is warranted and I believe producing a copy of the report prior to all matters being addressed would compromise the integrity of the actions to be taken in the future.

As to factor 5, I would note that the subject of the investigation has already chosen to leave his employment and, therefore, is no longer an employee of the Steamboat Springs Police Department and thus public concern regarding ongoing impropriety by that individual no longer exists.

As for factors which could weigh in favor of disclosure, other than some vague assertions in local media stories that the newspaper has issued, I have not been apprised of a specific public interest or public need for the disclosure of Report No. 3 by the requesting party. In fact, the only other information I have received from the newspaper supporting its request is a letter that was sent to the City Attorney by legal counsel for the paper in July, 2015 and some articles discussing an alleged "72 hour rule". The letter did not provide any legitimate need or explanation as to a public need for disclosure of the report and instead simply argued over

whether the record was a criminal justice record. By my review of the CCJRA, I believe the record is properly classified as a criminal justice record and would note that even if it were not, a highly confidential personnel investigation, which has not been shared with third parties and has not even been shared with individuals who were parties to the investigation, does not provide a legitimate basis for disclosure under the Colorado Open Records Act and disclosure would be contrary to the public interest.

While I have not been provided with information regarding a legitimate public need for disclosure, as part of my balancing analysis I nonetheless considered the general premise that much of government operation should be public and, therefore, there could be argued some public interest in any government action. I also considered some public comments I had read about taxpayer dollars being spent on the investigations. Although I believe those comments raise a different issue, which is whether the costs of the investigation, if it were requested, should be disclosed, this is not the issue currently before me, but rather an issue which could be addressed without disclosing the confidential personnel matters contained in the reports.

In weighing and balancing the various interests and carefully considering all of the pertinent information, I believe the balance far weighs in favor of maintaining confidentiality of Report No. 3. I have further determined that there is no viable way to redact the report and referenced records so as to maintain the privacy, confidentiality and other issues noted above, while providing any substance to the media.

As to Report No. 4, while the subject of the investigation is a different individual than in Report No. 3, the remainder of the facts and analysis set forth above in the balancing analysis conducted with respect to Report No. 3, directly apply and are part of my analysis. Instead of re-typing each of the items and analysis again, I am incorporating herein. As a result, for the same reasons as set forth above, I determined that the balance weighs far in favor of maintaining confidentiality as to Report No. 4, and that there is no viable way to provide substantive information while maintaining the confidentiality and privacy rights of those involved.

As to Report No. 5, once again, the subjects of the investigation are different. Also of difference, the allegations are far more benign in this report than in Reports No. 3 and 4. Another difference is that the subjects are still employed with the Department. However, the remainder of the balancing factors analyzed above as to Report No. 3 apply and once again instead of re-typing them all, I am incorporating them herein. Further, as to the subjects in this report, I have not yet made decisions regarding whether to impose discipline as to one of the individuals and, if so, what discipline and, therefore, the investigation and related disciplinary process is by no means complete and that is another factor that weighs against disclosure. The disciplinary process would be hampered and negatively impacted if the results of the investigation were disclosed, especially before the process was complete. As a result, for the same reasons as set forth above, I have determined that the balance weighs far in favor of maintaining confidentiality as to Report No. 5, and that there is no viable way to provide substantive information while maintaining the confidentiality and privacy rights of those involved.

As to Report No. 6, as the newspaper may recall, a community summary was released on or about July 22, 2015 and summary report shortly thereafter, both of which contained a summary of recommendations contained in this report. Since that time there has been no follow up requests from the newspaper regarding this particular report and so it is unclear whether the newspaper is wanting an analysis and response about it. However, to ensure a full review and analysis occurred, I have nonetheless reviewed this report. The remainder of the content of

Report No. 6 contains information regarding some of the allegations raised in other of the confidential, personnel internal affairs investigative reports and provides recommendations from the investigator, which I am in the process of considering, but have not yet been able to make final decisions about nor implement. In looking at the interests associated with the yet unreleased portions of the report, again utilizing all of the factors set forth above and the analysis described above and incorporated herein, there is specific information regarding witnesses statements and information regarding the subjects of the other investigations. As a result, there are privacy interests implicated both as to witnesses and subjects. Those interviewed were subject to Garrity advisements and confidentiality assurances, as noted above, and I have been advised that those involved had a reasonable expectation of privacy with respect to the information they provided, and as to their reasons why disclosure would negatively affect operation and function of the department, as well as morale. As a result, it is clear to me that factor 1 of the balancing test weighs in favor of not disclosing the remaining portions of this report.

As to factors 2 and 3, for many of the same reasons noted above, I believe they also weigh in favor of not disclosing the remaining portions of Report No. 6. Specifically, for there to be fair impartial investigations within the police department and for witnesses to provide complete and truthful information, confidentiality is a key component. If each individual knew that their information related to personnel matters would not be kept confidential, they may not be as forthcoming in investigations, which would hamper the City's ability to fully investigate personnel matters. Similarly, I am still in the process of evaluating the findings in Report No. 6 and determining how to proceed and disclosure would compromise the integrity of at least some of the actions to be taken in the future.

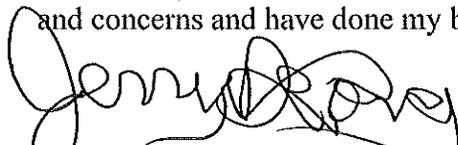
As to factor 5, some of the subjects of the investigation have already chosen to leave the City.

As for factors, which could weigh in favor of disclosure, I note that the same reasons and statements set forth above apply and are incorporated herein.

As for possible disclosure with redactions, based upon my own review of the report, the information that could be provided, such as the recommendations, without compromising the issues noted above, have already been provided through the community summary and summary report and made public. I see no way to provide further substantive information, while maintaining the confidentiality and privacy expectations of the witness and the subjects of the investigation.

As a result, in weighing and balancing the various interests and carefully considering all of the pertinent information and exercising the discretion afforded to me by the CCJRA, I believe the balance weighs in favor of maintaining confidentiality of Report No. 6.

I recognize that the newspaper may not agree with or be happy about these decisions. However, I have a duty to uphold, as the Interim Chief and custodian of these records. I have taken that duty seriously and considered all of the information I have received to date. I have also spoken with multiple of the individuals involved in these matters and listened carefully to their thoughts and concerns and have done my best to carefully weigh all of the information available to me.



Interim Police Chief Jerry DeLong