

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

No. 218-2020-CR-00077

THE STATE OF NEW HAMPSHIRE

v.

MICHAEL VERROCCHI

**MEMORANDUM OF LAW OF THE ACLU OF NEW HAMPSHIRE AND
THE UNION LEADER CORPORATION
IN SUPPORT OF THE STATE'S MOTION TO UNSEAL
ARREST WARRANT AND SUPPORTING AFFIDAVIT**

*****REQUEST TO PARTICIPATE AT ORAL ARGUMENT*****

NOW COME the American Civil Liberties Union of New Hampshire (“ACLU-NH”) and the Union Leader Corporation, by and through their attorneys, and submit this Memorandum of Law in Support of the State’s January 8, 2021 Motion to Unseal Arrest Warrant and Supporting Affidavit consistent with the provisions of RSA 595-A:4. The State’s Motion to Unseal should be granted. The ACLU-NH and Union Leader Corporation also have no objection to Defendant’s position that, if the State’s Motion is granted, all sealed pleadings in this matter should be unsealed.

In this criminal matter, the State has charged Michael Verrocchi with one class B felony count of reckless conduct with a deadly weapon (a vehicle) under RSA 631:3, II and one class A misdemeanor count of disobeying an officer while driving a vehicle under RSA 265:4. The unsealing of the arrest warrant and supporting affidavit in this criminal matter is related to the pending Chapter 91-A action being heard before this Court in *ACLU of New Hampshire v. Salem Police Department*, No. 218-2021-00026. In that matter, the ACLU-NH is seeking information in the Salem Police Department’s possession concerning the incident that led to this criminal prosecution. Oral argument on the State’s Motion to Unseal is scheduled to be held on February

9, 2021. Counsel for the ACLU-NH and Union Leader Corporation wish to participate in this argument, as it is customary for third parties seeking access to court information to have legal standing to seek such information. *Petition of Keene Sentinel*, 136 N.H. 121, 125 (1992) (“The newspaper, as well as any member of the public, however, has standing, without having to be made a party in a case, to request access to court records.”).

SUMMARY OF ARGUMENT

The State’s Motion to Unseal is straightforward and should be summarily granted. Defendant Verrocchi cannot meet the substantial burden required to resist public disclosure of court records—a standard which presumes the public nature of court records and can only be overcome by showing “with specificity that there is some overriding consideration or special circumstance … which outweighs the public’s right of access to those records.” *Petition of Keene Sentinel*, 136 N.H. 121, 128 (1992); *see also* N.H. R. Crim. P. 50(a)(2).

This is not a close case. At the outset, New Hampshire law presumes that arrest warrants are public documents. *See RSA 595-A:4* (“Upon the return of said warrant, the affidavit and the notes or transcript shall be attached to it and shall be filed therewith, *and they shall be a public document when the warrant is returned*, unless otherwise ordered by a court of record.”) (emphasis added). Moreover, in three Superior Court decisions since May 2020 employing the public interest balancing test to police records under the Right-to-Know Law, the courts have held that allegations of police misconduct should be disclosed because there is a compelling public interest in disclosure. This includes the recent decision of the Rockingham County Superior Court, which ordered the release of portions of the Kroll Report addressing Mr. Verrocchi’s actions that led to this prosecution. There, the Court held:

But there are limits to all general rules and when a police officer’s off-duty conduct includes the alleged commission of serious crimes, or actions that endanger public

safety, the expectation of privacy is lower and the public interest is higher In another instance an officer [Mr. Verrocchi] committed a minor vehicle infraction but then refused to pull over and led the police on a dangerous chase In these instances, the public interest in disclosure is significant, and the officer's privacy interest is at reduced.

Union Leader Corp. v. Town of Salem, No. 218-2018-cv-01406, at *27-28 (Rockingham Cty. Super. Ct. Jan. 21, 2021) (Schulman, J.), attached as Exhibit 13; *see also Provenza v. Town of Canaan*, No. 215-2020-cv-155 (Grafton Cty. Super. Ct. Dec. 2, 2020) (Bornstein, J.) (holding that an internal investigation report concerning an allegation that an officer engaged in excessive force is a public document because the public interest in disclosure trumps any privacy interest the officer may have under RSA 91-A:5, IV; currently on appeal), attached as Exhibit 1; *Salcetti v. City of Keene*, No. 213-2017-cv-00210, at *5 (Cheshire Cty. Super. Ct. Jan. 22, 2021) ("As such powerful public servants, the public has an elevated interest in knowing whether officers are abusing their authority, whether the department is accounting for complaints seriously, and how many complaints are made. This factor strongly favors unredacted disclosure.") (Ruoff, J.), attached as Exhibit 14.

Finally, in the recent case *State v. Letendre*, No. 219-2020-cr-0792 (Strafford Cty. Super. Ct. Feb. 4, 2021) (Howard, J.) (attached as Exhibit 15), the Strafford County Superior Court rejected a claim by a defendant police officer that disclosure by the Dover Police Department of a 49-page investigatory report would infringe upon his right to a fair trial in his criminal case. As that Court explained, "the voir dire process is designed to ferret out potentially contaminated jurors." *Id.* at *7. Applying FOIA Exemption 7(B), the Court also held the following: "The lengthy interval between any press coverage from the disclosure of the Report and trial will likely cause any public attention to lessen."; and (ii) "the defendant's contention that disclosure of the

Report would result in a serious interference with his ability to obtain a fair trial is speculative.”

Id. at *8.

As in these four recent Superior Court cases, this Court should reach the same conclusion and unseal the arrest warrant and supporting affidavit consistent with the provisions of RSA 595-A:4.

FACTUAL BACKGROUND

Michael D. Verrocchi is a sergeant employed by the Salem Police Department. On November 10, 2012, Mr. Verrocchi was off duty and operating a Jeep Cherokee on Route 28 in Salem along with another off-duty Salem officer. Mr. Verrocchi exceeded the speed limit (62 MPH in a 30 MPH zone) and failed to stop when signaled to stop by Officer Sean York of the Salem Police Department. *See* N.H. D.O.J. Jan. 15, 2020 Press Release, attached as Exhibit 2; *see also* N.H. D.O.J. Sept. 17, 2020 Press Release, attached as Exhibit 3; Kroll Internal Affairs Report, at p. 41 (REP 042), attached as Exhibit 4. Mr. Verrocchi fled from Officer York and proceeded to engage in a high-speed motor vehicle pursuit over a distance of approximately two miles. *Id.* During the chase, Mr. Verrocchi ran a red light and avoided spike strips placed in the roadway by Officer Kevin Swanson of the Salem Police Department. Mr. Verrocchi continuously failed to stop for Officer York. *See* N.H. D.O.J. Jan. 15, 2020 Press Release, attached as Exhibit 2. When the Salem Police Department officer(s) ultimately caught up with Mr. Verrocchi, Mr. Verrocchi was laughing after exiting the vehicle, thinking the whole incident to be a joke. *See* Kroll Internal Affairs Report, at p. 41 (REP 042), attached as Exhibit 4. Neither Officer York, Officer Swanson (who still works for the Department), nor any other Department officer arrested Mr. Verrocchi. Mr. Verrocchi and other Department officers have argued that the high-speed chase was a mere prank “gone too far” that veteran Salem police officers often played on rookies. *See* PSTC Sept.

22, 2020 Minutes, at pp. 9-16, attached as *Exhibit 5*; Mark Hayward, “Police ‘Prank’: Salem Sergeant Keeps His Certification,” *Union Leader* (Dec. 1, 2020), attached as *Exhibit 6*; Sept. 22, 2020 Select Exhibits Produced by PSTC Under Chapter 91-A (Aug. 14, 2020 letter from former Salem deputy chief stating that, under this prank, an off-duty officer in a vehicle would speed “and try[] to trick a fellow on duty Salem Officer into attempting a motor vehicle stop,” and then the off-duty officer driving the vehicle would “not stop[] for a short period before pulling over,” and then “the on-duty officer [would] realiz[e] he has been fooled”), attached as *Exhibit 7*.

The Salem Police Department’s conduct here is concerning, and the public interest in access to the arrest warrant and supporting affidavit is obvious. After this incident occurred, the Salem Police Department, rather than charge Mr. Verrocchi for this obvious criminal violation, chose to—in collaboration with the Salem Police Relief Union—treat this issue as a private personnel matter where only minor discipline was imposed. *See* Sept. 22, 2020 Select Exhibits Produced by PSTC under Chapter 91-A (Nov. 20, 2012 union correspondence stating that the union “would agree to the following settlement [t]he Town agrees that there will be no further action against Officer Verrocchi in regards to the incident in question as far as enforcement into any alleged m/v violations or additional punishment”; Aug. 14, 2020 letter from former Salem deputy chief stating that “[a]t no time did we consider criminal charges”), attached as *Exhibit 7*. After concluding that sustained misconduct occurred in violation of the Salem Police Code of Conduct, the Salem Police Department, in lieu of criminal prosecution, suspended Mr. Verrocchi for one day without pay. *See* Kroll Internal Affairs Report, at p. 41 (REP 042), attached as *Exhibit 4*. In sum, where the Salem Police Department likely would have charged a private person for evading the police, the Department in this case—with the support of union officials—elected to not charge one of their own officers who evaded the police. In other words, the Salem Police

Department and union officials elected to, in secret, protect one of their own rather than do their job and enforce criminal laws.

The Salem Police Department did not make public this incident, its 2012 internal investigation, or the discipline imposed on Mr. Verrocchi. As the State alleges, “[t]he incident was not reported to any prosecuting authority outside of the Salem police department . . .,” and then-Salem Police Chief Paul Donovan “failed to notify anyone of the defendant’s alleged criminal conduct.” *See* State’s Apr. 30, 2020 Obj. to Def.’s Mot. to Dismiss, at pp. 2, 3 in *State of New Hampshire v. Michael D. Verrocchi*, No. 218-2020-cr-00077 (Rockingham Cty. Super. Ct.). This incident only became public six years later when the Town of Salem, on November 21, 2018, released a heavily redacted version of an internal audit report completed by Kroll (a less redacted version was released on April 26, 2019 in response to public records litigation). *See Redacted Kroll Report Released on Apr. 26, 2019, attached as Exhibit 4; see also <https://www.townofsalemnh.org/home/news/police-audit>.*

This Kroll Report documents problems with the Department’s culture and how it handles internal affairs investigations. The Department’s mismanagement with respect to how it handles internal affairs investigations includes, for example, the following: (i) treating formal complaints as informal complaints; (ii) closing internal affairs investigations very quickly; (iii) making it difficult and intimidating for citizens to file complaints; (iv) inappropriate reviews of excessive force complaints; (v) failure to interview witnesses; (vi) inadequate documentation; (vii) destruction of materials; (viii) bad attitude toward complainants; and (ix) ignorance of Department policies. Moreover, Kroll compiled an addendum describing problems with the Department’s culture, including “members of management who either ignore or even encourage an environment where there exists a complete disregard for the Town’s authority.” *See Kroll Culture Addendum,*

at p. 1 (REP 123), attached as *Exhibit 4*. Kroll's addendum on the Department's culture included a screenshot of a Facebook post from Mr. Verrocchi, who was also the union president for sworn personnel, stating: "There comes a point when it's time to say fuck you to politics and I'm there. We need to make decisions, stand by those decisions and not waiver simply to satisfy the court of public opinion." See Kroll Culture Addendum, at p. 5 (REP 127), attached as *Exhibit 4*. Following the public release of the redacted Kroll report, Mr. Verrocchi, on November 24, 2018, posted a meme on his Facebook page saying #istandwithsalemmpd, with the heading "Wolves don't lose sleep over the opinion of sheep." See Ryan Lessard, "High-ranking Salem police officers take to social media to criticize report," *Union Leader* (Nov. 27, 2018), attached as *Exhibit 8*.

As part of its internal affairs investigation, Kroll became aware of this November 10, 2012 incident concerning Mr. Verrocchi and described this incident in its report as part of its internal affairs review (while not naming Mr. Verrocchi and the other Salem officers involved). See Kroll Internal Affairs Report, at p. 41 (REP 042), attached as *Exhibit 4*.¹ On January 21, 2021, the Rockingham County Superior Court ordered the release of these redacted portions of the Kroll Report addressing this incident. See *Union Leader Corp. v. Town of Salem*, No. 218-2018-cv-01406 (Rockingham Cty. Super. Ct. Jan. 21, 2021), at *27-28, attached as *Exhibit 13*.

When Kroll's review and depiction of this incident became public in November 2018, the New Hampshire Department of Justice commenced an investigation of Mr. Verrocchi's conduct. After an investigation², on January 15, 2020, the Department of Justice arrested Mr. Verrocchi and charged him with one class B felony count of reckless conduct with a deadly weapon (a vehicle)

¹ Kroll concluded that the Department's 2012 investigation of this incident was compliant with Department policy and did meet best practices for internal reviews. However, Kroll did not opine on the Department's decision to not criminally prosecute Mr. Verrocchi.

² The Salem Police Department placed Mr. Verrocchi on administrative leave on or about February 15, 2019 while the New Hampshire Department of Justice's investigation was pending.

under RSA 631:3, II and one class A misdemeanor count of disobeying an officer while driving a vehicle under RSA 265:4. The New Hampshire Department of Justice ultimately indicted Mr. Verrocchi for the one count of reckless conduct with a deadly weapon. *See* N.H. D.O.J. Jan. 15, 2020 Press Release, attached as *Exhibit 2*; N.H. D.O.J. Sept. 17, 2020 Press Release, attached as *Exhibit 3*. The New Hampshire Department of Justice issued two press releases concerning this incident, Mr. Verrocchi’s arrest, and Mr. Verrocchi’s indictment. *See id.*

Further, on September 22, 2020, Mr. Verrocchi requested that his police decertification hearing addressing this matter before the Police Standards and Training Council (“Council”) be public. The question at this hearing was whether Mr. Verrocchi’s police certification should be temporarily suspended pending resolution of the criminal charges. At this hearing, six Salem officials—including Acting Salem Police Chief Joel Dolan—publicly testified in support of Mr. Verrocchi. *See* PSTC Sept. 22, 2020 Minutes, at pp. 9-16, attached as *Exhibit 5*; Mark Hayward, “Police ‘Prank’: Salem Sergeant Keeps His Certification,” *Union Leader* (Dec. 1, 2020), attached as *Exhibit 6*. Mr. Verrocchi and Major David G. Parenteau (Ret.) of the Council also submitted exhibits during this public hearing, some of which the Council subsequently made public under the Right-to-Know Law. *See* Sept. 22, 2020 Select Exhibits Produced by PSTC under Chapter 91-A, attached as *Exhibit 7*. Following this public decertification hearing, the Council decided to not temporarily suspend Mr. Verrocchi’s certification after Mr. Verrocchi argued that the high-speed chase was a mere prank “gone too far” that veteran Salem police officers play on rookies. *See* PSTC Sept. 22, 2020 Minutes, at pp. 9-16, attached as *Exhibit 5*; Mark Hayward, “Police ‘Prank’: Salem Sergeant Keeps His Certification,” *Union Leader* (Dec. 1, 2020), attached as *Exhibit 6*.

On December 2, 2020, the ACLU-NH submitted to Salem Police Department a request under the Right-to-Know Law seeking “[a]ll reports, investigatory files, and disciplinary records

concerning the actions of suspended Salem police Sgt. Michael Verrocchi on November 10, 2012 that led to his criminal prosecution, and that led to a sustained finding of misconduct with a one-day suspension without pay issued as discipline.” *See* ACLU-NH Dec. 2, 2020 Chapter 91-A Request, attached as *Exhibit 9*. On December 30, 2020, the Salem Police Department denied the request, arguing that disclosure could reasonably be expected to interfere with an enforcement proceeding under *Murray* Exemption 7(A) and would deprive Mr. Verrocchi of his right to a fair or an impartial adjudication under *Murray* Exemption 7(B). *See* Salem Police Department Dec. 30, 2020 Chapter 91-A Response, attached as *Exhibit 10*. This dispute led to the related case *ACLU of New Hampshire v. Salem Police Department*, No. 218-2021-00026, which is also pending before this Court.

STANDARD OF REVIEW

Whether a court record should be sealed or unsealed falls under the rules set forth under Part I, Article 8 of the New Hampshire Constitution and the New Hampshire Rules of Criminal Procedure.

In 1976, Part 1, Article 8 of the New Hampshire Constitution was amended to provide as follows: “Government … should be open, accessible, accountable and responsive. To that end, the public’s right of access to governmental proceedings and records shall not be unreasonably restricted.” *Id.* New Hampshire is one of the few states that explicitly enshrines the right of public access in its Constitution. *Associated Press v. State*, 153 N.H. 120, 128 (2005). Article 8’s language was included upon the recommendation of the bill of rights committee to the 1974 constitutional convention and adopted in 1976. While New Hampshire already had RSA ch. 91-A to address the public’s right to access information, the committee argued that the right was

“extremely important and ought to be guaranteed by a constitutional provision.” LAWRENCE FRIEDMAN, THE NEW HAMPSHIRE STATE CONSTITUTION 53 (2d ed. 2015).

Applying these constitutional provisions, in *Keene Publ’g Corp. v. Keene District Court*, 117 N.H. 959 (1977)—a criminal case like this one—the Supreme Court held that the trial court there could not order the closing of a probable cause hearing to protect the defendant from pre-trial publicity. In doing so, the Supreme Court recognized that “in this state the press has been held to have a right, though not unlimited, to gather news so as to effectuate the policy of our constitution that a free press is ‘essential to the security of freedom in a state.’” *Id.* at 961 (quoting N.H. CONST. pt. I, art. 22).

Subsequently, in *Petition of Keene Sentinel*, 136 N.H. 121 (1992), the Supreme Court held that a trial court, when faced with a petition for access from the press or other members of the public, could not refuse to disclose documents filed in a divorce proceeding absent a specific showing by the party seeking to prevent access that would compel nondisclosure. As the Court explained:

Under part I, article 8, the public has a right of access to court proceedings and to court records which cannot be “unreasonably restricted.” We hold that under the constitutional and decisional law of this State, there is a presumption that court records are public and the burden of proof rests with the party seeking closure or nondisclosure of court records to demonstrate with specificity that there is some overriding consideration or special circumstance, that is, a sufficiently compelling interest, which outweighs the public’s right of access to those records.

Id. at 128 (emphasis added). The Court then added:

The petitioner’s right of access to the sealed records must be weighed and balanced against privacy interests that are articulated with specificity. In order for this exacting process to be accomplished, the trial judge must review each document to which access is sought and for which a specific right of privacy is claimed to determine if there is a sufficiently compelling reason that would justify preventing public access to that document, with the burden of proof resting on the party seeking nondisclosure. Before a document is ordered sealed, the trial judge must determine that no reasonable alternative to nondisclosure exists. In addition, the trial judge

must use the least restrictive means available to accomplish the purposes sought to be achieved.

Id. at 129-130.

The Supreme Court has repeatedly applied this standard with rigor in protecting the public's right of access to court records and proceedings. *See, e.g., State v. Kibby*, 170 N.H. 255, 258 (2017) (holding that the defendant, who had sent letters to the trial court concerning his representation by counsel, had failed to meet his burden of demonstrating with specificity that the letters contained privileged communications sufficient to justify maintaining them under seal); *Associated Press*, 153 N.H. at 138-39 (holding that RSA 458:15-b, III was unconstitutional, in part, because it (i) placed the burden of proof upon the proponent of disclosure, rather than the proponent of nondisclosure, (ii) abrogated entirely the public right of access to a class of court records, (iii) and was not narrowly tailored to serve the allegedly compelling interest of the State in protecting its citizens from identity theft); *In re N.B.*, 169 N.H. 265, 272-73 (2016) (holding that the portion of the trial court's order which stated that any future lawsuit or the pleadings therein filed by appellant against DCYF and CASA had to be filed under seal constituted a prior restraint on free speech and limited access to the courts in violation of N.H. Const. pt. I, arts. 8 and 22 in that it was overbroad and did not use the least restrictive means available to achieve its purpose).

Consistent with these constitutional rules, the general rule under the New Hampshire Rules of Criminal Procedure is that “all pleadings, attachment to pleadings, exhibits submitted at hearings or trials, and other docket entries … shall be available for public inspection.” *See N.H. R. Crim. P. 50(a)(1)*. However, “[t]his rule shall not apply to confidential or privileged documents submitted to the court for in camera review as required by court rule, statute or case law.” *See id.* “The burden of proving that a document or a portion of a document should be confidential rests with the party or person seeking confidentiality.” *See N.H. R. Crim. P. 50(a)(2)*.

Here, as explained below, Defendant Verrocchi’s argument to keep the arrest warrant and supporting affidavit sealed fails because he cannot demonstrate with specificity that there is some overriding consideration or special, compelling circumstance which outweighs the public’s right of access to those records under *Petition of Keene Sentinel* and N.H. R. Crim. P. 50(a).

ARGUMENT

I. Under *Petition of Keene Sentinel* and N.H. R. Crim. P. 50(a), Defendant Verrocchi Has Failed to Present “With Specificity” a Compelling Interest That Outweighs the Public’s Right of Access to the Arrest Warrant and Supporting Affidavit.

Defendant Verrocchi’s effort to keep the arrest warrant and affidavit sealed fails because his claim of privacy and confidentiality is conclusory, generalized, and not made with the required specificity. *See* Def.’s Jan. 21, 2021 Obj. to Mot. to Unseal, at p. 1 (merely stating that the sealed information “contains confidential and private information protected by statute”); *see also Petition of Keene Sentinel*, 136 N.H. at 129 (“The Douglasses cannot prevail in their claim to keep the records sealed merely by asserting a general privacy interest.”); *Associated Press*, 153 N.H. at 138 (“a generalized concern for personal privacy is insufficient to meet the State’s burden of demonstrating the existence of a sufficiently compelling reason to prevent public access”). Of course, “[c]ourts, as an integral part of the government of our State, are required by part I, article 8 of our constitution to be ‘open’ and ‘accessible.’ They are public forums.” *Petition of Keene Sentinel*, 136 N.H. at 128. Like litigants in civil or marital cases, litigants in criminal cases are not entitled to private proceedings. In fact, there is a heightened interest in transparency with respect to criminal cases so the public and the press can evaluate both how the criminal justice system is operating and how the State is attempting to use its prosecutorial power. *See Grafton Cty. Attorney’s Office v. Canner*, 169 N.H. 319, 328 (2016) (“the public should have access to

information that will enable it to assess how prosecutors exercise the tremendous power and discretion with which they are entrusted”).

Setting aside the fact that the information in the arrest warrant and support affidavit is neither “confidential nor private,” *see infra* Part II, hypothetical prejudice alone has never been sufficient under the First Amendment or the common law to deny the public access to records. If the law were otherwise, no negative information about a criminal defendant would ever be released—a rule that would undoubtedly hurt victims who, like the public, are entitled to information concerning the prosecution of criminal cases. Numerous other courts have agreed in various contexts, including the New Hampshire Supreme Court. *See, e.g., Petition of Keene Sentinel*, 136 N.H. at 128 (denying a political candidate’s “blanket assertion” that privacy rights in divorce and marital proceedings trump a newspaper’s right of access); *U.S. ex rel. Callahan v. U.S. Oncology, Inc.*, No. 7:00-CV-00350, 2005 U.S. Dist. LEXIS 31848, at *8 (W.D. Va. Dec. 7, 2005) (denying a request to seal a settlement agreement because “defendants ha[d] not overcome the presumption in favor of public access” by providing “general claims of prejudice”); *State v. Cianci*, 496 A.2d 139, 145 (R.I. 1985) (finding that “blanket statement of potential prejudice was not sufficient to demonstrate compelling reasons for ordering the sealing of discovery documents”).

Furthermore, it is important to note that “the knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power. Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account.” *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1035 (1991) (opinion of Kennedy, J.) (ellipsis omitted) (quoting *In re Oliver*, 333 U.S. 257, 270-71 (1948)). “[T]he criminal justice system exists in a larger context of a government ultimately of

the people, who wish to be informed about the happenings in the criminal justice system, and, if sufficiently informed about those happenings, might wish to make changes in the system.” *Id.* at 1070.

II. Defendant Verrocchi Has Not Met His Substantial Burden of Showing a Compelling Interest Justifying Sealing Because the Arrest Warrant and Supporting Affidavit Do Not Contain “Confidential and Private Information”

At the outset, no public interest balancing is required here because, following *Petition of Keene Sentinel*, it is clear that the Defendant has not presented “with specificity” any compelling interest that outweighs the public’s right of access to the arrest warrant and supporting affidavit.

However, to the extent the Right-to-Know Law’s balancing test for determining whether records are exempt from disclosure as an invasion of privacy under RSA 91-A:5, IV is instructive in applying the standard for determining whether a compelling interest justifies sealing information under N.H. R. Crim. P. 50(a)(2) and Part I, Article 8 of the New Hampshire Constitution, this standard too requires disclosure. This is because police officers have no privacy interest in records implicating their ability to perform their official duties.

The Supreme Court has explained this public interest balancing test as follows:

We engage in a three-step analysis when considering whether disclosure of public records constitutes an invasion of privacy under RSA 91-A:5, IV. First, we evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. Whether information is exempt from disclosure because it is private is judged by an objective standard and not a party’s subjective expectations. If no privacy interest is at stake, the Right-to-Know Law mandates disclosure.

Second, we assess the public’s interest in disclosure. Disclosure of the requested information should inform the public about the conduct and activities of their government. If disclosing the information does not serve this purpose, disclosure will not be warranted even though the public may nonetheless prefer, albeit for other reasons, that the information be released.

Finally, we balance the public interest in disclosure against the government’s interest in nondisclosure and the individual’s privacy interest in nondisclosure.

Lambert v. Belknap Cty. Convention, 157 N.H. 375, 382-83 (2008) (citations and quotations omitted). To be clear, this test should be construed consistent with the Right-to-Know Law's presumption in favor of transparency. As the Supreme Court has noted: "The legislature has provided the weight to be given one side of the balance, declaring the purpose of the Right-to-Know Law in this way: 'Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.'"

Union Leader Corp. v. City of Nashua, 141 N.H. 473, 476 (1996) (quoting RSA 91-A:1).

A. The Privacy Interest is Nonexistent.

There is no privacy interest implicated here. For example, the factual allegations in this case and the Kroll Report's depiction of this incident are already in the public record. *See* Kroll Internal Affairs Report, at p. 41 (REP 042), attached as Exhibit 4. The State has already issued two press releases concerning the allegations in this case. *See* N.H. D.O.J. Jan. 15, 2020 Press Release, attached as Exhibit 2; N.H. D.O.J. Sept. 17, 2020 Press Release, attached as Exhibit 3. And Mr. Verrocchi's own actions further demonstrate the lack of a privacy interest here. Mr. Verrocchi personally requested that his September 22, 2020 police decertification proceeding addressing this incident be public, effectively conceding that any privacy interest is nonexistent. *See* PSTC Sept. 22, 2020 Minutes, at pp. 9-16, attached as Exhibit 5. At this public hearing, six Salem officials—including Acting Salem Police Chief Joel Dolan—publicly testified on this incident. *See* Mark Hayward, "Police 'Prank': Salem Sergeant Keeps His Certification," *Union Leader* (Dec. 1, 2020), attached as Exhibit 6. Mr. Verrocchi and the Police Standards and Training Council also submitted exhibits during this public hearing, some of which the Council

subsequently made public under the Right-to-Know Law. See Sept. 22, 2020 Select Exhibits Produced by PSTC under Chapter 91-A, attached as *Exhibit 7*.

Moreover, the arrest warrant and affidavit do not constitute “intimate details … the disclosure of which might harm the individual,” *see Mans v. Lebanon School Board*, 112 N.H. 160, 164 (1972), or the “kinds of facts [that] are regarded as personal because their public disclosure could subject the person to whom they pertain to embarrassment, harassment, disgrace, loss of employment or friends.” *See Reid v. N.H. AG*, 169 N.H. 509, 530 (2016) (emphasis added). The arrest warrant and affidavit, for example, do not disclose medical or psychological records in an officer’s personnel file. Instead, the arrest warrant and affidavit relate to the alleged conduct of an officer that led to criminal charges. Thus, any privacy interest concerning the Defendant is nonexistent.

For context, under the invasion of privacy exemption in RSA 91-A:5, IV, the Supreme Court has been careful to distinguish between information concerning private individuals interacting with the government and information concerning the performance of government employees. *Compare, e.g., Lamy v. N.H. Public Utilities Com’n*, 152 N.H. 106, 111 (2005) (“The central purpose of the Right-to-Know Law is to ensure that the Government’s activities be opened to the sharp eye of public scrutiny, not that information about private citizens that happens to be in the warehouse of the Government be so disclosed.”); *Brent v. Paquette*, 132 N.H. 415, 427 (1989) (government not required to produce records kept by school superintendent containing private students’ names and addresses); *N.H. Right to Life v. Director, N.H. Charitable Trusts Unit*, 169 N.H. 95, 114, 120-121 (2016) (protecting identities of private patients and employees at a women’s health clinic); *with Union Leader Corp. v. New Hampshire Retirement System*, 162 N.H. 673, 684 (2011) (holding that the government must disclose the names of retired public

employees receiving retirement funds and the amounts notwithstanding RSA 91-A:5, IV); *Prof'l Firefighters of N.H. v. Local Gov't Ctr.*, 159 N.H. 699, 709-10 (2010) (holding that the government must disclose specific salary information of Local Government Center employees notwithstanding RSA 91-A:5, IV); *Mans*, 112 N.H. at 164 (government must disclose the names and salaries of each public schoolteacher employed by the district).

Courts outside of New Hampshire have similarly rejected the notion that police officers have a significant privacy or reputational interest with respect to actions implicating their official duties. This is because, when individuals accept positions as police officers paid by taxpayer dollars, they necessarily should expect closer public scrutiny. *See, e.g., Boston Globe Media Partners, LLC v. Dep't of Criminal Justice Info. Servs.*, 484 Mass. 279, 292 (2020) (“[P]olice officers and members of the judiciary occupy positions of special public trust. By assuming their unique position of power and authority in our communities, police officers must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel Accordingly, the public has a vital interest in ensuring transparency where the behavior of these public officials allegedly fails to comport with the heightened standards attendant to their office.”); *Baton Rouge/Parish of East Baton Rouge v. Capital City Press, L.L.C.*, 4 So. 3d 807, 809-10, 821 (La. Ct. App. 1st Cir. 2008) (“[t]hese investigations were not related to private facts; the investigations concerned public employees’ alleged improper activities in the workplace”); *Denver Policemen’s Protective Asso. v. Lichtenstein*, 660 F.2d 432, 436-37 (10th Cir. 1981) (rejecting officers’ claim of privacy); *Burton v. York County Sheriff’s Dep’t.*, 594 S.E.2d 888, 895 (S.C. Ct. App. 2004) (sheriff’s department records regarding investigation of employee misconduct were subject to disclosure, in part, because the requested documents did not concern “the off-duty sexual

activities of the deputies involved”); *State ex rel. Bilder v. Township of Delavan*, 334 N.W.2d 252, 261-62 (Wis. 1983) (“By accepting his public position [the police chief] has, to a large extent, relinquished his right to keep confidential activities directly relating to his employment as a public law enforcement official. The police chief cannot thwart the public’s interest in his official conduct by claiming that he expects the same kind of protection of reputation accorded an ordinary citizen.”); *Kroeplin v. Wis. Dep’t of Nat. Res.*, 725 N.W.2d 286, 301 (Wis. Ct. App. 2006) (“When an individual becomes a law enforcement officer, that individual should expect that his or her conduct will be subject to greater scrutiny. That is the nature of the job.”); *see also Perkins v. Freedom of Info. Comm’n*, 635 A.2d 783, 792 (Conn. 1993) (“Finally, we note that when a person accepts public employment, he or she becomes a servant of and accountable to the public. As a result, that person’s reasonable expectation of privacy is diminished, especially in regard to the dates and times required to perform public duties.”); *Dep’t of Pub. Safety, Div. of State Police v. Freedom of Info. Comm’n*, 698 A.2d 803, 808 (Conn. 1997) (in upholding the trial court’s judgment requiring disclosure of an internal affairs investigation report exonerating a state trooper of police brutality, concluding: “Like the trial court, we are persuaded that the fact of exoneration is not presumptively sufficient to overcome the public’s legitimate concern for the fairness of the investigation leading to that exoneration. This legitimate public concern outweighs the department’s undocumented assertion that any disclosure of investigative proceedings may lead to a proliferation of spurious claims of misconduct.”).

Finally, it should go without saying that a police officer’s alleged misconduct cannot be shielded from public scrutiny because exposure may cause reputational “embarrassment” to that official. It should come as little surprise that government actors often wish to keep their misconduct secret out of fear that the public may find out and “embarrass” them by holding them

publicly accountable. Such public scrutiny for acts implicating an official’s ability to perform their job is the price that the government official must pay. This is because that official—here, a police officer—works for the public, not him or herself. They are police officers, not private citizens.

B. The Public Interest in Disclosure is Compelling.

The presumption in favor of public access to the arrest warrant and affidavit is strong not only because it will allow the public to better understand the bases for Mr. Verrocchi’s prosecution—a compelling interest which exists regardless of whether the warrant implicates a public official—but also because these records concern the alleged misconduct of a police officer. This potential misconduct only heightens the public’s right of access, especially where it implicates possible criminal behavior. *See, e.g., Union Leader Corp.*, 162 N.H. at 684 (noting that a public interest existed in disclosure where the “Union Leader seeks to use the information to uncover potential governmental error or corruption”); *Prof'l Firefighters of N.H.*, 159 N.H. at 709 (“Public scrutiny can expose corruption, incompetence, inefficiency, prejudice and favoritism.”). As the Supreme Court has explained specifically in the context of police activity, “[t]he public has a strong interest in disclosure of information pertaining to its government activities.” *NHCLU v. City of Manchester*, 149 N.H. 437, 442 (2003). As one New Hampshire Court Judge similarly ruled in releasing a video of an arrest at a library, “[t]he public has a broad interest in the manner in which public employees are carrying out their functions.” *See, e.g., Union Leader Corp. v. van Zanten*, No, 216-2019-cv-00009 (Hillsborough Cty. Super. Ct., Norther Dist., Jan. 24, 2019) (Smuckler, J.).

Moreover—and critically—the Rockingham County Superior Court already held in the context of the Kroll Report describing this incident that this public interest in disclosure trumps

any purported privacy interests that Mr. Verrocchi may have in nondisclosure. *See Union Leader Corp. v. Town of Salem*, No. 218-2018-cv-01406, at *27-28 (Rockingham Cty. Super. Ct. Jan. 21, 2021) (Schulman, J.), attached as *Exhibit 13*. Two other cases have similarly held that the public interest in disclosure trumps any privacy interests with respect to official police conduct. *See Provenza v. Town of Canaan*, No. 215-2020-cv-155 (Grafton Cty. Super. Ct. Dec. 2, 2020) (Bornstein, J.) (currently on appeal), attached as *Exhibit 1*; *Salcetti v. City of Keene*, No. 213-2017-cv-00210, at *5 (Cheshire Cty. Super. Ct. Jan. 22, 2021) (Ruoff, J.), attached as *Exhibit 14*.

Disclosure of the arrest warrant and affidavit may also assist the public in vetting both the Salem Police Department's and the Department of Justice's investigation of Mr. Verrocchi. *See Reid*, 169 N.H. at 532 (“We recognize that [t]he public has a significant interest in knowing that a government investigation is comprehensive and accurate.”) (internal quotations omitted); *see also Rutland Herald v. City of Rutland*, 84 A.3d 821, 825-26 (Vt. 2013) (“[T]he internal investigation records and related material will allow the public to gauge the police department’s responsiveness to specific instances of misconduct; assess whether the agency is accountable to itself internally, whether it challenges its own assumptions regularly in a way designed to expose systemic infirmity in management oversight and control; the absence of which may result in patterns of inappropriate workplace conduct.”).

Furthermore, disclosure will help the public evaluate the concerning September 22, 2020 decision of the Police Standards and Training Council to not temporarily suspend Mr. Verrocchi's police certification pending the disposition of this serious felony case. During this decertification hearing—which, in this rare occasion, was public at Mr. Verrocchi's request—multiple Salem police and civilian officials rallied to Mr. Verrocchi's defense despite the pendency of his felony criminal case. One retired Salem deputy chief, after being asked whether “he agreed that the events

that happened were reckless and a criminal act,” even stated “‘one hundred percent,’ it was egregious putting people’s lives in jeopardy that night.” *See* PSTC Sept. 22, 2020 Minutes, at p. 12, attached as *Exhibit 2*. Another retired Salem sergeant acknowledged that Mr. Verrocchi’s actions “had put the public at risk.” *Id.* at 13. It is difficult to imagine how the Council’s decision to allow an officer to maintain his certification pending a felony criminal case does not undermine public confidence in the criminal justice system. Here, disclosure of the arrest warrant and supporting affidavit will help further inform the public on the appropriateness of the Council’s decision to not take any temporary action against Mr. Verrocchi.

Courts outside of New Hampshire have similarly recognized the obvious public interest that exists when disclosure will educate the public on “the official acts of those officers in dealing with the public they are entrusted with serving.” *Cox v. N.M. Dep’t of Pub. Safety*, 242 P.3d 501, 507-08 (N.M. Ct. App. 2010); *see also, e.g., City of Baton Rouge*, 4 So.3d at 809-10, 821 (holding the public interest in names and records of investigation into police officers’ use of excessive force trumps officers’ privacy interest); *Burton*, 594 S.E.2d at 895 (“[i]n the present case, we find the manner in which the employees of the Sheriff’s Department prosecute their duties to be a large and vital public interest that outweighs their desire to remain out of the public eye”); *Kroeplin*, 725 N.W.2d at 303 (“[t]he public has a particularly strong interest in being informed about public officials who have been derelict in [their] duty”) (quotations omitted).

III. Defendant Verrocchi Has Not Met His Substantial Burden of Showing a Compelling Interest Justifying Sealing Because Disclosure of the Arrest Warrant and Supporting Affidavit Would Not Prejudice His Right to a Fair Trial.

A. Under *Keene Publ’g Corp.*, Voir Dire—As Opposed to Sealing—is the Least Restrictive Means of Addressing Defendant’s Fair Trial Concerns.

All criminal prosecutions involve information that is unflattering, prejudicial, and sometimes inflammatory, but “pre-trial publicity—even pervasive, adverse publicity—does not

inevitably lead to an unfair trial.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 554 (1976). For example, in *Keene Publ’g Corp. v. Keene District Court*, 117 N.H. 959, 961-62 (1977)—a criminal case like this one—the Supreme Court held that the trial court there could not order the closing of a probable cause hearing to protect the defendant from pre-trial publicity. This case is no different. Just as it was improper to close a probable cause hearing based on concerns of prejudice in *Keene Publ’g Corp.*, it too would be improper here to seal court records based on such (unfounded) concerns.

Even if public disclosure of the arrest warrant and affidavit was potentially prejudicial (which it is not), the Supreme Court has made clear that the proper and least restrictive means of mitigating that prejudice is not by restricting the public’s access, but through voir dire. *See Keene Publ’g Corp.*, 117 N.H. at 962-63 (“Much that has been written about empirical studies of pretrial publicity indicates that for the most part juries are able and willing to put aside extraneous information and base their decisions on the evidence. Appropriate tools are available to the trial court as outlined in the draft ABA standard to exclude jury prejudice.”). New Hampshire Superior Courts have followed suit. In the recent case *State v. Letendre*, No. 219-2020-cr-0792 (Strafford Cty. Super. Ct. Feb. 4, 2021) (Howard, J.) (attached as Exhibit 15), the Strafford County Superior Court rejected a claim by a defendant police officer that disclosure by the Dover Police Department of a 49-page investigatory report would infringe upon his right to a fair trial in his criminal case. As that Court explained, “the voir dire process is designed to ferret out potentially contaminated jurors.” *Id.* at *7. Judge Schulman recently decided a similar issue, where he vacated a “gag order,” which subsequently allowed the disclosure of police reports during the pendency of a criminal case. *See State v. Andersen*, No. 218-2018-cr-00241 (Rockingham Cty. Super. Ct. Aug. 31, 2018), attached as Exhibit 12. There, Judge Schulman noted that “[e]xposure to media

coverage can be adequately addressed through routine voir dire.” *Id.* at *2. The same is true in this case.³

Courts across the country have similarly endorsed voir dire as effective at ensuring a fair and impartial jury, as well as rejected the notion that jurors are “nothing more than malleable and mindless creations of pretrial publicity.” *In re Application & Affidavit for a Search Warrant*, 923 F.2d 324, 330 (4th Cir. 1991). As the Fourth Circuit explained:

The reason that fair trials can coexist with media coverage is because there are ways to minimize prejudice to defendants without withholding information from public view. With respect to the potential prejudice of pretrial publicity, . . . [v]oir dire is of course the preferred safeguard against this particular threat to fair trial rights . . . [and] can serve in almost all cases as a reliable protection against juror bias however induced.

Id. at 329 (internal quotation marks omitted; alterations and second ellipsis in original; emphasis added); *see also, e.g., Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 15 (1986) (“Through voir dire, cumbersome as it is in some circumstances, a court can identify those jurors whose prior knowledge of the case would disable them from rendering an impartial verdict.”); *United States v. Martin*, 746 F.2d 964, 973 (3d Cir. 1984) (“Testing by voir dire remains a preferred and effective means of determining a juror’s impartiality and assuring the accused a fair trial.”) (internal quotation marks omitted); *State v. Schaefer*, 599 A.2d 337, 345 (Vt. 1991) (“As a basic principle, voir dire is the normal and preferred method of combating any effects of pretrial publicity.”); *DeBeer*, 774 N.Y.S.2d at 316 (noting that “comprehensive and searching voir dire can serve to protect the defendant”).

³ Moreover, rather than sealing these records, this Court can enforce the New Hampshire Rules of Professional Responsibility. For example, N.H. R. Prof. Resp. 3.6(a) states that “[a] lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.” N.H. R. Prof. Resp. 3.8(f) also states that—except for statements that are necessary to inform the public of the nature and extent of the prosecutor’s action and that serve a legitimate law enforcement purpose—a prosecutor shall “refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused”

B. To the Extent Exemption 7(B) Is Applied as a Guide, Defendant Can Show No Deprivation of His Right to a Fair Trial Under This Exemption.

To the extent Exemption 7(B) of the Freedom of Information Act is instructive in determining whether this information, if unsealed, would interfere with Mr. Verrocchi’s right to a fair trial, this exemption does not warrant sealing in this case. This exemption only applies if disclosure “would deprive a person of a right to a fair or an impartial adjudication.” 5 U.S.C. § 552(b)(7) (emphasis added); *see also Murray v. N.H. Div. of State Police*, 154 N.H. 579 (2006) (citing exemption). Consistent with the Right-to-Know Law’s presumption in favor of transparency, the “heavy burden” in satisfying this exemption falls squarely on the party resisting disclosure, and this exemption should be construed narrowly. *See Murray*, 154 N.H. at 585 (“[i]t is not the petitioner’s responsibility to clarify the respondents’ vague categorizations”). Though the New Hampshire Supreme Court has not directly addressed the contours of Exemption 7(B), the D.C. Circuit Court of Appeals has established a test, which states that “to withstand a challenge to the applicability of (7)(B) the government bears the burden of showing: (1) that a trial or adjudication is pending or truly imminent; and (2) that it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings.” *Wash. Post Co. v. United States Dep’t of Justice*, 863 F.2d 96, 102 (D.C. Cir. 1988); *see also Seacoast Newspapers, Inc. v. City of Portsmouth*, 173 N.H. 325, 338 (2020) (“we often look to federal case law for guidance when interpreting the exemption provisions of our Right-to-Know Law, because our provisions closely track the language used in FOIA’s exemptions”).

As to the first prong—and as in *Letendre*—Mr. Verrocchi’s trial is not “pending or truly imminent.” As this Court is aware, criminal trials in Rockingham County have been delayed due to the COVID-19 pandemic. Mr. Verrocchi’s trial is not currently scheduled. *See State v. Letendre*, No. 219-2020-cr-0792, at *8 (Strafford Cty. Super. Ct. Feb. 4, 2021) (Howard, J.) (in

rejecting defendant's Exemption 7(B) argument, noting that, amid the backlog of jury trials due to the COVID-19 pandemic, “[t]he lengthy interval between any press coverage from the disclosure of the Report and trial will likely cause any public attention to lessen”) (attached as *Exhibit 15*); *see also People v. DeBeer*, 774 N.Y.S.2d 314, 316 (N.Y. Cty. Ct., Ontario Cty. 2004) (“This lengthy interval between disclosure and trial will serve to allow public attention to subside.”).

As to the second prong, the Defendant's apparent contention that disclosure of information concerning this 2012 incident would deprive him of his ability to obtain a fair trial is speculative. The Defendant has only raised this fear using conclusory statements that are insufficient to justify withholding this information from the public under Exemption 7(B). *See* Def.'s Jan. 21, 2021 Obj. to Mot. to Unseal, at p. 3 (merely stating that release “creates a greater chance of a tainted jury pool and disinformation prejudicial to Mr. Verrocchi”). The burden of proof for invoking Exemption 7(B) cannot be met by “merely conclusory statements.” *Wash. Post Co.*, 863 F.2d at 101. Even if a party is faced with litigation, “it [does] not automatically follow that disclosure ... would deprive [that party] of a fair trial.” *Id.* at 102. The resisting party “must show how release of the particular material would have the adverse consequence that [FOIA] seeks to guard against.” *Id.* at 101. The Defendant has not met this burden here. *See also, e.g., Playboy Enterprises, Inc. v. United States Dep't of Justice*, 516 F. Supp. 233, 246 (D.D.C. 1981) (denying 7(B) exemption because “the degree of publicity that might come about as a result of the disclosure . . . [was] speculative at best”); *Dow Jones Co. v. FERC*, 219 F.R.D. 167, 174–75 (C.D. Cal 2003) (denying 7(B) exemption, in part, because “defendant has failed to demonstrate that disclosure . . . would generate pretrial publicity that could deprive the companies or any of their employees of their right to a fair trial”). Indeed, this case is no different than *State v. Letendre*, No. 219-2020-cr-0792 (Strafford Cty. Super. Ct. Feb. 4, 2021) (Howard, J.) (attached as *Exhibit 15*), where “the

defendant's contention that disclosure of the Report would result in a serious interference with his ability to obtain a fair trial is speculative." *Id.* at *8; *id.* at *6 (further noting that "[a]t this stage of the proceedings, the risk of actual prejudice is purely conjectural").

To the contrary, the facts indicate that disclosure of the arrest warrant and supporting affidavit will not deprive Mr. Verrocchi of his ability to obtain a fair trial. Again, Mr. Verrocchi himself requested that his September 22, 2020 police decertification proceeding addressing this incident be public, effectively conceding that public disclosure of this information would not prejudice his right to a fair trial. *See* PSTC Sept. 22, 2020 Minutes, at pp. 9-16, attached as Exhibit 5. If Mr. Verrocchi believes that publicly disclosing this information as part of his decertification hearing would not be prejudicial to his criminal case, then surely the public disclosure of the arrest warrant and affidavit concerning this incident would not be prejudicial.⁴

Finally, the Defendant's argument that the arrest warrant and supporting affidavit are "inaccurate" and "not relevant to the issue of Probable Cause" is to no avail. *See* Def.'s Jan. 21, 2021 Obj. to Mot. to Unseal, at p. 1. Such a claim is irrelevant to determining whether the public has a right of access to these court records under Part I, Article 8 to the New Hampshire Constitution. It should come as no surprise that the Defendant contests the information in the warrant and affidavit. But if that were a basis to seal court records, then nearly every pleading would be sealed in every criminal case at the cost of the public being able to hold the criminal justice system accountable. As the court explained in *State v. Kozma*, No. 92-15914 CF10E, 1994 WL 397438 (Fla. Cir. Ct. Feb. 4, 1994) in which a criminal defendant's inadmissible confession was unsealed:

⁴ Again, the State has already published two press releases about this incident. *See* N.H. D.O.J. Jan. 15, 2020 Press Release, attached as Exhibit 2; N.H. D.O.J. Sept. 17, 2020 Press Release, attached as Exhibit 3. If the State's press releases are not prejudicial, then surely the public disclosure of the arrest warrant and affidavit concerning this incident would not be prejudicial.

[E]ven massive pretrial publicity about a case is not enough to show a serious and imminent threat to the administration of justice or to the denial of fair trial rights. The fact that the Statement has been determined to be inadmissible does not alter that conclusion. Even where pretrial publicity includes publication of inadmissible evidence or confessions, a defendant can still receive a fair trial.

Id. at *2 (citations omitted); *see also Keene Publ'g Corp.*, 117 N.H. at 963 (noting general ability of press to be present at probable cause hearings despite the fact that the evidentiary rules are relaxed in such proceedings where evidence may be allowed that would not be presented to a jury at trial). Here, in focusing on “irrelevance” and “accuracy,” the Defendant is ignoring the standard under Part I, Article 8 that creates a presumption in favor of disclosure. Disclosure of the arrest warrant and affidavit—whether “accurate” or not, or whether “relevant” to the prosecution or not—will shed light on the reasons why the Department of Justice has brought this criminal case. In other words, the public interest in disclosure is strong regardless of whether the Defendant disputes the allegations. *See United States ex rel. Callahan v. U.S. Oncology, Inc.*, No. 7:00-CV-00350, 2005 U.S. Dist. LEXIS 31848, at *9 (W.D. Va. Dec. 7, 2005) (“Weighing the interests in this case, this court finds significant interest in allowing public access to a case where the public’s right to evaluate the conduct of the government is at stake.”).

In sum, if Pamela Smart can obtain a fair trial in New Hampshire with all the public disclosure and attention that her trial entailed, then surely the Defendant can here with the disclosure of the arrest warrant and supporting affidavit, especially where the trial has not yet even been scheduled and where the public attention has been far less. *See State v. Smart*, 136 N.H. 639, 653 (1993) (“We hold that, notwithstanding extensive pretrial publicity, there was no manifest error in the trial court’s determination that an impartial jury had been selected for the defendant’s trial.”).

WHEREFORE, the ACLU-NH and Union Leader Corporation respectfully pray that this

Honorable Court:

- A. Grant the State's Motion to Unseal Arrest Warrant and Supporting Affidavit; and
- B. Award such other relief as may be equitable.

Respectfully submitted,

UNION LEADER CORPORATION,

By its attorney,

/s/ Gregory V. Sullivan

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Dated: February 5, 2021

Certificate of Service

I hereby certify that a copy of the foregoing was sent to all counsel or record pursuant to the Court's electronic filing system.

/s/ Gilles Bissonnette
Gilles Bissonnette

February 5, 2021

EXHIBIT 1

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS.

SUPERIOR COURT

No. 215-2020-CV-155

SAMUEL PROVENZA

v.

TOWN OF CANAAN

PUBLIC ORDER ON PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT
AND FOR PRELIMINARY AND PERMANENT INJUNCTIONS AND ON
INTERVENOR'S CROSSCLAIM

The following order is issued under seal consistent with this Court's previous rulings. A public, redacted copy of this order will issue after the parties have had an opportunity to review it.

This matter is before the Court on the Plaintiff's Petition for Declaratory Judgment and for Preliminary and Permanent Injunctions. (Index #1.) On November 30, 2017, the plaintiff, Samuel Provenza, formerly a police officer for the Town of Canaan, was involved in a motor vehicle stop that became subject to some media coverage in the Upper Valley. The Plaintiff now petitions the Court to declare that an internal affairs investigation report related to the stop (the "Report") is not subject to disclosure under the New Hampshire Right-to-Know Law, RSA ch. 91-A, and to enjoin the defendant, the Town of Canaan (the "Town"), from disclosing the contents of the Report to the public. Valley News daily newspaper ("Valley News"), filed a motion to intervene, which the Court granted. (Index #4.) Thereafter, Valley News objected to the plaintiff's petition and filed a crossclaim requesting that the Court rule that the Report is subject to disclosure under RSA ch. 91-

Clerk's Notice of Decision
Document Sent to Parties
on 12/02/2020

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Grafton Superior Court
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A.¹ (Indexes # 10, 11).

On September 15, 2020, the Court held a hearing at which counsel for the Plaintiff, the Town, and Valley News were present. Prior to the hearing, the Town submitted under seal a copy of the Report with minor redactions of information it contends is not subject to disclosure under RSA ch. 91–A and an unredacted copy of the Report. (Index #15), and the Court approved the parties' Stipulation and Protective Order Regarding Nondisclosure of Subject Investigation Report. (Index #14.) At the hearing, the parties agreed that, subject to a potential order of stay pending appeal, each was amenable to this order acting as a final adjudication on the merits of both the plaintiff's requests for declaratory judgment and for preliminary and permanent injunctions and on the merits of Valley News's crossclaim. After considering the parties pleadings, offers of proof, and arguments, the Court makes the following findings and rulings.

I. Factual Background

a. November 30, 2017 Traffic Stop²

On November 30, 2017, Canaan police dispatch received a call about a suspicious vehicle following a town school bus. Officer Provenza responded to the call and traveled to the location provided by dispatch. Officer Provenza did not activate his cruiser camera before responding to the call.³ Upon arriving at the location of the bus, Provenza observed a white SUV following closely behind the school bus, and he initiated a traffic stop of the

¹ Valley News filed a "Complaint-in-Intervention," but that is not a pleading allowed as a matter of right. See Superior Court Civil Rule 6(a). As a result, the filing was docketed as a crossclaim pursuant to Superior Court Civil Rule 10. No party objected. (Index #17.)

² The following facts are taken from the Report and the parties' pleadings.

³ Canaan Police Chief Frank explained that all police vehicles in Canaan, apart from Officer Provenza's, were equipped with cameras that automatically turn on when the car is turned on. Officer Provenza's cruiser camera, on the other hand, had to be manually activated by pushing a button. Chief Frank did not feel Officer Provenza's failure to activate his cruiser camera was intentional, but rather an oversight given the situation.

white SUV. Officer Provenza approached the vehicle and identified the driver as Crystal Eastman, a resident of Canaan, acknowledged that he recognized her, and asked her "what's going on?" [REDACTED] Ms. Eastman explained that she was following the bus because her daughter had been having ongoing issues with the driver of the school bus. Officer Provenza described Ms. Eastman's behavior as "nutty and weird," and further noted that, in his opinion, she was "not making sense and . . . was rambling." [REDACTED]

Officer Provenza, in an attempt to determine if Ms. Eastman was impaired, then moved his head toward the window and sniffed to see if he could detect an odor of alcohol or cannabis. Ms. Eastman claims he "got close enough that he could have kissed her," and she then angrily asked what he was doing. [REDACTED] Officer Provenza informed Ms. Eastman that he was investigating reports of a suspicious vehicle following a school bus. Officer Provenza asked Ms. Eastman for her license and registration multiple times, with Ms. Eastman responded by asking why he needed them because he knew who she was. Ms. Eastman then proceeded to retrieve her license to give to Officer Provenza, but before she handed it to him, she claims she began to lean across her front seat to retrieve her registration and cell phone, "probably pulling her license back in with her." [REDACTED] Officer Provenza, on the other hand, claims that as he reached for the license, she "snatched it back out of my fingers." [REDACTED]

Officer Provenza then informed Ms. Eastman that she was under arrest. Officer Provenza attempted to open the vehicle's door, but Ms. Eastman grabbed the door to prevent Officer Provenza from opening it. Eventually Officer Provenza was able to open the door, but Ms. Eastman wrapped her right arm around the steering wheel to prevent him from removing her from her vehicle. Officer Provenza claims that Ms. Eastman was

attempting to bite his hand whereas Ms. Eastman claims that Officer Provenza grabbed her hair behind her head and tried to pull her out of the car. Ms. Eastman claims to have been screaming for Officer Provenza to stop pulling her hair and to have honked her horn at least once.

Soon thereafter Officer Provenza was able to handcuff Ms. Eastman's left wrist. Officer Provenza again attempted to pull Ms. Eastman out of the vehicle to cuff her right wrist. While Officer Provenza was attempting to handcuff Ms. Eastman, Ms. Eastman claims her knee was hit, "she heard it pop," and she yelled that Officer Provenza had broken her leg. [REDACTED] Officer Provenza finished handcuffing Ms. Eastman and called for backup. Ms. Eastman claims that she did not see Officer Provenza hit her leg but she "felt it." [REDACTED]

Chief Frank arrived on the scene shortly thereafter.⁴ Chief Frank assisted Ms. Eastman to the rear of her vehicle and attempted to calm her down. Ms. Eastman was still complaining that her leg was injured. Ms. Eastman was then transported to Dartmouth-Hitchcock Medical Center. Ms. Eastman claims that she did not bite or kick Officer Provenza during the altercation. Officer Provenza claims he did not pull Ms. Eastman's hair or "put any part of his body on her legs." [REDACTED]

b. Ms. Eastman's Subsequent Trial and News Coverage

Ms. Eastman was subsequently charged with resisting arrest and disobeying a police officer. At trial, Ms. Eastman was acquitted of the resisting arrest charge and

⁴ Chief Frank later interviewed a number of witnesses and followed up with these witnesses.

convicted of disobeying a police officer, and that conviction was upheld on appeal. On February 8, 2018, Ms. Eastman filed a formal complaint against Officer Provenza. In response to Ms. Eastman's complaint, the Town commissioned Municipal Resources, Inc. ("MRI") to conduct an internal investigation into the excessive force complaint.

As [REDACTED] the November 30, 2017 traffic stop and Ms. Eastman's subsequent trial, the Valley News began to cover the story.⁵ On February 4, 2019, Valley News reporter Jim Kenyon requested a copy of the Report, all government records related to it, and all information concerning the cost of the report pursuant to RSA ch. 91-A. On February 8, 2019, the Town denied Valley News's request for the Report based on the "internal personnel practices" exemption set forth in RSA 91-A:5, IV, and specifically citing Union Leader Corp. v. Finneman, 136 N.H. 624 (2007). (Valley News's Obj. ¶ 17, Ex. 3.) The Town did, however, provide redacted documentation related to the cost of the Report. On June 9, 2020, Valley News renewed its request for the Report following the New Hampshire Supreme Court's decisions in Union Leader Corporation & a. v. Town of Salem, 173 N.H. ___ (May 29, 2020) and Seacoast Newspapers, Inc. v. City of Portsmouth, 173 N.H. ___ (May 29, 2020) which overruled certain key holdings of Finneman.

In response to Valley News's renewed request for the Report, the Town made Officer Provenza aware of the request. Officer Provenza then filed this lawsuit seeking to enjoin the Town from releasing the Report. Valley News filed a motion to intervene, which

⁵ Before the plaintiff instituted this action, the Valley News had published five stories related to traffic stop and trial—"Jim Kenyon: Canaan Mom Injured by Police Officer Cries Foul" on March 4, 2018; "Jim Kenyon: In Canaan, Police Transparency Not a Priority" on August 12, 2018; "Jim Kenyon: Canaan report about police excessive force case remains a secret" on February 29, 2019; "Jim Kenyon: Judge finds Canaan woman not guilty of resisting arrest" on June 4, 2019; "Jim Kenyon: Plenty of question marks follow Canaan woman's sentence" on July 20, 2019.(Kenyon Aff., Index #12.)

this Court granted. Valley News then filed an objection to Officer Provenza's suit for injunctive relief and a crossclaim seeking disclosure of the Report.

c. Findings of the Report

The Town commissioned MRI to conduct an internal investigation into the excessive force complaint filed by Ms. Eastman. The purpose of its investigation was "to determine if the level of force used by Officer Provenza when he arrested Crystal Eastman was justified, given the circumstances." (Report at 13.) MRI conducted interviews of Officer Provenza, Ms. Eastman, Chief Frank, Ms. Eastman's supervisor, and several eyewitnesses⁶, and it also reviewed police reports, medical documentation, and other relevant evidence. MRI released its Report in July 2018. The investigator summarized his conclusions as follows:



⁶ As discussed below, *infra*. fn. 9, the eyewitnesses are all minors and their privacy interests require the Court to keep their names anonymous.

(*Id.* at 14–15.)

II. Analysis

Officer Provenza now petitions the Court to enjoin the Town from disseminating the Report to the public and to declare the Report exempt from public access under the Right-to-Know Law, pursuant to RSA 91-A:5, IV. (Pl.’s Pet. ¶¶ 1, 22.) Specifically, Officer Provenza argues that “his privacy interests in an unfounded internal affairs investigation outweighs the request for disclosure to the public.” (*Id.* ¶ 2.) Valley News objects and asserts that the Report is “a public record that must be made available for inspection” to Valley News and the public a large, pursuant to RSA ch. 91-A and Part I, Article 8 of the New Hampshire Constitution. (Valley News’s Crossclaim ¶ 32, prayer A.) Valley News contends that the Report is subject to disclosure because: 1) “the public interest in disclosure is compelling”; 2) “the privacy interests in nondisclosure are nonexistent”; and 3) “the public interest trumps any nonexistent privacy interest.” (*Id.* ¶ 32.)

With respect to Officer Provenza’s petition for injunctive relief, “[t]he issuance of injunctions, either temporary or permanent, has long been considered an extraordinary remedy.” New Hampshire Dep’t of Envtl. Servs. v. Mottolo, 155 N.H. 57, 63 (2007). An injunction should not issue unless the petitioner shows: (1) that he is likely to succeed on the merits; (2) that he has no adequate remedy at law; (3) that he will suffer immediate

irreparable harm if the injunctive relief is not granted; and (4) that the public interest will not be adversely affected if the injunction is granted. Id.; UniFirst Corp. v. City of Nashua, 130 N.H. 11, 13–15 (1987); see also Kukene v. Genualdo, 145 N.H. 1, 4 (2000) (“injunctive relief is an equitable remedy, requiring the trial court to consider the circumstances of the case and balance the harm to each party if relief were granted”). “The granting of an injunction is a matter within the sound discretion of the Court exercised upon a consideration of all the circumstances of each case and controlled by established principles of equity.” DuPont, 167 N.H. at 434.

As to the likelihood of success on the merits, Officer Provenza argues that he is likely to succeed on the merits “based on the balance of the probabilities as there is a clear privacy interest recognized by the public policy of the State of New Hampshire.” (Pl.’s Pet. ¶ 34.) Essentially, Officer Provenza asserts that, as a matter of public policy, the Report is exempt from disclosure under the Right-to-Know Law. He maintains that “[t]he public interest would not be adversely affected but rather promoted” by granting injunctive relief “as the public policy requires that personnel matters be held confidential pursuant to statute and that matters and allegations not be indiscriminately disseminated by individuals.” (Id. ¶ 35.) Valley News disagrees and contends that Provenza’s request for injunctive relief should fail because: 1) RSA 91-A:5, IV “does not create a statutory right of action for government officials seeking to have documents withheld, nor does it create a statutory privilege that can be invoked by Provenza to compel the Town to withhold the [Report]”; and 2) under RSA 91-A:5, IV the “public interest balancing analysis compels its disclosure.” (Valley News’s Obj. ¶15.)

Turning first to the parties' statutory arguments, generally, "[t]he ordinary rules of statutory construction apply to [the Court's] review of the Right-to-Know Law." Censabella v. Hillsborough Cty. Attorney, 171 N.H. 424, 426 (2018) (citing N.H. Right to Life v. Dir., N.H. Charitable Trusts Unit, 169 N.H. 95, 102–03 (2016)). "When examining the language of a statute, [the Court] ascribe[s] the plain and ordinary meaning to the words used." Id. at 103. "[The Court] interpret[s] legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include." Id. "[The Court] also interpret[s] a statute in the context of the overall statutory scheme and not in isolation." Id.

The purpose of the Right-to-Know Law "is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people." (RSA 91-A:1 (2013); N.H. Right to Life, 169 N.H. at 103. "Thus, the Right-to-Know Law furthers our state constitutional requirement that the public's right of access to governmental proceedings and records shall not be unreasonably restricted." Censabella, 171 N.H. at 426; see also N.H. Const. pt. 1, art. 8 ("the public's right of access to governmental proceedings and records shall not be unreasonably restricted.") (emphasis added). The Right-to-Know Law provides "[e]very citizen" with a "right to inspect and copy all government records . . . except as otherwise prohibited by statute." RSA 91-A:4, I. RSA 91-A:4, IV requires public bodies and agencies to make such government records available for inspection and copying upon request. The statute allows "[a]ny person aggrieved by a violation of this chapter" to petition for injunctive relief. RSA 91-A:7; Censabella, 171 N.H. at 427.

Valley News first argues that “[t]o the extent Provenza bases his request for declaratory and injunctive relief pursuant to a Right- to-Know exemption, his claim fails because the statute does not create a cause of action for anyone other than a requester who has been “aggrieved by a violation” of a government entity . . . who has declined to produce documents pursuant to an applicable exemption.” (Valley News’s Obj. ¶ 16.) In short, Valley News maintains that because “Provenza is not an aggrieved requester, he has no statutory right of action under the Right-to-Know Law.” (Id.) The Court concludes that it need not address the merits of this argument in order to rule on the merits of the parties’ dispute and the relief each requests. For purposes of this order, the Court assumes without deciding that the plaintiff is a “person aggrieved” within the meaning of RSA 91-A:7. In addition, the Court further rules that the plaintiff has standing to maintain this action under RSA 491:22 and RSA 498:1.

The Court next considers the parties’ arguments regarding to the balancing of public and private interests relating to disclosure of the Report. The Right-to-Know Law carves out exemptions from the general rule providing citizen access to governmental records. See RSA 91-A:5. RSA 91-A:5 provides, in pertinent part, that “[t]he following governmental records are exempted from the provisions of” the Right-to-Know Law:

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a public body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

Id. While it is true that “the statute does not provide for unfettered access to public records,” New Hampshire courts “broadly construe provisions in favor of disclosure and interpret the exemptions restrictively.” Seacoast Newspapers, Inc., 173 N.H. at __ (slip op. at 3.)

As noted above, Union Leader Corp. and Seacoast Newspapers, Inc., overruled key holdings in Fenniman relating to RSA 91-A:5, IV. Specifically, Seacoast Newspapers, Inc. “overrule[d] Fenniman to the extent that it broadly interpreted the ‘internal personnel practices’ exemption and its progeny to the extent that they relied on that broad interpretation.” 173 N.H. at __ (slip op. at 9). Similarly, Union Leader Corp. “overrule[d] Fenniman to the extent that it adopted a per se rule of exemption for records relating to ‘internal personnel practices.’” 173 N.H. at __ (slip op. at 11). The Court clarified that “[i]n the future, the balancing test we have used for the other categories of records listed in RSA 91-A:5, IV shall apply to records relating to ‘internal personnel practices.’” Id. (citing Prof'l Firefighters of N.H., 159 N.H. 699, 707 (2010)) (setting forth the three-step analysis required to determine whether disclosure will result in an invasion of privacy). Furthermore, “[d]etermining whether the exemption for records relating to ‘internal personnel practices’ applies will require analyzing both whether the records relate to such practices and whether their disclosure would constitute an invasion of privacy.” Id. (citing N.H. Housing Fin. Auth., 142 N.H. at 552).

New Hampshire Courts “engage in a three-step analysis when considering whether disclosure of public records constitutes an invasion of privacy under RSA 91-A:5, IV.” Lambert v. Belknap Cty. Convention, 157 N.H. 375, 382–83 (2008). This balancing test applies to all categories of records enumerated in RSA 91-A:5, IV. New

Hampshire Center for Public Interest Journalism v. New Hampshire Department of Justice

— N.H. __, __ (October 30, 2020) (slip op. at 10); Union Leader Corp., 173 N.H. at __ (slip op. at 11). “First, [the Court] evaluates whether there is a privacy interest at stake that would be invaded by the disclosure.” Lambert, 157 N.H. at 382. “Second, [the Court] assess[es] the public’s interest in disclosure.” Id. at 383. “Finally, [the Court] balance[s] the public interest in disclosure against the government’s interest in nondisclosure and the individual’s privacy interest in nondisclosure.” Id.

As to the first factor, the individual privacy interest, “[w]hether information is exempt from disclosure because it is private is judged by an objective standard and not a party’s subjective expectations.” Id. at 382–83. “If no privacy interest is at stake, the Right-to-Know Law mandates disclosure.” Id. at 383. Generally, “[a] clear privacy interest exists with respect to such information as names, addresses, and other identifying information even where such information is already publicly available.” Reid, 169 N.H. at 531.

Officer Provenza asserts that “[i]n New Hampshire, a police officer has a substantial privacy interest in [an] unfounded or unsustained internal affairs report which precludes the disclosure to the public because it outweighs the public’s right to know.” (Pl.’s Pet. ¶ 25.) To support his assertion of the heightened privacy interest of police officers, Officer Provenza also urges the Court to consider RSA 105:13-b, RSA 516:36, and Pivero v. Largy, 143 N.H. 187, 191 (1998). (Pl.’s Pet. ¶¶ 26–28.) Officer Provenza further argues that “the publication of baseless allegations deprives a police officer of his/her constitutionally protected liberty and property interests” pursuant to Part 1, Article 15 of the New Hampshire Constitution. (Id. ¶ 27.)

Valley News contends that Officer "Provenza's privacy interest in disclosure is nonexistent." (Valley News's Obj. ¶ 31.) It asserts that the plaintiff's reliance on RSA 105:13–b, RSA 516:36, and Pivero is misplaced. (Valley News's Obj. ¶¶ 34–36.) Valley News points to numerous cases from other jurisdictions that stand for the proposition that courts routinely reject the argument that police officers have a privacy interest when their actions implicate their official duties, including in the context of internal investigation of citizen complaints. (Valley News's Obj. ¶ 31, fn.7.) To rebut Officer Provenza's constitutional argument, Valley News posits that "the procedural due process and privacy protections in . . . Part I, Article 15 of the New Hampshire Constitution protect individual citizens from government officials, not the other way around." (*Id.* ¶ 37.)⁷

The Court first addresses the plaintiff's invocations of RSA 105:13–b, RSA 516:36, and Pivero. The Court agrees that the plaintiff's reliance thereon is misplaced. RSA 105:13–b concerns the disclosure of evidence in a "police personnel file." RSA 105:13–b, I. In this case, however, the Town initially denied Valley News's request for a copy of the Report based on the "internal personnel practices" exemption, not the exemption for "personnel . . . files," in RSA 91-A:5, IV. (Valley News's Obj., Ex. 3.) Moreover, RSA 105:13–b, by its plain language, applies only to situations in which "a police officer . . . is serving as a witness in any criminal case." John Doe v. Gordon J. MacDonald, Merrimack Super. Ct., No. 217-2020-CV-176 (August 27, 2020) (Order, Kissinger, J.); see Duchesne v. Hillsborough County Attorney, 167 N.H. 774, 781 (2015) (observing that the "current

⁷ To bolster this position, Valley News cites to Tompkins v. Freedom of Info. Comm'n, 46 A.3d 291 (Conn. App. Ct. 2012), which noted that "the personal privacy interest protected by the fourth and fourteenth amendments is very different from that protected by the statutory exemption from disclosure of materials." 46 A.3d at 297.

version of RSA 105:13-b addresses three situations that may exist with respect to police officers who appear as witnesses in criminal cases"). Finally, even if the Court was to "assume without deciding that RSA 105:13-b constitutes an exception to the Right-to-Know Law and that it applies outside of the context of a specific criminal case in which a police officer is testifying," an argument the plaintiff does not make, there is nothing in the record to suggest that the Report is contained in or is a part of the plaintiff's personnel file. New Hampshire Center for Public Interest Journalism, ___ N.H. at ___ (slip op. at 7–9); see Reid, 169 N.H. at 528 (discussing the personnel files exemption in RSA 91-A:5, IV). RSA 516:36 is also inapplicable because it governs the admissibility and not the discoverability of internal police investigation documents and, thus, has no bearing on the Right-to-Know analysis. Similarly, Pivero v. Largy is unpersuasive because that case did not concern the Right-to-Know Law and relied on a holding in Fenniman that has since been overruled.

With respect to the plaintiff's contention that disclosure of the Report to the public would deprive him of his "protected liberty and property interests" under Part 1, Article 15 of the New Hampshire Constitution (Pl.'s Pet. ¶ 27), the Court finds that the plaintiff has not sufficiently developed this argument for judicial review and deems it waived. See Guy v. Town of Temple, 157 N.H. 642, 658 (2008) (stating that "judicial review is not warranted for complaints . . . without developed legal argument, and neither passing reference to constitutional claims nor off-hand invocations of constitutional rights without support by legal argument or authority warrants extended consideration") (brackets, quotations and citation omitted); State v. Chick, 141 N.H. 503, 504 (1996) (considering waived

defendant's undeveloped Part 1, Article 15 argument upon which he did "not further elaborate").

The Court agrees with Valley News that Officer Provenza's privacy interests in disclosure, if any, are minimal. First, "the Right-to-Know Law furthers our state constitutional requirement that the public's right of access to governmental proceedings and records shall not be unreasonably restricted." Censabella, 171 N.H. at 426. Second, information concerning purely private details about a person who happens to work for the government is very different from facts, such as those detailed in the Report, concerning that individual's conduct in his or her official capacity as a government employee. See Lamy v. N.H. Public Utilities Comm'n, 152 N.H. 106, 113 (2005) (observing that "the central purpose of the Right-to-Know Law is to ensure that the *Government's* activities be opened to the sharp eye of public scrutiny, not that information about *private citizens* that happens to be in the warehouse of the Government be so disclosed") (quotations and citation omitted). Therefore, even "[a]ssuming there is a relevant privacy interest at stake, that interest is minimal because the [Report] do[es] not reveal intimate details of [Officer Provenza's] life," but rather information relating to Officer Provenza's conduct as a government employee while performing his official duties and interacting with a member of the public. See New Hampshire Civil Liberties Union, 149 N.H. at 441.

As to the second factor, the public's interest in the information, "[d]isclosure of the requested information should inform the public about the conduct and activities of their government." Lambert, 157 N.H. at 383. Indeed, "[t]he public has a significant interest in knowing that a government investigation is comprehensive and accurate." Reid, 169 N.H. at 532 (quotations and citation omitted). "The legitimacy of the public's interest in

disclosure, however, is tied to the Right-to-Know Law's purpose, which is 'to provide the utmost information to the public about what its government is up to.'" *Id.* (citing N.H. Right to Life, 169 N.H. at 111). "If disclosing the information does not serve this purpose, disclosure will not be warranted even though the public may nonetheless prefer, albeit for other reasons, that the information be released." *Id.* (citing Lamy, 152 N.H. at 111) (quotations omitted). "Conversely, 'an individual's motives in seeking disclosure are irrelevant to the question of access.'" *Id.* (citing Lambert, 157 N.H. at 383).

Officer Provenza argues that, because the Report ultimately concluded that the excessive force allegation against him was determined to be "not sustained," the public interest in the Report is insignificant. Officer Provenza further contends that nondisclosure of the Report actually promotes the public interest in two regards: firstly, "public policy requires that personnel matters be held confidential pursuant to statute and that matters and allegations not be indiscriminately disseminated by individuals," and, secondly, the public's interest in public safety is undermined if police are worried about dissemination of unfounded complaints, which would have a chilling effect on policing in the State. (Pl.'s Pet. ¶¶ 28, 31, 35.)

Valley News asserts that the "public interest in disclosure is strong." (Valley News's Obj. ¶ 28.) Specifically, Valley News argues that "[p]roducing the full report would enable the public to know not just the contours of Provenza's conduct, but also the policies and procedures governing internal affairs investigations and whether they were appropriately followed in this case." (*Id.* ¶ 29.) Valley News notes that this case occurs "[i]n this moment of conversation about police accountability nationally and here in New Hampshire"⁸ and,

⁸ Valley News directs the Court to Governor Sununu's Executive Order 2020-11, which recognized the "nationwide conversation regarding law enforcement, social justice, and the need for reforms to enhance

as such, “it is imperative that the public be able to know whether law enforcement agencies can be trusted to hold themselves accountable, or if a different system is necessary.” (*Id.*) Valley News posits that “setting aside the obvious public interest in allowing the public to evaluate the findings of MRI and the completeness of its investigation, there is a compelling public interest in enabling the public to use the MRI report to evaluate the integrity of the Canaan Police Department’s internal affairs investigation of this incident.” (*Id.* ¶ 30)

Valley News relies heavily on, and the Court finds persuasive, a Vermont Supreme Court case, Rutland Herald v. City of Rutland, 84 A.3d 821 (Vt. 2013), for the proposition that “there is a significant public interest in knowing how the police department supervises its employees and responds to allegations of misconduct.” *Id.* at 825. The Rutland Herald court reasoned that “the internal investigation records and related material will allow the public to gauge the police department’s responsiveness to specific instances of misconduct; assess whether the agency is accountable to itself internally, whether it challenges its own assumptions regularly in a way designed to expose systemic infirmity in management oversight and control; the absence of which may result in patterns of inappropriate workplace conduct.” *Id.* (quotations omitted).

Indeed, the public has a significant interest in knowing how the police investigate such complaints for a number of reasons. First, the public has the right to know that the police take their complaints seriously and that the investigation was “comprehensive and accurate.” See Reid, 169 N.H. at 532 (in reference to an investigation of the New Hampshire Attorney General’s office, the Court noted “[t]he public has a significant

transparency, accountability, and community relations in law enforcement.”
<https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/2020-11.pdf>.

interest in knowing that a government investigation is comprehensive and accurate") (quotations omitted); N.H. Civil Liberties Union, 149 N.H. at 441 ("Official information that sheds light on an agency's performance of its statutory duties falls squarely within the statutory purpose of the Right-to-Know Law") (quotations and citation omitted). Second, the public similarly has the right to know whether the police officer in question was given a fair investigation aligned with traditional notions of due process. Third, as is evidenced by the national conversation concerning policing in the United States, transparency at all levels of police conduct investigations is fundamentally important to ensure the public's confidence and trust in local police departments. See RSA 91-A:1 (The purpose of the Right-to-Know Law "is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.") (emphasis added); Prof'l Firefighters of N.H., 159 N.H. at 709 (noting that "knowing how a public body is spending taxpayer money in conducting public business is essential to the transparency of government, the very purpose underlying the Right-to-Know Law").

Moreover, the New Hampshire Supreme Court's overruling of Fenniman reinforces the importance of transparency in government. See Seacoast Newspapers, Inc., 173 N.H. at __ (slip op. at 9) ("An overly broad construction of the 'internal personnel practices' exemption has proven to be an unwarranted constraint on a transparent government."); see e.g., Salcetti v. City of Keene, (unpublished order, decided June 3, 2020), (slip op. at 7, 9–10) (where the Supreme Court vacated and remanded a superior court decision denying a petition concerning "any and all citizen complaints, logs, calls, and emails regarding charges of excessive police force and/or police brutality" in light of its recent decisions in Union Leader Corp. and Seacoast Newspapers, Inc.).

As to the third factor, the balancing of the private and public interests, “the legislature has provided the weight to be given one side of the balance by declaring the purpose of the Right-to-Know Law in’ the statute itself.” Reid, 169 N.H. at 532 (brackets omitted) (quoting Union Leader Corp. v. City of Nashua, 141 N.H. 473, 476 (1996)). Specifically, the preamble to RSA chapter 91–A provides: “Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.” RSA 91–A:1. “Thus, when a public entity seeks to avoid disclosure of material under the Right-to-Know Law, that entity bears a heavy burden to shift the balance toward nondisclosure.” Reid, 169 N.H. at 532 (quotations and brackets omitted). Here, although Officer Provenza is not a public entity, as the party opposing disclosure he bears the same “heavy burden.” See id.

Officer Provenza calls for a bright-line rule to the effect that if an internal police investigation concludes that the complaint against the officer is unfounded or not sustained, then the officer’s privacy interest outweighs the public interest. (Pl.’s Pet. ¶¶ 25, 28.) This proposition, however, contravenes the purposes of the Right-to-Know Law — ensuring maximum public access to governmental proceedings and records, and promoting accountability of public officials to the citizens of New Hampshire. See RSA 91–A:1. The people of New Hampshire have the constitutionally rooted right to access public information and hold those in power accountable for their actions, a right “essential to a democratic society.” Id.; N.H. Const. pt. 1, art. 8. To apply the bright-line rule that Officer Provenza urges the Court to adopt would be to acknowledge that the people of New Hampshire merely have the right to access information concerning founded

misconduct of police officers and not, among other things, whether an investigation resulting in a finding that the misconduct complaint was not sustained was “comprehensive and accurate.” See Reid, 169 N.H. at 532. In the absence of Fenniman and its progeny, Officer Provenza cannot meet his “heavy burden” to shift the balance towards nondisclosure. Reid, 169 N.H. at 532. The Court concludes that the balancing test overwhelmingly favors the public’s interest in disclosure of the report in the name of transparency and accountability. See RSA 91-A:1.

As the trial court in Union Leader Corp. noted, “bad things happen in the dark when the ultimate watchdogs of accountability—i.e, the voters and taxpayers— are viewed as alien rather than integral to the process of policing the police.” Union Leader Corp. v. Town of Salem, No. 218-2018-CV-01406, 2019 WL 3820631, at *2 (N.H.Super. Apr. 05, 2019) (vacated and remanded by Union Leader Corp., 173 N.H. at __). “Democracies die behind closed doors,” and through laws, such as the Right-to-Know Law, the people are better able to hold government officials accountable. Detroit Free Press v. Ashcroft, 303 F.3d 681, 683 (6th Cir. 2002).

For the reasons articulated above, the Court rules that the Report is subject to disclosure. The Right-to-Know Law provides “[e]very citizen” with a right to inspect and copy government records except as otherwise prohibited by statute” and “requires public bodies and agencies to make such government records available upon request.” RSA 91-A:4, I; RSA 91-A:4, IV. Here, because the Report is not exempt under RSA 91-A:5, IV, the Town must comply with the statute by disclosing the Report.⁹

⁹ At the September 15, 2020 hearing, the Town requested that certain information—specifically medical information, license plate numbers, and the names of minors—be redacted from the Report. Valley News does not object to the proposed redactions. (Index #19.) The Court agrees that the privacy interest in this information outweighs any public interest in it. Reid, 169 N.H. at 531.

III. Conclusion

For the foregoing reasons, the plaintiff's petition for declaratory judgment and for preliminary and permanent injunctions is **DENIED**, and Valley News's crossclaim for declaratory relief is **GRANTED**.

The Court requests that the parties review the redacted copy of this order, attached hereto, and if they believe further redaction is necessary, to so inform the Court by motion filed within seven (7) days of the date of the clerk's notice of decision. Thereafter, the redacted version will be issued publicly.

So Ordered.

Date: 12/2/2020



Hon. Peter H. Bornstein
Presiding Justice

EXHIBIT 2

New Hampshire

Department of Justice

Office of the Attorney General

News Release

For Immediate Release

January 15, 2020

Contact:

Kate Spiner, Director of Communications
(603) 573-6103 kate.spiner@doj.nh.gov

Geoffrey W. R. Ward, Senior Assistant Attorney General
Chief, Criminal Justice Bureau
(603) 271-3671 geoffrey.ward@doj.nh.gov

Arrest of Sergeant Michael Verrocchi of the Salem Police Department on Charges of Reckless Conduct and Disobeying an Officer

Concord, NH – Attorney General Gordon J. MacDonald announces that Michael D. Verrocchi, age 41, of Salem, New Hampshire was arrested on Wednesday, January 15, 2020, and charged with one class B felony count of reckless conduct with a deadly weapon and one class A misdemeanor count of disobeying an officer. Mr. Verrocchi is currently employed as a Sergeant with the Town of Salem Police Department.

The reckless conduct charge alleges that on November 10, 2012, in Salem, New Hampshire, Michael Verrocchi did recklessly engage in conduct which placed or may have placed others in danger of seriously bodily injury, in that Mr. Verrocchi, while operating a Jeep Cherokee on Route 28 in Salem, operated the motor vehicle in excess of the posted speed limit, failed to stop when signaled to stop by Officer Sean York of the Salem Police Department by means of audible and visual emergency warning signals, and instead fled from Officer York and engaged in a high-speed motor vehicle pursuit over a distance of approximately two miles during which Mr. Verrocchi ran a red light and avoided spike strips placed in the roadway by Officer Kevin Swanson of the Salem Police Department and continuously failed to stop for Officer York. The vehicle being operated by Mr. Verrocchi constitutes a deadly weapon as defined in RSA 625:11.

The disobeying an officer charge alleges that on November 10, 2012, in Salem, New Hampshire, Michael Verrocchi did purposely, while driving or in charge of a motor vehicle, neglect to stop when signaled to stop by Officer Sean York of the Salem Police Department by means of authorized audible and visual emergency warning signals.

Mr. Verrocchi is scheduled to be arraigned in the Rockingham County Superior Court on January 30, 2020, at 1:00 p.m.

The charges and allegations contained in the complaints are merely accusations, and Mr. Verrocchi is presumed innocent unless and until he is proven guilty.

New Hampshire Department of Justice
33 Capitol Street | Concord, NH | 03301
Telephone: 603-271-3658

EXHIBIT 3

New Hampshire
Department of Justice
Office of the Attorney General

News Release

For Immediate Release

September 17, 2020

Contact:

Kate Giaquinto, Director of Communications
kate.giaquinto@doj.nh.gov | 603-573-6103

Nicole M. Clay, Assistant Attorney General
nicole.clay@doj.nh.gov | (603) 271-3674

Indictment of Michael Verrocchi of the Salem Police Department on Charges of Reckless Conduct

Concord, NH – Attorney General Gordon J. MacDonald announces that Michael D. Verrocchi, age 42, of Salem, New Hampshire has been indicted by the New Hampshire Multicounty Grand Jury for one count of reckless conduct with a deadly weapon, a class B felony.

On November 10, 2012, Mr. Verrocchi, an off-duty Salem Police Officer, recklessly engaged in conduct which placed or may have placed others in danger of serious bodily injury when he operated a vehicle at a high rate of speed and engaged in a motor vehicle pursuit, failing to stop when signaled to do so by police.

This matter is scheduled for a dispositional conference in Rockingham County Superior Court on October 20, 2020.

The charges and allegations contained in the indictment are merely accusations, and Mr. Verrocchi is presumed innocent unless and until he is proven guilty.

New Hampshire Department of Justice
33 Capitol Street | Concord, NH | 03301
Telephone: 603-271-3658

EXHIBIT 4

**Version of Internal Affairs
Report Released On April 26, 2019
After Superior Court's April 5 and 22,
2019 Orders**



October 12, 2018

Report of Audit

Prepared for

Mark T. Broth, Esq. of Drummond Woodsum

Daniel P. Linskey
Managing Director, Security Risk Management

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REP 002

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1. Introduction & Scope of Audit

Introduction

Kroll was engaged by the law firm, Drummond & Woodsum, on behalf of the Town of Salem, New Hampshire, to audit the operations and efficiencies of the Salem, New Hampshire Police Department ("Salem PD"), namely related to the following:

- time and attendance practices of personnel within the Salem PD, and
- internal affairs investigative practices within the Salem PD.

Kroll has separated these tasks into two reports, with this report focusing on the Salem PD's internal affairs practices, as compared to best practices for law enforcement agencies nationwide. Specifically, Kroll evaluated the process by which the department handles internal affairs investigations to determine how these current practices impact and affect the operations of the department, the work environment of the Salem PD personnel and the community of Salem, New Hampshire, as a whole. Kroll's mandate was to review the process, in its entirety, and make a determination as to its fairness and comprehensiveness, and whether it is in line with widely-regarded law enforcement best practices. Kroll was not tasked with conducting an independent review of facts or circumstances surrounding individual complaints filed against Salem PD personnel.

It is widely accepted that law enforcement agencies will receive complaints concerning the conduct or behavior of its personnel. Police officers have the unique authority to remove a person's freedom, as well as take a human life. An effective and comprehensive internal affairs investigative process is meant to ensure that policing of our communities is done legally and ethically while also ensuring compliance with department-mandated policies and procedures. A citizen has the right to submit a complaint about alleged improper conduct by its police personnel, and it is essential that the complaint be thoroughly investigated. Further, if the complaint is sustained, the department must take appropriate action to address the issue. This process is fundamental to establishing the necessary trust and confidence to effectively police a community.

Just as fundamental is the principle that police officers can be sure that their actions, which are often made during times of tension and conflict, will be fairly and impartially investigated regardless of who is making the complaint, and that if their actions are found to be within the law and conducted in

accordance with the department's policies and procedures, they will be supported by their department. Kroll acknowledges that complaints may be lodged against officers merely as retribution for enforcement actions they may have taken, and it is just as important for these investigative measures to disprove a false complaint as it is to prove and sustain a valid one. It is also critical that if an officer is found to have conducted him- or herself improperly or inappropriately, that the response from the department is seen as appropriate and proportionate to the incident. Officers who have complaints sustained against them should be able to anticipate a consistent outcome. Officers committing the same offense, should all things be equal, must be treated the same. If the offense mandates additional training, a reprimand or a more formal disciplinary action, there should be no fear that individuals will be treated differently because of who they are or with whom they have aligned themselves within the department.

Specifically, it is Kroll's opinion that when determining how to respond to a complaint, police leadership should, at the very least, ask the following questions of all parties involved: "What happened? Why did it occur? Was it an honest mistake or an intentional violation? What previous history is there of complaints against this employee?" Police officers are certainly capable of and do make mistakes, respond imperfectly under stress or have bad days; however, some may also deliberately engage in inappropriate or criminal behavior, just like members of the very community which they are bound to serve and protect. Therefore, it is the goal of appropriate and impartial internal affairs investigations to not only protect the citizens of the community but also the law enforcement personnel tasked with serving those citizens.

Key Personnel

Mark Broth

Mark Broth is an attorney with Drummond Woodsum's labor and employment group. His practice "focuses on the representation of private and public employers in all aspects of the employer-employee relationship."¹ He is currently representing the Town of Salem, New Hampshire in this investigation.

Chris Dillon

Chris Dillon was appointed as town manager of Salem, New Hampshire on August 7, 2017, replacing outgoing Town Manager Leon Goodwin. As town manager, Dillon "works to oversee the day-to-day operations of Salem and will work with the five-member Board of Selectmen."²

¹ <http://www.dwmlaw.com/PROFESSIONAL?id=6>

² "Dillon tapped as new Salem town manager," *New Hampshire Union Leader*, September 7, 2017.

Chief Paul Donovan

Paul Donovan was appointed as chief of the Salem PD in 2001 following 20 years as an officer with the Hartford, Connecticut Police Department.³

Deputy Chief Robert Morin

Robert Morin is deputy chief of the Salem PD. Deputy Chief Morin also serves as union president, representing those with the title of lieutenant and above.

Captain Joel Dolan

Joel Dolan is a captain with Salem PD.

Captain Michael Wagner

Michael Wagner is a captain with Salem PD.

Sergeant Michael Verrocchi

Michael Verrocchi was promoted to sergeant in March 2016. Sergeant Verrocchi is union president for sworn personnel, ranging from patrol officers to lieutenants.

Keith Hickey

Keith Hickey served as town manager of Salem, New Hampshire from 2010 to 2015.

Leon Goodwin

Leon Goodwin served as Salem, New Hampshire assistant town manager from October 2013 to December 2015 and then became town manager in December 2015. He served in this role until January 1, 2018. Goodwin is currently a foreign service officer with the U.S. State Department.

Molly McKean

Molly McKean previously served as human resources director for the Town of Salem, New Hampshire. She left this position in December 2017. She is an employment lawyer by training and is currently employed at Saint Anselm's College as executive director of human resources.

³ "Chief Donovan Says Salem Police 'Prepared and Capable' for Casino," *Salem Patch*, April 17, 2013.

Background

Attorney Broth, as well as Town Manager Dillon, informed Kroll that they had received informal complaints from individuals over the years stating that the internal affairs process at the Salem PD was perceived as unfair and incomplete. They were told that the department was known to discourage citizens from making formal complaints, and when complaints were, in fact, submitted, the investigative actions were insufficient or disregarded entirely. In some instances, they informed Kroll, decisions about whether to sustain or not sustain a complaint, and subsequently issue discipline, were based on popularity within the department's leadership instead of on the merits of the case. They stated that similar concerns were raised with two previous town managers, with one even discussing initiating an audit of the police department with Chief Donovan. The chief welcomed such a review but expressed concerns that the independent entity being considered for the assignment did not have the relevant professional experience of dealing with a law enforcement agency, and as such, the review did not proceed.

Dillon, while serving in his prior role as director of recreation for the Town of Salem, told Kroll he had heard complaints of similar concerns regarding the Salem PD's internal affairs program. He noted that in his previous role, he interacted daily with town residents and employees, and that during those interactions, he often received information concerning the professionalism of the Salem PD. One such discussion involved a supervisor in the Salem PD who was asked about injuries that a suspect sustained after fleeing into a wooded area. The supervisor responded with, "Well, if you are going to make us run, you are going to pay the price." Kroll notes that, without further insight into the interaction, the supervisor's response indicates that force may be utilized on an individual as a form of punishment instead of necessity.

Similarly, upon his appointment as town manager, Dillon received additional information concerning the department's internal affairs process. Individuals expressed concerns over being discouraged from filing a complaint, as well as about the complaint form itself. It was revealed that the form unnecessarily required a signature under pains and penalties of perjury and warned that any false or misleading statements by a complainant could lead to civil or criminal prosecution. A copy of this form is included as follows:

| Complaint Intake Form | |
|---|------------------------|
| ICI File #: _____ | |
| Name of Complainant _____ | |
| Address _____ | |
| Phone Number _____ | Date of Incident _____ |
| Employee Names _____ | |
| Alleged Misconduct _____ | |
| <p>The following will be presented to an identifiable complainant by the Supervisor receiving the complaint and/or Assigned Investigator for review and signature. A refusal will have an appropriate weight placed on it during the investigation.</p> | |
| STATEMENT OF AFFIRMATION | |
| <p>I, _____, do hereby affirm that the attached information is true and complete to the best of my knowledge and belief. I understand that false, misleading or untrue statements, accusations or allegations, herein made by me, either orally or in writing to any person investigating this complaint may subject me to civil and/or criminal prosecution.</p> | |
| <p>I further realize that it may be necessary for me to meet with investigators or others to discuss this complaint. I understand that my testimony before a court or other administrative hearing may be required. I hereby agree to make myself available for such hearings or court upon reasonable request.</p> | |
| Complainant Signature _____ | Witness _____ |
| <p>Method Received: Telephone _____ In Person _____ By Mail _____ Written Statement _____ Outside Source _____ (BOS, Town Mgr, rec'd complaint) _____</p> | |
| <p>Complainant advised of our procedures in conducting investigations Y _____ N _____ Date _____ Time _____ Receiving Supervisor _____</p> | |
| Reviewed _____ | Assigned to _____ |
| GO# 65-3, Attachment A | |

Dillon told Kroll that he requested a copy of the form from the Salem PD on several occasions but never received one.

Kroll also learned of significant tension between the Salem PD's administration and the town's administration, which has existed for several years. The town administration stated that they were perceived as interfering or impeding with the Salem PD's operations whenever they made a request, sought information or commented on the department's operations. They attributed the tension to interpretations of the department's collective bargaining agreements ("CBA"), with the Salem PD often countering their requests by saying that the town's actions violated the department's CBA and were, therefore, unlawful.

This issue presented itself most recently in early 2018 when Dillon received a complaint regarding Salem PD officers. The complainant informed Dillon that they felt the need to contact him directly – instead of contacting the Salem PD directly – because several people, including a former member of the Salem PD, had told them that their complaint would not be investigated properly if they went directly to the front desk at the Salem PD. Dillon informed the complainant that they needed to put their complaint in writing. The complainant followed that recommendation, and the town manager forwarded the complaint to Chief Donovan for consideration. The chief and others at the department informed Dillon that they could not investigate the complaint because the town manager's directions to the complainant violated the department's CBA. The town manager disagreed and sought legal counsel. Kroll notes that the complaint form below clearly has a section for complaints received from the board of selectmen and the town manager:

Method Received:
Telephone _____
In Person _____
By Mail _____
Written Statement _____
Outside Source _____
(BOS, Town Mgr, rec'd complaint) _____

There was then a meeting with Broth, Dillon and Chief Donovan. After that meeting, the chief forwarded the complaint to the Office of the Attorney General in Concord, New Hampshire for a determination as to any criminality posed by the Salem PD. The Attorney General's Office responded with a letter stating that the Salem PD's actions were not criminal in nature and referred the matter back to the Salem PD for further consideration. Chief Donovan informed Dillon that the Attorney General's Office had cleared the officers and that no further investigation or response was needed. Dillon disagreed with the chief's interpretation of the Attorney General's Office's response and engaged Kroll to conduct an independent, third-party audit and review of the Salem PD's internal affairs program.

Kroll's Investigative Team

Kroll's primary investigative team was led by the following professionals:

Daniel Linskey ("Linskey"), managing director

Linskey is a former superintendent-in-chief of the Boston Police Department and a 27-year veteran of the force. He notably led the Boston Police Department through some of the most tragic and contentious events in the city's history, including the Boston Marathon bombings and the Occupy Movement.

As a managing director at Kroll, Linskey serves clients in diverse industries with internal investigations, crisis response measures and risk management, as well as personal, physical and operational security strategies. He leads Kroll's worldwide law enforcement consulting practice. Widely respected for his knowledge of the complexities inherent in law enforcement and homeland security, Linskey has also consulted with several national and international government agencies on a broad range of challenges, including large-scale event management, crisis leadership and preparedness, and community engagement strategies.

Linskey was a member of the United States Department of Justice's team requested by the St. Louis County Police Department to respond to Ferguson, Missouri after the officer-involved shooting by Darrin Wilson. While there, the team conducted a collaborative review of the department. Linskey co-authored the report *Collaborative Reform Initiative an Assessment of the St. Louis County Police Department* (<https://ric-zai-inc.com/Publications/cops-p316-pub.pdf>).

Linskey also has extensive experience developing and conducting law enforcement training to line level officers, first line supervisors, speciality units and senior leaders of agencies. He has provided training to numerous law enforcement personnel from across the globe through the U.S. State Department's ATA Program.

Linskey has served as an expert witness relative to appropriate police policy and procedure for several law firms and police departments, including the New Hampshire Attorney General's Office. He is a graduate of the FBI National Academy Class 243, as well as the Harvard University Kennedy School, National Leadership Preparedness Initiative in 2014.

Katy Shanahan (“Shanahan”), managing director

Since joining Kroll in 2006, Shanahan has worked on, and currently manages, a variety of complex multijurisdictional investigations on behalf of clients in diverse sectors, including large-scale due diligence assignments in support of IPOs and other transactional dealings, asset searches, investigations of employee fraud and misconduct, and theft of intellectual property. Her efforts support her clients' needs in crisis management, litigation support and corporate contests. Additionally, she has significant experience in both cyber security and physical and operational security casework. Prior to joining Kroll, Shanahan was an investigator with the U.S. Department of Labor's Office of Labor-Management Standards. There, she helped promote labor union and labor-management transparency through the enforcement of reporting and disclosure requirements for unions and their officials, employers, labor relations consultants and surety companies.

Roy Bethge (“Bethge”), former deputy chief of operations for the Buffalo Grove Police Department

Roy Bethge is a veteran police leader with more than 28 years of experience. He retired in May 2017 as deputy chief of operations for the Buffalo Grove Police Department in northern Illinois. His responsibilities included leadership of the patrol and investigations division with oversight of the public information function. He holds a master's degree in criminal justice from Columbia College and has an extensive background as a trainer in the subject areas of leadership development, officer safety, use of force and adult learning. Bethge is co-founder and lead instructor of The Virtus Group, Inc., which brings innovative leadership training and personal development instruction to law enforcement professionals around the country. As part of that endeavour, Bethge is co-creator of the *WINx: Inspiring Leadership in Law Enforcement* conference, which is a TED-style experience focused on law enforcement professionals.

Dr. Laura King (“King”), chief investigator for the McHenry County State’s Attorney’s Office

Dr. Laura King began her career in 1996 with the McHenry, Illinois police department. She quickly moved up the ranks from patrol to investigations and was promoted to patrol sergeant. She soon became administrative sergeant, followed by commander. In 2016, Dr. King was appointed as chief investigator for the McHenry County State’s Attorney’s Office, where she leads a team of professionals offering investigative support to prosecutorial teams county-wide. Dr. King is a liaison between the state’s attorney’s office and local law enforcement agencies to improve communications and operations with the intent to bring about more successful prosecutorial efforts.

Dr. King holds a doctorate of philosophy in psychology, a master of science degree in psychology and a bachelor of science degree in criminal justice administration. She is a graduate of the FBI’s prestigious National Academy (265th Session) and also graduated from Northwestern University’s School of Police Staff and Command (266th Session). In 2016, Dr. King was invited to Washington D.C. to participate in a roundtable hosted by the Department of Justice’s National Institute of Justice in its exploration of how best to establish, support and/or expand the in-house research and analytic capacity of law enforcement agencies around the country.

Scope of Audit

Kroll's efforts included the following:

- Met with Attorney Broth, Town Manager Dillon, Deputy Chief Morin, Captain Dolan and Captain Wagner to develop an audit plan and gather information concerning the internal affairs process, as well as potential areas for review.
 - The meeting was intended to include Attorney Broth, Town Manager Dillon, Kroll and Chief Donovan; however, the chief was out of work on a personal matter when the meeting occurred. His absence was unknown by Kroll or the others when the meeting was scheduled.
- Requested department-related policies and procedures, as well as CBA documents.
- Requested five years of comprehensive internal affairs files.
- Requested three years of arrest reports.
- Requested three years of use of force reports.
- Reviewed department policies and procedures, as well as CBA documents.
- Reviewed internal affairs files.
- Conducted interviews of the following:
 - Chief Donovan
 - Deputy Chief Morin (union president)
 - Captain Dolan
 - Captain Wagner
 - Sergeant Verrocchi (union president)
 - Individuals who contacted Kroll after learning of Kroll's involvement in the audit and who had direct experience with or knowledge of the Salem PD internal affairs program.
 - Several citizens contacted Kroll under the belief that Kroll was tasked with re-investigating complaints made against Salem PD personnel. While Kroll spoke with these individuals, they were all informed that Kroll's audit was limited to an audit and review of the department's internal affairs program and not a re-investigation of submitted complaints.
 - Town Manager Dillon
 - Former Town Manager Keith Hickey
 - Former Town Manager Leon Goodwin

- Former Human Resources Director Molly McKean
- Reviewed three years of use of force reports.
- Reviewed three years of arrest reports.
- Reviewed current publications and policies regarding best practices for internal affairs.

2. Review of CBA / Contracts

There are currently three collective bargaining agreements in place for the Salem Police Department:

1. The agreement between the Town of Salem, New Hampshire and the Salem Police Relief N.E.P.B.A. Local #22, in effect from April 1, 2016 to March 31, 2020, covering patrol officers, sergeants, dispatch supervisor, dispatchers and animal control officers.
2. The agreement between the Town of Salem, New Hampshire and the Salem Public Administrators Association, in effect from April 1, 2017 to March 31, 2020, covering the deputy police chief, police captains and police lieutenants.
3. The collective bargaining agreement between the Town of Salem, New Hampshire and the Salem Administrative and Technical Employees, in effect from April 1, 2017 to March 31, 2020, covering administrative staff and clerks.

Due to the scope of this Audit, this report will concentrate on the Salem Police Relief contract and the Public Administrators Association contract since these are the two agreements that specifically relate to and address the internal affairs procedures applicable to sworn staff members. Each of these contracts will be reviewed in depth with a summary offered related to how the contracts impact the current internal affairs process, as well as how they compare to national best practices followed by accredited police agencies.

Concerns with Salem Police Relief N.E.P.B.A. Local #22 CBA

Article 1: Agreement, Purpose and Non-Discrimination

Article 1 clearly stated this agreement is between the Town of Salem, New Hampshire and the Salem, New Hampshire Police Relief (hereinafter called the "Union"). It goes on to state "the purpose of the agreement is to... set forth terms and conditions of employment." At no time does this agreement specify the chief's role as superseding authority over matters. In fact, the agreement is clearly made between the Town and the Union.

Article 4: Management Rights

Article 4 of this document covers management rights. It begins with the following wordage:

1. The parties agree that all rights and responsibilities of the Town which have not been specifically provided for this agreement are retained in the sole discretion of the Town. The right to determine and structure the goals, purposes, functions and policies of the Town without prior negotiations with the Union shall include:
 - a. The right to direct employees, to determine qualifications, hiring criteria, to establish standards for work, retain employees in positions.
 - b. The right to lay off personnel due to budgetary constraints and/or lack of work.
 - c. The right to take such actions as in its judgment is necessary to maintain the efficiency of Department operations.
 - d. The right to determine the means, methods, budgetary and financial procedures, and personnel by which the Department operations are to be conducted.
 - e. The right to make personnel rules, regulations, and policies not inconsistent with the provisions of this agreement and to require compliance therewith.

Management rights then continues to address other areas including the chief and command staff's authority in emergency situations, employees right to grieve and a provision that the Town agrees not intentionally violate the agreement. It is the specific wording of number one and its subsections that we must focus our attention.

Clearly management rights are established early in the document to offer guiding principles to ensure all parties are following the contract in good faith. In the first section (offered above), we see that any area outside of the areas covered specifically by the contract revert to the authority of the Town. This section goes on to address specific subsections, or areas, where the Town has ability to impose structure without prior negotiations with the Union. The first subsection speaks specifically to "establishing standards of work and retain employees in positions." In the third subsection we see the Town being granted "The right to take such actions as in its judgment is necessary to maintain the efficiency of Department operations." These subsections are offered to detail areas where the Town can take actions without prior negotiations with the Union.

It is recognized that a healthy work environment would have each employee answering to one main authority figure. While this is usually the chief of police, because of the sensitivity of matters of establishing and maintaining public trust, the Town must maintain some authority and ability to look into concerning matters. This is necessary both because of the history of police corruption in this country and because citizens may not feel comfortable going to the police department to report concerning behavior of one of their own employees. In specifically giving the Town "the right to direct employees, to determine qualifications...to establish standards for work, retain employees in positions...(and) to take such actions as in its judgement is necessary to maintain the efficiency of Department operations" the Town is granted a level of oversight authority on Department operations. All of these things are extended with the agreement established in number 4 of this article stating "...(the) rights and powers shall not be exercised unfairly as to any employee and shall not be exercised as to violate any provisions of this contract." It is determined this allows the Town authority over these areas of responsibility as long as fair and impartial procedures are being followed.

Article 6: Employee Rights and Responsibilities

Article 6 established a clear procedure for complaints brought against a member of the unit. This article offers a step by step process for complaint handling. The process begins with the chief or supervisor notifying the employee within ten business work days that the complaint has been filed. The employee is entitled to a written document explaining the exact nature of the complaint, the date and time of the offense and the name of the individual bringing the allegation. It then states if the chief of supervisor does not act upon a civilian complaint, the complaint shall be destroyed and shall not be placed in the employee's personnel file. This is not reasonable for efficient functioning of a police department. While it is understood how important timeliness is in addressing issues, this article would suggest if this ten-day rule is unintentionally violated that the complaint disappears for all purposes. This provision does not make sense from an operational perspective. It could potentially erode the public trust by allowing legitimate citizen complaints being brought forward by a concerned public to be ignored due to a technicality in the collective bargaining agreement.

This article goes on to set guidelines for investigations to be completed within 10 business work days and a hearing to be scheduled within 10 business work days of the completion of the investigation. The article continues to explain an investigation that could result in criminal prosecution of the employee or a civil rights violation against the employee or Town has an extended time period for completion of the investigation. This is understandable considering the serious nature of this type of investigation. Despite the extended time allowed for an investigation, there is no exception offered in this article for

missing the initial 10-day initiation guideline. This is concerning as it would allow the chief or the assigned supervisor the ability to intentionally delay the initiation of the investigation of a complaint which would result in the complaint being ineligible for investigation in accordance with the terms of this contract.

This article explains that all disciplinary action shall be subject to the Discipline & Termination and Grievance Procedure articles of the agreement. The article concludes by stating that an exoneration, a failure to sustain the complaint or a finding of an unfounded allegation would all result in no documentation related to the complaint appearing within the employee's file. It goes on to clearly state that "in no event will complaints of any nature be kept in the employee's personnel file, maintained at the Town Offices, without his/her knowledge." It is assumed this is in reference to unfounded, non-sustained or complaints resulting in exoneration. It is important to note that national best practices would require the chief to maintain a confidential file with all allegations and subsequent investigations, regardless of findings to be maintained in a secure location. This is important for several reasons. First, human error is a fact of life and persons conducting internal investigations are not exempt from it. Second, for purposes of early warning, all complaints and the nature of said complaints must be tracked by the agency to be used to identify concerning patterns of behaviour. This must be done in order to responsibly run a law enforcement agency to ensure the public trust is not violated and someone is monitoring high risk areas such as racial bias, use of force and ethical violations.

Article 9: Grievance Procedure

Article 9 defines a grievance as an alleged violation of any of the provisions of this agreement except those specifically noted in the management rights article. It is important to note that management rights is the article that gives the Town superseding authority over police operations and the right to act to maintain the efficiency of the department operations. This section clearly describes the procedure for grieving violations of the CBA by members of the union against the Town.

Article 11: Discipline and Termination for Cause

Article 11 is where the disciplinary process is detailed. The steps to be followed per contract are clear but a provision in number 1 of this article clearly allows the Town to reserve the right to assess discipline on the merits of the offence and initiate discipline at any step.

In the first paragraph offered under number 2 of this article, proper reasonable cause for discipline is defined. In addition to a list of lesser violations "behavior detrimental to the Town (and) conduct

"unbecoming an officer" are listed. The next sentence places limits on the Town's ability to address matters. It requires the conduct leading to the disciplinary action must have occurred within six (6) months of the initiation of the action. This is problematic because at times the public does not report offenses in a timely manner. This is especially true if members of the public feel intimidated by the police culture.

While a six-month reporting period may be appropriate for policy violations or complaints of rudeness by officers, a six-month restriction for criminal behavior or civil rights violations is unreasonable. By having this provision in the contract, the contract in essence takes away the ability of the Town, the chief or any supervisor to address matters involving a significantly delayed report of police misconduct. In matters that are criminal in nature, this time frame would be lesser than the statute of limitations imposed by legislation. Since the law of the State is the ultimate legal authority for New Hampshire, it would be reasonable to declare this section of the contract illegal. Article 25: Separability discusses that if one article is found to be illegal or invalid the remainder of the contract is still in effect. There is also a due process guarantee in the U.S. Constitution, as well as most state Constitutions that may make this provision of the CBA a violation of citizen's rights.

The article goes on to describe in detail the time restrictions for each action at each level of discipline. It is important to note that in each and every section it calls for action to be initiated by the employees "immediate supervisor or other supervisor." There is nothing limiting this supervisory capacity to members of the department. In fact, the agreement clearly articulates in Article one that the agreement is with the Town and in article four it establishes the rights of the Town to ensure efficiency of operations.

Written warnings and suspensions are covered in number five of this article and here we see for the first time a call for discipline to be issued to the employee by the Chief. While this article clearly shows the Chief as the ultimate authority over police discipline, this should not be interpreted as restrictive. The Chief of police is traditionally an appointed position. The person holding this office usually serves at the pleasure of the Town with an employment contract being customary. Provisions for separation from this authority role are usually clear in this contract. If the chief is shown to be incompetent or derelict to matters of importance to the community, he or she is often excused from the role of chief. This causes union contracts to be written assuming the chief will responsibly be leading police operations. It is uncommon, if not non-existent, for a CBA to clearly state that if the chief is failing to act, that the Town may assert its authority as established under management rights (article four of this contract). Whenever the chief is mentioned as an authoritative role, it should be assumed no one with lesser authority than the chief may make these decisions. The Town, being in a higher position of

authority would be allowed to step in and fill the role of the chief if the chief is failing to act as required to protect the integrity of operations.

In summary article 11 establishes procedures to be followed for disciplinary issues. There is nothing in this article that would disallow the Town from following these procedures and conducting their own investigation if the chief was failing to take necessary action.

Summary

It is unclear as to who was in attendance for the negotiations of this union contract; however, only the signatures of the union president and the town manager appear on the document. It is customary for CBAs to be agreed upon by a representation of the membership, as well as a representation of town administration and legal counsel for both sides. In matters such as this, where questions arise about the details of the language of the contract, often the spirit of the agreement is called upon to settle such issues.

It would be hard to believe that town administration would willfully enter into a contract that removed their ability to act against employees acting in a way to bring discredit to the town. It would also be hard to believe the town would agree that criminal behavior or civil rights violations perpetrated by their officers should be ignored if members of the public do not bring them to light within a six-month time period from the occurrence of the event. Due to the restrictive language which excuses the police agency from initiating an investigation into an officer's conduct if it is not reported within six months of occurrence, article 11 of the contract between the Town of Salem, New Hampshire and the Salem Police Relief should be considered illegal and, therefore, readdressed.

Concerns with Salem Public Administrators Association CBA

Article 13: Discipline

This article opens with a statement that reads "an employee may be disciplined and/or terminated for misbehavior while on duty if there is found to be proper reasonable cause for such action. An employee may be disciplined and/or terminated for misbehavior while off duty only if this behavior has a severe and demonstrated impact on the employee's ability to perform his/her duties and responsibilities." This is an uncommon distinction between on-duty and off-duty behavior and appears to be unreasonably restrictive to the Town's ability to discipline persons covered by this bargaining agreement for off-duty

behavior. While this contract covers many executive level civilian employees, it also covers member of high rank in both the police and fire departments. Sworn police positions, unlike the civilian positions covered, carry a burden of the individual holding the office to conduct him/herself in a certain manner both on and off duty. The fact that this contract limits the ability of the Town to only address off-duty behavior that has a severe and demonstrated impact on the employee's ability to perform his/her duties and responsibilities is concerning due to the sensitive nature of police work and the ethical standards of the profession.

Number nine of this article states, "The town of Salem shall not discipline or discharge employees who come under this agreement except for cause as set forth in this Article. This statement simply speaks to cause and not to the process of investigating allegations. While this article goes on to state that an employee who disputes discipline or discharge are entitled to follow the Grievance Procedure, this does not restrict the process. This article offers steps to follow for discipline but allows the Town the right to assess discipline on the merits of the offense and initiate discipline at any step of the process.

Article 19: Management Rights

This article agrees that the rights and responsibilities of the Town that are not specifically articulated within the agreement are retained in the sole discretion of the Town. In subsection "a" of paragraph one it clearly states the Town has "the right to direct employees... to retain employees in positions and to suspend, demote, discharge or take other disciplinary actions against an employee for proper and just cause." This statement clearly allows the Town to initiate an investigation that may result in discipline against any employee as long as it is done for proper and just cause. While this action may be subject to other provisions of this agreement (including grievance and arbitration) this should not be interpreted as limiting to the Town's ability to investigate allegations against the police.

Article 23: Public Safety Officer Benefits

This article discusses benefits of certain members of this contract that are not afforded to other members of the Union. It discusses issues such as uniform allowance, holiday pay, leave and injured on duty benefits. While this section extends benefits to members of the public safety units covered by this contract, there is no discussion of any differences in code of conduct or other provisions that might be fitting in a subsection specifically designed to separate public safety officers and clarify the differences for this subset of employee's purposes of the contract.

Summary

This contract has some significant differences in dealing with police employees than the contract between Salem Police Relief Local #22. Most notably, this contract does not have the six-month restriction for initiation of an investigation that may be brought to the agency in a delayed report from members of the public. However, Kroll was informed that it is an acceptable past practice to apply it based on a past agreement. A matter of concern is the restriction that off-duty behavior be subject to discipline or discharge "only if this behavior has a severe and demonstrated impact on the employee's ability to perform his/her duties and responsibilities." For police professionals, especially those holding positions of rank and authority within a police organization, this provision is dangerously restrictive and offers unreasonable sheltering of potentially compromising off-duty behavior to be protected from discipline if a direct correlation to impact on job performance cannot be argued. This is contradictory to national best practices which hold law enforcement officers to a higher standard of behavior both on and off-duty due to the moral and ethical standards of the profession. It is also in conflict with the departmental policy, which will be discussed in depth later in this report.

3. Review of Departmental Policies

An incomplete sampling of general orders was given for review. The general orders all have an issue date and a date of review on the face of the document. It is unable to be determined if these reviews are being conducted as required. Since some documents call for a review in years that have already passed, it is assumed that if a review was in fact done that the date of review would have been updated. The summaries offered below indicate if the policy appears to have been updated as required (current) or if it is overdue for review (past due).

General Order 10-3: Policy Review

This general order was issued on October 9, 2015 and is up for review in 2018 (current). In summary this order calls for the creation of a policy review committee to ensure policies both have input from all levels of the agency as well as being subject to review at regular intervals. This general order is in line with national best practices although no proof that the policy is being followed was offered as part of the documentation received for review.

General Order 10-5: Firearms Discharge Review Board

This general order was issued on October 9, 2015 and was up for review in 2017 (past due). It establishes a review board and a process for reviewing all use of force incidents including, but not limited to, discharge of a firearm. The board is tasked with reviewing all qualifying incidents (any use of force including hands on techniques, OC taser and incidents involving weapons display or discharge). It calls for the completion of a "Use of Force Report" documenting each use of force incident and an annual review of said incidents by the board. This policy only addresses the process and responsibility of the review board. There is no mention of early warning systems to identify problem behaviour or the responsibilities of the supervisor doing the real time review of the incident. The findings of the board are forwarded to the Chief of Police for determination of action. Use of Force is covered in General Order 35-1, which is referenced in this general order.

General Order 10-6: Inspection Process

This general order was issued on October 9, 2015 and was up for review in 2017 (past due). This general order lists responsibilities for the different levels of police administration reference both line and staff inspections. This order calls for both announced and unannounced inspections, but in contrast

with national best practices, does not specify what intervals these inspections should be done at (monthly, quarterly, annually). Additionally, the form attached for use is a non-specific narrative asking for efficient and non-efficient areas. There is no mention of checking for required equipment, cleanliness of the officer's firearm, wearing of body armour or other areas that are commonly listed on evaluations to ensure the evaluator is doing a thorough and consistent job with each and every employee. The current form allows for discrepancy in what each supervisor might be looking for and allows areas that need to specifically be observed to potentially be overlooked.

General Order 10-7: Police Vehicle Accident Review Board

This general order was issued on October 9, 2015 and has a review date of 2016 (past due). This general order establishes an accident review board and describes a points system used to determine a course of action as a result of the crashes. This policy states this board will review all accidents involving police vehicles. It is established that the board will have meetings, but no regular intervals or time frame after the occurrence of an accident is given. Clarification on how expediently after an accident occurs a review should be conducted is in order.

General Order 15-3: Officer Replacement/Work Assignment

This general order is dated October 19, 2017 with the review date of 2019 (current). This general order establishes very specific process for overtime assignments and outside details. This topic is usually subject to terms established in a collective bargaining agreement and it is common to see this detail in the negotiated contract and a referral in policy to the bargaining agreement. Here the general order offers the specific guidelines for filling assignments. Violation of this policy seems to have its own set of penalties built into the general order. This leads one to wonder if an employee violating this policy is excused from other disciplinary action and is only subject to the penalties established in this order or if they are subject to these penalties as well as other disciplinary action. It is uncommon to see a policy with penalties for violation of policy built into the general order as usually police are expected to follow general orders and violations of orders are unacceptable.

General Order 15-9: Swaps

This order was issued on October 9, 2015 and is up for review in 2018 (current). The order established a procedure for officers engaging in a shift swap. The swap needs supervisory approval.

General Order 25-1: Police Conduct

This general order is dated November 6, 2015 and calls for a yearly review on the face of the document (past due). In addition to the two-page policy, a seventeen-page attachment (Attachment A) is included with this document. The comprehensive attachment clearly covers both on-duty and off-duty behaviour with some specifications made for differences between the two. It can be assumed that the provisions that do not specifically state the difference of if the behaviour is on-duty or off-duty covers behaviors in both situations (example; there are clear specifications for alcohol consumption as related to on-duty vs. off-duty compared to the statement about criminal conduct being prohibited which does not make a specification to duty status). The Code of Conduct is routinely the standard for judging behavior. While these policies cannot be all inclusive in their list of inappropriate behaviors, they are a good completion of guidelines for personnel to follow and offer a general idea of what behaviors are considered in conflict with acceptable police conduct. This policy also contains a preamble explaining the articles are not all-inclusive of prohibited behaviour. Additionally, it contains the Law Enforcement Code of Ethics as part of the document which calls police to a certain standard of conduct both in their personal and official life.

General Order 35-1: Use of Force

This general order was issued on November 19, 2017 and is due for review in 2019 (current). A contradiction is present in that the seventh paragraph under policy calls for a "yearly" review of this policy as part of the "Use of Force training review". It is unclear why that annual review would not be the standard for the policy review rather than to have a two-year review called for on the heading of the document with a mention of an annual review on the second page. This document goes on to explain the different levels of force that can be used by an officer and situations where the force would be acceptable and also unacceptable. There is no mention of completing a use of force report in the deadly force section of this general order although it is mentioned in Section VIII: Use of Force Report that a use of force report will be generated whenever a firearm is discharged on-duty outside the firing range. A use of force report is called for in both the OC and TASER sections of this general order. A use of force report is not required under the "Hard Hand Control" section discussing strikes or the Intermediate Force section that discusses the use of the ASP Baton. A use of force report is also not required under the Drag Stabilized 12 Gauge Bean Bag Round. Despite the use of force report not being specifically called for when discussing these less lethal weapon usage, Section VIII: Use of Force Report does state, "when a non-lethal weapon (including a police canine) is used on a subject or when any use of force results in an injury or death". It is not in line with national best practices to only require

a use of force report when force used results in injury or death. While this general order does specifically require a use of force report for the firing of a firearm, the use of OC spray and the use of a TASER, there are several other incidents that would be considered use of force incidents by any reasonable standard in which this report does not require use of force reporting to occur. These include use of hands on tactics (including strikes, holds and takedowns), any use of force used to restrain people or take people into custody, Bean Bag Gun Deployment, ASP strikes and compliance holds and any other force applied that may not be covered in the specifications of this policy. Imposing a standard of reporting use of force only when injury or death occurs is irresponsible and potentially dangerous. It also prohibits the agency from tracking which officers may be involved in the low-level force incidents that may require training or intervention. Often identifying a pattern of behaviour with use of force incidents that would fall outside the scope of what is required to be reported by this general order is where the agency would have the potential to identify concerning behaviors before they turn into excessive force problems for the agency. Numbers that appear to be CALEA standards are placed throughout this general order. There is no reference to CALEA anywhere in the document, but the numbering system appears to coincide with current CALEA standards.

*When interviewed Captain Wagner stated that any use of force other than the application of handcuffs required a report. However, that is not clear in the policy.

General Order 45-2: Property Management & Control

This general order was issued on November 30, 2015 and has a review date of 2018 (current). This general order establishes procedures for the acceptance, documentation and control of all properties held by the Salem Police Department. The persons responsible for the evidence as well as a control system for audits is also explained in this general order. This document again shows numeric indications throughout the body for the document that appear to align with CALEA standards. Under the Chief's signature on the last page of the document before the attachment CALEA standards are referenced. This is the first policy observed by this auditor to make any formal reference to CALEA, this includes the review of documents with a more recent issue date than 2015.

General Order 65-3: Internal Investigations & Review

This general order was issued on October 19, 2017 with a review date of 2020 (current). The policy section of this document opens with a statement that "all complaints will be accepted and documented". It goes on to read that complaints will be fully investigated in an open and fair manner. These statements are in direct contradiction with the collective bargaining agreement with Salem Police Relief

Local #22 which disallows for any investigation of complaints that did not occur within the last six months. Under section V: Supervisory Responsibilities the last statement of the first paragraph stated that a supervisor's explanation shall not serve to dissuade or discourage a complaint from being filed. This appears to be in contradiction with the formal complaint form that indicates the complainant can be charged with a crime if the allegations are found to be untrue. The next paragraph goes on to task the supervisor with the responsibility of documenting the complaint if the person making the complaint does not want to commit the complaint to writing. Section VII: Internal Complaint Investigation closes with the statement, "All collective bargaining agreements shall be adhered to". This would disqualify any complaints delayed for six months or more from being investigated by the agency. This document fails to include "Attachment A" which is referenced as the "Complaint Intake Form" although other attachments are included, none of them bearing a title of Complaint Intake Form or Attachment A. The policy also makes no mention to any training required by members of the supervisory staff tasked with conducting internal investigations. Due to the sensitive nature of these investigations it is national best practice to require training of employees who will be responsible for conducting internal investigations.

General Order 65-7: Disciplinary Procedures

This general order was issued on March 14, 2018 and has a review date of 2020 (current). This general order explains definitions and general guidelines for disciplinary procedures and is generally reflective of the disciplinary procedures seen in the collective bargaining agreements. The document closes with a concerning statement that reads, "(A)ll internal investigations or informal inquiries and related paperwork without a finding of "sustained" shall be removed from all files and destroyed after a period of one (1) year". This statement contradicts previous policy that stated files will be kept by the Chief. Previous policy (G.O. 65-3) disallows any complaint documentation with a finding other than sustained to be placed in personnel files. It is unknown what files these complaints with the other investigative dispositions may be kept if they are disallowed in personnel files. It is concerning that this policy might indicate that citizen complaints that are not sustained might be destroyed after one year. If this is occurring, it is not in line with national best practice and is potentially concerning behaviour as the Chief has ultimate responsibility over the contents of these investigations and they should be available for reference in the event additional information arises or events of a similar nature occur in the future. CALEA standards are referenced throughout this document and CALEA standards are referenced at the end of the document after the Chief's signature.

General Order 00: Situations Involving Family and Friends

There is currently no policy that prohibits or outlines how officers should or should not respond to situations involving family or friends.

Officers will often find themselves in a situation involving a family member or friend. As a best practice, most departments have guidelines as to how best to respond, including prohibitions from intervening unless an emergency exists as well as requirements to immediately notify a supervisor. These policies also address requirements for or best practices when engaging with off-duty officers, which also often require a higher ranking supervisor being engaged immediately.

There were several instances reviewed by Kroll in which such a general order may have benefited the Salem PD.

4. Retention of Internal Affairs Investigative Files

Kroll requested and was provided by Salem PD administration case files for internal affairs investigations, which they described as comprehensive and complete. However, Kroll was previously informed by Chief Donovan that department policy called for the destruction of any and all complaints and documentation pertaining to investigations that resulted in not sustained complaints. Kroll was further informed that prior to receiving the documents, Chief Donovan reviewed various files and removed documents, seemingly to comply with the CBA. The CBA, however, mandates that documents be removed from personnel files only if requested by the employee. There is no purging requirement detailed in the CBA.

Despite indicating otherwise, Kroll received not only complaints where violations were sustained but also documents from several unfounded and not sustained complaints, which had, in fact, been maintained by the department for informational purposes (despite Kroll being told that the department does not maintain these complaints after a not sustained or unfounded ruling is administered).

Kroll notes that the department has recently started using the software program, Guardian Foundry System ("Guardian"), which tracks complaints, as well as other factors, in an effort to identify and flag concerns pertaining to officers. Although the department has had access to Guardian for some time, officers only recently began utilizing the software. Guardian is considered best practice within law enforcement and, in Kroll's experience, can effectively track internal affairs complaints and, therefore, aid administration in providing support to officers via training, additional supervision, counselling or other means. While Kroll was concerned that the department's implementation of Guardian may lack effectiveness based on Chief Donovan's interpretation of the CBA, Captain Dolan stated in his interview that he had been serving as point person for the implementation of the Guardian system and was fully aware of its benefits specific to tracking formal IA investigation and informal inquiries:

MR. LINSKEY: So, the -- you'd get complaints from people who said hey, I got a ticket, I -- I wasn't doing forty-five I was doing thirty-eight, you know, he was wrong and that's not a complaint against officers' action and activities, that's -- that's for the Court to decide, that wouldn't be an IAD complaint, you'd -- you'd let the person know that, you know, whether the ticket is fair or justified, the -- the right forum for that is to go to Court, state your case, but it's not something the department needs to get involved with.

CAPTAIN DOLAN: Well correct -- yeah, that -- that -- I think that's a procedural, that that's -- that's, you know, the suspects or the violator or the -- or the operator's, you know, opinion and that -- that's for him to go in front of a Judge and say no, I wasn't -- I wasn't doing it and it's for the -- for the Judge to decide the facts.

MR. LINSKEY: And if it's a -- I know you guys are now tracking complaints, but that's not something that would go into Guardian, that's --

CAPTAIN DOLAN: That would not. No, that would not.

MR. LINSKEY: Now if the same thing occurred, hey the officer gave me a ticket, not only was I not doing forty-five but he called me, you know, the F word, he called me this word, I don't think his -- he was professional in the way he treated me, and in some of those cases you're able to get the person's side of the story, you talk to the officer, get their side of the story, somewhere in between you figure out whether, you know, the officer denies it categorically or he says yeah, you know what, I might have said something, but not quite that, you know, let me give you my version of it, and some cases you're able to work it out with the person on the phone and say look it, I spoke with the officer, you know, he -- he apologizes for saying that or I've talked to him about not -- you know, not shining the light in somebody's eyes when they have a medical -- whatever their -- and -- and sometimes we're able to work that out on the phone where they don't want to file a formal complaint, they feel satisfied that someone at least listened to their concern.

CAPTAIN DOLAN: Well, we have -- we have on Guardian we have a citizen's complaint which is outside of the IAD, so -- so it is one of those.

MR. LINSKEY: So -- so if --

CAPTAIN DOLAN: So -- so we do have that category so in the intention of when we implemented it, it is those because I'm sure in -- in your experience you have guys, and some active guys are going to have more just because they're active --

MR. LINSKEY: Sure.

CAPTAIN DOLAN: -- and then there are guys that for whatever reason that their tone is not soft or -- or they get those and -- and it could just be a matter of training, could be a matter of -- of what we do down the road with him, but the intention of, when we implemented Guardian was to track those and if there's a guy that keeps coming up because we, you know, we have guys that have -- and they've been addressed in their annual performance evaluations, there are guys that generate more. They're not swearing at them it's just the -- the matter in which they are talking to them that comes off -- that people -- that turns people off. So, that is our intention with the citizen's

complaint entry on that and that it would be on there and then at some point that could -- that will trigger an early intervention if there's -- there's so many of those.

MR. LINSKEY: Okay. So, that would be, if there was unprofessional conduct that would be something that would be referred to Guardian now, previously, before Guardian, if you spoke with the officer, spoke with the operator, and you spoke to the operator and said, you know what, I've -- I've talked to him, I've told him, you know, he's got to have patience, he's got to use, you know, shouldn't use language like that. By the way, I just want to let you know, he'd worked eighteen hours, he'd been over -- extended his tour during the snow emergency, so he was a little tired and probably frustrated easy, I apologize on behalf of the PD. If that citizen was happy, then that's not -- we don't have to go any further with that, it's kind of taken care of at a management, supervisory level, and now you would make a notation in Guardian, but previously before Guardian, it would just kind of be known to you and the other supervisors that hey, this is the second or third time we've had to talk -- talk to Dan about the way in which he talks to people during traffic stops.

CAPTAIN DOLAN: There -- there was -- there was no central location for it --

MR. LINSKEY: Got it.

CAPTAIN DOLAN: -- so it either stayed with -- on their shift, it either stayed on with that, it could have just been that supervisor and then when -- because when we do performance evaluations we send out a -- an email to all departments, anyone that would have contact with him, hey, I'm doing an eval on Joel Dolan, any input, you know, and a supervisor could say well, you know, I'm working the desk and I get -- I get a lot of phone calls when, you know, he's --

The IA case files, which were described to Kroll as complete, also presented several concerns. Although some of the case files contained large amounts of detail and information, many files contained only a few documents. None of the files included Garrity Rights⁴ ("Garrity") forms, transcripts/audio recordings of officer interviews or photographs/visual aids, and as such, appear to be incomplete. Many did not contain notices to officers of the complaints filed against them, which would be in violation of the CBA, as well as in opposition to law enforcement best practices.

⁴ Garrity Rights apply to the right of a public employee not to be compelled to incriminate themselves by their employer. These rights are based on the 1967 United States Supreme Court decision *Garrity v. New Jersey*. Garrity Rights apply only to public employees, because they are employed by the government itself.

Kroll's interview with Captain Dolan notes, however, that his investigations were, in fact, much more in-depth than detailed in the case files. Captain Dolan stated that he records all of his interviews and provides all officers with Garrity forms before commencing an investigation. Sergeant Verrocchi stated that his officers only give statements after signing Garrity forms and that he also records the interviews for the union.

These incomplete, and seemingly uncomprehensive, files present a major concern, based on Kroll's opinion. Case files pertaining to IA investigations must to be maintained in their entirety to properly protect the town, police department, as well as officers, against future complaints and/or litigation. Failure to maintain complete case files may also be in violation of the New Hampshire Attorney General's regulations.

While the comprehensiveness of these case files is certainly a concern, even more concerning to Kroll was the lack of clarity as to what records are currently maintained by the Salem PD, and therefore, what information was available to Kroll. When initially interviewed by Kroll, Chief Donovan stated that the documents encompassed all records maintained by the department for the past five years. However, when presented with documents that included unfounded and not sustained complaints, the chief stated that such documents should have been destroyed and may have been inadvertently stored in a previous supervisor's file cabinet. He stated that the records were provided to Kroll as a courtesy and as an example of what the file may look like should they be regularly stored. Chief Donovan stated the following in his interview with Kroll:

MR. LINSKEY: Is there any documentation that says that the person was satisfied with it, is there something they sign that says, you know, I met with -- today Lieutenant Jones, met with Linskey and Shanahan, we discussed the issues, after having a conversation I'm fine with the outcome and --

CHIEF DONOVAN: We don't but even if there was, technically we don't keep those, like that exonerated, that would not have been kept normally.

MR. LINSKEY: What do you mean it -- so due to CBA practices it's not kept?

CHIEF DONOVAN: CBA, if -- if there is not a finding of sustained they don't get kept.

MR. LINSKEY: Is it they don't get kept at all or they don't get kept in the officer's personnel file?

CHIEF DONOVAN: No, they don't -- they don't get kept, they're done, they're -- they're gone as if they don't exist.

MR. LINSKEY: So if there's a finding of exonerated, not sustained, the finding of exonerated then right away it gets shredded?

CHIEF DONOVAN: No -- well yeah, technically it's supposed to get shredded right away. I'll normally do them at the end of the year.

When presented with the 29 case files over the prior five years, which had been provided to Kroll, and asked about their accuracy, Chief Donovan stated the following:

MR. LINSKEY: Is it possible those numbers aren't accurate based on the CBA that if people make a complaint then it's to find as not a -- not sustained or unfounded that the documents go away, that we don't have an accurate -- remember because that --

CHIEF DONOVAN: Oh yeah, because the only ones you'll have --

MR. LINSKEY: -- that number seems --

CHIEF DONOVAN -- you'll only have the sustained, but the numbers are -- the numbers really aren't much higher.

MR. LINSKEY: What -- some of these aren't sustained, some of these are unfounded, un-sustained.

CHIEF DONOVAN: Well Rob threw some in there just so you can see --

MR. LINSKEY: Okay.

CHIEF DONOVAN: -- what they look like and how we do them, so we included some of the stuff that we normally wouldn't have had in there, and we had actually looked for some of it because the way the CBA reads if they're not sustains we don't keep them.

MR. LINSKEY: And the thought is the -- the town does not keep any of those documents, they get destroyed in accordance with the CBA if it's a not sustained or unfounded. So would you agree with me that seven citizens' complaints during a five year time frame during the advent of the cellphone videos and the recent, you know, pressure on law enforcement is -- is a low number?

CHIEF DONOVAN: Well of course it's low, but we don't have those kind of issues here. This isn't Boston. It's amazing what you get here, I mean, most of the people are very cooperative, we rarely run into people that are not cooperative with us. These guys are mostly younger guys, they're not -- they're not hot heads, they're not pushy, they're very polite, it's -- I think we just don't get a lot.

However, Chief Donovan's interpretation – and the Salem PD's practice – of this records retention practice is in direct conflict with direction provided in a memorandum issued to all New Hampshire police departments by the New Hampshire Attorney General's Office on March 21, 2017:

LAW ENFORCEMENT MEMORANDUM

To: All New Hampshire Law Enforcement Agencies / All County Attorneys
From: Joseph A. Foster, Attorney General
RE: The Exculpatory Evidence Protocol and Schedule
DATE: March 21, 2017

All complaints of lack of credibility, excessive force, failure to comply with legal procedures, and mental illness or instability must remain in an officer's personnel file, until a determination is made that the complaint is unfounded, exonerated, not sustained or sustained. Any complaints, determined to be sustained (meaning the evidence proved the allegations true) or not sustained (meaning the evidence is insufficient to determine whether the allegation is true or false) must be preserved in the officer's personnel file throughout the officer's career and retirement, unless the finding is later overturned.

When Deputy Chief Morin was asked about the retention of internal affairs case files, specific to how Guardian could be more effective if information was maintained on only sustained complaints, he responded:

MS. SHANAHAN: So that's how an I – that's how an internal inquiry is supposed to happen, how it's supposed to play out in terms of investigative – how intake, investigation, response, and conclusion.

MR. LINSKEY: And when is it purged from Guardian, or is it ever purged from Guardian?

DEPUTY CHIEF MORIN: It will not – it won't be purged from Guardian, it – it stays in Guardian, but –

MR. LINSKEY: But six months -- so this is -- this is a complaint, --

DEPUTY CHIEF MORIN: Yup.

MR. LINSKEY: -- no discipline's been found --

DEPUTY CHIEF MORIN: No -- well, it's not --

MR. LINSKEY: -- by CBA. Isn't it --

DEPUTY CHIEF MORIN: It's not a complaint it's an informal inquiry because she --

MR. LINSKEY: Okay.

DEPUTY CHIEF MORIN: -- writes right in there, I don't wish to go on with the formal complaint, so it was an informal inquiry.

MR. LINSKEY: So informal inquiries can be kept past the time of the deletion process for the CBA?

DEPUTY CHIEF MORIN: Right. Now, if she comes back eight months from now, per the CBA, --

MR. LINSKEY: Yup.

DEPUTY CHIEF MORIN: -- okay? It's no good.

MR. LINSKEY: But I think -- these -- you can keep these documents as long as you want?

DEPUTY CHIEF MORIN: Keep that document. Now, if a letter of counseling, --

MR. LINSKEY: If -- if --

DEPUTY CHIEF MORIN: -- verbal warning --

MR. LINSKEY: If a verbal warning went then it -- it goes six months, no is --

DEPUTY CHIEF MORIN: No, two years.

MR. LINSKEY: -- is it a year? Two years, okay.

DEPUTY CHIEF MORIN: Two years.

MR. LINSKEY: If nothing was sustained, if everything was, you know, Linskey did his job, nothing -- I'm -- I'm exonerated --

DEPUTY CHIEF MORIN: Yeah.

MR. LINSKEY: -- from all of it, then it has to go away; right?

DEPUTY CHIEF MORIN: It's supposed to go away.

MR. LINSKEY: Even this; even an informal?

DEPUTY CHIEF MORIN: It goes away in the sense that it no longer exists in the personnel file at HR.

MR. LINSKEY: Your personnel file at HR?

DEPUTY CHIEF MORIN: Right.

MR. LINSKEY: Okay. But the PD will still keep the record?

DEPUTY CHIEF MORIN: Yes.

MR. LINSKEY: Okay.

DEPUTY CHIEF MORIN: And though we gave you that, we're maintaining, and there'll be a Court decision very soon⁵, --

MR. LINSKEY: Sure.

DEPUTY CHIEF MORIN: -- that it always exists in the Chief's -- under lock and key. It exists there, but any discipline that by contract comes out is removed from that file, from their personnel file out -- that file it stays, their personnel --

MR. LINSKEY: It stays in the Chief's file --

DEPUTY CHIEF MORIN: Personnel file --

MR. LINSKEY: -- comes out of their personnel file, comes out of the city hall file.

DEPUTY CHIEF MORIN: Correct.

MR. LINSKEY: But the document stays in the Chief's file.

DEPUTY CHIEF MORIN: The document always exists.

MR. LINSKEY: Okay,

DEPUTY CHIEF MORIN: It's -- it's kind of like a case hat's been -- that somebody has annulled; okay? The charges go away but it still -- the event still happened.

MR. LINSKEY: Got it.

DEPUTY CHIEF MORIN: So it's the same thing.

MR. LINSKEY: Okay. And if he had six more complaints of the same behavior you could at least, for your own mindset, say you know what, --

DEPUTY CHIEF MORIN: Correct

Deputy Chief Morin's statements are consistent with the Salem PD's IA procedure, as provided to Kroll, and would be considered in compliance with the Attorney General's direction concerning the Laurie decision. His statement regarding Guardian's maintaining all such information is keeping with the best utilization of the program. However, Kroll was sent a newly-revised policy by the Salem PD (#G.O. 65-7.G.O.), which supersedes the previous policy (#G.O. 65-3). This newly-revised policy states that an information log detailing all complaints will, in fact, be purged from Guardian. Still, the deputy chief's description of a master file under the chief's control was in direct conflict with Chief Donovan's statements.

⁵ The Deputy Chief was referring to a court action that is occurring in another jurisdiction regarding whether the Town has a right of access to the files that were provided to Kroll.

Kroll requested a second interview to clarify the actual procedure and determine if additional documents might exist in a file under the chief's control. As reported in a second interview with Chief Donovan:

MR. LINSKEY: So we've gone through the process of IA's, spoke to different people who have done them, the stuff we had is that the -- I know you said initially that some of it came from a former, I don't know if it was a captain or a deputy chief, who used to keep files that he should have not kept but you gave them to us to show us a couple instances of informals.

CHIEF DONOVAN: Oh yeah, I think -- I think the informals. Yeah, he -- usually with the informals, especially if they were not sustained, he shouldn't have hung on to them, but he did.

MR. LINSKEY: Okay.

CHIEF DONOVAN: You know, I'm sure he didn't -- hadn't do any -- anything nefarious, he just I think would stick them in a file cabinet, not cleaning out (inaudible at 00:37, low audio) cleans the cabinet out, but yeah.

MR. LINSKEY: The IA files we got, for those cases we talked about, whether it was the lieutenant who was drunk driving, or the officer who left the rifle in the car or any of that, do we have the whole IA file, are there audio tapes, do they -- do they audio tape officers, are there forms that they fill out or is that -- the things we have is the whole file?

CHIEF DONOVAN: Yeah, we don't tape -- though occasion if we have to download something, like an ice center thing or we'll download stuff from dispatch coming off of IMC, we'll download it, but yeah, usually the whole -- if there's tapes or any CDS or anything with it they'd normally all be together and with the package.

MR. LINSKEY: Okay. So, none of those cases that we got had tapes or CDS or anything?

CHIEF DONOVAN: If they weren't in there then I didn't have them, no.

MR. LINSKEY: Okay.

CHIEF DONOVAN: Sometimes -- I would think they all -- the whole package should come over, but every once in a while I will have to go back after somebody and say where's the tapes or where's the -- the CDS, as a matter of fact I had one right here the other day, I might have already put it in -- but they should turn a whole package over, all the material, over to me first and then of course if it comes not sustained then all of it's gone.

MR. LINSKEY: *Not sustained it goes?*

CHIEF DONOVAN: *Right.*

MR. LINSKEY: *Does -- do -- do you keep anything just, and I'm not talking -- personnel files or main file, is there a file that, you know, everything that came in is at least kept there for, I'm going to screw up the name, I -- I call it Giglio and Brady purposes, but I know it's -- it's Laurie, Laurie up here, is there a main file for, you know, it's not sustained but there were accusations of corruption, whatever, that you would -- you'd be required to turn over at some point?*

CHIEF DONOVAN: *Well, no there's -- if you read Laurie, Laurie only accepts not sustains or if it's not sustained they don't accept it, they only want sustained incidences.*

MR. LINSKEY: *Okay.*

CHIEF DONOVAN: *So yeah, if we have sustained incidences out there, we've had people we've had to put on the Laurie list, the entire package can go up to them, but they could also have maybe another one or two that were not sustains, that package -- those are gone so they wouldn't go to them. Laurie is very careful when they wrote Laurie, to that, they would only use incidences of sustained findings, they wouldn't use incidents that weren't because basically they're allegations but if -- if they can't be proven I don't think they want to hold that against an officer. I think the purpose of Laurie was just to make sure that if there were sustained incidents against an officer that those were provided to the Feds.*

MR. LINSKEY: *What do you do, Chief, to track, you know, Linskey's had nine instances of somebody saying he threw out the F bomb and, you know, is there no way of tracking that, is there no way of keeping those reports to say, okay look, although they were not sustained, you know, this is the ninth time we've had --*

CHIEF DONOVAN: *We never had that, we don't get a lot of repeats, and again, we're a small agency, pretty much know anybody that has more than one or two we're going to know who they are.*

MR. LINSKEY: *Okay.*

CHIEF DONOVAN: *The vast majority of guys in -- in the organization don't get any complaints at all and if you do have somebody who's, like, a repeat offender you know exactly who that person is and not -- in -- in those particular cases we would know who they were, and they never even make it that far. If we start to see a pattern of some kind of misconduct, we would jump on it right away, you know, even -- even if we couldn't -- say it was a he said, she said, we couldn't prove it one way conclusively, we would still already start working on that officer with retraining and we'd start maybe*

putting him under a little more direct supervision, you know, we might even put him on a PIP. We do try to nip it in the butt before he gets too high, so we don't -- we don't have people who have I mean, there was only one individual I can think of who pretty much had, like, several instances.

Kroll notes that Chief Donovan's statement is not in alignment with the department's IA policy, as provided to Kroll, and appears to include a misunderstanding of the Attorney General's guidance regarding Laurie. It also is in direct conflict with Deputy Chief Morin's understanding and explanation of the current operations of the department.

Kroll further notes that even under the assumption that Kroll was only supposed to be provided with sustained complaints, there seems to be case files missing. In one of the cases reviewed, Internal Investigation (formal) IA #02-16 Officer █, a review of the formal investigation shows an investigation conducted █ on █ referencing the conduct of Officer █ on a call for service. There is the statement, "Officer █ had been disciplined on four other occasions in the past year," included in the findings section of this incident. Kroll was not provided any of those files.

5. Review of Internal Affairs Investigations

Retired Deputy Chief Roy Bethge and Dr. Laura King conducted an independent review of the IA investigative files as provided to Kroll. Their analysis is based on a review of 29 separate complaints. Sixteen of these complaints were generated internally, and all resulted in sustained charges. Thirteen complaints were generated from outside the department, and five resulted in sustained charges.

As noted, the case files contained a significant lack of documentation and often appeared to be incomplete. However, interviews revealed, in some instances, that additional investigative efforts had, in fact, been conducted without proper documentation either included in the case file or provided to Kroll.

Additionally, many of the officers tasked with conducting IA investigations had no formal training to conduct such investigations. Captain Dolan noted that he and Detective Lieutenant Fitzgerald had received formal training:

MR. LINSKEY: And you had formal training on IAD investigations.

CAPTAIN DOLAN: I did, not what -- I had done some before but I -- then I saw it I'm like, I'm doing IAs it's probably something I should be trained in, and then myself and Detective Lieutenant Fitzgerald went to IA training.

However, Captain Michael Wagner stated in his interview that, although he is often tasked with conducting IA investigations, he has never received any specialized training:

MR. LINSKEY: Okay. Any specialized training into internal affairs investigations when you came into the position where you started to get involved with them?

CAPTAIN WAGNER: Nope, I have not gone to a formal IA course yet, that's something that we're waiting to come up, that I'm definitely going to be going to, but I have not gone to a formal internal affairs course yet.

As such, there is a disconnect between the department's written policies and the practice of those tasked with receiving and investigating complaints. Kroll's interviews confirmed that the practice is not in alignment with the department's policies and is not in keeping with law enforcement best practices. Further, the department is in serious need of formalized training in conducting such investigations, with officers even acknowledging the need and desire for such training.

Internal Investigation (informal inquiry upgraded to formal) IA [REDACTED]: Officer A

A review of this IA investigation shows an informal inquiry being upgraded to a formal investigation due to preliminary findings. This investigation was conducted by [REDACTED]. On [REDACTED], Officer A was found "passed out" in the report room of the Salem PD while on duty. It was later learned that Officer A had consumed prescription medication resulting in his inability to stay awake. An Employee Assistance Program ("EAP") intervention was immediately initiated as the investigation into Officer A's conduct began. Through the investigation, Officer A was found to be abusing prescription medication and was impaired while on duty. Officer A's failure to notify his supervisors of his prescribed medication combined with his being impaired while on duty resulted in a recommendation of termination of employment. This packet shows a complete effort with documentation of statements from witnesses, relevant policy / performance evaluations and supplemental documentation. References to a "fitness for duty" evaluation in [REDACTED] and a prior IA investigation (IA #04-10) from [REDACTED], which resulted in a 15-calendar day suspension without pay and a last chance agreement, are included. The full details of this [REDACTED] investigation were not available for review. On [REDACTED], Officer A submitted a letter of resignation to the chief and Town of Salem. This letter was not accepted by the Town and the internal investigation moved forward. Officer A did not show up for the hearings. Chief Donovan completed a report, which was submitted to Keith Hickey, the town manager, documenting his decision to terminate Officer A. This documentation was submitted to Hickey on [REDACTED].

This investigation **was** compliant with the Salem PD policy. This investigation **did meet** accepted best practices for internal reviews.

Internal Investigation (formal) IA #01-12: [REDACTED]

A review of this incident shows a formal investigation ordered by Chief Donovan to be conducted by [REDACTED]. This is in addition to a criminal investigation assigned to [REDACTED]. While the IA investigation was assigned to the next highest rank in accordance with department general orders (65-7, IV, D), it is not considered best practice to have a member of a union investigating another member of the same union. In addition, the criminal investigation being assigned to [REDACTED] appears to violate General Order 65-7, IV, D in that an officer of the same rank is being assigned an investigative function. [REDACTED] is in the same union as [REDACTED] with the same concerns arising as previously mentioned. To make matters more complicated, the union president at the time was [REDACTED]. It is unknown why the criminal investigation was not given to a higher-ranking member of the police department, as required in the contract, but it can be assumed that this is because the [REDACTED] and is representing the employee being investigated. This is another indication of how the current state of union operations is potentially

disruptive to essential police functions. Given the situation at hand, the investigative function of a matter so serious should have been retained by the chief himself. The incident being investigated resulted in [REDACTED] being arrested by the Salem PD and transported to the hospital after a single vehicle crash where [REDACTED] was allegedly driving while intoxicated. This crash was preceded by an incident at a shopping mall in a neighbouring jurisdiction where [REDACTED] was behaving in a disoriented manner. Witness statements were gathered, evidence was collected, the accident was photographed, and full and complete police reports were generated. During this internal investigation, the [REDACTED] union representation. [REDACTED] was placed first on administrative leave but worked with human resources to request time off under the Family Medical Leave Act (FMLA) to seek medical treatment. While [REDACTED] was on [REDACTED], [REDACTED] tendered a letter of resignation.

This investigation **was not** compliant with the Salem PD policy (assigning a person of the same rank to conduct the investigation). This investigation **did meet** acceptable best practices for internal reviews.

Internal Investigation (formal): Officer B and Officer C

A review of this investigation shows a formal inquiry into the conduct of Officer B and Officer C regarding off duty conduct on [REDACTED]. The investigation was assigned to [REDACTED]. During this incident, Officer B, while off duty, was seen traveling 62 MPH in a 30 MPH zone by [REDACTED], also of the Salem PD. [REDACTED] activated his emergency lights to initiate a traffic stop, and Officer B did not pull over. [REDACTED] deployed stop sticks in attempt to stop Officer B's vehicle but Officer B maneuvered his vehicle around them. [REDACTED] caught up with Officer B's vehicle and when Officer B exited the vehicle, he was laughing, thinking the whole incident to be a joke. Officer C was a passenger in Officer B's vehicle during the events, and he was exonerated of any wrongdoing. Officer B was charged with being in violation of the Salem Police Code of Conduct, and the allegations were sustained with a one-day suspension without pay issued as discipline.

This investigation **was** compliant with the Salem PD policy. This investigation **did meet** acceptable best practices for internal reviews.

Internal Investigation (Informal): Officer D

A review of this incident shows [REDACTED] assigning [REDACTED] to investigate a complaint made by a citizen against an officer for unnecessary use of force. In this one-page total offering of the internal packet, it was found Officer D did make physical contact with the complainant but that it was a necessary and lawfully applied control tactic (seemingly placing his hand on her chest to stop her from moving forward). It is unknown if this occurrence was documented in the police report as the report is

not offered with this internal packet. Additionally, based on the current use of force reporting rule, this type of action would not need to be documented or reported by the officer. (However, Kroll was informed that the current practice does require it.) More concerning than this is the allegation briefly mentioned in the report that the complainant tried to file a complaint at the time of occurrence and spoke with the sergeant about the incident. General Order 65-3, V & VI states that "the supervisor will describe the issues of the complaint in writing providing all information is available at the time" and "all complaints will be accepted by this agency. Complaints may be given in person, over the phone or in writing....The complaint receive by the supervisor shall be forwarded to the Chief of Police." If these actions were followed, there is no documentation offering such. In the memorandum documenting this investigation, it states that [REDACTED] told her that she "could go to the police department to file a complaint." This is in direct contradiction with General Order 65-3. This incomplete investigative report offers a suggestion that supervisors are not in fact taking complaints and documenting them but placing the burden on members of the public to bring a complaint forward, and to not only report it to a supervisor at the time of occurrence but also take additional efforts to respond in person to the police department for an additional potentially burdensome complaint reporting process. This suggests supervisors are able to ignore complaints that come in through a less formal process and not take the action required by policy. It could also inadvertently dissuade citizens from bringing complaints forward if their initial complaint is dismissed or ignored.

This investigation **was not** compliant with the Salem PD policy (supervisor's obligation to take and document a complaint). This investigation **did not meet** acceptable best practices for internal reviews.

Internal Investigation (informal): Officer E

A review of this incident shows an informal investigation ordered by [REDACTED]. This investigation was ordered on [REDACTED] after an incident occurred on [REDACTED]. It is unknown how this investigation came to the attention of the Salem PD. This packet includes a letter of findings issued by [REDACTED] stating that [REDACTED] conducted an investigation and found that Officer E had no probable cause to arrest the subject and no authority to seize or tow the vehicle. None of the efforts of [REDACTED] during this investigation are present with this packet. The memorandum states Officer E was found in violation of general order 25-1, Article V, Section 5.14 – "performing assigned duties in a careless or negligent manner." The memorandum also mentions another informal investigation into a similar incident (details not provided) from [REDACTED]. The [REDACTED] incident was handled with a letter of counselling, according to the memorandum. Approximately five months later, with the [REDACTED] incident, we see what is purported to be another violation described as "very similar in nature." The [REDACTED] incident is handled with a written warning. While progressive discipline is being

followed, this is a second incident which resulted in a custodial arrest being made without probable cause and property being seized without authority, two very serious matters. More concerning than the written warning is the lack of any remedial training or performance improvement efforts instituted by the agency to assist this officer in making better decisions. Arresting a person without authority, in demonstrated patterned behaviour, is concerning beyond an informal inquiry. Any employee counselling efforts that may have occurred were also not documented. It is difficult to believe an officer would be allowed to exhibit this type of concerning behavior without the agency taking a more serious approach to try and stop the action from occurring in the future.

This investigation **was** compliant with the Salem PD policy. However, there is a lack of documentation that makes **it impossible to determine** if the investigation met acceptable best practices for internal reviews.

Internal Investigation (formal) IA # [REDACTED]: Officer F

A review of this incident shows a formal investigation assigned to [REDACTED] conducted on [REDACTED]. The entire documentation of this investigation consists of two memorandums. One documents the details of the investigation and the other is a memorandum documenting a reduced discipline negotiated by the union. This investigation was initiated after Officer F was involved in an off-duty traffic crash after consuming alcohol and left the scene of the incident prior to officers arrival. This investigation was conducted by on duty supervisors [REDACTED] and [REDACTED]. Two policy violations were sustained as part of this incident, and the officer was issued a ten working day suspension without pay and follow up with the EAP. The end, result after negotiations with the union, was a five working day suspension. It is unclear why a reduced discipline would be agreed to in this situation.

This investigation **was** compliant with the Salem PD policy. However, the investigation is lacking thoroughness, and as such, this investigation **did not meet** acceptable best practices for internal reviews.

Internal Investigation (formal) IA # [REDACTED]

A review of this IA investigation shows allegations being investigated by [REDACTED] in response to a formal complaint filed by Citizen 1, who contacted the Salem PD on [REDACTED] to report an incident that occurred on [REDACTED] at a local high school hockey game. [REDACTED] was working a detail in uniform at the game, [REDACTED] for the Salem team. The allegation received was that [REDACTED] made threatening statements and demonstrated intimidating behavior towards others. The events occurring on the [REDACTED] followed an altercation between [REDACTED] and the

complaining parents at another [REDACTED]. Citizen 2 also filed a formal complaint against [REDACTED] [REDACTED] for the same incident. This complaint was filed on [REDACTED]. Citizen 1 alleges unprofessional conduct, the use of vulgar language and intimidation. A third complainant, Citizen 3, wrote in an email complaint but never completed the "formal complaint" paperwork at the police department.

Five allegations were investigated against [REDACTED]: unprofessional behavior, intimidation, inappropriate language, aggressive or threatening behavior and conflict of interest. The allegation of unprofessional behavior was sustained for [REDACTED] by his confronting the parents while working the [REDACTED] detail. The intimidation/aggressive or threatening behavior allegation was exonerated with [REDACTED] actions being classified as required police responsibilities at a [REDACTED] game detail. While there were repeated witness statements and an admission from [REDACTED] about his use of inappropriate language, this was classified as "unfounded" due to "inconsistencies." Lastly, for the conflict of interest, [REDACTED] was exonerated. [REDACTED] was issued a written warning and given clarification of expectations for the future regarding his [REDACTED]. The findings of this investigation in the area of inappropriate language are surprising given the evidence offered in support of this allegation. Although it was not within Kroll's scope to investigate facts of a complaint, [REDACTED] provided documentation to Kroll regarding this complaint and offered a statement of his version of events. He informed Kroll that the complaint was exacerbated based on tensions that he was having with members of the Board of Selectmen. He stated that his witnesses who verified his side of events were not allowed to give statements as they would all be seen as friends and family supporting him. The file listed contact with some witnesses who supported [REDACTED] version of events, but it is unclear what, if any, information was considered from them. [REDACTED] was told that he had to receive some sort of discipline due to politics, although the exact disciplinary measures are unclear. The findings seem to support that a compromise was reached in the investigation.

This investigation **was not** compliant the Salem PD policy (conducting complete investigations focused solely on the truth). This investigation **did not meet** acceptable best practices for internal reviews.

Internal Investigation (informal): Officer G

A review of this incident shows an informal investigation assigned to [REDACTED] assigned by [REDACTED] into the accidental discharge of a firearm by Officer G on [REDACTED]. This packet contains an investigative report coversheet as required. A use of force report is also included. Police reports were completed by all officers. The personal accident injury notification form, which was completed by [REDACTED], the supervisor on duty at the time of the incident, does not have any

narrative in the section asking for a description of conditions that may have contributed to the accident/injury nor does it have the section taken about what has or will be done to prevent a recurrence. This is uncommon as the narrative reports explain both of these areas well. Review of policy and remedial training are both recommended although no documentation of either occurring are offered as part of this permanent record. Overall, this investigation is one of the most complete packets offered in an internal investigation.

This investigation **was** compliant with the Salem PD policy. This investigation **did meet** acceptable best practices for internal reviews.

Internal Investigation (informal): Officer H

A review of this investigation shows a complaint being received by the New Hampshire Attorney General's Office regarding a complaint of Officer H choking a subject during the booking process on [REDACTED]. Upon receiving this complaint, [REDACTED] assigns [REDACTED] with conducting an informal inquiry into this incident. This allegation meets all the criteria established in General Order 65-3 for a formal complaint, yet it is investigated as an informal inquiry.

Four allegations are made in this complaint. The first is that the complainant was held up by the neck by the officer. Review of booking photos show redness on the subject's neck. [REDACTED] speaks with the officer who denies the allegation. No effort to speak with a dispatcher who might have seen the incident via camera is made. Based on the officer refuting the allegations, it is determined this part of the investigation is unfounded. The second allegation that the officer "elbowed" the complainant in the eye is also unfounded citing no visible injury being observed. Once again, no investigative effort other than getting the officer's statement was made. The third count, consisting of two parts, alleges complainant was escorted into the cell via holding him by the neck, which was exonerated as an acceptable practice per [REDACTED]. The second part of this allegation was that complainant was "choke slammed" to the ground. This part of the allegation was unfounded based on lack of observed physical injury. The forth allegation is that Officer H made threatening statements to complainant. Here it is stated: "None of the officers involved heard you make these statements." Therefore, this final allegation is not sustained. There is no mention of interviewing the other officers who did not hear the statements about the other allegations. Also, no effort was made to identify a dispatcher or other department member who might have observed the physical contact between Officer H and complainant.

While the findings are a result of an incomplete investigation, most concerning is that this incident is not investigated as a formal complaint despite the subject going to the Attorney General's Office. It is

unknown if the Attorney General's Office conducted its own investigation into these matters or if the lacking efforts on behalf of the Salem PD are the entirety of this investigation.

There were no photographs in the package. There was no notice to Officer H of the complaint's receipt on [REDACTED]. There is a notice to him listing that the charges were unfounded and not sustained on [REDACTED], which, in and of itself, would have been a violation of the CBA's 10-day notice requirement.

This investigation **was not** compliant with the Salem PD policy. It **did not meet** acceptable best practices for internal reviews.

Internal Investigation (informal): Officer F

A review of this incident shows an informal investigation assigned to [REDACTED] as a result of Officer F's off duty arrest for driving while under the influence on [REDACTED]. A memorandum documenting the events occurred and alleged violations is included as an investigative report along with the incident report from the New Hampshire State Police. The report documents Officer F resigning from the Salem PD on [REDACTED] and offers this as the reason for the lack of a formal IA investigation.

This investigation **was not conducted** due to the officer's resignation.

Internal Investigation (informal): [REDACTED]

A review of this incident shows an informal investigation assigned to [REDACTED] by [REDACTED] [REDACTED], which references recurring harassment of one of the staff members, who, reported on [REDACTED] [REDACTED]. The first two incidents ([REDACTED] and [REDACTED], respectively) are not investigated because of the time restriction imposed in the CBA. This is a problem in that it distracts from the entire scope of the situation being considered and addressed. While the first incident seems to have been reported and addressed informally at the time (without an investigation), in the second incident, the supervisor allegedly makes a comment related to the employees off duty sexual conduct. This is inappropriate for a work environment, especially from a supervisor. It is dismissed in this allegation as being offered in a "sarcastic joking manner" and "past the six-month union time frame." It is inexcusable for a workplace to investigate such an egregious allegation from an employee about a supervisor's conduct, especially when an internal witness was involved in the situation. The third allegation happened within the allowed timeframe but was not sustained. This was followed by two incidents of rude or offensive comments that were sustained. A letter of counselling is issued but there is no remedial training effort required or any apology offered to the subordinate employee. There is a mention

of a meeting with human resources, which is documented. The human resources representative recommended a follow up both with the employee to ensure the environment has improved and also with the supervisor to monitor behavior. None of this follow up is documented as part of this packet. This is concerning as the contents of the investigation show a supervisor who admits to intentionally not speaking with one of [REDACTED] subordinates. Lack of [REDACTED] can be just as dangerous in police operations as lack of communication on the street. It is imperative that all employees work in a cooperative and professional manner. While the incidents reported occurred during times where there was not a critical incident occurring, this level of uncooperative effort during a serious police event could result in a failure of duty or someone getting hurt. This packet also contains log entries referring to this same supervisor potentially hearing other employees as well; this information comes from a log entry on [REDACTED] stating that the agency "will have a lawsuit coming due to [REDACTED] treatment of the complainant." Neither is the employee documented as making these comments nor is the victim interviewed as part of this packet. Potentially more concerning is the fact this statement was documented in the log, and no investigation was initiated into this comment. Based on the pattern of behavior and seriousness of allegations, a letter of counselling without any remedial training being offered or a formal performance improvement plan being implemented is concerning. We see in this investigation just how potentially detrimental the six-month limit to investigating a delayed report of misconduct can be to responsible operations.

This investigation **was not** compliant with the Salem PD policy (informal v. formal inquiry). This investigation **did not meet** acceptable best practices for internal reviews.

Internal Investigation (formal) IA # [REDACTED]: Officer I, [REDACTED] A, Officer J and Officer K

A review of this incident shows a formal investigation into the conduct of Officer I conducted by [REDACTED] at the direction of [REDACTED]. This investigation was initiated as a result of the Salem PD being made aware of an investigation by the New Hampshire Attorney General's Office into excessive force by Officer I during an incident occurring on [REDACTED]. The arrestee in the [REDACTED] incident filed a complaint with the Attorney General's Office that he was assaulted by Officer I while he was handcuffed. Complete documentation of the incident and investigation is offered as part of this packet, including the extensive documentation by the Attorney General's investigation. Interviews of witnesses are conducted, and a thorough effort is put forward to investigate all allegations. A recommendation for termination is the result of the investigation and a hearing date was scheduled for [REDACTED]. Two arrest warrants were issued for Officer I on [REDACTED]. Officer I turned himself in on the warrants. The hearing was held and a recommendation for termination was made to Town Manager [REDACTED] by [REDACTED] on [REDACTED].

Formal IA investigations were also conducted into the conduct of [REDACTED] Officer J and Officer K for the same incident. [REDACTED] was exonerated of allegations of excessive force but allegations for lack of supervision were sustained with a five-day suspension without pay and the failure [REDACTED] was sustained with a letter of counselling recommended. Both Officer J and Officer K were exonerated for excessive use of force. All documentation for these investigations is provided in a thorough and complete manner but are not as comprehensive as the investigation of Officer I's conduct.

This investigation **was** compliant with the Salem PD policy. This investigation **did meet** acceptable best practices for internal reviews.

Internal Investigation (informal): Officer L

A review of this incident shows an informal investigation initiated and led by [REDACTED]. [REDACTED] issued a memorandum to Officer L after he missed court on [REDACTED]. The documentation in this investigation is incomplete. It discusses an email on [REDACTED] from Attorney [REDACTED] that is included in the packet but only reads "XXXXXXXXXXXX. \$5k c/s." If this is supposed to be a notice to appear in court, it is insufficient as there is no date in the body of the email or any time or location of appearance. While these two things may be common knowledge in this institution, from the standpoint of a reasonable person, the information appears lacking. The memorandum further states that the hearing was not posted on the court board. It then states the officer received two notifications via email advising him of the hearing, but neither the first nor the second notification contained a time or location of appearance. No policy regarding officers' necessity to check email or the frequency of that task was included with the policy packet. Nor was there a policy on court notification procedures. Additionally, it is unknown if the emails were read or received by this officer. It is unknown if any of these factors were even explored as part of this investigation. It appears this court date should have appeared on the court board based on the comment acknowledging that it was not there. It is unknown why this hearing did not make it to that board since no investigation into that appears to have been done. Despite this lack of content, the allegation was sustained and a letter of counselling was given to the officer for this violation.

This investigation **was** compliant with the Salem PD policy (however, it seems to be lacking documentation). This investigation **did not meet** acceptable best practices for internal reviews.

Internal Investigation (informal): Officer M

A review of this incident shows an informal inquiry by [REDACTED] into the conduct of Officer M on a traffic control detail that occurred on [REDACTED]. During this detail, the driver of a vehicle failed to obey Officer M's traffic control signals. In an attempt to get the driver's attention, Officer M hit

the trunk portion of the vehicle causing damage and upsetting the occupant family and then spoke to the family in a rude and vulgar manner. The packet offers a full investigation with interviews being conducted with officers and witnesses and photos being taken of the damage to the vehicle. A sustained finding of a policy violation was the result, with a letter of counselling offered as the recommended discipline. The complaint was handled as an informal inquiry even though the complainant signed and completed a formal complaint form.

This investigation **was not** compliant with the Salem PD policy. This investigation **did meet** acceptable best practices for internal reviews.

Internal Investigation (informal): Officer M

A review of this incident shows an informal inquiry into a citizen complaint of excessive use of force investigated by [REDACTED]. This packet is incomplete with only the memorandum included without the original incident report, complaint form or any other documentation. The second paragraph of this memorandum states, "Complainant called the shift commander and wanted to file a complaint of excessive force on Officer M. [REDACTED] was advised how to make that complaint, [REDACTED] refused to come to the Salem Police Department claiming [REDACTED] in fear of being assaulted." The memorandum goes on to explain that the citizen called again with the same complaint the next day and "was once again informed on the Salem Police Department policy and practice on filing complaints."

We see documented practices inconsistent with the agency's General Order 65-3, V & VI, which states, "the supervisor will describe the issues of the complaint in writing providing all information is available at the time" and "(a)ll complaints will be accepted by this agency. Complaints may be given in person, over the phone or in writing....The complaint received by the supervisor shall be forwarded to the Chief of Police." The citizen offering the complaint is given instruction to come to the police department to file the complaint. In this set of circumstances, the citizen expressed that [REDACTED] was fearful of responding to the police agency, and rather than the police agency documenting the complaint as required by their policy. The complainant is repeatedly told to come to the police department to file a formal complaint. This practice actively dissuades members of the public from having their complaints against the police department heard and can be construed as intimidating.

The memorandum documenting the investigation was offered without a copy of the report, the Facebook video, the security footage from [REDACTED] or the Fire Department run sheet. The booking camera does not record events, but active recording of the booking room and any holding areas would be in line with national best practices along with a video retention policy that follows some set of

standards. Those interviewed stated they welcome video recording in the cell blocks and booking area. This is an immediate low-cost step that would protect both officers against false complaints, as well as document any concerns expressed by suspects. While it does appear that the investigation was done in a responsible manner and no excessive force occurred, the lack of documentation kept as part of the informal inquiry coupled with the violations of general order by department members, expose substantial areas of concern. Chief Donovan noted the following regarding this IA investigation:

CHIEF DONOVAN: I'd need to look at it and see. No, this is an informal, it says right on it. Yeah, she was one [REDACTED] didn't want to come because [REDACTED] -- I mean, if you look at some of the hints right there [REDACTED] refused to come to Salem Police Department claiming [REDACTED] was in fear of being assaulted, I mean, that's kind of like -- tells you a little bit why the complaint is the way it is. Yeah, I remember her [REDACTED] did file a -- [REDACTED] did put a -- a little You Tube thing that she made on herself.

MR. LINSKEY: Okay. So you became aware of a You Tube video that says that [REDACTED] was assaulted while at the police department?

CHIEF DONOVAN: There was actually a very long tirade that I think it kind of wounded off into something else and that's what it was on the -- on the YouTube page.

MR. LINSKEY: So -- so [REDACTED] called to make a complaint and it says [REDACTED] was advised how to make a complaint, [REDACTED] refused to come to Salem Police Department, so how do you make a complaint?

CHIEF DONOVAN: No, if you come right in and fill out the complaint form, a citizen's complaint form.

MR. LINSKEY: What if I don't want to fill -- come in and fill out a complaint form, can I still make the complaint?

CHIEF DONOVAN: Oh, you still can make the complaint, we'll look at it, but we're not going to give it the same weight we're going to give it if somebody comes in and signs the form because when you sign a form you're swearing to the facts that everything that you say is true.

It is understandable that a citizen who submits a formal complaint under pains and penalties of perjury may be regarded with more credibility in instances where facts are unable to be proven or disproven and, therefore, the incident is unable to be sustained. However, the facts are the facts. In this case, the complainant alerts two supervisors as to her desire to submit a complaint alleging physical assault while in custody but expresses fear in doing so. [REDACTED] is incorrect in asserting that the complainant's only course of action for submitting a complaint is in writing as this complaint, although not received in

writing, alleges criminal allegations of physical abuse by officers while in custody. The formal complaint process includes complaints submitted in writing and/or those that allege criminal misconduct or similar offenses, as defined below:

This investigation **was not** compliant with the Salem PD policy. This investigation **did not meet** acceptable best practices for internal reviews.

Internal Investigation (formal) IA [REDACTED]: Officer M

A review of this incident shows a formal inquiry conducted by [REDACTED] into an incident that occurred on [REDACTED] involving Officer M and a missing patrol rifle. The rifle was determined to be missing at the end of Officer M's patrol shift. An investigation was conducted, and it was determined Officer M unintentionally left the rifle on the trunk of his patrol vehicle at the beginning of his shift. The rifle was located by a good Samaritan who found the damaged rifle on the roadside. Two policy violations were found to be sustained as a result of this investigation. A five-day unpaid suspension was issued to Officer M as discipline to include a review of the applicable general orders.

This investigation **was** compliant with the Salem PD policy. This investigation **did meet** acceptable best practices for internal reviews.

Internal Investigation (informal): Officer N

A review of this incident shows an informal inquiry conducted by [REDACTED] on [REDACTED] into a policy violation that occurred during a custodial arrest of a subject. This complaint came verbally through the prosecuting attorney after learning information from the public defender. It was learned during this arrest, Officer N took a photograph of the arrestee with his cellular telephone and sent it to a family member of the arrestee. The prisoner was allegedly urinating in the photo. While this is egregious conduct that disrespects and potentially humiliates the person being arrested and violates their privacy, this review was conducted as an informal inquiry. A policy violation was sustained with a letter of counselling being issued for engaging in conduct that could discredit the department. The arrest report and the photograph were not included in this packet. No mention of training on the treatment of prisoners, privacy protections or ethical conduct was mentioned as part of this informal inquiry.

This investigation **was** compliant with the Salem PD policy. This investigation **did not meet** acceptable best practices for internal reviews.

Internal Investigation (Informal): Officer O

A review of this incident shows an informal inquiry initiated by [REDACTED] as to an incident that occurred on [REDACTED]. The entirety of this informal investigation was one memorandum. In reviewing the case files, it appears a citizen approached Officer O after the officer failed to use his directional and pointed out his violation of the law. Once the man left, Officer O reportedly activated his lights and followed the man, initiating a traffic stop and demanding identification. The citizen did not feel he violated any traffic law, so he attempted to go into his place of work at which time the door was forcibly shut by Officer O causing injury to the citizen's arm. There is a mention of the incident being recorded on a dash camera. It is unknown to whom the dash camera belongs. This information was related to [REDACTED] by Officer O after the incident occurred, but we see no documentation from [REDACTED] [REDACTED] as to the allegations of making a stop without probable cause or assault. It can be assumed by [REDACTED] involvement that the citizen reported the incident to him verbally. [REDACTED] memorandum documenting the incident is written on [REDACTED].

[REDACTED] meets with the citizen in the interview room and allows him to tell him the details of the events occurred. [REDACTED] then states "I found his [The Citizen's] approach to be condescending and told him the same." [REDACTED] goes on to state how the citizen was discussing the law and mentioned his father was a chief of police. [REDACTED] goes on to tell him he is not impressed with his associations and seems to imply he [REDACTED] knows more about the law than the citizen. [REDACTED] also tells the citizen he is not going to dictate how the police agency would handle the investigation. [REDACTED] then goes on to tell him that it is not an assault when a police officer causes physically injury to another without a "culpable state of mind." This seems to be in conflict with section 1.b of the state statute that reads:

NH Rev Stat § 631:2-a – Simple Assault:

- I. A person is guilty of simple assault if he:
 - (a) Purposely or knowingly causes bodily injury or unprivileged physical contact to another; or
 - (b) Recklessly causes bodily injury to another; or
 - (c) Negligently causes bodily injury to another by means of a deadly weapon.
- II. Simple assault is a misdemeanor unless committed in a fight entered into by mutual consent, in which case it is a violation.

[REDACTED] then writes the following statement, "I informed him that he was free to file a formal complaint and that the matter would be fully investigated, to include any inconsistencies in the story." This

statement holds an implied threat that the citizen could potentially be investigated if he takes the steps established to file a formal complaint. Again, we must look at General Order 65-3, which states complaints will be accepted in person, via telephone or in writing. In this instance, the citizen has now spoken to two police supervisors about a traffic stop being made without probable cause and a possible assault and still has not officially "filed a complaint." We see a system designed to intimidate members of the public and make them fearful of the consequence of filing a complaint about concerning police conduct. [REDACTED]

[REDACTED] finishes the meeting by encouraging the citizen to discuss the events with his police associates and asking him what he did wrong in this situation, as if the citizen's decision to approach the officer and point out the traffic violations created this course of events.

[REDACTED] does speak with Officer O after the meeting. Officer O stated that he reported the incident to [REDACTED] on the day of occurrence. There is no documentation of this complaint offered by either [REDACTED] or [REDACTED]. Officer O states that the citizen was following him closely, gesturing for him to pull over. After Officer O pulled aside, the citizen approached him and told him he did not use his directional. According to Officer O, this was communicated with the use of expletives. Officer O then describes the citizen as pulling away at a "high rate of speed." Officer O admits he pulls the citizen over after this, allegedly for following too closely and speeding. The citizen travels to his place of employment and attempts to enter the building. He made the statement he did nothing wrong and wanted to go to work. It is unclear how Officer O determined he was speeding. Officer O "gives chase" and stops him from entering the building. Officer O requests identification, and the citizen refuses. When he is threatened with arrest for not providing identification, he complies with the officer's instructions. This reviewer is still not convinced there was probable cause for the stop. Some police cultures allow for police to initiate enforcement activity because the citizen's conduct was upsetting to the officer and challenged the officer's ego. The officer then finds reason for the police contact. Police must not allow personal biases to influence their decision to take enforcement efforts. General Order 25-1: Code of Conduct, Section VI (Discretion) calls for officers to not "base their actions or inactions... (on) personal bias or prejudice." Article X (Unethical Conduct) of this same general order discusses "Arbitrary or abusive use of police powers or arbitrary or abusive action taken under the color of police power in personal disputes or affairs" in subsection 10.07. While we can see suggestions that Officer O violated this general order, this is not investigated as part of the inquiry. Abuse of police authority is one of the most important behaviors that an agency can identify to ensure officers are conducting themselves in an appropriate and ethical manner.

The citizen states at the end of the meeting with [REDACTED] that he would like an apology from Officer O. This interaction is arranged by [REDACTED], and the citizen comes back to the agency the next day to receive his apology. At that time, he says he's had an unexplained change of heart and does not want to file a complaint. He further states that he, in fact, owes the officer an apology. He also apologizes to

[REDACTED] and [REDACTED]. When Officer O arrives, the complainant shakes Officer O's hand and thanks him for his service to the community. This inquiry is then closed, and no further action is taken.

In Chief Donovan's interview with Kroll, he stated the following:

MR. LINSKEY: This particular case it looks like the guy, in my opinion, was being a wise guy, the -- the guy behind him⁶

CHIEF DONOVAN: Oh, no question, yeah.

MR. LINSKEY: -- turns -- turns the directional on, tells the officer, you know, hey --

CHIEF DONOVAN: Maybe Officer O got tweaked, (name changed)

MR. LINSKEY: Yeah.

CHIEF DONOVAN: -- you know, he -- he didn't care for it.

MR. LINSKEY: Would you agree that Officer O got tweaked?

CHIEF DONOVAN: Oh yeah, I would say he got a little tweaked on that one.

MR. LINSKEY: Do you think that Officer O behavior of going after -- now all of a sudden this car is driving at a high rate of speed, he leaves a detail that he's providing protection from a -- a -- sounds like they're moving some heavy equipment or something and he's behind them with lights keeping them safe, he leaves that to go to a motor vehicle stop because someone pissed him off, basically, that's what it seems like to me.

CHIEF DONOVAN: Oh, so they probably were already off the road at that point, that's probably why we didn't -- that's probably why we didn't bother doing anything more with him on that.

MR. LINSKEY: But you agree, he -- he -- he got pissed and he was spotted --

CHIEF DONOVAN: Oh he was -- yeah, he probably did, he --

MR. LINSKEY: The guy didn't have a two inch gash before the interactive with the officer, he did after.

CHIEF DONOVAN: Well that's an assumption, I mean --

MR. LINSKEY: I don't know that, I can't, I mean, the Investigation⁷ -- he says he was injured and there's -- he knows cops -- formal complaints, I told him I was quite certain the officer didn't have any reason to stop him, therefore, reason -- I also indicated

⁶Officer O was in a cruiser working a detail following heavy equipment when the complainant pulled up next to him and complained about the officer not using a directional. The complainant drove off. Officer O decided to follow the subject and conduct a stop, and during the course of their interaction, the complainant was cut trying to enter into his work facility.

⁷*Linskey reading from report of informal investigation of [REDACTED]

officer Officer O by statute had not assaulted him. I pointed out that he acknowledged he did not realize his arm was cut until after the two had separated and that in order to prove an assault there would have to be a culpable state of mind and one that clearly did not exist in this case law. That sounds like a lot of -- whether it was an official assault or not, but it seems like, you know, the guy has the altercation with the officer and he's cut afterwards and -- and comes and makes a report of it.

CHIEF DONOVAN: Oh, okay.

MR. LINSKEY: Any concerns about that that should have been documented, a picture of the cut, to say, you know, it's consistent with somebody or not consistent that -- that a little more could have been done with this? I know it looks like they worked it out.

CHIEF DONOVAN: Possibly, yeah possibly, but why -- again, the -- the purpose of the informal is if you can work it out you just work it out and if the person's okay when -- when they leave and they're -- they're satisfied, I mean, I think that should be one of their goals is, you know, the person should leave and hopefully that they're satisfied, hopefully that they and the officer both have a chance to get their act and maybe the officer now realized, yeah, I guess I did give you -- they weren't after this guy after all either.

MR. LINSKEY: Do you think it would have been helpful for the lieutenant to maybe have a counselling session with the officer to say, look, this worked out?

CHIEF DONOVAN: That probably did happen, it probably was just not documented, but he probably did talk to him and say --

It is Kroll's belief that this investigation is another example of an informal investigation that should have been elevated to a formal complaint. Further, the lack of documentation relative to the citizen's alleged injury puts the officer, department and town at risk should litigation occur in the future.

Kroll also spoke with Deputy Chief Morin regarding this incident. His comments are included as follows:

MR. LINSKEY: This one is a -- I think you were involved in this one. [REDACTED]
assigned it to you [REDACTED]. This is Officer O and a citizen.

DEPUTY CHIEF MORIN: I don't recall it but what's about?

MR. LINSKEY: a citizen was -- took umbrage with Officer O operation of his motor vehicle of his police car and he pulled alongside him and told him as such.

DEPUTY CHIEF MORIN: Okay.

MR. LINSKEY: Okay, so it seems similar to the one you talked about that was in there; right? So, woman got pulled over, she had some concerns, she made a complaint, she came in had a conversation, there was a meeting, there was an explanation as to, you know, hey this is what played out, this is why it played out, it came to a conclusion she said, ah you know what, having all that knowledge I didn't know that, I'm okay now, I'm fine, similar type thing; right? Any concern with Officer O -- Officer O's behavior here?

DEPUTY CHIEF MORIN: No, and I -- I know that you don't know these officers, when you -- and obviously when you know an officer and you know his character and you know his demeanor and Officer O is one of our [REDACTED], as a former [REDACTED], [REDACTED], sometimes we have to check Officer O to see if he still has a pulse because he's that even keeled and when we made him a [REDACTED]; myself and [REDACTED] were -- [REDACTED], and one of our concerns was just that, [REDACTED], you know, follows down the lead. Officer O [REDACTED] amazing, but Officer O is not a high strung -- that's not who he is, you know, he also doesn't make a ton of car stops so if he made a car stop there's a reason why he made the car stop.

MR. LINSKEY: Well that's just it, what do you think the reason was he made the car stop?

DEPUTY CHIEF MORIN: Whatever it was that alerted it to him he felt it was egregious enough for him to make the car stop.

MR. LINSKEY: You don't think that he felt like the guy was breaking his balls and came up beside his window and told him, you know, you didn't use your directional and took off and he's like you're going to tell me what to do?

DEPUTY CHIEF MORIN: No.

MR. LINSKEY: That wasn't -- that thought never entered your -- as a possibility?

DEPUTY CHIEF MORIN: Some other people I would say yes.

MR. LINSKEY: But not him?

DEPUTY CHIEF MORIN: Officer O , no.

MR. LINSKEY: Because he's performing security for the detail; right? They got this big piece of equipment and he's following behind him with the lights on, this guy rolls over, gives him -- gives him a hard time really, gives him a -- yeah, you pointed out to the guy, like, wouldn't it had been better if you called the station than to confront the officer directly, and then all of a sudden a guy who doesn't make a lot of car stops makes a car stop. Did you at least have that conversation with him or did you consider that?

DEPUTY CHIEF MORIN: I -- I did have that conversation with him --

MR. LINSKEY: Okay.

DEPUTY CHIEF MORIN: -- but I've worked with Officer O for [REDACTED], so I know him and I'm sure that you can look back in your time with Boston PD, people that you know.

MR. LINSKEY: Sure.

DEPUTY CHIEF MORIN: He's not a high-strung guy, he's not one of those that I'm going to show you, you know, like I said, we have to check his pulse sometimes to make -- now, having said that, he's the guy that's always in the right place at the right time, that doesn't happen by accident, --

MR. LINSKEY: Right.

DEPUTY CHIEF MORIN: -- as you know. The fact that he [REDACTED] that's amazing doesn't happen by accident, but he is just very quiet, wouldn't say shit if he had a mouthful, and that's who he is, so, you know, the first instinct that I had is, okay, there's more to this story, I hear the guy out, he's condescending in his tone, his daddy

--

MR. LINSKEY: Sure.

DEPUTY CHIEF MORIN: -- is a police chief and I point out to him that, you know, perhaps he could have handled it better, invite him to file a complaint, two days later he comes back and says I thought about what you said; okay? So he was hot, he was pissed that Officer O pulled him over. Officer O probably chewed him -- chewed him a little bit; okay? But again, that's not who this guy is, so --

MR. LINSKEY: But we all have a bad day, I mean, I've --I've -- I've --

DEPUTY CHIEF MORIN: Of course we do.

MR. LINSKEY: -- you know, I've --

DEPUTY CHIEF MORIN: Of course we do.

MR. LINSKEY: -- had my button pushed, every cop in America --

DEPUTY CHIEF MORIN: Of course we do --

MR. LINSKEY: -- has had their button pushed.

DEPUTY CHIEF MORIN: -- and had this guy wanted to file a complaint, it would have been fully investigated, but he wanted to -- he wanted to air his grievance, he got to say what he had to say; [REDACTED] listened to what he had to say and [REDACTED] okay, well how do you think that you could have handled that better to have avoided this?

MR. LINSKEY: Sure.

DEPUTY CHIEF MORIN: They shake hands, there's no complaint, everybody goes home happy.

MR. LINSKEY: Okay. What about the injury, were there any photographs taken of it?

DEPUTY CHIEF MORIN: I -- I didn't read it that closely, I'm sorry, injury.

MR. LINSKEY: He claims he got injured when the officer closed the door on him as he's trying to get into the work place.

DEPUTY CHIEF MORIN: No, I didn't -- I didn't take a photograph of the injury.

MR. LINSKEY: Okay. But you said you did have a little conversation with him about, hey, did you --

DEPUTY CHIEF MORIN: I had -- I had a lot of conversation with him, I mean --

MR. LINSKEY: Not -- not with the complainant, with --

DEPUTY CHIEF MORIN: With Officer O ?

MR. LINSKEY: -- Officer O.

DEPUTY CHIEF MORIN: Yeah, I did.

MR. LINSKEY: About did he -- did he piss you off and --

DEPUTY CHIEF MORIN: Yeah, I did.

MR. LINSKEY: Okay.

DEPUTY CHIEF MORIN: Okay? But again, that's not who this guy is.

MR. LINSKEY: Okay. But [REDACTED] didn't note that in the report, that had a conversation with him, that, you know, it might of -- it might have been his attitude that because him to -- and, you know, just to be careful of that when making those type of responses, because I've seen in other reports you've made that -- you've kind of articulated, hey, you know, this -- this --

DEPUTY CHIEF MORIN: And again, if Officer O was that guy, then it would have been noted, so some of the other people that may have been noted --

Two concerns come to light in Deputy Chief Morin's comments: 1) The disregard of a complaint based on his own personal assessment of or feelings toward an officer, and 2) The lack of formal documentation relative to an injury that allegedly occurred during a physical encounter with a police officer. It is improper policy, and quite risky, to dismiss or disregard a complaint based on one's own personal feelings towards an officer. Each investigation should be considered on its merit, and while the human element obviously is a factor, it cannot be the only factor in determining the validity of a complaint. Deputy Chief Morin should have interviewed and documented Officer O's testimony, and Deputy Chief Morin should have supplemented Officer O's interview with a similar interview with the citizen. Photos of the injury should have been taken.

While the department resolved this matter seemingly to everyone's satisfaction, the case file contained no such documentation as to interviews with relevant parties, photographs of alleged injuries or proof of counseling provided to Officer O, whereas Kroll did identify counseling records in other IA investigative case files. This inconsistency is not keeping with best practice as it could lead to an appearance of one set of rules for some employees and another set of rules for others.

This investigation **was not** compliant with the Salem PD policy. This investigation **did not meet** acceptable best practices for internal reviews.

Internal Investigation (formal) IA # [REDACTED]: Officer P

A review of this incident shows a formal investigation for a policy violation occurring during a custodial arrest on [REDACTED]. This arrest was made by Officer P, who arrested a subject while the subject was awaiting the arrival of a bail commissioner. Officer P placed the subject back into a holding cell. Policy requires all personal property to be taken from prisoners prior to the prisoner being placed into a cell. Officer Officer P failed to take the subjects cellular telephone from the subject. Upon the subject's release, it was learned the subject had made a video of himself sitting in the holding cell and posted it to Facebook. Officer P learned about this and self-reported it to his supervisor. The investigation was conducted, and the policy violation was sustained. The discipline recommended was a written warning.

This investigation **was** compliant with the Salem PD policy. This Investigation **did meet** acceptable best practices for internal reviews.

Internal Investigation (informal): Officer Q

A review of this incident shows a citizen making a complaint of excessive force to [REDACTED] on [REDACTED]. At the time of the complaint, [REDACTED] informs the complainant of the "complaint process" to which he cooperates and completes a written statement. [REDACTED] photographs the injuries the complainant alleges occurred during an arrest situation involving Officer Q earlier that day. The incident report, written statement and intake form are not included as part of this packet. Instead this inquiry consists of one single memorandum prepared by [REDACTED]. The narrative documents the citizen's arrest, which included an incident where Officer Q observed a vehicle travelling at a high rate of speed. While no radar was operable to record the speed, Officer Q estimated the vehicle to be traveling between 80-90 MPH, according to this memorandum. It is unknown how this estimation was calculated. The memorandum then states the driver and passenger were both arrested without incident. The details of that arrest, which appear to have some importance as to the allegations being brought forward are unable to be reviewed due to a lack of supporting documents. The driver was arrested for reckless operation and the

passenger, the complainant, was arrested for possession of marijuana. During the processing of the complainant, there was an altercation between Officer Q and the citizen.

[REDACTED] all responded to the booking area at some point and observed the complainant being combative. [REDACTED] observed the struggle via camera. Force was used to keep the citizen from assaulting the officers and to control his behavior. There is mention of all officers involved completing the use of force report. It is unknown if the minor injuries to the citizen qualified as an "injury" from the officer's perspective at the time of the incident or if this was done upon request after this complaint came in. These documents were not included in the informal inquiry packet provided. With four witnesses to the citizen's combative behavior, the allegations of excessive force were classified as necessary force used to control the subject during the arrest. There were also allegations of missing money and property. These allegations were dismissed with no investigation documented. The statement, "... it is highly unlikely the citizen had this money on him at the time of arrest," seems insufficient when considering the seriousness of the allegation. Additionally, Officer Q stated that the citizen had a lighter, belt and string on his person at the time of his arrest, but only the item listed in [REDACTED] personal inventory is a belt. This discrepancy should have been investigated further as it suggests there may have been other property that was not accounted for. It can only be assumed that because the excessive force part of the complaint was found unsubstantiated, that any other parts were assumed to not have merit as well. This is a dangerous practice and not in compliance with General Order 65-3 stating all complaints will be fully investigated.

More concerning than the lack of investigative effort into all parts of the allegations is the fact that this incident was not conducted as a formal complaint. General Order 65-3 offers clear guidelines on what type of allegations and circumstances must be present for both formal and informal complaints. This general order defines a formal complaint as "a complaint received under the above guidelines that is submitted in writing, where the complainant is available for follow-up investigation, interview, and/or the complaint alleges criminal misconduct of a similar serious offense." The complainant's allegation met all the criteria established by General Order 65-3 for a formal complaint, yet this process was conducted as an informal inquiry. There is nothing in the general order that offers discretion of the agency to move formal complaints to informal complaints. Due to the informal nature of this inquiry, many steps were not taken that would have been required as part of the formal process. An example of this are the attempts to speak with the only witness not employed by the Salem PD, the citizen's co-defendant. There is no mention of any effort other than repeated attempted phone calls to contact the subject. Considering the subject might have information that would be valuable to this inquiry, a stronger effort to make contact should have been made.

This investigation **was not** compliant with the Salem PD policy. This investigation **did not meet** acceptable best practices for internal reviews.

Internal Investigation (informal inquiry): Officer R, [REDACTED] and Officer B

A review of this incident shows an informal inquiry into a complaint of excessive force by officers during a custodial arrest situation on [REDACTED]. The investigation was conducted by [REDACTED] after a complaint was submitted via email by the boyfriend of the arrestee (alleged victim). The boyfriend of the arrestee was also arrested during this same incident, but his complaint was about how the officers treated his girlfriend. The allegation is that officers grabbed her hair, tore her pants, bruised her arms and slammed her to the floor. Arrest reports are attached to this inquiry for review. [REDACTED] spoke with some of the members of the Salem PD involved in this incident. Officer B admits to grabbing the arrestee's hood and hair to stand her erect. While it is understood that the officers were attempting to stand her up, it is a dangerous practice to bring a person to a standing position by grabbing his/her hair or a piece of clothing worn around the neck. Police are routinely trained in tactics that identify grabbing subjects by the neck as deadly force, and they are trained in alternate compliance and assistance holds to avoid this sensitive area. The conversation with Officer B and a review of the reports seem to be the extent of this investigation. Even though Officer B grabs the subject by the hair and hood to assist her to standing, this is not addressed as an area of concern or a training issue. No counseling or alternative methods that would be less dangerous to the arrestee were documented. Also, the complaint mentions another officer having contact with her after the incident and laughing about her injuries. This part of the complaint is completely overlooked as part of the inquiry. [REDACTED] claims he cannot reach her because of a phone number that is out of service, but it appears the officers have had contact with her after the incident, and there is even a suggestion that they would be able to identify her place of employment. None of these avenues were explored to contact her, and one phone message was the extent of the attempted contact with her boyfriend.

Further, we see a complaint that comes in meeting the definition of what should be a formal inquiry based on General Order 65-3, and we see it being handled as an informal inquiry by the Salem PD. Additionally, after the alleged victim's boyfriend submits a complaint, of a serious nature, in writing, and identifies himself as the complainant, all the criteria required for a formal complaint, [REDACTED] states, "if the alleged victim's boyfriend returns my call, I will inform him that if she wishes to file a complaint, she will need to report to the PD to do so." It is a concerning practice to insist individuals respond to the police agency as the only way to have a formal complaint filed. This is especially concerning considering General Order 65-3 clearly allows for other reporting methods to be accepted. An identified pattern of not following established policy for the acceptance of formal complaints is obvious. Requiring redundancy of reporting on behalf of citizens wishing to bring allegations of police misconduct to the attention of the agency is a poor practice.

Often if the first outcry is not taken seriously, citizens will not trust the police to take action with the additional reporting effort. This seems to be used as a tactic to intimidate people from bring complaints forward against the officers and an excuse to classify serious allegations as "informal inquiries" despite a policy that mandates a formal investigation.

Chief Donovan noted the following regarding this investigation:

MR. LINSKEY: (Linskey reading from [redacted] report) I left a message for boyfriend of the arrestee⁸ to call me if he wished to shed more light on his claims, as I'm writing I have not heard back from him. I also attempted to contact his girlfriend but the phone number listed on the arrest report is no longer in service. If he returns my call I will inform him that if she wishes to file a complaint she will need to report to the PD to do so.

MR. LINSKEY: So, even though boyfriend of the arrestee had sent an email and written a complaint about excessive force that he says occurred, although it occurred to his girlfriend, that's not considered a complaint?

CHIEF DONOVAN: Well I think that's why they looked into it as much as they did but if she wanted to file a complaint she's -- she's more -- she was more than welcome to. I think you can see she was kind of a soup sandwich.

MR. LINSKEY: Yup.

CHIEF DONOVAN: And that's what happens, you know, you'll get that and then you'll never hear from these people again and chances are she probably hasn't even come through Salem again. This is like a main drag through for people to come to get drugs from Lawrence and we do run into these folks like that all the time, you know, and we'll get them the one time, you know, could end up being a situation like that and then you never see them again.

MR. LINSKEY: The supplemental report that it refers to, I'm assuming this would be the supplement?

CHIEF DONOVAN: Yup, yeah, this was right up on the top so yeah, that's -- does it say who wrote it?

MS. SHANAHAN: It says by -- oh, [redacted].

CHIEF DONOVAN: [redacted] yeah that's for Officer B but -- yeah, that is -- I believe I'd have to look and see whether it said in the report about who did the supplement.

MR. LINSKEY: Yeah, [redacted], I think.

⁸ Name inaccurately transcribed.

CHIEF DONOVAN: Oh, it was? Okay.

MR. LINSKEY: [REDACTED] who completed supplemental report.

CHIEF DONOVAN: I don't know why it would have said for [REDACTED], it should have said by, but --

MR. LINSKEY [REDACTED] --

CHIEF DONOVAN: It might be just how MC works.

MR. LINSKEY: On [REDACTED] boyfriend of the arrestee submitted an email complaining about it. This report, the supplemental report that I think it -- I don't think there was a new supplemental report done after the complaint, I think he wrote the original supplemental report --

CHIEF DONOVAN: Probably.

MR. LINSKEY: -- from that night because it's dated [REDACTED]⁹ so from [REDACTED], Wednesday [REDACTED]. [REDACTED], FYI, and he sends [REDACTED] the email complaint at 8:26 a.m. on the [REDACTED] reviews it, looks like he reaches out to boyfriend of the arrestee at least once to shed more light on his claims, he's not heard back from, he attempted to contact her but the phone number listed is no longer in service, if boyfriend of the arrestee returns my call, and he writes a report back stating that basically boyfriend of the arrestee was not present when the alleged excessive force happened, I called, no one's got back to me and he received the complaint at 8:26 a.m. on the [REDACTED] and he's completed his report on the [REDACTED] you think that could be a problem with giving a little more time for people to respond?

CHIEF DONOVAN: Again, you're looking at partial packages and stuff, there may have been more to this in the original package with the stuff that --

MR. LINSKEY: I'm exactly that -- I'm looking exactly what I have in front of me for documents.

CHIEF DONOVAN: This was probably in [REDACTED] file draw, again, and this is stuff -- you know, when you guys asked for this stuff these guys looked for -- they looked through to see what they could find and they even pulled out stuff that technically should not have been kept because this probably shouldn't have been kept.

MR. LINSKEY: Okay, but you'd agree --

CHIEF DONOVAN: So there might have been a complete package to this and now you're looking at just a piece of it.

⁹ reading from an email

MR. LINSKEY: But you'd agree with me what we have in front of us it looks like the [REDACTED] received the complaint at 8:26 in the morning and did an investigation where he reached out to two individuals, spoke with the officer, reviewed the reports, and is able to complete that form the same day.

CHIEF DONOVAN: Well if you can't get a hold of the people there's really no reason to hold on to it.

MR. LINSKEY: Well, if you left a voice mail, wouldn't you have waited a day or two to see if the person responded back?

CHIEF DONOVAN: I suppose you could have, yeah.

MR. LINSKEY: Left a message for Victim's boyfriend to call him, as of this writing I have not heard back from him.

CHIEF DONOVAN: Right, so if you do hear from him I suppose you can reopen it again or put an addendum to it.

MR. LINSKEY: You'd agree that's quick?

CHIEF DONOVAN: Yeah.

MR. LINSKEY: It looks -- it looks -- it look --

CHIEF DONOVAN: Oh it's -- it's quick, but you're asking about situations that happened years ago, you're talking about two more soup sandwiches that chances are not ever going to be seen here again, so yeah, we could spend a lot of time trying to track him down but I can understand why he didn't because they know where we are, if they relay (sic) want to file the complaint or they want to follow up they're more than welcome to come here and say what have you done so far.

MR. LINSKEY: Well they did --

CHIEF DONOVAN: But these are the people --

MR. LINSKEY: -- they did file a complaint, --

CHIEF DONOVAN: Right.

MR. LINSKEY: -- they filed a written email complaint.

CHIEF DONOVAN: But I'm saying these are people who have never come back here again and even wanted to know what was going on, so he probably filed the email complaint just because he was angry, which is fine, --

MR. LINSKEY: Sure.

CHIEF DONOVAN: -- I mean, I understand that, go ahead and do it, but they're not showing any interest in seeing this go anywhere either, so I think what he probably did was, you know what, if they want to come back, they can come back, and we'll do -- we'll deal with it some more, if not we'll just close it and move on.

MR. LINSKEY: Do you think maybe a phone call the next day, maybe a letter to both of the individuals involved?

CHIEF DONOVAN: I don't think it's our job to go out there and solicit these things from people. If these people want to file a complaint, they can come in, they can sit down and give us the information, but for us to go out, we have a million and one other things to do, we don't have enough people to do what we have to do. Now, I mean I suppose if this was the perfect world and we had an IA division, which we don't have, it's done by a captain who's doing a million other things or by a shift lieutenant, yeah, if this was Hartford or Boston you'd have a professional IA unit and that's all they did was IAs I suppose they'd have the time to go out there and try to track people down and stuff, we don't. If they want to file a complaint they're welcome to file the complaint and we'll investigate it.

MR. LINSKEY: Well they did file a complaint.

CHIEF DONOVAN: Right, and we investigated it, and that's where it ended up.

The Salem PD's handling of this incident exposes another example of the department's failure to follow its own IA investigative procedure. Not only is there an email alleging physical abuse while in custody, but there is also a complainant (albeit not the complainant that the Salem PD deems mandatory to submit the complaint) who does, in fact, submit a written complaint. The complete investigative report provided to Kroll consists of a report outlining the complaint and a review of the previously filed reports. There are no statements or supplemental reports from officers involved or notes of interviews. The case file reports that a voice mail was left informing the complainant that even though they submitted a written email complaint – that by policy would call for a full formal investigation – the girlfriend needed to come to the Salem PD to file a complaint on her own. The department's full investigation, which resulted in a not sustained determination relative to the complaint of physical abuse, occurs within hours.

While it is certainly possible that neither the complainant, nor his girlfriend, planned to follow up regarding the complaint, the Salem PD took no efforts to confirm that possibility. Best practice would call for the department to wait a day or two for a follow up call, send a certified letter to the complainant and alleged victim asking them to contact the investigator for follow up, interview the officers and document their version of events. This documentation of efforts is necessary to protect the officers, as well as the town, from future litigation, as well as to determine what truly happened and if any disciplinary action is needed.

Kroll further notes that all citizens should have the right to submit a complaint against an officer, and all officers should have the right to a fair and thorough investigation. The failure to properly investigate such allegations could lead to lawsuits placing the officers and the department in harm's way. It is also of grave concern that a Salem PD supervisor expressed contempt towards complainants, ignored the policy requiring fair and thorough investigations and has an attitude that his department is not under any obligation to make efforts to prove or disprove complaints against his officers, especially one involving alleged physical abuse while in custody.

CHIEF DONOVAN: Oh it's -- it's quick, but you're asking about situations that happened years ago, you're talking about two more soup sandwiches that chances are not ever going to be seen here again, so yeah, we could spend a lot of time trying to track him down but I can understand why he didn't because they know where we are, if they relay (sic) want to file the complaint or they want to follow up they're more than welcome to come here and say what have you done so far.

MR. LINSKEY: Well they did --

CHIEF DONOVAN: But these are the people --

MR. LINSKEY: -- they did file a complaint, --

CHIEF DONOVAN: Right.

MR. LINSKEY: -- they filed a written email complaint.

CHIEF DONOVAN: But I'm saying these are people who have never come back here again and even wanted to know what was going on, so he probably filed the email complaint just because he was angry, which is fine, --

MR. LINSKEY: Sure.

CHIEF DONOVAN: -- I mean, I understand that, go ahead and do it, but they're not showing any interest in seeing this go anywhere either, so I think what he probably did was, you know what, if they want to come back, they can come back, and we'll do -- we'll deal with it some more, if not we'll just close it and move on.

MR. LINSKEY: Do you think maybe a phone call the next day, maybe a letter to both of the individuals involved?

CHIEF DONOVAN: I don't think it's our job to go out there and solicit these things from people. If these people want to file a complaint, they can come in, they can sit down and give us the information, but for us to go out, we have a million and one other things to do, we don't have enough people to do what we have to do. Now, I mean I suppose if this was the perfect world and we had an IA division, which we don't have, it's done by a captain who's doing a million other things or by a shift lieutenant, yeah, if this was

Hartford or Boston you'd have a professional IA unit and that's all they did was IAs I suppose they'd have the time to go out there and try to track people down and stuff, we don't. If they want to file a complaint they're welcome to file, the complaint and we'll investigate it.

The residents of Salem and their officers are equally deserving of a professional IA process as are the citizens and officers of Hartford and Boston. This philosophy as to the obligations of the Salem PD to investigate complaints of excessive force could easily support a Monell¹⁰ claim bringing liability under Section 1983 of Title 42 of the United States Code: civil action for deprivation of rights. The court, however, requires that a §1983 claim against a municipal entity be based on the implementation or execution of "a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that party's officers."¹¹ [REDACTED]

[REDACTED]

This investigation **was not** compliant with the Salem PD policy. This investigation **did not meet** acceptable best practices for internal reviews.

Internal Investigation (informal then formal): Officer S

A review of this incident shows an informal investigation when a formal investigation is clearly in order. Citizen W makes a formal complaint that he was racially profiled on December 22, 2015. In a memorandum dated December 28, 2015, Supervisor B states he informed Citizen W on December 22, 2015 (the date the complaint was filed) that he [Supervisor B] does not believe there was any basis of fact to his complaint. This causes one to speculate if this opinion, which was asserted prior to any investigation, could have influenced the outcome of the investigation. Certainly, this statement made Citizen W question the seriousness in which his allegation would be investigated.

On [REDACTED] Citizen W comes to the Salem PD, meets with a [REDACTED] completes the complaint intake form, provides a written statement and alleges a civil rights violation and unlawful search. These elements would qualify Citizen W's complaint as a "formal complaint," according to General Order 65-3. [REDACTED] was assigned to look into the events and provides a memorandum documenting a conversation with Officer S as to the events of the traffic stop and search. At no point is this incident investigated as a formal complaint. There is no notice given to the employee, and there is no documented

¹⁰ <https://caselaw.findlaw.com/us-supreme-court/436/658.html>

¹¹ <http://www1.law.umkc.edu/justicepapers//PembaurDocs/BrennanDocs/CI%20I-702-4/03-07-86%20LFP%20Dissent%204th%20Draft%20Dissent%20WJB702F40004.pdf>

investigation other than a conversation with the officer. No IA number is issued, and it seems that Citizen W is sent a correspondence informing him that the allegation was without merit; the investigation was closed.

A formal investigation was initiated on [REDACTED] (IA # [REDACTED]) by [REDACTED]. Based on the documentation provided, it appears Citizen W, again, files a complaint in writing. Citizen W goes over the details of the event from the initial complaint, which are almost identical to his first statement, and states that when he responded to the police department to make the complaint against the officer who coerced him into signing the consent form, he "was met with hostility." He also states that the lieutenant tried to talk him out of filing a complaint. Citizen W stated that upon insisting on filing a complaint, he was "reluctantly" given the forms, and that upon completing the paperwork, he met with [REDACTED] and was told "nothing" was going to be done about the complaint. He further states that after he filed the complaint, [REDACTED] told him not to return to Salem and threatened to arrest him if he did not leave the department. It is very concerning to believe a citizen bringing forth an allegation of police misconduct would be treated in such a manner.

When [REDACTED] receives the written notice from [REDACTED] that a formal investigation will be conducted into Citizen W's complaint, [REDACTED] responds in an email to Chief Donovan that the allegation is outside the six month timeframe allowed in the CBA. As mentioned earlier, the six month investigative restriction is for the contract covering sergeants and officers. That restrictive verbiage does not appear in the contract covering police lieutenants, captains and deputy chiefs. However, Kroll was told that it has been applied as a past acceptable practice. Based on the chief's response, the chief agrees that [REDACTED] is protected by contract from being subject to an investigation that is beyond the authorized six month period. [REDACTED] goes on to assert that human resources is out of line in bringing concerning matters to the attention of the police department. Clearly both the officers and the administrators CBAs recognize the towns authority as the ultimate supervising body in management rights. The way this allegation was handled from the initial reporting of the incident through the second reporting has major areas of concern in the integrity of police operations. There are concerns in areas of making the complaint process reasonable for members of the public, the handling of formal complaints in accordance with policy. It is also concerning that police management does not seem to respect or regard human resources as a cooperative entity working to protect the integrity of municipal operations. Instead, there seems to be some disdain for input received from outside the police agency in police matters. This could potentially compromise public trust and allow for an environment where the police remain unaccountable for potential unethical conduct or questionable behavior.

[REDACTED] stated the following regarding Citizen W complaint:

MR. LINSKEY: All right. Citizen W. (named change throughout for confidentiality)

[REDACTED] Yeah.

MR. LINSKEY: Two complaints, one I think you handled, one he complained against

[REDACTED]

[REDACTED] Eight months later.

MR. LINSKEY: So Citizen W complains, there's a car stop, the officer stops him, he's going to seize his car, get a search warrant, Citizen W leaves, comes back with a tow truck, he comes in and complains about the officer, makes a statement about black lives matter, no, he makes --

[REDACTED] No.

MR. LINSKEY: -- a statement about -- concerning he wanted it on record in case the police officer shot an innocent black person, and then he had a conversation with you, I think you had some conversations about the dangers of officers, things going on, tensions these days, things that go on, and then at some point he was -- left the station, he has his version of events of why he left the station, I'm more interested in the investigation you did of Citizen W complaint. What did you think of that, what -- so he's written a formal complaint, this -- and this is -- so --

[REDACTED] He -- he came in, I met with him, the -- the two -- it was like 2 o'clock in the morning, he feels that the officer stopped him because he was black. It was 2 o'clock in the morning, traveling in an opposite direction, the officer pulled him over for speeding. The officer felt that he detected an odor of marijuana emanating from the car, saw an ashtray full of cigarette butts, asked for consent to search. Consent to search is not granted, the officer informs him that he is going to tow his car and apply for a search warrant, guy walks a little ways down the street, comes back and decides he doesn't want his car to get towed, gives the officer consent. The officer searches the car, finds nothing. He doesn't give him a summons, he doesn't give him -- he doesn't arrest him, so I said -- and his complaint was racial profiling. So I said, okay, sir, did he use any racial slurs? No. Did he swear at you? No. Was he rude to you? No. Did he put his hands on you? No. I said, okay, I'm not -- I'm not seeing the nexus here; what is it that you'd like to see done. He says, I want this documented in case that white cop kills a black guy. I said okay, sir, have a nice day. I document it all, I take the next step because the officer is going to need a little bit more than the smell of marijuana and an

ashtray full of butts, I assign it to his [REDACTED] to do some retraining with him on that and discuss what he needs, all of that is sent to Citizen W, all of it, and I --

MR. LINSKEY: So, he gets all of that in a letter?

[REDACTED] All of it; okay? Eight months later the complaint is virtually the same except for the fact that I threw him out of the station saying, all you people and your black lives matter are whatever, whatever, whatever he said. Now, this is a classic Molly McCain,¹² former HR Director, sticking her nose where it didn't belong because she's the one that gets the complaint, she raises holy hell; okay? I believe the original complaint came in December --

MR. LINSKEY: [REDACTED]

[REDACTED]: December, and when did Ferguson happen, August of '15?

MR. LINSKEY: August of '14, wasn't it?

[REDACTED] I think it was '15.

MR. LINSKEY: Yeah -- no, November of '15 is when the verdict came out, I think.

[REDACTED] Okay. But the actual incident happened in August.

MR. LINSKEY: Yeah.

[REDACTED] Okay. So, no mention of that in his original complaint and then eight months later all of a sudden, it's a complaint [REDACTED]. So, Molly was dealing with this, calls then [REDACTED], says that we need to look into this matter and this is an IA number that was assigned that should have been rescinded, but it never was so that's why we sent it to you. So, I get notification that there's going to be an IA [REDACTED], I send an email to the Chief and say I understand that there's been an IA, however it's more than eight months old per CBA, you know, it's -- you can't -- can't do that, however, [REDACTED].

The Chief concurred with my assessment, [REDACTED] sent Citizen W notification that we would not be looking into his second complaint, which was the same as the first except he didn't get his pound of flesh that he wanted in his first crack, so he was trying a second crack. It never happened. Did I tell him, okay, sir, have a good day, why don't you move along? Yes, I did. Why? Because the complaint was not valid, there was no reason for the complainant to documentation in case this white cops kills a black -- I mean, it's just foolishness and in addition to hearing his complaint, taking his complaint, I also noted that the officer was a little overzealous and did not have -- he

¹² Transcriber incorrectly spelled this individual's name.

wouldn't have got a search warrant based upon an order of mari -- so I had retraining done with him, which is all documented.

MR. LINSKEY: So -- so you were concerned about the officer, that, like, you really didn't have the ability to get this guy out of his car and tell him you're getting a search warrant?

[REDACTED] Cor -- well, he didn't, and he needed some retraining on that, which is exactly what happened, but the complaint was for racial profiling, --

MR. LINSKEY: Racial profiling.

[REDACTED] -- which, I mean, 2 o'clock in the morning he knew it was a black guy, and the guy said it --

MR. LINSKEY: I mean, the only -- the only thing I would point to that, and I don't think it's there, is he said he saw the car at the, you know, that he was familiar with this particular car, so, you know, was he (inaudible at 1:10:02, low audio) the car and the operator at the Red Roof Inn or just the car? So, he -- the reason he says he pulled the car over is he was familiar with this car involved in something, so I don't know if he -- and, you know, I don't know if he ran MDT and he -- he saw a photo, I mean, that's the only way he could make the --

[REDACTED] : But he --

MR. LINSKEY: -- the racial profiling if he'd seen him before with the car.

[REDACTED] But he was speeding too, which is why he made the stop. When he made the stops he's familiar, and -- and this white Cadillac that he's talking about, not a nice Cadillac, it was an eight-five Deville or something like that.

MR. LINSKEY: Okay.

[REDACTED] And the gentlemen is from Pennsylvania, doesn't reside in New Hampshire, stays at the Red Roof Inn when he comes to town to do his business, Red Roof Inn [REDACTED].

MR. LINSKEY: Sure.

Kroll's summary of the incident is as follows:

The complainant, Citizen W, comes to the Salem PD and submits a formal written complaint regarding his being stopped by an officer. The complainant claims he was stopped for no other reason than his race. He is made to exit the vehicle, his vehicle is impounded for a search warrant and he is forced to walk. He returns later and reluctantly provides consent to search the vehicle. A search is conducted, and no evidence is seized; the complainant is allowed to drive away.

Per Salem PD policy, Citizen W is provided with a written form to complete relative to his interaction with the officer. Citizen W completes and signs the form; however, instead of his complaint being taken and forwarded to the chief, per the policy, [REDACTED] enters the room and speaks to him about his complaint. According to [REDACTED] Citizen W states, "I want this documented in case that white cop kills a black guy." Supervisor B takes offense to that statement saying, "Okay, sir, have a nice day. Why don't you move along?" No investigation is conducted, and the complainant is made to leave the police station. [REDACTED] says the complaint is "foolishness." However, [REDACTED] did observe that the officer did not have probable cause to order the subject out of the car, seize the car or search the car. He orders remedial training for the officer.

Kroll notes that Citizen W may have asserted that the officer's actions were based on race. Citizen W may have stated that he wanted his assertion to be documented in case of a future event with the officer and an African American individual. That is entirely his right. Despite Citizen W exercising his right to issue a formal complaint on what he perceived to be racial profiling, [REDACTED] turns him away from the station and tells him nothing will happen with this complaint. This occurs even though [REDACTED] agrees that the officer overstepped his bounds and did not have probable cause to order him out of his car, seize his vehicle or conduct a search.

[REDACTED] made an automatic determination that it was inconceivable that Citizen W was racially profiled, noting that it was 2:00 a.m. and the vehicles were traveling in opposite directions, rendering it impossible for the officer to determine Citizen W's race. It is Kroll's opinion that it is actually easier to see the race of an operator when traveling in different directions than when following from behind. However, this allegation should have been investigated in the IA formal complaint. Both Citizen W, via his allegations, and [REDACTED] via his acknowledgment that the officer required remedial training, were in agreement that the officer's actions were out of policy and were done without cause. No effort was made to determine if the officer had any prior experiences with Citizen W in which he would have known the complainant's race. The officer states that he stopped Citizen W for speeding but says that he had previously seen the vehicle at the Red Roof Inn, a site allegedly known for illegal activity. No inquiry was made to determine whether the officer had previously run the complainant's license plate on his MDT Terminal, which would also reveal the complainant's race. It does appear, however, through [REDACTED] comments that the Salem PD believed Citizen W was involved in illegal activity at the Red Roof Inn. If there are anonymous complaints about his activities or reliable information of other citizen complaints, observations and encounters with law enforcement relative to Citizen W, all of this would be appropriate information to include in an investigative case file and aid in the department's not

sustained recommendation. However, if it existed and was more than just a hunch that he was involved in illegal activity, Kroll believes such information would have been presented. As the case files stands, the complaint against the officer is unchallenged due to a lack of proper and comprehensive investigation. Citizen W alleges he was detained and made to exit his vehicle without cause and that when he went to sign a formal complaint, he was told his case would go nowhere and [REDACTED] threw him out of the station. [REDACTED] agrees that Citizen W was correct when he was detained and had his vehicle searched without cause requiring remedial training for the officer. [REDACTED] also agrees he found the complaint foolish and told the complainant that he was done and had him leave the station.

This investigation **was not** compliant with the Salem PD policy. This investigation **did not meet** acceptable best practices for internal reviews.

Internal Investigation (formal) IA # [REDACTED]

A review of this incident shows the formal investigation initiated by [REDACTED]. An investigative report cover sheet is displayed on top of the packet. In reviewing the contents of the investigation, it appears the investigation follows best practices, general orders and the terms of the CBA. The Salem PD learned from the Federal Bureau of Investigation that [REDACTED] used the SPOTS system for personal use. [REDACTED] was placed on paid administrative leave on [REDACTED] after the agency learned of these allegations. That status was changed on [REDACTED] to unpaid administrative leave effective [REDACTED]. [REDACTED] submitted a letter of resignation prior to the unpaid leave taking effect. Accompanying the letter of resignation from [REDACTED] was a letter from Union Vice President Michael Verrocchi. This letter discusses two weeks' pay and health benefits being extended to [REDACTED] as part of a negotiation related to her resignation. This was the only element of the investigation that was out of the ordinary. Since the contents of that negotiation is not discussed in any part of the documentation of the internal investigation, the reasons for such an agreement remain unknown.

This investigation **was** compliant with the Salem PD policy. This investigation **did meet** acceptable best practices for internal reviews.

Internal Investigation (formal) IA [REDACTED]: Officer T

A review of this formal investigation shows an investigation conducted by [REDACTED] on [REDACTED], which references the conduct of Officer T on a call for service. During this call, Officer T called the supervisor of [REDACTED] PD and engaged in a verbal argument about jurisdictional issues. A complete investigation into the incident is documented including an audio recording of the phone call

with the lieutenant from [REDACTED] PD. There is the concerning statement, "Officer T had been disciplined on four other occasions in the past year," made in the findings section of this incident. It should be noted that no documentation for any of these mentioned incidents was included in the materials presented for this assessment. The allegations in this investigation were sustained with Officer T receiving one day suspension without pay and recommendation for a stress management training course and a performance improvement plan designed to assist this officer with job performance.

This investigation **was** compliant with the Salem PD policy. This investigation **did meet** acceptable best practices for internal reviews.

Internal Investigation (formal) [REDACTED]: Officer B

A review of this formal investigation shows [REDACTED] being assigned to conduct a formal investigation on Officer B based on alleged misconduct occurring on [REDACTED]. The allegation is that Officer B was insubordinate to [REDACTED] during a debrief on a call for service and failure to obey lawful orders. Interviews were done with all involved parties and witnesses, and the packet contained the police report from the call for service, as well as a CD of radio transmissions. The findings were sustained, and Officer B was issued a two-day suspension without pay.

This investigation **was** compliant with the Salem PD policy. This investigation **did meet** acceptable best practices for internal reviews.

Internal Investigation (formal) IA # [REDACTED] Civilian D

A review of this investigation shows a formal inquiry conducted by [REDACTED] into attendance issues involving Civilian D between [REDACTED]. The investigation uncovered a pattern of behavior possibly related to a medical issue. The employee was under the care of a physician and was making changes to [REDACTED] prescribed medication in attempt to correct the behavior. The allegations were founded with a recommendation that no discipline be issued for six months to see if the issue could be corrected under the care of Civilian D's physician. An additional event occurred on [REDACTED] and resulted in a written warning. This investigation appears to be complete with all documentation of the investigation provided.

This investigation **was** compliant with the Salem PD policy. This investigation **did meet** acceptable best practices for internal reviews.

Internal Investigation (Informal Inquiry): Sgt. B, Officers U, V, X, Y, Z and AA

A review of the case files shows Captain Wagner being assigned to conduct an informal inquiry into the conduct of the above listed officers relative to an occurrence at an ice rink on December 2, 2017. This task was assigned by Deputy Chief Morin after receiving a complaint from the Attorney General's Office as to the conduct of said officers. Some of the content provided appears to have been unable to be reviewed due to technological issues. Rather than finding technology that would allow for the agency to view this video content, a document stating that the Apple videos were not compatible with the program available was offered. (After the incident was highlighted in local media, the third video was accessed.) A memorandum summarizing a partial review of the information from the Attorney General's Office stated that the Salem PD had not received a formal complaint. No attempt was made to contact any of the parties involved in the incident. It is Kroll's opinion that this is an incomplete investigative effort and should not have been handled as an informal inquiry when it clearly meets the criteria for a formal complaint and a subsequent investigation. While the allegation is not the most serious in nature we have seen, the pattern of handling complaints from the public informally, incompletely and without regard to the definitions established in the Salem PD's General Orders are consistent across all levels of severity of allegation.

On December 2, 2017, four Salem PD officers arrested a youth hockey coach, after tazing him and wrestling him to the ground. Spectators claimed that he had done nothing wrong, and one officer was seen attempting to distract people from videotaping the incident by flashing his flashlight at the crowd.

The suspect's lawyer filed a complaint with the Attorney General's Office, including with his complaint 15 affidavits of witness statements supporting the defense's allegations and three cell phone videos. The Attorney General's Office concluded that there was no criminality in the officers' actions and referred the matter to the Salem PD for administrative review. In the letter sent to Anderson's attorney by the Attorney General, there was no direction to contact Salem PD to submit a formal complaint, and even though the attorney submitted a formal written complaint to the Attorney General's Office alleging improper arrest, excessive force, unprofessional behavior and intimidation of witnesses, the Salem PD still has yet to initiate a formal IA investigation. It is the department's belief that until the arrestee appears at the Salem PD and submits a formal written complaint, there is no need by the department to conduct a formal review. Note, again, the department's policy that formal investigations be issued in writing or must allege "criminal misconduct or similar serious offense."

FORMAL COMPLAINT – A complaint received under the above guidelines that is submitted in writing, where the complainant is available for follow-up investigation, interview, and/or the complaint alleges criminal misconduct or similar serious offense.

INFORMAL COMPLAINT - A complaint, as defined above, that is received anonymously, or by an identifiable subject not seeking action but supplying the information as advisory, to be used as see fit. Informal complaint, during the course of review, may become Formal Complaints if a complainant steps forward and files a more in-depth report, or if circumstances or information dictate an a more in-depth investigation is appropriate.

INTERNAL COMPLAINT INVESTIGATION (ICI) – The action taken on a complaint. This in-depth, thorough investigation requires an ICI number assigned, full documentation of all action taken, with all factual information gathered forwarded to the Chief of Police for review and discipline, if deemed necessary.

*Salem PD General Order 65-7

While a formal IA investigation was not initiated, Deputy Chief Morin does assign Captain Wagner to conduct an informal inquiry. The captain reviewed the complaint with the Attorney General's investigator, reviewed the 15 witness affidavits and reviewed two of the three videos, as he was unable to access the third. (After he wrote his report unfounding the complaint, he was able to open the third video.) He also reviewed the reports previously filed by the officers and drafted a report closing out the informal investigation less than 24 hours after being tasked with the review. His report is dated March 13, 2018. Kroll notes that the department never issued notices to the officers informing them that a complaint was filed against them and that an investigation was being conducted, which violates the CBA. (This appears to occur almost every time there is an informal inquiry.) There were no interviews of independent witnesses, no canvasing of the surroundings where the incident occurred for video footage and no interviews of hockey rink staff who may have provided an independent version of events. The captain did not reach out to the complainant's attorney or any of the individuals who signed affidavits, including one who is a Massachusetts State Trooper and who allegedly helped calm tensions and physically assisted the Salem PD in keeping people back during the arrest. In his report, the captain noted that the affidavits all contained similar statements, appeared to be rehearsed and some appeared to be "cut and pasted," indicating to him an air of bias, and effectively closed out the informal inquiry.

Relative to the amount of time spent by Captain Wagner on the informal inquiry, Deputy Chief Morin states:

MR. LINSKEY: And then, you know, so the inquiry comes into you, you give it to Wagner, this is basically the -- the informal inquiry and he got it on -- you got it on March 12th and he's completed it on March 13th.

DEPUTY CHIEF MORIN: I got it on March 9th.

MR. LINSKEY: March 9th?

DEPUTY CHIEF MORIN: Yeah, I think that's when.

MR. LINSKEY: He got it on March 12th?

DEPUTY CHIEF MORIN: Yeah, because I talked to Lisa Wolford¹³ before.

MR. LINSKEY: Yup.

DEPUTY CHIEF MORIN: Where's her original letter; is it March 9th?

MR. LINSKEY: Yeah.

DEPUTY CHIEF MORIN: March 9th is her original letter?

MR. LINSKEY: Drafted a cover letter.

DEPUTY CHIEF MORIN: Yup.

MR. LINSKEY: But the -- the -- the Captain got a request on March 12th --

DEPUTY CHIEF MORIN: Yup.

MR. LINSKEY: -- and was finished with it by March 13th. Is that a short period of time for that? I mean, that's one of the bigger kind of complaints you guys have around here; right?

DEPUTY CHIEF MORIN: Yeah, but it -- it -- he reviewed everything, he made the contacts with the officers that he needed to, he read the reports; okay? So, we're efficient, I don't know -- and again, we've yet to hear from Dabella¹⁴ and instead what we get is we get a 91A¹⁵ request from WBZ; okay?

Kroll then asks Deputy Chief Morin if it would be a more thorough and fair investigation if they interviewed those that signed affidavits. His response is as follows:

MR. LINSKEY: Did -- any thought of speaking to the Massachusetts State Trooper who was there?

DEPUTY CHIEF MORIN: No.

MR. LINSKEY: Why not?

DEPUTY CHIEF MORIN: Why?

¹³ Senior Assistant Attorney General Lisa Wolford

¹⁴ Attorney Christopher DiBella

¹⁵ The Right to Know Law RSA 91-A:4 grants all citizens the right to access public records.

MR. LINSKEY: Because he's a law enforcement official who would be expected and required to give an independent review as to what he saw.

DEPUTY CHIEF MORIN: And if you read his statement it's pretty clear that it's more of a character reference. We saw his actions in there, he wasn't condemning the actions of the police department.

MR. LINSKEY: You would say he was -- he was assisting you guys.

DEPUTY CHIEF MORIN: He was assisting us. When he realized that it was his buddy -- his statement was a character reference, that this -- this has to be a misunderstanding and it probably -- I don't disagree that the coach probably was trying to, but what I do disagree with is that when the officers told him to step off, put your hands down, relax, he did not do that, and when he was -- when they grabbed hold of him, he didn't say okay guys, this is just a big misunderstanding and put his hands behind his back, he continued to, whether he thought he was justified in doing it or not, that's not the case; okay? So, the -- I read the, I think he's a detective --

MR. LINSKEY: Yup.

DEPUTY CHIEF MORIN: -- in Mass State Police, again, it was a character reference. He didn't say the officers did X, Y, and Z wrong or anything like that. In fact, in the video he's assisting, he's saying let them do their job, let -- let them -- stand back, let them do their job.

MR. LINSKEY: So probably a fair ended minded --

DEPUTY CHIEF MORIN: Yeah.

MR. LINSKEY: So, if you're looking for a fair -- look at the, --

DEPUTY CHIEF MORIN: Yeah.

MR. LINSKEY: -- you know, somebody from the other side who says, look, this is what I saw --

DEPUTY CHIEF MORIN: If --

MR. LINSKEY: -- and there's no thought of reaching out to him to get his version of events?

DEPUTY CHIEF MORIN: There is no complaint. There is no -- when they come in and file a complaint, which they will not do, --

MR. LINSKEY: So if they came in tomorrow and filed a complaint, --

DEPUTY CHIEF MORIN: Absolutely.

MR. LINSKEY: -- you would interview all of those people?

DEPUTY CHIEF MORIN: Absolutely.

MR. LINSKEY: What if it's within the six months' time period?

DEPUTY CHIEF MORIN: Six months?

MR. LINSKEY: Yeah.

DEPUTY CHIEF MORIN: It has to be within six months, it can't be after six months, but yeah.

MR. LINSKEY: So if they file -- just -- and this just goes to your CBA, if they filed six months and one day and they come up with a video that shows six ways to Sunday guys were swearing and throwing rocks and bottles and you guys under your CBA could not take action for discipline, you could investigate it, but you couldn't take discipline?

DEPUTY CHIEF MORIN: If we had a situation in which -- let's go back to Officer I.

MR. LINSKEY: Yup.

DEPUTY CHIEF MORIN: Six months and a day it came back that he split the guy over the head with a flashlight and we didn't know that, I don't care about the CBA, I'm going to fire his ass.

MR. LINSKEY: Okay. And then it would just work out in the grievance process, he could fight it.

DEPUTY CHIEF MORIN: Whatever.

Kroll further notes that relative to the ice rink investigation, the informal inquiry was conducted in less than 24 hours without any actions other than reading the documents and examining two of the three videos. Captain Wagner did not interview any of the witnesses, as their statements were considered to have an air of bias and favoritism towards the complainant. However, with that logic, then the involved officers' statements should also be disregarded, as they are all acquaintances and co-workers, and their reports could also be considered biased toward the Salem PD. Further, one of the witnesses is a sworn law enforcement officer who, according to several law enforcement and civilian statements, assisted the Salem PD. Despite his actions that night at the ice center, he agreed to complete and sign an affidavit against fellow sworn law enforcement officers to support the complainant, and even his statement was disregarded.

Kroll also interviewed Captain Wagner, who as noted above, has never received any formal training in conducting IA investigations. Captain Wagner stated the following as to the thoroughness of his informal inquiry into the occurrence at the ice rink:

CAPTAIN WAGNER: However, to give you a -- and you have it, so you -- so you know that I've done it, we received a -- the Ice Center, --

MR. LINSKEY: Yup.

CAPTAIN WAGNER: -- we never received a complaint for that, still haven't to this day, no phone calls, Attorney Dabella was asked to contact me, my name directly.

MR. LINSKEY: Who asked?

CAPTAIN WAGNER: The AG's office.

MR. LINSKEY: Did anyone confirm with the AG's office that they asked the attorney to do that?

CAPTAIN WAGNER: Nope -- nope, but --

MR. LINSKEY: Would that be -- would that be something that would be helpful if somebody is saying, look, you guys never even reached out to the attorney --

CAPTAIN WAGNER: With all due respect, Dan, I'm not chasing down complainants, if they want to file a complaint and they've been given direction to contact me, and I -- I welcome them to call me, it -- it's out there but they -- but they chose to do other things

-

MR. LINSKEY: Roger that.

CAPTAIN WAGNER: -- like contact media, contact, you know, newspapers and set up this whole charade to make their client the victim, I'm not chasing them down for their complaint. I'm here, I'm willing to take it, I'm willing to sit down and speak with them, all -- although at -- at this point I think that there's issue with that because of -- of the -- the witnesses and -- and I can't really speak to the defendant right now because he's represent --

MR. LINSKEY: Why not?

CAPTAIN WAGNER: Because he's represented by -- by his attorney. If I'm going to be questioning him about --

MR. LINSKEY: Well you can't speak to him about his criminal case, you can speak to him about his complaint.

CAPTAIN WAGNER: But that's the criminal case, that's part of the criminal case, I mean, evidence of what occurred during that, that's going to be part of it, so probably not the best time to be speaking to him. Secondly, I did take what the AG sent me, you have the CD, I did review every statement on there, I reviewed all the officer's reports, I did do an informal inquiry and looked into it even though I didn't receive a formal complaint.

MR. LINSKEY: Okay. So an informal inquiry was initiated because the email from -- because of the letter from the AG

CAPTAIN WAGNER: Yes.

MR. LINSKEY: -- and you did that -- were going to do that, you evaluated all the written documents from the people who put it in, --

CAPTAIN WAGNER: Yeah.

MR. LINSKEY: -- you read all the written reports from the officers, and you reviewed the videotapes. Were you able to get the third video to open?

CAPTAIN WAGNER: I was.

MR. LINSKEY: Okay.

MR. LINSKEY: Three years from now if this were in Court and you're on the stand defending your response, would it be better for the Town of Salem and the officers who were being possibly sued if your response was, well, I shouldn't have to chase people down, but I reached out, here's an email I sent to the attorney saying that I've become aware of a complaint from the Attorney General's Office, please call me at this number, if you have any issues or concerns I'd like to go over these complaints and see what you have to say. There's a process we have in place, I'd be willing to put it forward, let me know what your client would like to do; would it be better for you and Salem PD to have that document on file saying that, look, we -- we think this is all a bunch of bull, we don't -- we don't -- we think this is an attorney who's trying to use the media for his side, we've got this report from the AG, the AG's declined criminal, and what's -- the - -

all the AG can do is say criminal; right? So, it's criminality, civil rights violations; right? If it's rules and regulation, F bombs, excessive kicks, telling people, you know, if you're --

CAPTAIN WAGNER: I'll stop you right there because the only thing that -- that is missing from this is me calling or -- or reaching out to -- to the attorney. I -- I felt it was sufficient that the authority that he decided to complain to, which was a tactical move on his part I feel, he complained to the AG's office, the highest law enforcement authority in the state, --

MR. LINSKEY: Yup.

CAPTAIN WAGNER: -- and then it was -- the complaint, it wasn't rejected but it was unfounded, so there was -- there was no criminal wrong doing, no civil rights violations --

MR. LINSKEY: Right.

CAPTAIN WAGNER: -- in -- in their opinion, and it was returned to him with instruction to contact Captain Wagner, I have the letter from the AG, so what -- what they sent to him,

MR. LINSKEY: And did --

CAPTAIN WAGNER: -- and --

MR. LINSKEY: So, you have the letter the AG sent to him?

CAPTAIN WAGNER: Yeah.

MR. LINSKEY: And it says contact Captain Wagner?

CAPTAIN WAGNER: I believe so, yeah.

MR. LINSKEY: Okay. We don't have that.

CAPTAIN WAGNER: Okay.

MR. LINSKEY: All we have is the -- your report that says the AG said that she was going to have him reach out to me, that's --

CAPTAIN WAGNER: I'll try -- when we take a break or whatever, I'll -- I'll --

MR. LINSKEY: But that's exactly what I'm look -- is there a documentation that says, look, --

CAPTAIN WAGNER: Let me see, I'll pull it out and see if it -- it might have been one that came in after the fact --

MR. LINSKEY: Okay.

CAPTAIN WAGNER: -- so maybe you didn't get it in that original -- when we sent out those -- the reproductions of all the -- the informals and the IAs that you guys got, --

MR. LINSKEY: Yup.

CAPTAIN WAGNER: -- it very well may have been not here yet, --

MR. LINSKEY: Okay.

CAPTAIN WAGNER: -- so, I'll look and see if that's in the -- I have -- I have the file.

MR. LINSKEY: Then we would both be in agreement that that's a better position for Salem PD to defend, to say --

CAPTAIN WAGNER: Yeah, I -- I suppose it would be a -- a better but in the same token there's also -- I don't feel there's anything wrong with -- with the way it was done. This guy is an attorney, he defends people for a living, --

MR. LINSKEY: Yup.

CAPTAIN WAGNER: -- he knows what to do, he knows where we are. If he so chose to make a complaint, he would do it with us if he wanted to, he knows it -- he -- it can be done and how to do it, it wouldn't be his first go around.

MR. LINSKEY: Sure.

CAPTAIN WAGNER: He certainly figured out where to find the AGs and he certainly figured out where to find Cheryl Fiandaca and -- and every other person involved in* this debacle that's out on the media, one sided debacle, he totally figured that out on

his own, so do I need to leave him a trail of breadcrumbs to come in here and -- and fill out a complaint or did -- did he have no intention of ever doing that? That's my position on that.

MR. LINSKEY: Okay.

*Kroll notes that a controversy arose regarding information that was reported by WBZ TV regarding this incident. WBZ TV reporter Cheryl Fiandaca ran an on-air story with several individuals critical of the arrest of the hockey coach at the ice rink. The reporter was the former public information officer for the Boston Police Department and worked for Former Chief Linskey in that capacity. Kroll had been provided the IA file concerning the ice rink prior to the story airing; however, the reports were in a file box in Kroll's office space, which was not accessed until Chief Linskey returned from international travel. Reports are also believed to have been provided to the attorney and defendant. Since leaving BPD, Chief Linskey has not had contact with Cheryl Fiandaca except by direct Twitter messages on three occasions – the last being on December 6, 2016 before she sent a link to the story she was airing over Twitter on April 26, 2018 saying she heard he may be involved in a review of the Salem PD. Linskey responded that he was on vacation. Linskey returned on May 1, 2018. On May 2, he went to the Kroll office and brought the case files concerning Salem out of their box for review while traveling domestically on another client matter. It was then that he reviewed the ice center report for the first time. Chief Donovan wrote a letter to the town manager stating that he was concerned that the Kroll team provided the documents to the news. Kroll has addressed this issue with the chief and several others. Kroll takes the integrity of their cases extremely seriously and did not share any documents with anyone other than the Kroll team.

Kroll has included hereto the letter sent by the Attorney General's Office to the complainant, the letter sent to the Salem PD and the letter sent to the plaintiff's attorney, Christopher Dibella, which states, "As mentioned when we spoke, I have referred your complaint and materials to the Salem Police Department for administrative review."

ATTORNEY GENERAL
COMMONWEALTH OF MASSACHUSETTS
BOSTON, MASSACHUSETTS 02109-1401



ATTORNEY GENERAL

March 25, 1995

Christopher J. O'Riley,
District Law Officer, P.C.
41 Charles Street,
Boston, MA 02108

Myself, and myself for Christopher J. O'Riley, Esq.

Dear Attorney O'Riley,

As I would expect, I have reviewed the relevant correspondence which you provided to the office in connection with your complaint about Boston Police Commissioner Anderson who responded to the Boston Sunbeam on December 5, 1994. To the pertinent portions of that letter:

The relevant statement you provided suggests that persons participating in the lottery game described above carry at least one Boston artifact. The game [poses] "washboard," "cassette," "washboard," and [participants] as "spicy stars." After the game ended, several persons from both teams continued to have "spicy" discussions.

Mr. O'Riley was one of the persons who was with "Spicy" after the game. He was with a man and his wife. Both individuals reported to law enforcement. O'Riley and his wife had eaten at the Boston Fish House. They reported that Mr. Anderson and Anderson's wife were "having a washboard." According to several of the Boston residents, a several dozen Chinese laundry workers were at Mr. Anderson's restaurant, participating in the game, and those laundry workers had well-known and well-known Boston artifacts, such as washboards, washboards, and so forth. The other diners are not sure of Mr. Anderson, and according to some, mentioned that he had Mr. Anderson's name on his shirt. Mr. Anderson, who has the general flavor of the office agrees to get right over to Mr. Anderson.

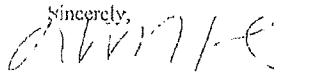
One of the relevant statements reported that Mr. Bradley was over to Mr. Anderson and told him to put his hands behind his back when Mr. Anderson took a step back and asked why, the office pointed him. Another statement reported that the office told Mr. Anderson he was under investigation when presented him. At least one of the statements resulted later in charges to Mr. Bradley telling Mr. Anderson's wife when she up, Mr. Anderson told to the office, "Get out of here" or something like that.

The police reports suggest that police had been called to a fight at the Icenter. One of the officers reported that upon arrival, he was told that there was fight in the lower rink involving parents. He saw a crowd of people yelling, and noted that Sgt. Bagley, who was surrounded by people, pushed a man while ordering him to get back. The officer saw Mr. Andersen yell something at Bagley and take a step toward him with raised hands. The officer believed that Mr. Andersen was going to assault Sgt. Bagley. The officer ran up, grabbed Mr. Andersen, and began to pull him away from the crowd. Mr. Andersen began to "violently thrash around." Other officers arrived and assisted. Because Mr. Andersen continued to struggle and thrash, one of the officers used his Taser.

In his report, Sgt. Bagley indicates that when he entered the lower level of the rink, he walked into a crowd of 40-50 people. He saw two men, who he later determined were Mr. Griffin and Mr. Andersen, standing face to face. Mr. Andersen had both arms raised above his head. Sergeant Bagley believed that there was "animosity" between the two. He told Mr. Andersen to back off, but Mr. Andersen did not move. Bagley walked between the two and told Mr. Andersen to "back off" while pushing him. According to Sgt. Bagley, Mr. Andersen appeared angry and walked toward Bagley in an aggressive manner. At this point, a second officer grabbed onto Mr. Andersen and physically removed him from the area. Mr. Andersen was "twisting" and tried to pull away. He was ultimately tased. According to the reports, two of the officers were injured by Mr. Andersen during the struggle, one sustaining a cut in his mouth.

The Criminal Justice Bureau investigates allegations of criminal misconduct against State, and in some circumstances, local public officials. We will conduct an investigation when there is reason to suspect that a crime has occurred. Given the evidence summarized above, I cannot conclude that there is such reason here. Even if, as your witness statements suggest, Sgt. Bagley was mistaken about the nature of Mr. Andersen and Mr. Griffin's interaction, there is insufficient evidence to indicate that Sgt. Bagley's belief was unreasonable. See RSA 627:5.

Attorney DiBella, if you have any questions, please don't hesitate to call. As I mentioned when we spoke, I have referred your complaint and materials to the Salem Police Department for administrative review.

Sincerely,

Lisa. L. Wolford
Senior Assistant Attorney General
Chief, Criminal Justice Bureau

Cc: Gordon J. MacDonald, Attorney General
Jane E. Young, Associate Attorney General
Patricia Conway, Rockingham County Attorney
Paul T. Donovan, Chief, Salem Police Department

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL

ANN M. RICE
DEPUTY ATTORNEY GENERAL



March 9, 2018

Chief Paul T. Donovan
Salem Police Department
9 Veterans Memorial Parkway
Salem, NH 03079

Dear Chief Donovan,

On February 27, 2018, we received a complaint from Attorney Chris Dibella concerning an incident involving Salem officers, which occurred at the Salem New Hampshire Ice Center on December 2, 2017. Attorney Dibella's client, Robert Andersen, was charged in connection with the incident. Dibella alleged, amongst other things, that a Salem officer shoved Andersen and told Andersen's wife to "shut the f*** up."

I am referring this matter to you for what action you deem appropriate. Enclosed on disc are the documents and video provided by to this office Attorney Dibella, and the report generated by the New Hampshire Department of Justice investigator who took Attorney Dibella's call.

If I can be of additional assistance, please let me know.

Sincerely,

Lisa L. Wolford
Senior Assistant Attorney General
Chief, Criminal Justice Bureau
(603) 271-3671

LLW/mmp
Enclosure
1964918

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There is, in fact, no direction to contact Captain Wagner, in contrast with comments provided to Kroll. Captain Wagner completed his informal inquiry, wrote his report and closed the matter in less than 24 hours. In direct contrast with the department's policy, Captain Wagner did not attempt to call the complainant, claiming that he was not "chasing down complainants" and that such contact was precluded by the complainant's being represented by counsel.

It is Kroll's opinion that making good faith efforts to speak to a complainant is certainly not chasing them down and would represent standard practice in IA investigations or even informal inquiries. It is also Kroll's opinion that this informal inquiry was not conducted fairly or thoroughly and certainly not in accordance with law enforcement best practices. It also was not conducted in accordance with the Salem PD Policy GO 65-7, which states:

II. POLICY: All complaints will be accepted and documented. Any investigation based on a complaint will be conducted in an open and fair manner, with the truth as the primary objective. The Salem Police Department shall accept all complaints against their employees and will fully investigate all such complaints.

All violations of Department Rules and Regulations, Code of Conduct, Policies and Procedures, and all other directives which occur shall be dealt with in a fair and impartial manner, and in accordance with the Collective Bargaining Agreements in place with the Town of Salem. In all cases where disciplinary action is taken, the employee shall receive a copy of the documented discipline issued. (26.1.4)

Kroll further notes that in stark contrast with this department's policy was the fact that at some point after closing the informal inquiry, the Salem PD sought criminal complaints against two other individuals identified in video footage of the ice center incident. The evidence supporting those arrests allegedly came from the WBZ news footage. However, Deputy Chief Morin and Captain Wagner also told Kroll that they had received complaints from several witnesses from the other side of the disturbance who had come forward to dispute the complainant's version of events. The department accepted these witness statements and conducted interviews of them without attempting to corroborate the accounts by speaking to the complainant or any of the witnesses who signed affidavits in support of the complainant's allegations. If witnesses came forward to provide information to the Salem PD, the department should have made every effort to gather and evaluate that information. The officers' actions show an acceptance of information that supports their officers and also shows a complete disregard for any information to the contrary.

While Kroll does not claim to know what occurred at the ice rink and was not tasked with conducting an independent investigation of the events, it is our opinion that the Salem PD cannot conduct a fair or comprehensive IA review without speaking to witnesses from both sides. Furthermore, an IA

investigation is an administrative review and must be conducted in parallel with a criminal investigation. This is certainly not the first time the Salem PD has conducted a criminal investigation while at the same time conducting an administrative investigation. Several of the IA instances noted above confirm this statement. However, it is imperative that these investigations remain separate to avoid any indication of potential retaliatory charges.

Captain Wagner noted the following in his interview:

MR. LINSKEY: But you can look at the video and if – if all of a sudden the guy is handcuffed and people kicked him five times in the head --

CAPTAIN WAGNER: A hundred percent.

MR. LINSKEY: But we don't have that, that's not --

CAPTAIN WAGNER: We -- we don't have it and I'm a hundred percent agreeing with you, handcuffs go on, it's over.

MR. LINSKEY: Okay.

CAPTAIN WAGNER: But it -- it didn't occur. So, in -- in speaking to her about that, she -- we got into talking about the -- about the -- the fact that we arrested two additional people from it and, you know, her

MR. LINSKEY: Two additional people?

CAPTAIN WAGNER: Yeah, yup. Her initial response to that was, well that looks retaliatory, I'm like, well, it may look that way but without getting into it, additional evidence was uncovered and the – we had proof of it, as a result of you airing that video. I didn't have that video, it was actually discovered when I – I got the CD.

MR. LINSKEY: The third one?

CAPTAIN WAGNER: Yeah. When -- when I was reviewing it for the internal review I came across some of this stuff and showed it to the -- the guys involved and they're like, oh shit, yeah, there it is, and then they found out some additional video of the guy on the ice or whatever, so that's what it is, it's the guy that went out on the ice and – did you say the -- the guy that slapped the officer?

MR. LINSKEY: I heard there was one other and that – so I received a call from her again saying, did you know they're bringing complaint against the guy who slapped the officer's hand? I said, nope. She said, yup, they're going to get a warrant for him, they told him you're going to turn himself in. I said oh, okay, thanks, Cheryl. And I also spoke to Cheryl and the attorney and said, because the attorney called me, look, we are not doing a review of the internal affairs cases, just so we're clear, I'm not –

CAPTAIN WAGNER: You said this?

MR. LINSKEY: Yeah.

CAPTAIN WAGNER: To who?

MR. LINSKEY: Cheryl Fiandaca and Dabella.

CAPTAIN WAGNER: But you are.

MR. LINSKEY: No, we're not. I'm doing a review of the process. Who -- I'm not going to interview people about --

CAPTAIN WAGNER: Well, okay --

MR. LINSKEY: I'm not going to interview the people about, you know, is -- is -- is, you know, what did you say, did -- what did you see, --

CAPTAIN WAGNER: No, --

MR. LINSKEY: -- I'm not pulling my own video, I'm not doing my own independent review of what happened at the skating rink or any of these events.

CAPTAIN WAGNER: No -- no -- no, you're not doing your own investigation but you're -- you're questioning the -- the steps and tactics and -- and -- and verbiage and phrases and things that we said and the way we did things in the -- in the individual investigations.

This investigation **was not** compliant with the Salem PD policy. This investigation **did not meet** acceptable best practices for internal reviews. Not only did this investigation not meet acceptable best practices, but these actions undermine the integrity of the Salem PD. Further, it is Kroll's opinion that there was a significant failure by the department's leadership in their accepting this investigation as a complete effort.

Internal Investigation (formal) IA # [REDACTED] Officer BB

A review of this formal investigation from [REDACTED] shows that [REDACTED] investigated a failure of Officer BB to keep a current certification [REDACTED], as well as payroll inconsistencies related to training dates. The findings of failure to maintain narcotics certification was sustained, as well as a finding of failure to keep required department records. The allegations of collecting pay for training days without being in attendance were unfounded. Despite the sustained findings of two policy violations, it is unknown what discipline, if any, was recommended or issued to Officer BB, as there is no documentation of such with this packet.

This investigation **was** compliant with the Salem PD policy. This investigation **did not meet** acceptable best practices for internal reviews, as it lacked documentation.

When asked about an investigation that was assigned to him for investigation, [REDACTED] stated the following:

[REDACTED]: -- but it is the same officer, the one that was up at Walmart he identify -- he transposed the license plate numbers later on, like, through -- throughout his report transposed the license plate numbers, vehicle didn't match, so I'm -- I'm actually jumping ahead one, vehicles didn't match, he then identified the operator from the second vehicle, the one that didn't match --

MR. LINSKEY: Yup.

[REDACTED]: -- in all his other reports and was in the process of -- had filed a -- an arrest affidavit and pulled an arrest -- arrest warrant but had not had it signed and that suspect was not the same suspect. And then the other one was a shoplifting, I believe, at Home Depot, identified the suspect without any follow up, arrest -- he was arrested and come to find out he was actually in the hospital at the time of -- of the thefts and had served ten days in jail.

MR. LINSKEY: What was -- what was your investigation in that one?

[REDACTED]: That one was speaking to -- spoke to the officers that were involved.

MR. LINSKEY: How did it come in; how did the complaint come in?

[REDACTED]: That complaint came in internally. One of our sergeants or lieutenants was in the courtroom when they had the -- it was a probable because hearing, so he was in the report room, it was either the arraignment or the probable because hearing, and the guy went up -- went on record to the Judge saying this isn't me, I haven't been in Court in so long, I was actually in the hospital during this period, they have the whole thing. So, whatever -- again, without reviewing it and knowing everything that was said, it was -- it was along those lines that the lieutenant – lieutenant came back and said hey I think we have a problem with this arrest based on what -- what was said in Court today, and we started to look into it.

MR. LINSKEY: And what was your -- what was your process you used for that investigation?

[REDACTED] That one we used -- I interviewed him, he was read Garrity, he was -- he was interviewed, that one was taped, and that one was done, and the union rep was there for that. Then I did --

MR. LINSKEY: Do you transcribe the tapes?

[REDACTED]: We don't.

MR. LINSKEY: Okay.

[REDACTED]: We don't send it out. And that one I went up to contact the guy who was arrested, he was homeless, he was living in a homeless shelter up in Manchester, I went up there, left my card with the shelter in Manchester, asked them to -- if -- if he comes back in, can you have him call me. He did come back in, they called Manchester PD, while they gave him the card he said I'm not calling him, they called Manchester PD said, hey Salem was up here looking for him, I'm not really sure what they want, Manchester went to look for him and he -- he -- he -- we haven't really been able to find him since.

[REDACTED] efforts were in keeping with best practice. It should be noted that in what was to be a complete copy of the IA file provided to Kroll, there was no Garrity form submitted and signed by the officer. There were also no audio recordings of the interviews provided.

[REDACTED] noted that if there is a crime, even older than six months, that the appropriate action would be to refer the complaint to the Attorney General's Office:

MS. KING: Okay. All right, so do -- just one other question, and this is kind of out -- outside of the process it's actually at the inception of the process, so I read in the union contract that a formal complaint must be things that occurred within the last six months?

[REDACTED]: Correct.

MS. KING: Okay. So -- so if somebody came to you with a complaint that happened last year, how would you handle that from the intake process; is that just -- is it documented, is it automatically discounted because per the union contract it doesn't meet the parameters?

[REDACTED] Well, if it's a crime, we would probably send it to an -- the Attorney General's office to investigate because even though by union we can't, if you're still in office and you did it under the color of law then the Attorney General's office would still have some oversight over that, so

MS. KING: Okay.

[REDACTED] -- so if it's a criminal matter we -- we would pass it on. If it's a policy matter, it's one of those that we -- we would take it in, we would document it, but it would really be nothing procedural wise that we would be able to -- to do much with.

6. Kroll's Communications with External Citizens

Shortly after being engaged to conduct an audit of the Salem PD's IA investigative process, Kroll recommended that the town issue an announcement soliciting positive or negative comments from the public. A decision was made not to issue such an announcement to avoid a perception that complaints were to be re-investigated independently by Kroll, which was not in the scope of our investigation. As such, Kroll did not seek out citizens but was contacted by several citizens – in an unsolicited manner – who wished to speak regarding concerns, as well as positive interactions, with the Salem PD. Kroll made every effort to afford these individuals with an ability to be heard and represented in this review.

1. Kroll spoke with a complainant, The Complainant, who attempted to file a complaint against Supervisor B for threats, harassment and unprofessional behavior. According to a conversation with The Complainant, [REDACTED] called the Salem PD and spoke with a supervisor, who convinced [REDACTED] not to file a complaint.

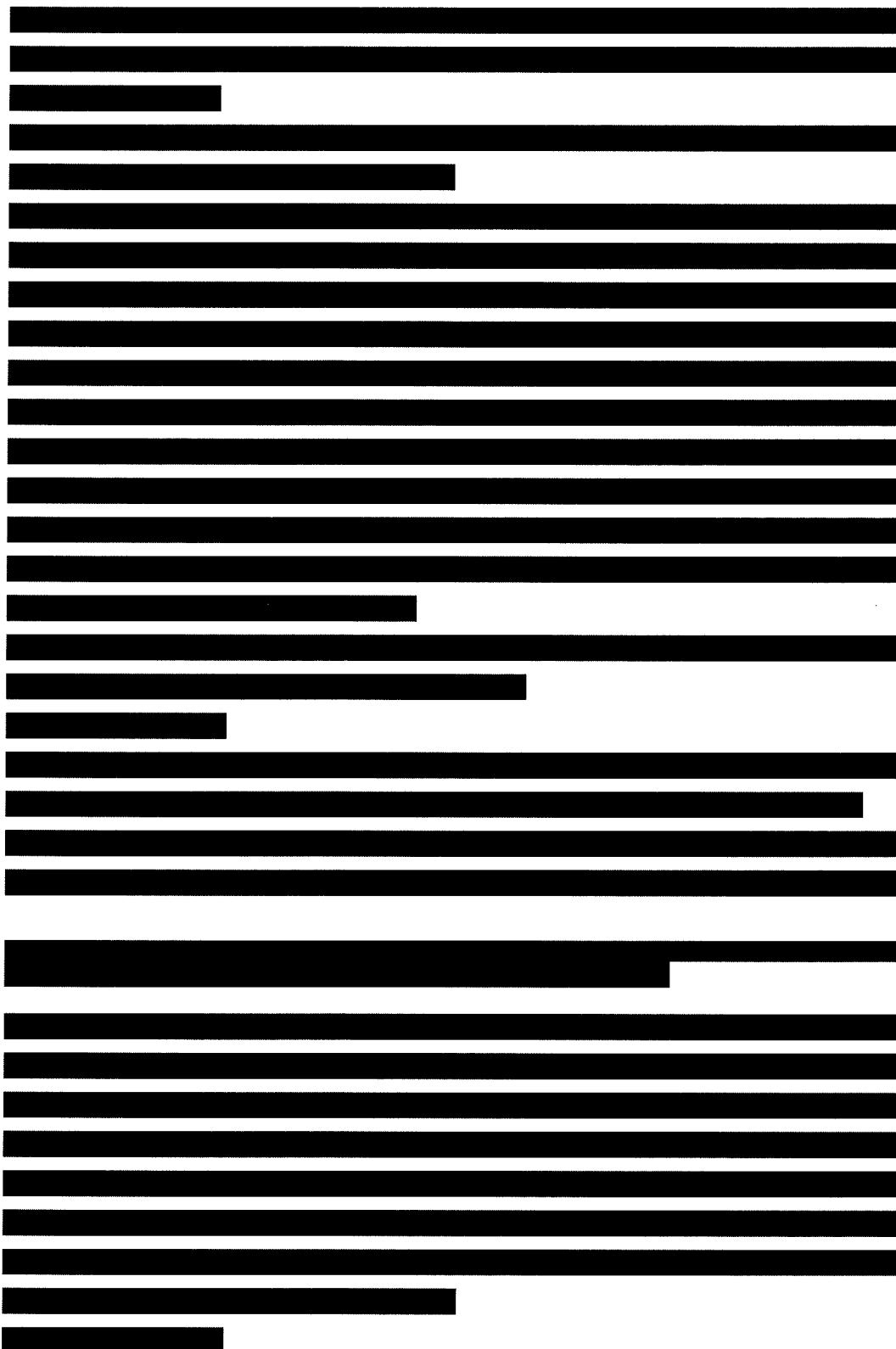
According to The Complainant, [REDACTED] was the officer [REDACTED] spoke to over the phone relative to filing a complaint against [REDACTED]. [REDACTED] told Kroll that [REDACTED] son had accompanied [REDACTED], and it was prior to the [REDACTED] that the alleged harassment occurred. According to The Complainant, [REDACTED] convinced [REDACTED] not to file a complaint. [REDACTED] also told Kroll that there was a second instance of alleged harassment and unprofessional behavior by [REDACTED] for which [REDACTED] did not bother discussing with the Salem PD, as [REDACTED] felt nothing would be done.

[REDACTED]
[REDACTED]

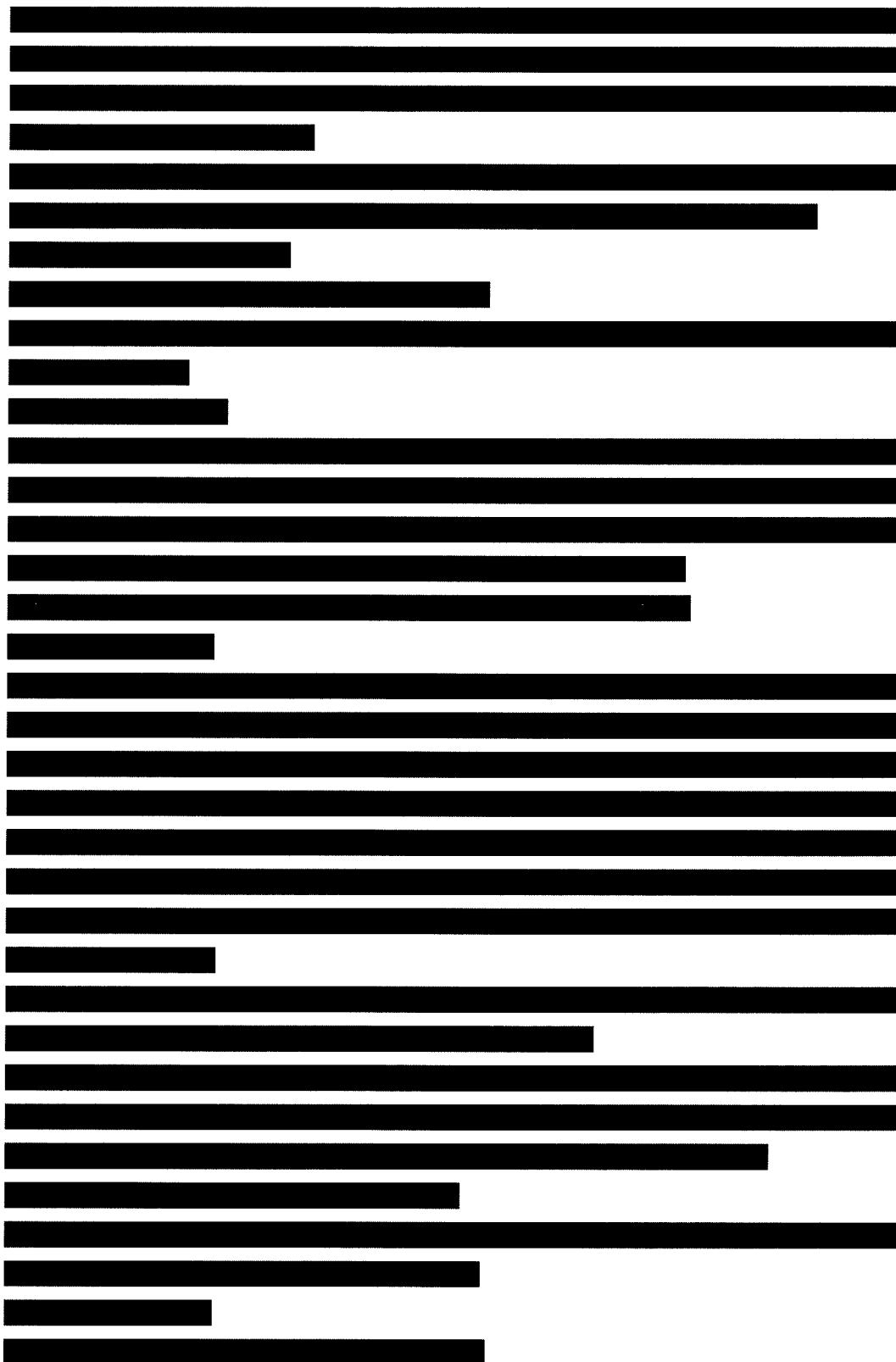
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

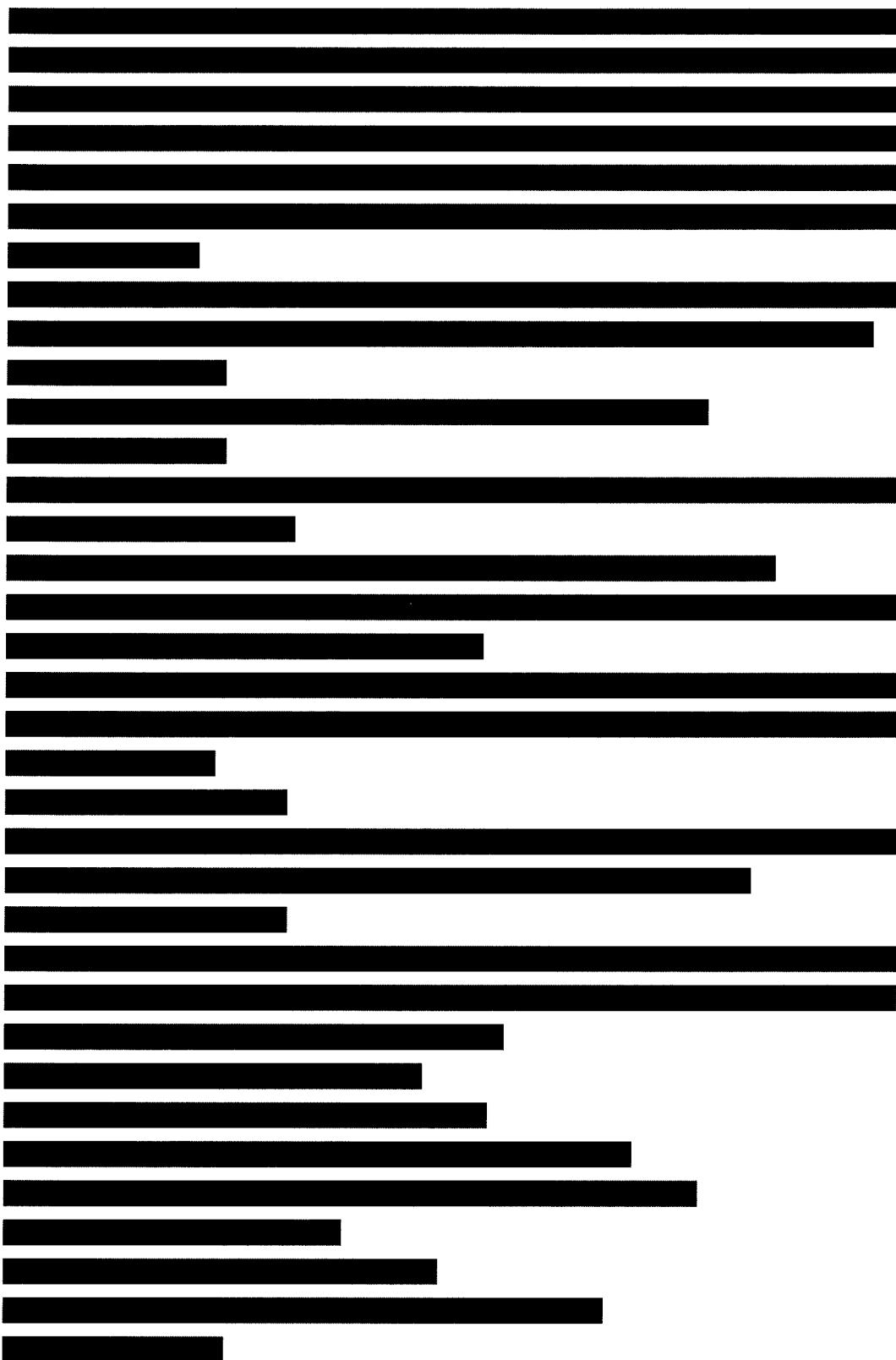
A large black rectangular redaction box covers the majority of the page content, starting below the header and ending above the footer. The redaction is approximately 85% of the page width and 80% of the page height.

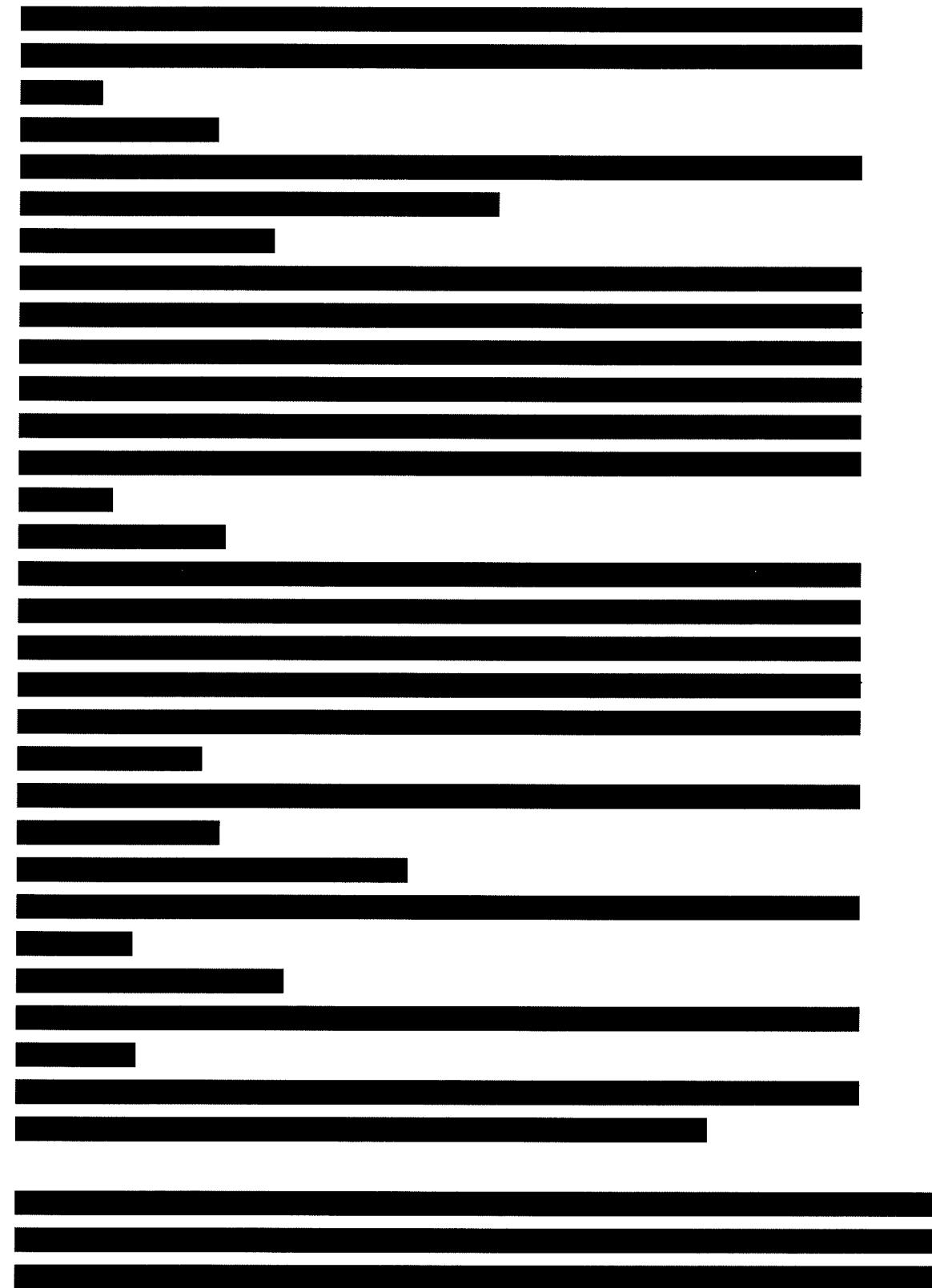
The image shows a single page of white paper with numerous horizontal black bars of varying lengths. These bars are used to redact sensitive information. The bars are positioned at different vertical intervals across the page, with some appearing in pairs or small groups. The lengths of the bars vary significantly, from very short segments to long stretches that cover multiple lines of text.



The page contains approximately 30 horizontal black redaction bars of varying lengths, primarily aligned to the right of the center. There are several shorter bars on the left side and one very long bar spanning most of the width near the bottom.







A series of six horizontal black bars of varying lengths, decreasing from top to bottom. The first bar is the longest, followed by four shorter bars of equal length, and a final short bar at the bottom.

| Term | Percentage |
|------------|------------|
| GMOs | ~85% |
| Organic | ~95% |
| Natural | ~90% |
| Artificial | ~65% |
| Organic | ~95% |
| Natural | ~90% |
| Artificial | ~65% |
| Organic | ~95% |
| Natural | ~90% |
| Artificial | ~65% |

2. Kroll spoke to a gentleman who was stopped at a construction site by officers directing traffic. The caller was a law enforcement official with another law enforcement department. He told Kroll that he was yelled at and subjected to profanity and insults by two officers at the construction site. The caller did not inform the officers that he was a 20-plus year veteran of public safety, but told Kroll that he felt the Salem PD needed to increase diversity in the ranks and better train in how to engage with citizens. This caller went to the Salem PD to file a complaint and spoke with Deputy Chief Morin and Captain Dolan. He expressed that they apologized for the officers' actions and addressed the issue with those involved. The caller was pleased with their responsiveness and professionalism and decided not to file a formal complaint.

- Kroll notes that this complaint was handled to the complainant's satisfaction. It was not identified in the documents provided to Kroll and was not recorded or otherwise tracked. This complaint should now be entered in Guardian for future reference.
3. Kroll was contacted by a law enforcement official who wished to remain anonymous. The caller stated that they had observed individuals taken into custody by Salem PD within the past five years, and that it was their opinion that the Salem PD used excessive force resulting in significant injury during an arrest. They told Kroll that when the victims went to the Salem PD, they were dissuaded from filing a complaint.
- This complaint did not appear in any of the documents provided to Kroll. If accurate, reports of excessive force must be given the highest level of review. This complaint should have been documented and elevated to a formal complaint for thorough investigation. Under no circumstances should officers have dissuaded a citizen from filing such a complaint.
4. Kroll spoke with a citizen who alleged improper arrest and excessive force that they had reported to the Salem PD without satisfaction. They indicated that they wanted to share the complete account but wanted to speak to their attorney first. That individual did not reach out to Kroll again.
- Kroll was not provided with any documentation as to this case by the Salem PD or by the complainant and is, therefore, unable to evaluate its merits.
5. Kroll was contacted by a citizen who alleged that they had attempted to file complaints with the Salem PD regarding, what they felt, was a failure on the part of some officers to enforce a restraining order. The complainant alleged that there was a personal friendship with some of the officers and the subject of the restraining order, which was the reason for the inaction. The complainant expressed significant concern for their safety.
- Kroll was not provided with any documentation of this matter by the Salem PD. During its interviews, Kroll learned that one of the supervisors was aware of the complaints/concerns raised by the complainant, and a supervisor at the Salem PD did have some limited interaction with the subject of the restraining order. According to the interviews, the Salem PD believed that the subject did not violate the restrictive terms of the restraining order obtained by the complainant and advised the complainant to address their concerns with

the court. This information was not documented at any time. However, it is Kroll's understanding that this type of interaction would now be captured by Guardian.

6. Kroll was contacted by a former member of the Salem PD, who reported that the internal affairs process was generally fair and thorough but that complaints filed against supervisors were not taken seriously and not handled properly.
 - Kroll's review of provided IA case files (noted above) indicate that this comment has some merit. However, it is Kroll's belief that not all complaints against those in a supervisory role are taken less seriously or not handled properly, as there are instances included above whereby supervisors were terminated or resigned as a result of the investigation. Kroll did find instances in which complaints against supervisors were not handled in accordance with the Salem PD policy and were not investigated in a fair and thorough manner, with some resulting in discriminate treatment among department personnel.
7. Kroll spoke with a complainant who reported that a family member was arrested by the Salem PD without cause. The complainant attributed the arrest to a relationship that the alleged victim had with a Supervisor B. The complainant alleged that the family member attempted suicide while in custody and that the department did not document the suicide attempt or seek medical intervention. They reported contacting the department and being told that they needed to come in and submit a formal complaint, but although the complainant told the department that they were fearful to go to the station, they were told it was the only way to file a complaint.
 - Kroll was provided no documentation of this complaint and can make no evaluation as to its merits.
8. Kroll was contacted by a complainant who had an interaction at their home with several members of the Salem PD, including Supervisor B. The complainant alleged that they were arrested without cause and that family members were threatened with arrest. The complainant stated they were then released from custody after agreeing to allow officers to speak with a sleeping family member ("suspect") who was suspected of a crime. The complainant alleged that they were coerced into allowing the officers into their home, and that they arrested the suspect. The complainant also alleged that there were illegal searches conducted of the suspect's dresser drawers, as well as unprofessional language and conduct by some of the officers on the scene. The complainant alleged that the suspect's arrest was predicated on the

suspect's dating a member of Supervisor B's family. They also alleged that unethical prosecutorial actions were taken by Supervisor B and others and that since the arrest of the suspect, police cars, which never previously patrolled the complainant's neighborhood, were frequently passing by their home in what they alleged were efforts to intimidate the family. The complainant further alleged that the suspect was coerced into pleading guilty to a misdemeanor and accepting a reduced sentence after being threatened with incarceration if they did not.

Subsequent to the complainant bringing a complaint against Supervisor B, the complainant alleged that they and Supervisor B attended the same party, at which Supervisor B stared at the complainant in an intimidating fashion. Shortly thereafter, this complainant sought counsel from law enforcement friends who informed them that if they filed a complaint with the Salem PD, nothing would be done. The complainant then contacted Town Manager Dillon for assistance with their complaint. The town manager informed the complainant to formalize the complaint in writing and send it to him so that he could forward it to Chief Donovan. The complainant drafted the written complaint later that day and sent it to the town manager.

The complainant told Kroll that no one from the Salem PD had contacted them or any of their provided witnesses. They, at one point, learned that the complaint had been forwarded to the Attorney General's Office for review, at which time they spoke with the Attorney General's investigator, who stated that they determined no criminality but that they referred the complaint back to the Salem PD for an administrative review.

- Kroll was provided with documentation as to this matter, along with a letter to Chief Donovan from Supervisor B that stated he was providing this information, as well as information regarding a previous incident that resulted in sustained finding despite it occurring outside of the time period that Kroll had requested. The Supervisor B provided several documents, including the written complaint forwarded to Chief Donovan by Town Manager Dillon. He stated that he denied the allegations in the complaint and had waived his right to have it investigated by the Attorney General's office even though it was his belief that the town manager violated the CBA by taking the complainant's phone call, recommending that the complainant issue a written complaint and forwarding the complaint to the chief for a review. Supervisor B stated in his document to the chief that this was his only internal affairs complaint filed against him.

During an interview Supervisor B, he spoke as to the complaint's allegations. Therefore, while Kroll was not tasked with investigating this complaint, Supervisor B wanted to speak on the record as to the allegations.

Kroll spoke with the complainant and Supervisor B, and while there are a lot of similarities between the accounts, there are some disputed points in each version. This complaint was submitted in writing by the complainant via the town manager to the chief. The chief did not initially conduct an investigation and stated that he was unable to conduct an investigation as the town manager violated the CBA by allegedly investigating the complaint and conducting his own interviews. The town manager denies doing anything other than speaking to the complainant and informing them to put their concerns in writing and then forwarding that written complaint to the chief.

As noted, initially, the chief refused to document the complaint or conduct an investigation. However, after meeting with the town manager and Attorney Broth, the chief reluctantly sent the complaint to the Attorney General's Office for a review. The Attorney General's Office reviews the complaint on its face for criminality and declines jurisdiction, referring it back to the Salem PD for an administrative review. It is standard process for the Attorney General or district/county prosecutor to review complaints for criminal violations, and if they determine no clear criminal violations, to refer the complaint back to the local jurisdiction for a review of administrative concerns, such as violations of rules, regulations or procedures. In this case, the matter was sent back to the Salem PD for further review, which did not happen. This is not in keeping with law enforcement best practice. Kroll further notes that Supervisor B cannot waive his right to an Attorney General's review, as the Attorney General is not bound by any labor contract.

The chief told Kroll that he did not conduct an investigation because the town manager had violated the CBA by conducting his own independent investigation. However, as noted previously throughout this report and on the Salem PD's complaint form (included below), there are several methods by which a complaint can be brought to the department's attention. Of the listed ways, the Salem PD can receive a complaint through an outside source, noted as "BOS [Board of Selectmen], Town Mgr. [Town Manager]."

Complaint Intake Form

ICI File #:

Name of Complainant _____

Address _____

Phone Number _____ Date of Incident _____

Employee Names _____
_____Alleged Misconduct _____

The following will be presented to an identifiable complainant by the Supervisor receiving the complaint and/or Assigned Investigator for review and signature. A refusal will have an appropriate weight placed on it during the investigation.

STATEMENT OF AFFIRMATION

I, _____, do hereby affirm that the attached information is true and complete to the best of my knowledge and belief. I understand that false, misleading or untrue statements, accusations or allegations, herein made by me, either orally or in writing to any person investigating this complaint may subject me to civil and/or criminal prosecution.

I further realize that it may be necessary for me to meet with investigators or others to discuss this complaint. I understand that my testimony before a court or other administrative hearing may be required. I hereby agree to make myself available for such hearings or court upon reasonable request.

Complainant Signature

Witness

Method Received:

Complainant advised of our procedures in
conducting investigations Y _____ N _____

Telephone _____

In Person _____

By Mail _____

Written Statement _____

Date _____ Time _____

Outside Source _____

(BOS, Town Mgr, rec'd complaint) _____

Receiving Supervisor _____

Reviewed _____

Assigned to _____

GO# 65-3, Attachment A

Kroll was not provided any prior arbitration or case law that supports the Salem PD's assertion. Further, by failing to document the complaint, the chief violated the policy of the Salem PD, and by not conducting a fair and thorough investigation, the chief violated the policy of the Salem PD.

The chief failed to conduct an investigation or review to substantiate his statement that the town manager violated the CBA, and only after Kroll informed the chief that Town Manager Dillon simply accepted a phone call from the complainant and directed them to formalize their complaint in writing, did the chief change his stance from there being a violation of the CBA to a failure to submit a formal complaint at the Salem PD, which Kroll disputes is unnecessary for all of the reasons set forth elsewhere in this report.

It is Kroll's belief that these actions are not in keeping with the Salem PD policy and reflect negatively on the Salem PD. These actions confirmed what the complainant alleged, which was that no investigation would be conducted. This is an abdication of the chief's duties and responsibilities and a failure of the complainant's rights for due process. Chief Donovan's actions and failure to comply with his own department policy failed the officers who were entitled to a complete and thorough investigation whereby their names could have been cleared, and is not in keeping with acceptable best practices. Further, this failure opens the Town of Salem, as well as the involved officers, to unnecessary liability.

- The chief's inaction further violated the supervisor's due process, as well as the due process of the other officers involved. By making the decision not to conduct a proper investigation of the allegations, the chief enabled the complaint to go unchallenged. A thorough investigation, whereby both sides of the conflict were able to explain and justify their actions or inaction, might have led to a satisfactory outcome for all parties. However, Chief Donovan's actions, or lack thereof, in fact, do the opposite and exhibit a preference for the supervisor, thereby confirming the complainant's concerns of preferential treatment on the supervisor's behalf and against the complainant.
- Kroll further notes that supervisors' interactions involving members of his family and friends, while reporting as a member of law enforcement, are quite concerning. Kroll is aware of at least four instances in which complaints were made against Supervisor B alleging inappropriate actions against individuals involved with his family. One of these interactions resulted in a criminal complaint filed against Supervisor B that led to no administrative

action by the Salem PD. Kroll notes that similar actions by patrol officers or other members of the department have resulted in significantly different responses.

9. Kroll was contacted by an attorney for an individual who was arrested and facing criminal charges. The attorney, as well as several others, believed that Kroll was tasked with conducting an independent investigation of the facts regarding their complaints. (Kroll informed every citizen that its role was to conduct an audit of complaints filed with the Salem PD and determine if the IA process was consistent with best practices.) The attorney explained that he had submitted a complaint alleging false arrest and excessive force by the Salem PD against his client to the Attorney General's Office. The attorney identified over 12 witnesses who all signed affidavits. The attorney also provided three videos of the incident. The attorney informed Kroll that the Attorney General's Office had referred the matter back to the Salem PD after finding no criminal actions. The attorney was informed through media reports that the Salem PD had conducted an internal investigation and cleared the officers of any wrongdoing. The attorney alleged that none of his witnesses were contacted during the Salem PD's investigation.

As previously noted, the Salem PD initiated an informal inquiry relative to this matter. Kroll notes that there was no documentation of Garrity rights being issued or interviews of the involved officers. There was no outreach to the complainant or the identified witnesses who corroborated the complainant's version of events. However, there was an attempt to obtain statements for those who supported the officers' version of events. There were no phone calls, emails or letters between the officer conducting the internal inquiry and the attorney for the complainant. The complete investigation was conducted in less than 24 hours and a report of not-sustained was issued. This complaint was not elevated to a formal complaint even though it met the criteria under Salem PD's rules and regulations. The response was not in keeping with the department's policies and certainly not in keeping with law enforcement best practice. In addition, only after adverse media coverage of the complaint aired, the department began active outreach to identify those who could discount the complaint and support the officers' version of events, while simultaneously conducting no outreach to the complainant or those who supported the complainant. The department claimed that they did not contact any of the complainant's witnesses because the complainant had never come to the Salem PD and signed a written complaint form. This is a complete violation of the Salem PD complaint policy and can even appear to be negligent or retaliatory in nature.

Salem PD personnel, interviewed by Kroll, stated that they were unaware of any complaints regarding the manner in which they were policing the community. They said that they felt that their officers were very professional and received very few complaints, noting that they had not heard of any such concerns as those relayed to the town manager. Kroll conducted a simple Internet search and identified the following:

Nathan Logan

I have been going to Salem for years and I have been working in salem for the past year and a half. Every experience I have had with the Salem Police Department is negative. I cannot recall interacting with an officer that seemed to care about helping people. I have seen officers violate traffic laws to many times to count. I've seen them turn on their lights to run a red light just to turn them off again after the intersection. I've seen them make illegal u-turns without lights or a siren on and I've seen them driving well above the speed limit without lights or siren on.

Recently I called to complain about an officer excessively speeding without his emergency lights or siren on and the woman that worked at the station on the other end of the phone was very rude, and she made it clear that she did not care about anything I was saying.

I am in no way writing a bad review because i don't like cops. I do like cops. I understand that police officers have a dangerous and stressful job, i respect that. I think that no city, state, or country could function without them. There is something wrong with this towns police force. They do not set an acceptable example and they hold themselves higher than civilians.

Mercado V

Women who answers the phone obviously doesn't care to help, extremely unpleasant. Told my girlfriend "don't call next time" and "I don't care." Serve the public, what a joke.

Jose Jose

Went to visit my family may 21/ 2018 stayed at the red roof hotel and ended up going to Wendy's to buy some food came back and got harassed by 2 salem Nh police man younger than my kids followed me from the lights all the way to my room inside the red roof property so I parked and got out my car walking to my door the cop finally stopped me and said what you doing here meanwhile this is a hotel what do u do In hotels sleep lol so I told him I was in the hotel to sleep he Asked for my I'd illegally but i still gave it to him.(i have nothing to hide) he told me that this hotel was a prostitution and drugs hotel.ok I don't do any of that so I don't care so the other cop said to me what was that inside your car blood inside the center console. Meanwhile i got out my car before they stopped me wow lol. So I said no so he kept going is that weed inside your center console i said no so he kept going are u high i don't care about weed we all do it i said no and had enough of the unlawful activity going on in my face by salem Nh police  and I told them I was recording them for my safety they both jumped up and said no u ok u good to go wow I never seen so much corruption from police officers that are supposed to be public servant not public intimidators and i will be putting the video up on YouTube look it up under (corrupt salem Nh police 

Lisa Carter

The stigma of the Opiate Epidemic is unfortunately alive and well within the Salem PD, my son overdosed and was essentially dead, the police stood there watching ME administer Narcan and perform 15 minutes of CPR, when EMS arrived, and THEY WERE PHENOMENAL, one particular snake of a cop told me to stop calling 911 when my son overdoes, he repeated this more than once that night ... Officer Diresta was wonderful ... When I tried to file a grievance against this disgusting public servant he refused to give me his badge number, and I was denied my RIGHT to speak with the Captain or Chief, when I called the Town Manager 5 times I never received a response ... This could be ANYBODY's child ... I had to go all the way to the GOVERNOR and file an official written complaint about this incident! SUBSTANCE USE DISORDER KNOW NO SOCIOECONOMIC BARRIERS, FORTUNE OR FAME, GENDER OR EHNICITY, SEXUAL ORIENTATION, OCCUPATION OR POLITICAL VIEWS!! NO ONE IS IMMUNE!! SHAME, SHAME, SHAME ON THE SPD, and the Town Manager ... They are supposed to PROTECT AND SERVE ... SPD NEEDS SOME INTERVENTIONAL WORK SHOPS AND START CARRYING NARCAN ... I DON'T CARE ABOUT THEIR PERSONAL OPINION, DO YOUR FREAKING JOB! IF IT WAS ONE OF THOSE COPS KIDS I BET THEY WOULD BE SINGING A DIFFERENT TUNE ...

Donna Eastman

Called them last night after an issue with the guy next door, they said they would send a car. Not only did they not show up but the neighbor had his guests esclate the tensions by having them threaten me.

Sadie Smith

They are packed with over the top most unprofessional conduct and I am not impressed. Unless you know someone. 4 car's show up on a pullover. They have the worst bullying and harassment. Especially when you don't kiss their ass. They drink and drive? They do drug's no doubt about it. Their child good must have been scrappy. They definitely have been known to lie and say the complete opposite of what happened. Not all of them are Security officers and those who are professional are not enough. The Badge is a badge of honor. I have seen a lot of disgraceful and ignorant police.

7. Union Issues

There are currently three collective bargaining agreements in place with the Salem Police Department, one of which is the agreement between the Town of Salem, New Hampshire and the Salem Public Administrators Association, in effect from April 1, 2017 to March 31, 2020, covering the deputy police chief, police captains and police lieutenants; currently, Deputy Chief Morin is president of that union. He also oversees all IA investigations and complaints submitted to the Salem PD. Previously, Deputy Chief Shawn Patten served in this role.

Interview with Deputy Chief Morin

MR. LINSKEY: Can you tell me about your role as Deputy Chief, what's your assignments, roles and responsibilities?

DEPUTY CHIEF MORIN: I am the Deputy Chief, second in command, everything flows through me before it gets to the Chief so basically everything fall under my purview.

MR. LINSKEY: So, roles and responsibilities with IAD would come with you if a complaint came in through the front desk or through a letter or an email, it would go to you?

DEPUTY CHIEF MORIN: Yes.

Discipline, when properly executed, is corrective in nature; discipline that is properly and fairly applied is necessary in the workplace. As such, unions have a clear duty to represent their members and hold management accountable for the fair and corrective use of discipline. The responsibility of the individual tasked with implementing and overseeing the IA practices of a police department is often in direct conflict with those of the union tasked with ensuring the protection of its members. We saw this conflict when reviewing the IA investigation of [REDACTED] was tasked with overseeing the investigation to ensure that it was fair and thorough, the deputy chief and then union president was also tasked with representing the rights of his union member. A violation of the policy also existed in allowing for a similar ranked officer to oversee the investigation of a peer. These two roles represent a conflict of interest and cannot be effectively carried out without inherent conflict.

Another example would be if a member of the Salem Public Administrators Association is involved in an incident and there is an allegation that the officer is operating a vehicle under the influence. Deputy Chief Morin, as the officer charged with overseeing a fair and thorough IA investigation, would likely request a field sobriety test and breathalyzer. However, it would be unconscionable for a union

representative to encourage a member of its union to voluntarily provide information or evidence that may be unfavorable to them.

Kroll further notes such a conflict relative to its audit of the Salem PD, whereby Deputy Chief Morin, as a member of the department's administration, had an obligation to support the administration's decision to conduct an independent audit. He also had an obligation and responsibility to instill in his officers the fact that Kroll's audit was an acceptable practice in law enforcement and was initiated in order to make improvements within the department and effectuate a positive impact on the officers' working conditions. However, Deputy Chief Morin regularly and vehemently disparaged Kroll's efforts and the Town's decision – in various online and in-person methods – to conduct an audit in what he and the union considered was his role as union president. Kroll provides the following social media post of such comments:

Kroll interviewed several labor attorneys, many of whom work on behalf of law enforcement labor unions and/or police administrations. The attorneys were all unanimous in their opinion that an officer who oversees IA investigations and the corresponding disciplinary processes cannot possibly simultaneously serve as union president in an effective manner.

8. Findings and Recommendations

Finding #1: The Salem PD's current CBAs contain some of the most restrictive language ever reviewed by Kroll. The CBAs, in their current form, severely impact the department's ability to effectively administer discipline.

Currently, the New Hampshire Civil Statute of Limitations sets forth the time period within which the state must commence a criminal case. If the state attempts to bring an action against someone after the applicable time period has passed, that person charged can have the case dismissed. In general, violent crimes have a longer statute of limitations, and with some crimes, there is no statute of limitations. In certain instances, the statute of limitations may be tolled, or suspended, which grants the state additional time to commence a legal action. The statute of limitations is set forth as follows:

Section 625:8 Limitations

Murder: no statute of limitations

Class A Felony: 6 years

Class B Felony: 6 years

Misdemeanor: 1 year

Currently, if evidence is discovered that an officer had, on- or off-duty, committed a felony (i.e. sexual assault, domestic violence) whereby the victim comes forward after delaying a report of the event, or evidence is discovered of some type of corruption (i.e. civil rights violations, stealing property from an evidence room, activity occurring six years and one day prior), the Salem PD would be prohibited from seeking disciplinary action against the officer. Since there is no ability to prosecute a person after the statute of limitations has expired, there would be no consequences imposed on the officer.

The CBAs' timelines may also impact the ability to conduct comprehensive investigations involving allegations of corruption. Law enforcement often receives complaints of corruption against employees. Some of these allegations have led to sweeping indictments or prosecutions of officers; however, others were found to be malicious or frivolous in nature. Currently, as the CBA stands, the department would be obligated to notify an officer within 10 days of the department's receiving allegations of corruption. However, such corruption investigations could take months, if not longer, to gather the appropriate evidence needed to prove or disprove the allegations. The current stipulation requires that if a department learns of a corruption investigation, they would have 10 days to complete the investigation or they would have to, by CBA mandate, notify the officer under investigation. Either option (1: continuing without notifying the officer

and forfeiting the ability to discipline them, or 2: informing the officer of an ongoing investigation) is not in keeping with law enforcement best practices.

Recommendation #1: Kroll recommends a legal review and evaluation of provisions set forth in the CBAs, as well as revision, if needed.

The CBAs, which are in place between the Town of Salem, New Hampshire and Salem Police Relief N.E.P.B.A. Local #22, in effect from April 1, 2016 to March 31, 2020, covering patrol officers, sergeants, dispatch supervisors, dispatchers and animal control officers; the Town of Salem, New Hampshire and Salem Public Administrators Association, in effect from April 1, 2017 to March 31, 2020, covering the deputy police chief, police captains and police lieutenants; and the Town of Salem, New Hampshire and the Salem Administrative and Technical Employees, in effect from April 1, 2017 to March 31, 2020, covering administrative staff and clerks, all need to be revisited. Efforts should be made to determine if the stringent time and notification requirements are legal and ensure they do not present a possible conflict with due process for the citizens of New Hampshire to ensure that their complaints are fairly, thoroughly and accurately investigated.

If due process is in question, all efforts should be made to renegotiate and amend these highly restrictive timelines.

Finding #2: The current Salem PD General Order 65-7 regarding IA investigations and disciplinary procedures, while recently updated, must be reviewed, as the current order is not in keeping with acceptable law enforcement best practices.

This rule provides a contradiction as to how Guardian will be deployed within the Salem PD and is inconsistent with what the department's administration told Kroll as to its deployment. The rule continues to place an undue emphasis on the complainant coming to the department to submit a formal complaint under pains and penalties of law, which Kroll believes may, in fact, discourage a citizen from filing a complaint.

When interviewed, Chief Donovan informed Kroll that he implemented at the Salem PD many of the policies and procedures utilized during his tenure with the Hartford Police Department. The Salem PD policy is set forth as follows:

SALEM POLICE DEPARTMENT GENERAL ORDER

| | | |
|---|--|-----------------------|
| CHAPTER: PROFESSIONAL STANDARDS | DATE OF ISSUE 06-04-2018 | G.O.#: 65-7 |
| SUBJECT: INTERNAL INVESTIGATIONS & DISCIPLINARY PROCEDURES | RESCINDS G.O. # 65-3, dd 10-19-2017 G.O. #65-7, dd 06-29-2012 | REVIEW 2020 |

I. PURPOSE: The Salem Police Department must be accountable for the acts of its employees. A relationship of trust and confidence between the police and community is essential. The purpose of this General Order is to identify the procedures to be followed in dealing with violations of Departmental Rules and Regulations, Code of Conduct, Policies and Procedures, and other mechanisms for ensuring accountability to the public, the efficient and effective operation of the agency, and to provide for a safe workplace that ensures all employees are treated fairly and respectfully. (26.1.1)

This General Order defines the various types of disciplinary sanctions which may be imposed and delineates the responsibility for the initiation and conducting of disciplinary procedures. (26.1.1)

II. POLICY: All complaints will be accepted and documented. Any investigation based on a complaint will be conducted in an open and fair manner, with the truth as the primary objective. The Salem Police Department shall accept all complaints against their employees and will fully investigate all such complaints.

All violations of Department Rules and Regulations, Code of Conduct, Policies and Procedures, and all other directives which occur shall be dealt with in a fair and impartial manner, and in accordance with the Collective Bargaining Agreements in place with the Town of Salem. In all cases where disciplinary action is taken, the employee shall receive a copy of the documented discipline issued. (26.1.4)

An employee may be disciplined and/or terminated if there is found to be proper reasonable cause. Proper reasonable cause shall include, but shall not be limited to the following:

- Demonstrated incompetence;
- Recurring absenteeism;
- Recurring tardiness;
- Insubordination;
- Falsification of documents concerning payroll or other department operations;
- Behavior detrimental to the Town;
- Conduct unbecoming an officer.

III. DEFINITIONS:

COMPLAINT – Any expression of dissatisfaction or an allegation of misconduct which is:

- a) Unconstitutional, or
- b) Unlawful, or
- c) A violation of department policy

Similarly, the Hartford PD policy – developed and implemented in 1981 – is as follows:

| HARTFORD POLICE DEPARTMENT ORDER | | (CONTINUATION) | 3-2 |
|--|---|----------------|---------------|
| Subject | CITIZEN COMPLAINT PROCEDURE | | Date of Issue |
| | | | 11-02-81 |
| IV. | PROCEDURES FOR RECEIVING COMPLAINTS: (continued) | | |
| <p>C. WALK-IN COMPLAINTS: During normal business hours, all walk-in complaints will be referred to the Internal Affairs Division where appropriate action will be taken in compliance with this Order.</p> <ol style="list-style-type: none"> 1. After the complaint is received and properly documented, the complainant shall be placed under oath and requested to sign the complaint after reading (or having been read) the warning for perjury or false statement. If the complainant refuses to swear to and sign the complaint the complaint will still be received and the refusal to sign shall be noted. 2. The Internal Affairs procedure will be explained to the complainant and he/she will be given a copy of the complaint as a receipt. 3. The complaint will then be officially logged, assigned an Internal Affairs case number and referred for investigation as outlined in Section III-A of this Order. <p>D. IN THE FIELD: Any member of the Department approached in the field by a complainant expressing allegations of police misconduct, shall immediately notify his or her Supervisor and request the complainant await his/her arrival.</p> | | | |

Both policies address signing and swearing to a complaint, as well as the requirement that staff direct complainants to this practice. However, there is also a caveat noting that failure to sign the complaint form does not prevent it from being documented or investigated fully.

Kroll notes that much has changed in the Hartford PD due to a federal consent decree focusing, in part, on the department's IA complaint program and disciplinary process. The Hartford PD has recently had federal oversight of its department extended to 2019 and has made wide-reaching changes in how they handle citizen complaints since the policy was enacted in 1981.

More notably, it is Kroll's belief that each and every complaint should be considered on its merit. The Salem PD's current rule has led to formal complaints being handled as informal inquiries, often leading to a limited investigative process that violates a citizen's due process, as well as the protections afforded to officers under the CBA. Similarly, the very questioning of an officer without an explicit signed waiver of his/her Garrity rights is in direct violation of the CBA and can negatively impact the investigation if wrongdoing is uncovered.

Recommendation #2: Develop a new policy

Kroll believes that this policy should be reviewed and amended.

Finding #3: The current Salem PD IA investigative process is not compliant with the department's own policies and procedures and does not meet minimum acceptable law enforcement best practices.

Kroll's review found several instances in which IA investigations did not follow the policies and procedures of the Salem PD, including many complaints that originated from outside sources. Serious allegations of misconduct were placed in limbo or discarded without a full or fair investigation, which seriously impacted the due process rights of citizens and the personnel of the Salem PD. Often these complaints were not investigated because the department's leadership stipulated that a complaint was not "official" until a victim comes to the department and signs a formal complaint. However, the rule clearly states that the Salem PD accepts all complaints. Further, although leadership agreed in Kroll's interviews that an email complaint was the same as a written complaint, Kroll learned that complainants who sent emails were advised to come to the department and make a formal written complaint. Even in some cases whereby a complainant did come to the department and submit a written complaint under pains and penalties of perjury, the department did not conduct even basic, simple investigative efforts.

Further, the leadership of the Salem PD has an improper understanding of what the New Hampshire Attorney General's Office does when reviewing a police misconduct complaint. The Attorney General's office only conducts a preliminary review to see if there are obvious signs of criminal actions by individuals. They may see evidence right away that prompts them to open a full investigation, or they may request additional information. They then provide an opinion as to whether they will formally investigate criminal misconduct or decline to move forward. If they decline conducting a full investigation, they can refer the complaint back to the local police department for an administrative review for potential non-criminal misconduct. It is the department's responsibility, then, to ensure that there were no violations of rules, regulations, professionalism or other legal issues. However, Kroll determined that the Salem PD failed to follow through with the Attorney General's Office's recommendation for further review, providing two reasons: "The AG unfounded the charges" or "There is no complaint. No one came in and filled out the complaint form." These responses are in no way an acceptable practice.

Kroll further noted that while some investigations were conducted in a full and comprehensive manner, others did not include basic investigative techniques. Kroll's investigation determined that allegedly full and fair investigations consisted of a cursory review of reports previously filed by officers, occasionally supplemented with an informal conversation with an officer without advising them of their CBA rights

or providing required Garrity warnings, considered no independent information or evidence and often were closed within hours without speaking to the complainant or any of the complainant's witnesses.

Kroll also learned that there were perceptions inside and outside of the department that the decision to investigate a complaint and the process by which the Salem PD investigated IA complaints were based on who you were or with who you aligned yourself in the department's administration. In some instances, Kroll found officers who faced complaints of alleged criminal activity who were placed on administrative leave and had a restricted weapon status. They faced both criminal charges, as well as internal investigations, as to their alleged conduct. However, Kroll also found one instance in which a supervisor, who was part of the administration, exhibited even more egregious felonious conduct but whose conduct was disregarded by the department. He was able to continue with his duties without being placed on administrative leave or being subjected to an IA investigation.

Kroll also learned of several instances relative to improper conduct by a supervisor, as relayed by a previous town manager to Chief Donovan. Chief Donovan allegedly agreed that the allegations were concerning and informed the previous town manager that he would address the concerns directly with the supervisor and personally counsel the officer. However, these complaints were reportedly discarded, and no formal action was taken.

Kroll also determined that citizens were actively dissuaded from filing complaints. In one interview, a supervisor of the IA program stated that he wanted a complainant to come to the department to submit a formal complaint so that the department could then prove that the complainant misstated the facts and seek criminal charges against the citizen:

"why she's not going to come in, because she's not going to come in and write this statement down and swear to it to be true, because when she does, and we disprove it, and we will, we're going to charge her, that's why she's not coming in. She went to Chris [town manager] to get exactly what has transpired here..."

This statement and attitude by a senior leader who has oversight for the professionalism of the department is quite concerning and certainly exposes some truth behind comments that the department makes it difficult for the public to submit a formal complaint.

Recommendation #3: Kroll recommends a complete overhaul of the Salem PD IA program. Further, those involved in developing and implementing the program must be educated on the best acceptable law enforcement practices and trained to properly conduct IA investigations. The department leadership must be aligned with these goals to ensure proper execution, and at a minimum, the following should be adopted immediately into any new IA process:

- Implement the Guardian System to identify and track officer performance.
- Develop a comprehensive IA investigative check list.
- Accept any and all complaints, including those submitted in person, over the phone, in writing (including email), through third parties and anonymously.
- Initiate investigations proactively, even for those where no formal complaint is made but for which information is developed from lawsuits, social media posts or any other means.
- Investigate any and all complaints regardless of perceived severity or perceived biases against the complainant.
- Provide officers with formal IA investigative training.
- Amend the complaint process to eliminate the potential for intimidation towards complainants.
- Implement consistent investigative processes, documentation and disciplinary actions for all members of the department to avoid disparate action based on relationships.
- Administer standard outreach to all complainants, as well as witnesses.
- Record audio statements for all interviews, when possible.
- Conduct periodic audits of IA investigations, both internally, as well as via external third parties.
- Provide timely notification of complaints, as well as outcomes, by electronic and/or certified mail.
- Implement a consistent protocol for recordkeeping to ensure complete and accurate case files.
- Ensure compliance with the department's CBAs for officers' due process rights.

Finding #4: There is a mandatory retention period for IA investigative files as stipulated by the New Hampshire Attorney General's Office. The Salem PD may not be compliant with this regulation.

The Salem PD's policies indicate that there should be a locked file cabinet in Chief Donovan's office to store IA complaints and case files, including those that were sustained and not sustained. The town manager directed Chief Donovan to provide Kroll with all IA investigative files for the preceding five years. However, despite this directive, the files were seemingly incomplete, as there were no Garrity forms, no audio recordings and many missing documents / whole case files. Kroll was also provided

with several not sustained and unfounded complaints, allegedly provided by happenstance during the records collection process, despite the department's belief that these files were purged. Kroll disagrees with this assertion, as the rule stipulates that all sustained and not sustained complaints should be kept for the entirety of an employee's career.

However, there is seemingly confusion within the senior administration of the department, as Chief Donovan informed Kroll that the department does not maintain not sustained or unfounded complaints. However, Deputy Chief Morin stated that the files are, in fact, stored in a file cabinet in the chief's office. As a result of the discrepancy, Kroll re-interviewed Chief Donovan and asked if such a cabinet existed in his office. Chief Donovan stated that he did not retain the files. Therefore, if the files are not retained, then the department is in violation of Salem PD GO 65-7, as well as the New Hampshire Attorney General's guidelines. If they are, in fact, being stored in the file cabinet, then Chief Donovan was either not candid with Kroll or is unaware of their existence or his responsibilities. Both of these possibilities are considered highly problematic.

Recommendation #4: Kroll recommends that the Salem PD update its current recordkeeping system for IA investigative files in consultation with best practices and as directed by the Attorney General's Office.

Finding #5: The deputy chief in charge of IA investigations should not be union president, as it is a conflict of interest to oversee IA investigations and represent the interests of union members.

Recommendation #5: Kroll recommends that the deputy chief be responsible for assisting with contract negotiations for the department but be prohibited from serving as union president.

Finding #6: As detailed in Kroll's secondary report relative to time and attendance concerns within the Salem PD, members of the administration are also known to work detail assignments, often during regular working hours. It is Kroll's opinion that these detail assignments may adversely impact the supervisors' ability to properly oversee the department's IA program.



Recommendation #6: Kroll recommends an evaluation as to the impact that Chief Donovan's working details during regular work hours may have relative to his failure to properly supervise the department's IA program.



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**Version of Culture Addendum
Released on April 26, 2019 After
Superior Court's April 5 and 22, 2019
Orders**

1. Addendum A

Culture within the Salem PD

While Kroll was not specifically tasked with conducting a review of the culture within the Salem PD, nearly every interview and communication over the course of Kroll's audit included comments attributing challenges within the department to a deficiency with the department's cultural environment. Such cultural concerns include members of management who either ignore or even encourage an environment where there exists a complete disregard for the Town's authority. Kroll has included below a summary of these concerns as stated in interviews, email communications, text messages, social media posts and second hand accounts.

Disregard for Authority / Police Department v. The Town

Kroll was originally engaged to conduct this audit by Town Manager Dillon, via outside counsel, who alleged what could only be described as a complete and utter disregard by Salem PD management of Dillon's authority as town manager, and therefore, Chief Donovan's direct supervisor. One example involved Dillon's weekly staff meetings with all department heads. Dillon said that during his weekly one-on-one meetings with Chief Donovan, it "had become increasingly challenging to obtain any answers to his questions," and that Chief Donovan started claiming scheduling conflicts, and more recently, refused to attend the meetings altogether.

Further, Dillon stated that it was only when he attempted to speak to Chief Donovan about Kroll's impending audit that Deputy Chief Morin informed him of the chief's extended absence. Dillon then followed up with the chief the following day – a Wednesday – again, to discuss Kroll's audit, at which time, Dillon learned that the chief was taking the rest of the week off. While Dillon said he informed his [REDACTED] that individual days off could be taken without formal notification, in cases of "multiple days off, they are to notify me of that fact, [REDACTED]"

[REDACTED] Dillon said this is "absolutely" followed by [REDACTED] within the town. Dillon stated in his interview that [REDACTED] also took [REDACTED] without formal notice or approval, with Dillon only learning of the arrangement when he sent a follow up meeting request [REDACTED]. The [REDACTED] responded saying that he was [REDACTED] Dillon said, "[REDACTED]
[REDACTED] [REDACTED] but I kind-of found out about it in a roundabout way and then I was never actually given specifics as to whether [REDACTED] all the time off, whether [REDACTED] partial time off, how long [REDACTED] was taking off or looking to take off."

Former HR Director Molly McKean also noted that [REDACTED] would email the town manager to notify him of their intent to take vacation or to ask permission. [REDACTED]

[REDACTED] may notify the town manager after the fact, but the process is to inform the town manager of vacation time. McKean said, "That as a matter of fundamental courtesy, [REDACTED] [REDACTED] at a minimum notify the town manager and potentially, at the town manager's discretion, um, I believe, the town manager could ask [REDACTED] seek permission for that time off."

Former Town Manager Leon Goodwin told Kroll that there "had been issues with the chief in the past," including a lack of trust between the Salem PD and the town's "management wing" (town manager / board of selectmen). Goodwin said that Chief Donovan "is a smart guy" but "certainly held a grudge, I think, against certain selectman, against the town manager – the prior town manager." He said the chief almost never came to selectmen meetings and would often send the deputy chief or one of the captains, but that on one occasion when the chief did attend, there was an outburst, and the former town manager suspended the chief without pay, but Goodwin noted that the pay was later reinstated.

Goodwin further noted that the Salem PD "didn't want anyone in their business, including the town manager." He said they "kept their own separate records. They kept their own personnel files that they did not share with the HR or the town manager. They dealt with their own personnel issues/disciplinary issues without involving the HR manager." McKean also said that her "experience is that – um – there's no oversight of the [internal affairs] program because the police department would guard their internal affairs processes and investigations." She said "They do not feel any need to share – um – potential investigations, concerns, nothing with the town manager or human resources, which as you've probably already gathered if you looked into any – like – documents that I left when I left – um – I had real concerns about, you know, our potential liability if the town is not aware of potential charges or concerns about a particular officer and we're just tripping along like everything is normal and meanwhile the police department and the police chief is making decisions about, 'Well I'm going to investigate this, or oh, I'm not...' with no communication with the town manager or human resources at all."

McKean said that she believed the police department's interpretation of their CBA adversely affects internal affairs investigations. She said, "I find it hard to believe that any arbitrator would say – you know – this agreement is going to allow you both to shield internal affairs investigations while you're looking at officer misconduct or wrongdoing, but my understanding is that that's the police department view of it." McKean said that "it was a constant battle back and forth about who had the power to oversee the police department, and the police message was 'we will police ourselves,' which you know, sometimes that works but not always and town hall was entirely in the dark. The relationship between the police department and town hall is, at best, tense, and at worse, adversarial."

Further, Kroll was told that the department often ignores or disregards requests for information or documents with Dillon saying that he had asked the chief for copies of general orders or policies and

procedures "but wouldn't always receive them." He said he had asked – multiple times – for a copy of the complaint form that citizens use to make complaints against the Salem PD, which Dillon was told was "intimidating." He said that while his request was never honored, the form was subsequently uploaded to the Salem PD's website.

Current HR Director Anne Fogarty said that since 2004, she has worked for several town managers, but that no former town manager has been as disrespected by the Salem PD as Dillon.

Chief Donovan noted the following of Dillon's handling a citizen complaint in his interview with Kroll:

CHIEF DONOVAN: The town manager screwed that one up from the get go when he started it, I mean that's -- and I agree with the (inaudible at 01:42:10, low audio), --
MR. LINSKEY: And then how did he --
CHIEF DONOVAN: -- he doesn't have the right to start an IA.
MR. LINSKEY: How did he screw it up, let's go into that?
CHIEF DONOVAN: He should not have interviewed her, and he should not have interviewed --
MR. LINSKEY: Do you --
CHIEF DONOVAN: -- the other one.
MR. LINSKEY: Do you know that he interviewed anybody?
CHIEF DONOVAN: He told me he did.
MR. LINSKEY: He told you that he interviewed somebody?
CHIEF DONOVAN: He told me he called and he talked to him.
MR. LINSKEY: It -- it -- well, if he called and said you need to put your report in writing and I will forward it to the Chief of Police, is that an interview?
CHIEF DONOVAN: If that's all he said that wouldn't be an interview but that --
CHIEF DONOVAN: He should never have gotten involved --
MR. LINSKEY: Well, --
CHIEF DONOVAN: -- to begin with.
MR. LINSKEY: How could he -- so if he gets an email from a constituent that says, look I have a complaint with the police department but I'm told if I go and deliver it directly to them it won't be taken seriously, I want -- I want to let you know of it, and he says give it to me in writing and I'll send it to the Chief.
CHIEF DONOVAN: What he should have said was go down and do it like every other town manager has in the past --
MR. LINSKEY: Okay.
CHIEF DONOVAN: -- and then he could have asked me did you get the complaint from her and I would have said yes, are you working on it, yes, we are.
MR. LINSKEY: Would you agree that's a minor difference in facts?
CHIEF DONOVAN: It's not that minor when you consider the disruption he's caused since he's been in there because he doesn't know what he's doing yet, he's still learning the job.
MR. LINSKEY: Okay.

He further states regarding Dillon:

CHIEF DONOVAN: And it's kind of like the way these contracts are written, it's hard enough for me to work with them now without having somebody else, you know, doing what he thinks he -- he has a total disregard for contracts, he doesn't care about the contracts. Well that's great, he's the town manager, if that's what he wants to do that's fine, I still have to work with them, so make my life a little easier and just do it the right

way, which would be refer it to the police department and follow it up with me and just say did you get it, yeah we got it, did you issue it off yet, yup, we issued it off for investigation.

Deputy Chief Morin also provided commentary as to his thoughts regarding Dillon's honesty relative to a citizen complaint filed against the deputy chief:

I was nowhere near her [complainant] at any point in time, it's all garbage -- it's all garbage; okay? And again, when the Chief got notified of the complaint, which was on the 16th, eight full days after he got the complaint, okay, which it's clear in her complaint that they had correspondence. Chris says, I got it the same day, I said no, I don't believe you, I don't believe that's the case at all because he pled guilty on the third, I don't think that she waited five days to contact you, so I don't believe you.

The Appearance of Insubordination

Salem PD management was informed by its superior, Town Manager Dillon, to cooperate with Kroll's audit. While this directive was followed at the outset with Chief Donovan and Deputy Chief Morin participating, when possible, in introductory meetings and making themselves available to Kroll for interviews, it has been brought to Kroll's attention that on several occasions, the members of the Salem PD have disparaged Kroll's efforts and potentially even impeded or undermined the audit. While Kroll fully appreciates an employee's right to free speech, what follows intends to illustrate the apparent contempt in which administration is held by some members of Salem PD and the apparent deviation from law enforcement best practice.

The following reflects Deputy Chief Morin's thoughts as to why Kroll was hired:

MR. LINSKEY: Can you see how someone from the outside, who doesn't know any of the players, can say --

DEPUTY CHIEF MORIN: Yeah.

MR. LINSKEY: -- it looks like all the police --

DEPUTY CHIEF MORIN: But I'm going to tell you why --

MR. LINSKEY: -- reports have been taken.

DEPUTY CHIEF MORIN: -- why she's not going to come in, because she's not going to come in and write this statement down and swear to it to be true, because when she does, and we disprove it, and we will, we're going to charge her, that's why she's not coming in. She went to Chris to get exactly what has transpired here and if you don't think that that's behind this and Molly McCain is behind why you've been hired, then you're foolish as well. Although not part of either of Kroll's assignments these issues were presented to the team during the audits and as such are being reported to the Town for their informational review.

Initially, Deputy Chief Morin noted in the closed group "Salem, NH Residents" on Facebook that while he disagreed with the need for the audit, he and the members of the Salem PD would cooperate:

[Rob Morin](#) shared a link.

March 20 at 8:34am

We are a little confused ourselves. Though any agency or department can and should look at ways to improve, this is an extremely costly venture. It is difficult to believe this is a collaborative effort when there has been no input or consultation with PD Admin. We will cooperate to the extent that it does not infringe upon CBA's or employee rights and privacy. We are very confident in our policies and procedures and we are very proud of the men and women of SPD who serve this community. I am disheartened by the manner in which we learned about this assessment. The press release was also a bit misleading in regards to the DPW assessment in 2011. That assessment did not lead to the creation of municipal services in 2015. I am quite familiar with what happened in 2015 and it was not related to anything that happened in 2011. We are not intimidated or concerned about this assessment but feel there are more critical things that 40-50k could pay for. We will however Work with Chief Linsky (Ret) and his staff.

However, on the same Facebook thread, Deputy Chief Morin's fiancée directly mentioned Dillon in a disparaging nature:

[Gina DiResta](#) I agree with your transparency assessment however have you met our TM? To quote Kenny Rogers let's hope Mr. Dillon knows when to "fold them" because he is pissing up a rope...it's personal and it's a witch hunt and it's costing the tax payer a lot of money. Money that could fund half a patrolman position.

[Manage](#)

[Likes](#)[Show more reactions](#)

[Reply](#) 2d



[Tom Linehan](#) [Gina DiResta](#) I have known Christopher Dillon since he first was hired. That is what surprised me. He was pretty transparent in my dealings with him over the years.

[Manage](#)

[Likes](#)[Show more reactions](#)

[Reply](#) 2d



[Gina DiResta](#) His behaviors prove different.

The following post was also identified on Sergeant Michael Verrochi's public Facebook profile:



[Rob Morin](#) I share the outrage, VRock and I know you know that. For the past 5 months we at SPD have been subject to an "audit". This audit is not only a waste of money but a complete and utter pile of horse shit. The audit was ordered by a Town Manager, who was concerned about liability based upon "perception". Not only did this man not bother to ask the PD admin about these "perceptions", he also doesn't have the experience or knowledge to assess any response given. He was the Recreation Director for Christ Sakes. I have been unable to get staff hired, policies implemented, concerns listened to or even a simple or timely response to emails or voice mails. So, yes VRock, I'm pissed off and I stand right next to you. I have a message for the BOS in Salem.... wake TFU. I extend my heartfelt appreciation to all of those citizens who support law enforcement and I can assure you, we will always do our jobs!!!!

[Like](#) 3w

[11](#)

[Michael Verrochi](#) There comes a point when it's time to say fuck you to politics and I'm there. We need to make decisions, stand by those decisions and not waiver simply to satisfy the court of public opinion. I know I can be a pain in your ass at times but I always have a reason. New gear ideas, training, opinions all for the good. I don't claim to know it all nor do I want too but I do know this. Time to take our balls off the shelf!

[Like](#) 3w [Edited](#)

[4](#)

[Rob Morin](#) I have plenty of balls. Like you, I'm not shy about making my opinion known. You can rest assured, I will have much to say and will not be silenced or intimidated.

[Like](#) 3w

[2](#)

Deputy Chief Morin's comments relative to Dillon are not only inaccurate but insubordinate and unbecoming of a Salem, New Hampshire police officer. There are even undercurrents of threatening

language, which according to human resources, would at the very least warrant a reproach by the chief, if not more formal disciplinary action. These comments also clearly show Deputy Chief Morin acting as union president and not as the sworn officer in charge of the Salem PD's internal affairs program.

"Us. v. Them" Mentality / Discriminatory Disciplinary Judgments

Kroll learned of an "us versus them" mentality within the Salem PD, both in terms of a "police department versus town" (noted above) and a "those aligned with management versus everyone else." Kroll learned that the latter often results in a discriminatory application of discipline for some members of the police department, with some being disciplined in one way for an action and other officers, considered aligned with management, receiving a less severe punishment.

Some examples of discriminatory behavior within the Salem PD are noted as follows:

In discussing the influx of recent turnover at the Salem PD, current HR Director Fogarty said that the department had "lost a lot of good, long-term employees" with some attributing their departure to the culture within the department. Fogarty said, "It's hard because people know that if you go against Deputy Chief Morin, you get on a list, and he comes after you. It's a concern. And that's why people are afraid to talk. They're not allowed to talk to HR because if it gets back to Deputy Chief Morin, he's going to go and get them." Fogarty mentioned that former Deputy Chief Jimmy Chase "was basically pushed out of that department." She said he resigned as deputy chief and then a few months later, resigned as a special officer, which "is unheard of." She said usually they resign as a special officer when they move far away or age out and "don't want to do it anymore."

Fogarty said that Chase would often not know what was going on in the department because Morin would go around him and go right to the chief. Former Town Manager Goodwin also noted that during the last year of his tenure, there were severe management issues within the department. Goodwin said that Chase eventually retired but that Goodwin felt like Chase was, in fact, forced out.

Former HR Director McKean also noted that many former police officers have left the department due to "a handful of senior managers," saying that the chief "sets the tone" and he's had his issues with various town managers and with the Board of Selectman, and it creates "an 'us versus them' mentality in the police department."

Fogarty explained that, in November 2012, an officer was cited for driving while under the influence. This officer subsequently was terminated as a result; however, in March 2013, another officer left the scene of an accident without a breathalyzer being administered. Fogarty noted that this was the second

issue with alcohol for this particular officer, but that human resources was never informed of the first incident. Fogarty said that members of the Salem PD "are not team players with HR" and that HR "can't get anything from them." She said, "They do not believe they work for the Town of Salem. They do not believe they have to follow our policies." She said the Salem PD was the only department where HR had these types of issues, with Fogarty saying, "We are civilians, and we are basically no good."

Kroll further learned of several instances in which [REDACTED] was the recipient of less severe or no disciplinary action. [REDACTED] had found that [REDACTED] "did do some stuff, but also found that he didn't do some of the accusations." Former Town Manager Hickey included a memo saying that he was "troubled by the outcome of the IA investigation" because he'd spoken with two of the complainants and found them credible.

In his interview with Kroll, Chief Donovan also discredited complaints relative to [REDACTED] based on his own bias against the complainant:

CHIEF DONOVAN: Oh, all right, well yeah, okay, now that makes sense. The [REDACTED] and him don't get along at all. The [REDACTED] -- I had a pile of them here, as you've noticed there's not a single [REDACTED]ere anymore, [REDACTED] was useless, went off at like 20 something years old with a disability, he said he tore his Achilles tendon doing the PT test. I'm 65, I've done that PT test three or four times already, so I got to call BS on that. But the [REDACTED] are typical of your Salem townies and basically yeah, they're always looking for -- they're always looking for something for free or, you know, something to that effect, and they certainly would not be afraid to use him, and that was the other person he talked to, was [REDACTED] -- was -- oh, she's [REDACTED] wife or the other [REDACTED] wife, it was [REDACTED] that went off on the disability.

Goodwin also told Kroll about a prior investigation into then [REDACTED], who allegedly threatened his sister's boyfriend by flashing his firearm at the defendant while in court. [REDACTED] was wearing his Salem PD badge and carrying his department-issued gun at the time. A criminal complaint was filed against [REDACTED] with a northern Massachusetts police department. Goodwin said that Chief Donovan knew about the charges for months, but that Goodwin only found out via an anonymous letter. He said the issue caused tension between Goodwin and the Salem PD because Goodwin believed the underlying activities relating to the charges seemed to be "within the character of that individual involved." However, the chief told Goodwin that "he didn't want to bother [Goodwin] with that stuff."

Goodwin said that, as a result, there was counselling provided to the chief with Goodwin telling him "it was not a bother" but that the chief was, in fact, obligated to tell him. Further, Goodwin noted that [REDACTED] acted completely unprofessionally during this period of time, sending a 10-page letter to the other law enforcement agency, "berating them up and down" and acting "unbecoming of his position, of being a police officer and of his knowledge of the investigative process, he never should

have done that." Goodwin said the chief allegedly provided counselling to [REDACTED], but "the chief would say that he was doing these things, and both HR and I were pretty sure that they would go behind closed doors and be like, 'Yeah, we're not going to do anything about this,' but it was very difficult to ascertain – um – what was really going on over there because they just, they would stonewall us."

Note that Kroll did not conduct an independent investigation as to these charges. Further, Kroll did not receive from the Salem PD or review any documentation related to these alleged counselling sessions. In fact, the only documentation voluntarily provided to Kroll by [REDACTED] related to counselling he received as a result of an incident at a hockey rink – not to the charges of intimidation noted above.

During Kroll's interview, Chief Donovan stated that the criminal charges brought against [REDACTED] were, in fact, compromised as the detective who brought the complaint was doing so only because the complainant was his informant:

MR. LINSKEY: Going to Court involving somebody from your family and tapping your holster twice?

CHIEF DONOVAN: Depends, they said he tapped his holster, he said he pulled his -- his pants up.

MR. LINSKEY: Okay.

CHIEF DONOVAN: Well, you know what, I know what that's like, and you must know what it's like, you're carrying a gun and all this weight, as soon as you stand up the first thing you do, you adjust your gun.

MR. LINSKEY: But you're usually not calling out the defendant's name right as you're doing it.

CHIEF DONOVAN: Yeah, but on the other hand, I'm not the detective doing the warrant, this guy's my snitch.

MR. LINSKEY: I'm not the detective --

CHIEF DONOVAN: You know, that's a little aspect of that that you have to consider as well, the guy that filed the complaint against him was that detective's snitch for drugs.

MR. LINSKEY: Are -- are -- and how do we know that?

CHIEF DONOVAN: I forget how I found out, I think it might have been from my -- my detective, [REDACTED] maybe.

MR. LINSKEY: Did anyone ask the detective if that -- the individual was his informant?

CHIEF DONOVAN: I think we did get that information that's why --

MR. LINSKEY: Did you speak with the Chief of Police to say you had a detective whose doing --

CHIEF DONOVAN: I never talked to -- no, I only talked to his [REDACTED], or whatever his name was.

MR. LINSKEY: Did you have a conversation with him about, hey I'm concerned that your detective brought a criminal complaint against my [REDACTED].

CHIEF DONOVAN: I think the time I talked to him I didn't know that guy was his -- a snitch for him.

MR. LINSKEY: When you found out you weren't concerned enough to say, wait a second, I just want to let you know your guy brought a complaint against one of my officers and he apparently was carrying water for one of his informants.

CHIEF DONOVAN: At that point it was done, I had no reason to go back and talk with him again.

MR. LINSKEY: You wouldn't think that's a big enough issue that the Chief should know about, that his -- he's got a compromised detective?

CHIEF DONOVAN: I don't necessarily think he's got a compromised detective, I think maybe the detective took his snitch's word for it and said, okay well, you know, what -- yeah, we'll do a warrant for this.

The following is an excerpt from Kroll's interview with Chief Donovan, whereas Linskey cites a portion of [REDACTED] letter to Kroll:

MR. LINSKEY: All right. So [REDACTED] gave me this as part of the package, it's --

CHIEF DONOVAN: Which one's that one?

MR. LINSKEY: This is the ice skating rink incident.

CHIEF DONOVAN: Oh, okay yeah, the one --

MR. LINSKEY: Where he got disciplined, and he says I understand you've been ordered -- it's my personal copy -- "I'm attaching my personal copy of my internal affairs investigation, which was removed from my personal file twelve months later, though the IA is outside the request and no longer in existence, I will once again waive my right and provide you with a copy. As you remember the Town Manager Hickey involved himself in the complaint because he had a personal relationship with the Bishop Brady athletic director. Though my due process rights were violated you recall that I waived my rights and did not contest the IA from moving forward. I decided to provide this document for two reasons, first I and SPD have absolutely nothing to hide, second, I heard Lieutenant Linskey tell you that the town manager believes that I am a hot head and a loose cannon and that you protect me. You'll remember that (inaudible at 01:25:27, low audio) the exact same thing about me in 2017 at the meeting we had with her and TM Goodwin. The attached internal investigation are the only IAs that have ever been conducted on me, it's also the only formal complaint ever filed on me. In [REDACTED] board of selectmen meeting TM Dillon stated he received information that he felt supported his decision for the audit, I suspect he was referring to a complaint filed with me by [REDACTED]. As you know I waived my right and allowed the complaint to be sent to New Hampshire Attorney General for review..."

However, Kroll notes that [REDACTED] cannot waive his right to a criminal review by the Attorney General's office. Further, Kroll determined through an interview with [REDACTED] that he had listened to the interview between Kroll and Chief Donovan through the wall that abuts the two offices and the door that opens into a communal shared area. This disregard for private conversations between the chief and those in his office is certainly not keeping with law enforcement best practice or basic ethical behavior.

MR. LINSKEY (reading from [REDACTED] letter): As you know internal investigations are an issue for civil rights violations, criminal misconduct, or policy violations, even if Town Manager Dillon hadn't violated due process rights at the time and even if [REDACTED] had filed a formal complaint with the police department, which to date has not been done, there is no policy violation that exists. You should also know that [REDACTED] has attempted to contact [REDACTED] I'm assuming that's his --

CHIEF DONOVAN: It's his --

MS. SHANAHAN: That's the girlfriend.

MR. LINSKEY: -- girlfriend? -- "Three times, once by telephone the day after the incident and twice by text since the announcement of the audit. [REDACTED] has informed [REDACTED] that any form of communication from her is unwelcome and has requested further communication to cease. [REDACTED] has kept all the attempts of contact clearly on an attempt to excite and cause discomfort and anxiety." So, that's kind of a letter he -- I don't know if you saw that when he put it in the packet.

CHIEF DONOVAN: Yeah, he slapped it on the cover --

MR. LINSKEY: Okay.

CHIEF DONOVAN: -- of the package.

MR. LINSKEY: So -- and just first go to, "I overheard Lieutenant Linskey tell you that the town manager believes that I am a hot head and loose cannon and that you protect me." Do I -- I don't have a recollection of using those exact words; do you remember -- recall that?

CHIEF DONOVAN: You told me?

MR. LINSKEY: That I told you that?

CHIEF DONOVAN: I don't remember either.

MR. LINSKEY: I know we had some discussion about --

CHIEF DONOVAN: Was it --

MR. LINSKEY: -- that clearly he's had some concerns that I've raised.

CHIEF DONOVAN: Well how many times have we all sat together?

MR. LINSKEY: Once.

CHIEF DONOVAN: Once.

MR. LINSKEY: In this office.

CHIEF DONOVAN: It would have been -- no him with [REDACTED] too; was he with us at all?

MR. LINSKEY: No, --

CHIEF DONOVAN: Then how would --

MR. LINSKEY: -- you and I have met -- you and I have met twice, --

CHIEF DONOVAN: Yeah.

MR. LINSKEY: -- once in the town manager's office with [REDACTED], --

CHIEF DONOVAN: Yeah, and once here.

MR. LINSKEY: -- and once here.

CHIEF DONOVAN: Yeah, no, I don't know why -- what he's referring to on that one then. What was it; what did it say? He said he overheard, I -- I don't know where he would have overheard it.

MR. LINSKEY: Where does he -- his office sit?

CHIEF DONOVAN: Oh, he's right over there, he's the next office over, but --

MR. LINSKEY: Is it -- I mean, you and I had a normal conversational tone; right?

CHIEF DONOVAN: Yeah, he --

MR. LINSKEY: We weren't --

CHIEF DONOVAN: I don't think -- I mean [REDACTED] put that up there because that was a door at one time, but they insulated it well enough, I think, between that and all the books I have there it should not be -- I mean, I've had plenty of confid -- confidential basically with people here and never had anybody hear it.

MR. LINSKEY: Okay. I -- I mean I don't recall him being in the office and I --

CHIEF DONOVAN: No, I don't think so.

MR. LINSKEY: -- I certainly don't think we had a heated conversation that could be heard through the walls, and I don't recall those exact words, I know clearly -- I think you and I discussed that some of the reasons were the recent complaint by [REDACTED] against the lieutenant and that he was concerned it might not have been handled appropriately. I don't think I --

CHIEF DONOVAN: Yeah.

MR. LINSKEY: -- referred to him as a hot head or those words.

CHIEF DONOVAN: I mean, I don't know where he would have heard that from either unless that was -- I mean, she used to say that about him all the time, you know, they were like oil and water, those two didn't get along and --

[REDACTED] also had the following to say regarding listening to Kroll's interview of Chief Donovan:

[REDACTED]: That's my little gift to Chris Dillon.
MR. LINSKEY: There you go. You decided to provide this document for two reasons, first, I and the SPD have absolutely nothing to hide, secondly, I overheard Lieutenant Linskey tell you that the town manager believes that I'm a hothead and a loose cannon and that you protect me. You remember that former HR Director Molly McKinnon said the exact same thing about me in 2017 in a meeting you had with her and T.M. Goodwin. The attached internal affairs investigation is the only IA has ever been conducted on me, All right, so are you clear on what I said to the Chief?

[REDACTED]: Yeah.

MR. LINSKEY: And you heard it --

[REDACTED]: Through the walls, they're thin.

MR. LINSKEY: Through the walls, while I was having a meeting with the Chief?

[REDACTED]: Uh-huh.

MR. LINSKEY: In an un-elevated voice you were able to hear my conversation with the Chief?

[REDACTED]: Oh yeah, I heard your whole conversation in there today too.

MR. LINSKEY: And that was the exact phrasing?

[REDACTED]: Yeah.

MR. LINSKEY: Okay. I -- I don't remember it exactly like that, I remember saying to him well, you know, I think there is some issues and concerns and tensions with the [REDACTED] [REDACTED] and him and he thinks there's something to look at there. I don't remember calling you a hothead or a loose cannon.

[REDACTED]: No, you didn't call me a hothead and loose cannon, Chris has told you that I'm -- that's exactly what Molly McCain, let's just say the town is better off without her --

MR. LINSKEY: Okay.

Former HR Director McKean also mentioned the IA investigation involving [REDACTED] being investigated criminally by the northern Massachusetts police department [same instance as noted above], saying that Town Hall only learned of the charges through an anonymous letter received a couple months after the Salem PD was informed. She said, "I have real concerns about the fact that we kept an officer under criminal investigation, we kept him working – um – because we were unaware that the investigation even existed. Not something the chief felt that he needed to notify the town manager." McKean said had she known that a police officer was being charged with "assault by means of dangerous weapon," she said she "would have contacted our outside counsel. I likely would have at least put the officer on a paid administrative leave – you know – pending looking into what the charges were." She said, "But the idea that we didn't know about it for months, that the chief didn't feel the need to share the information, and that, we just had this officer working as usual – um – that was a real problem for me." McKean said the fact that the chief unwittingly didn't investigate the charges "absolutely" would have increased the town's liability, and that "When the town manager and I explained to the police chief why that was a problem, it...seemed to go right over his head. He did not understand that. He sees the department as separate from the town."

McKean said that relative to [REDACTED], "He is the only officer in that department where he seemed to be the common denominator in a lot of problems and – um – I – this issue in northern Massachusetts was kind-of the icing on the cake for me that there have been – you know – years of receiving kind-of low grade or mid-level grade complaints against him and nothing ever seems to stick. He always has an excuse. The chief certainly had his back and – um – he seems to have just skated along. Now the difficult thing is that [REDACTED] is well-trained and very bright – um – and certainly he is capable of spinning things, and I think he does that. He also very competent at his job, so if you need paperwork, he gets it done unless he doesn't think you're entitled to it and then he stonewalls you for months."

Concerning Behavior

Regarding citizen complaints, Fogarty told Kroll she would contact the police department but would get no assistance, would be told it was outside her purview and told to "butt out." She said that the Salem PD "would be pretty disrespectful to Molly [McKean] even if it were something as simple as a dog license. If they don't agree with you, you're called a piece of shit or incompetent."

Chief Donovan's feelings towards McKean were noted in his interview with Kroll when he stated:

MR. LINSKEY: She is --

MS. SHANAHAN: She, the HR?

CHIEF DONOVAN: Being the HR person.

MR. LINSKEY: HR Director, okay.

CHIEF DONOVAN: I mean, when it comes down to skill level I'd give him a hundred, I'd give her about a forty.

MR. LINSKEY: Okay.

CHIEF DONOVAN: She was terrible, for an attorney and for an HR person, she didn't know much about either. Keith Hickey used to actually come to me to do his HR stuff because she was terrible.

Fogarty said the Town has never had such an adversarial relationship with the police department as they have had for the last year or so. She said, "I've always been able to – you know – ask questions. Um, with the former deputy chief, I've a very good relationship. Actually, you know, the three previous. It was, you know, if I didn't understand something, I could ask a question, and if I – you know – even pushed back, it wasn't that big of a deal. You know, they could explain it and that kind of stuff. Um, I don't feel that I can do that as much anymore. Um, they can come across very intimidating. If you don't agree with them, it's like a bulldog gnawing at your ankle. Um, you just – people just – seem to like to give up because it's easier to just not deal with it." She further said, "The lack of respect to other people is huge. Um, we all work for the same employer. We should be a team. I, you know, and it's not just HR that feels the same way. It's – you know – Finance. Um, and the problem is a lot of people are afraid to talk."

McKean told Kroll that when she turned over documents relative to an officer's Worker's Compensation claim to the town's defense counsel in a privileged manner, she "took it on the chin from the current chief and current deputy chief for that." Specifically, the chief and deputy chief were [REDACTED] [REDACTED] McKean via email, [REDACTED] saying she didn't know the law. McKean said she did not make a formal complaint because she was leaving her position, and the town manager was switching, and "honestly any complaint about the police department really went nowhere."

McKean said that she did not believe that the police department's approach to handling citizen complaints was "welcoming or open," as they require citizens to sign under the penalty of perjury, which she thought "had a chilling effect." She was also told on more than one occasion by citizens that complaints submitted to the police department "seemed to be completely ignored or they were ridiculed for filing complaints."

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Fogarty said the culture at the Salem PD "is not accepting of people that are injured or trying to get them back...especially if they don't like you." Fogarty said, "I know if [REDACTED] worked for the Fire Department [REDACTED] would have come back to work and [REDACTED] would still be working...It's [Salem PD] not a nice place to work. The culture – If you're not on the good list, then the culture can be very bad for people." She said, "It's like if you get injured, just go away and you're not our problem anymore."

Fogarty further noted concerns regarding the process of onboarding new Salem PD personnel. She said that in the past, there was a formal hiring process, whereby "if they're hiring new employees, there's a physical agility, a written test, they go through the oral board." She said that recently the department had stopped this process and had hired personnel without going through the formal process, including one recent hire who is "a best friend of a newly hired employee." She also noted that the department was "only hiring white, single, young men and not being very diverse" with the department only having one Hispanic and two female officers. She further noted that a relative of a current officer was recently hired over two other certified officers.

Fogarty said the Salem PD doesn't care if the town gets sued. She also noted that some of the social media posts by members of the department have appeared to be racial in nature. She said McKean

reached out regarding a post made by [REDACTED] and was successful in getting it pulled down. Further, according to Goodwin, [REDACTED] made postings on Facebook regarding Muslim individuals that Goodwin and human resources found to be "completely inappropriate" and almost "equivalent to hate speech." Goodwin said the chief, again, counselled [REDACTED] about taking down the posts, but that [REDACTED] "called up the HR director and threatened her and told her to stay out of his business." The chief, again, claimed that he counselled the [REDACTED] and told him to have no further communication with the HR director. Kroll has not independently corroborated the occurrence of these counselling sessions.

Kroll asked McKean if she'd ever heard the phrase that taking citizen complaints "was the pussification of America." She said that [REDACTED] said that directly to her, and that she got used to that type of language from "this particular officer." McKean did acknowledge that this type of language was not consistently used by other members of the Salem PD, and that within other town departments, this type of language could result in disciplinary action. She said that if she reported conduct like that by an officer to, for example, the fire chief, "I have no doubt that the fire chief would have taken action at a minimum of strongly worded verbal counselling with respect to the employee."

Kroll also learned from McKean that [REDACTED] has posted "numerous times on Facebook things that were of questionable taste including statements that were sexist, statements that were racist – um – statements that, you know, overall, and I recognize that employees in New Hampshire very broad free speech rights, ah, however, with respect to police officers, I think statements that marginalize one particular ethnic group – um – are absolutely inappropriate especially where it's in a broad social media setting where, you know, anyone can find it." She said that "[REDACTED] was not only dumb enough to friend the HR director, he was dumb enough to ignore me when I would call him and say 'You gotta take this down. Um, you can't be saying stuff like this.' The chief took no action whatsoever with those Facebook posts." The posts were primarily on [REDACTED] own personal account, which is blocked from public view, but he does identify as a Salem police officer on his personal account. He is also quite active on the Salem resident page, where "he would post things that would make me cringe."

The following text messages were provided to Kroll by a member of law enforcement who feared retaliation if identified. Kroll notes that this individual is an active duty member of law enforcement. Kroll was not tasked with validating these reports.

Specific threats made to McKean by [REDACTED] included, [REDACTED]
[REDACTED] McKean said he was [REDACTED]
[REDACTED] and there is quite simply a lack of cooperation between the police department and the town, which could expose the town to liability, and I think [REDACTED]
[REDACTED], and the efforts to stop someone like me from turning over legitimate documents to our own counsel – um – you know, to me, it was an untenable situation." She further said that the [REDACTED] Any complaint she made to the [REDACTED], and he'd call her and yell. She called it "an absolutely pointless endeavour to secure any support from the [REDACTED] on this front." McKean said she had a good relationship with the former [REDACTED], but that [REDACTED] "despite "some good efforts." [REDACTED]
[REDACTED]

**Version of T&A Audit Released on
April 26, 2019 After Superior
Court's April 5 and 22, 2019 Orders**



September 19, 2018

Report of Audit

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1. Introduction & Scope of Investigation

Introduction

Kroll was engaged by the law firm, Drummond & Woodsum, on behalf of the Town of Salem, New Hampshire, to audit the operations and efficiencies of the Salem, New Hampshire Police Department ("SPD"), namely related to the following:

- time and attendance practices of personnel within the SPD, and
- internal affairs investigative practices within the SPD.

Kroll has separated these tasks into two reports, with this report focusing on the SPD's time and attendance practices. The Salem Police Department has 79 personnel of which 63 are sworn. They operate several shifts over 24-hour periods 365 days a year. Their schedules and time off procedures are set by contract. There has been what was described to Kroll as a high turnover rate in the past few years. There have been 18 line of duty related disability retirements in recent years compared to one line of duty disability retirement in the fire department during that same time period.

Key Personnel

Mark Broth

Mark Broth is an attorney with Drummond Woodsum's Labor and Employment Group. His practice "focuses on the representation of private and public employers in all aspects of the employer-employee relationship."¹ He is currently representing the Town of Salem, New Hampshire in this investigation.

Chris Dillon

Chris Dillon was appointed as Town Manager of Salem, New Hampshire on August 7, 2017, replacing outgoing Town Manager Leon Goodwin. As Town Manager, Dillon "works to oversee the day-to-day operations of Salem and will work with the five-member Board of Selectmen."²

¹ <http://www.dwmlaw.com/PROFESSIONAL?id=6>

² "Dillon tapped as new Salem town manager," *New Hampshire Union Leader*, September 7, 2017.

Chief Paul Donovan

Paul Donovan was appointed as chief of the SPD in 2001 following 20 years as an officer with the Hartford, Connecticut Police Department.³

Deputy Chief Robert Morin

Robert Morin was promoted from captain to deputy chief. Deputy Chief Morin also serves as union president representing lieutenants and those above the title of lieutenant.

Captain Joel Dolan

Joel Dolan was promoted to captain in January 2016.

Captain Michael Wagner

Michael Wagner is a captain with SPD.

Sergeant Michael Verrocchi

Michael Verrocchi was promoted to sergeant in March 2016. Sergeant Verrocchi is union president for sworn personnel ranging from patrol officers to lieutenants.

Keith Hickey

Keith Hickey served as town manager of Salem, New Hampshire from 2010 to 2015.

Leon Goodwin

Leon Goodwin served as Salem, New Hampshire assistant town manager from October 2013 to December 2015 and then became town manager in December 2015. He served in this role until January 1, 2018. Goodwin is currently a foreign service officer with the U.S. State Department.

Anne Fogarty

Anne Fogarty has served as human resources director for the Town of Salem, New Hampshire since December 2017. She previously served as benefits administrator for the town.

Molly McKean

Molly McKean previously served as human resources director for the Town of Salem, New Hampshire. She left this position in December 2017. She is an employment lawyer by training and is currently employed at Saint Anselm's College as executive director of human resources.

³ "Chief Donovan Says Salem Police 'Prepared and Capable' for Casino," *Salem Patch*, April 17, 2013.

Background

Attorney Broth, as well as Town Manager Dillon, informed Kroll that they had received informal complaints from individuals over the years stating that the time and attendance program at SPD had some issues in how it was being overseen and implemented. There were reports to the town manager that there appeared to be several instances of individuals who were on vacation or engaged in personal matters while they were on the payroll records as being paid for working their regular shifts. Three separate social media postings showed employees outside of the country or state while payroll records showed they received their regular pay.

SPD maintains a police secondary employment system "Detail System", where off duty SPD officers can be hired by private companies and individuals to perform a myriad of security and other functions through the City of Salem Police Department. These assignments are voluntary assignments such as working off hours at a bar or a night club to assist with security, directing traffic around a construction, or overseeing security at an amusement park. In addition to the regular work schedule, opportunities exist for fellow officers to cover both other shifts and/or sick/ vacation time. Some of these assignments can be made mandatory if there are no volunteers. Once a week the time clerk at SPD gathers all the known detail and other potential shifts assignments for the upcoming week and lists them on an assignment schedule. The list is then divided by the number of officers to determine how many extra duty hour assignments are available to the officers if they want to fill them during off hours. Once the number of hours is determined the schedule is then sent to the Chief (senior person) for his review. The Chief picks any assignments he wants up to the number of hours available to him. If the number of average hours available to him is 20 he can pick up to the number of hours in any fashion he decides i.e.: Five (4) hour details, or two (8) hour details and one (4) hour detail. After the Chief has selected what assignments he wants, the schedule is sent to the Deputy Chief to repeat the process and it continues down through the personnel based on seniority. After everyone has made their selection, if there are jobs still remaining, then the list goes back through the same process. The officers work for the customer as needed as Salem Police officers with full jurisdiction and authority to enforce the law. The department collects the payment and pays the officers after deducting an administrative fee. The town also receives the benefit of having private vendors supplement their patrol shifts as detail officers can be required to respond to concerns unrelated to their off-duty assignment if needed.

Kroll's Investigative Team

Kroll's primary investigative team was led by the following professionals:

Managing Director Daniel Linskey (“Linskey”)

Linskey is a former superintendent-in-chief of the Boston Police Department and a 27-year veteran of the force. He notably led the Boston Police Department through some of the most tragic and contentious events in the city's history, including the Boston Marathon bombings and the Occupy Movement.

As a managing director at Kroll, Linskey serves clients in diverse industries with internal investigations, crisis response measures and risk management, as well as personal, physical and operational security strategies. He leads Kroll's worldwide law enforcement consulting practice. Widely respected for his knowledge of the complexities inherent in law enforcement and homeland security, Linskey has also consulted with several national and international government agencies on a broad range of challenges, including large-scale event management, crisis leadership and preparedness, and community engagement strategies.

Linskey was a member of the United States Department of Justice's team requested by the St. Louis County Police Department to respond to Ferguson, Missouri after the officer-involved shooting of Darrin Wilson. While there, the team conducted a collaborative review of the department. Linskey co-authored the report *Collaborative Reform Initiative an Assessment of the St. Louis County Police Department* (<https://ric-zai-inc.com/Publications/cops-p316-pub.pdf>).

Linskey also has extensive experience developing and conducting law enforcement training to line level officers, first line supervisors, speciality units and senior leaders of agencies. He has provided training to numerous law enforcement personnel from across the globe through the U.S. State Department's ATA Program.

Managing Director Katy Shanahan (“Shanahan”)

Since joining Kroll in 2006, Shanahan has worked on, and currently manages, a variety of complex multijurisdictional investigations on behalf of clients in diverse sectors, including large-scale due diligence assignments in support of IPOs and other transactional dealings, asset searches, investigations of employee fraud and misconduct, and theft of intellectual property. Her efforts support her clients' needs in crisis management, litigation support and corporate contests. Additionally, she has significant experience in both cyber security and physical and operational security casework. Prior to joining Kroll, Shanahan was an investigator with the U.S. Department of Labor's Office of Labor-Management Standards. There, she helped promote labor union and labor-management transparency through the enforcement of reporting and disclosure requirements for unions and their officials, employers, labor relations consultants and surety companies.

Managing Director John Slavek (“Slavek”)

John Slavek is a managing director in Kroll's Philadelphia office. Since joining Kroll in 1998, John has assisted clients confront a wide range of finance and accounting issues, including corporate fraud, embezzlement, business income losses, bankruptcy, contractual disputes and internal control evaluation. He also has extensive experience working on due diligence projects, investigating financial statement manipulation, and quantifying potential lost profits. He is a Certified Public Accountant licensed in the State of Pennsylvania and has also received the Certified in Financial Forensics designation from the AICPA. John has testified as an expert witness on numerous issues involving fraudulent financial reporting, improper accounting, lost profits, and violations of a non-compete agreement, and internal control weakness related to embezzlement at venues in Pennsylvania, New York, Ohio, Illinois, California, and Maryland. Prior to joining Kroll, John spent four years at a Big Four accounting firm as both a forensic financial investigator and an auditor.

Associate Director Jordan Lazarus (“Lazarus”)

Jordan Lazarus is an associate director in Kroll's Philadelphia office. His experience includes investigations of financial misconduct as well as the reconstruction of accounting transactions. During his time with Kroll, Jordan has focused his attention heavily on detailed forensic accounting matters, investigations dealing with possible FCPA violations and the drafting of expert reports dealing with these matters. Jordan is also a Certificated Public Accountant as well as a Certified Fraud Examiner.

Scope of Investigation

Kroll's efforts included the following:

- Meeting with Attorney Broth, Town Manager Dillon, Deputy Chief Morin, Captain Dolan and Captain Wagner to develop an audit plan and gather information concerning the time and attendance program, as well as potential areas for review.
 - The meeting was intended to include Attorney Broth, Town Manager Dillon, Kroll and Chief Donovan; however, the chief was out of work on a personal matter when the meeting occurred. His absence was unknown by Kroll or the others when the meeting was scheduled.
- Requested department-related policies and procedures, as well as CBA documents.
- Requested payroll records for three years.
- Requested master schedules, supplement assignment schedules, payroll records.
- Requested detail slips.
- Conducted interviews of the following:
 - Chief Donovan
 - Deputy Chief Morin (Union President)
 - Captain Dolan
 - Captain Wagner
 - Sergeant Verrocchi (Union president)
 - Individuals who contacted Kroll after learning of Kroll's involvement in the audit and who had expressed concerns to the Town Manager and others regarding time and attendance issues at the SPD
 - Town Manager Dillon
 - Former Town Manager Keith Hickey
 - Former Town Manager Leon Goodwin
 - Former Human Resources Director Molly McKean
 - Sharon Savage Time and Attendance Manager
 - Sandra Bohne back up Time and Attendance
 - Basil Chingros Administrative Officer
- Reviewed payroll records for one year⁴.
- Reviewed department policies and procedures, as well as CBA documents.

⁴ Due to the large volume of records a decision was made to look at one year of data to determine if any evidence of the described issues were present.

- Reviewed master schedules, supplement assignment schedules, payroll records.
- Reviewed detail slips.
- Reviewed social media posts of reported conflicts.
- Kroll developed a database to input all of the time and attendance information into along with the accompanying shift assignments and CBA requirement rules. The payroll information was analyzed to see if there were any inconsistencies in the reported data that indicated that a person was not paid correctly.
 - Initial analysis was conducted on all the supervisors who due to their assignments have the greatest ability to change their schedule and therefore more likely to have conflicts with the payroll information.
 - A secondary analysis was conducted on the top earning patrol officers.

2. Review Time & Attendance Data

Kroll was retained by the Town of Salem, New Hampshire ("Salem" or the "Town") to conduct a forensic accounting audit of the daily operations and staffing at the Salem Police Department ("SPD"). More specifically, the Town had become aware of allegations that employees of the SPD were working Outside Details that overlapped with their normally scheduled shifts. An Outside Detail is a patrol shift worked by a SPD officer that is requested by a third party and should be worked outside of an officer's regularly scheduled shift. For example, if the local shopping mall would like an officer to patrol the property, the mall operator would submit a Salem Police Detail Request which would formally acknowledge the request for a SPD officer to work an Outside Detail. The officer would then submit a Salem NH Police Detail Voucher to the SPD to allow for payment to the officer. Per SPD regulations, an Outside Detail shift is a four-hour minimum, even if the third party needs the officer for less than four hours.

After discussions with Town personnel, Kroll focused its initial analysis on the 2017 calendar year. This limited scope allowed Kroll to preliminarily confirm or disprove the allegations brought to the Town's attention. Kroll's understanding of Outside Details, and how they are conducted, is based upon discussions with Town personnel and a review of SPD policies and procedures.

In order to perform our analysis, the Town and SPD provided both electronic and paper records requested by Kroll.

Listed below is a summary of the key files reviewed by Kroll.

1. 2017 REMOTE ENTRY EDIT FOR REG and OD: An Excel file which contained both payroll and Outside Detail data from January 1, 2017 through December 31, 2017. This file included data on a daily basis as well as the Shift Code worked by each officer. The Shift Code identifies the eight-hour time period worked (Shift 1, 12am – 8am; Shift 2, 8am – 4pm; and Shift 3, 4pm – 12am).
2. AR Customer Edit: A PDF file which listed the name of the Outside Detail vendor, the officer who worked the detail, and the number of hours worked. This file did not contain the hourly rate or amount paid to each officer for their Outside Detail shifts.
3. Salem NH Police Detail Voucher: Kroll understands that in order to be paid for their Outside Detail shifts, these paper slips are submitted by SPD officers to the police department's finance personnel. These slips include the vendor name, location of the Outside Detail, officer name, and the hours and date worked.

4. 2015 through 2017 Salem Police Outside Detail Wages: Three Excel files that included the name of the SPD officer, check date, the number of Outside Detail hours worked, and the gross and net amounts paid by the Town.
5. Various vendor documentation: Kroll reviewed various paper-based supporting documentation from third parties who requested Outside Details. These documents included the name of the third party, the date and times the SPD officer worked the detail, and the names and signatures of the officer and third-party supervisor(s) who were on site during the Outside Detail.
6. Various shift scheduling documents ("SPD Schedule"): Kroll understands that Basil Chingros, the SPD Scheduling Maintenance Officer, is responsible for creating the weekly schedules analyzed. Kroll used these scheduling documents to determine what Outside Detail shifts were assigned to specific SPD officers.

For each Outside Detail shift included within the payroll data, Kroll identified the applicable vendor. This was accomplished by using unique data points, such as the name of the SPD officer and the date and number of hours worked, to look up the corresponding vendor name within the "AR Customer Edit" file.

As the hourly rate was included in a separate data set, Kroll imported these rates into the master database in order to calculate the amount received for each Outside Detail shift. During the analysis, Kroll identified SPD officers who were paid different hourly rates when working Outside Detail shifts. In these situations, Kroll used the hourly rate that was the most prevalent for each officer. A summary of the hourly rates for each SPD officer discussed in this memorandum is below.

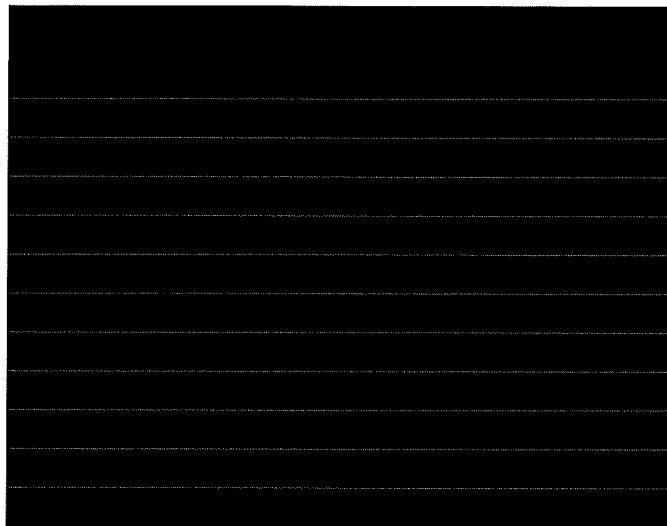
Per SPD regulations, if a third party would like to hire an officer for an Outside Detail for less than four hours, the third party must still reimburse the Police Department as if the officer worked a minimum of four hours. As such, if Kroll noted that an officer worked an Outside Detail of less than four hours, the amount of money they received was calculated as if the officer had worked the minimum of four hours.

Based on discussions with the Town, Kroll selected an initial population of 15 [REDACTED] SPD officers whose Outside Detail shifts would be analyzed. Our analysis identified that 12 of the 15 had potential overlapping Outside Details.

Kroll also sampled a population of lower-ranked SPD officers in an attempt to identify potential instances of overlapping hours. For this analysis, Kroll identified six SPD employees who accounted for approximately 33.1% of the remaining Outside Detail hours.

Using the paper records provided by the Town and SPD, Kroll created a database that included the start and end times for each Outside Detail worked by the 15 officers included in the original sample.

Kroll also entered the start and end times for the Outside Details of the six SPD officers included in the supplemental sample into the database. Below is a table of the 12 officers who had potential overlapping Outside Detail and their hourly pay rates.



Kroll analyzed the data to determine if overlaps existed between the regularly assigned and Outside Detail shifts. One of the major assumptions underpinning the analysis was that the Shift Codes included within the payroll data were correct. Kroll's current understanding is that there is no log book or clock in/out system used by the SPD to track the actual times worked by SPD officers and as such, Kroll have relied upon these Shift Codes. However, Kroll has made the assumption that the original Shift Codes for [REDACTED] [REDACTED] included within the payroll data were incorrect.

During the analysis, Kroll identified that approximately 50.0% of the Shift Codes related to these four officers were "1" which indicated a shift of 12:00am to 8:00am. In addition, approximately 25.0% of the payroll data entries for these four officers appear to be "block billed". For instance, instead of daily payroll entries of 7.5 hours for each of the five days worked, a lump sum of 37.5 hours was inputted via a single line item.⁵ This type of entry limited Kroll's ability to determine what Shift Code and hours were actually worked. Based on these limitations, the Town advised Kroll that the normally scheduled shifts for [REDACTED] [REDACTED] were from 8:00am to 4:00pm, Monday through Friday. Should records or data be provided that refutes this assumption, Kroll's analysis may need to be updated.

Of the 12 [REDACTED] SPD officers, Kroll identified approximately 103 instances (**Exhibit A-1**) where the possibility of overlapping hours existed. As shown in the table below, 36 or approximately 35.0% of all flagged transactions relate [REDACTED]. For the six lower-ranked SPD officers included within Kroll's supplemental sample, Kroll identified 11 transactions where the possibility of

⁵ While it appears that the Town payroll system shows payroll entries as 7.5 hours, Kroll understands that SPD officers work 8-hour shifts.

overlapping hours existed. Of those 11, eight transactions relate to Officer [REDACTED] while the remaining three relate to [REDACTED]. [REDACTED] had the largest number of Outside Detail hours for 2017 (1,043.00) and [REDACTED] had the third highest number of hours (828.50). The table below shows the number of possible overlapping instances of the 12 officers identified.



In our analysis which is discussed below, at least one occurrence is described, per officer, where Kroll identified overlapping hours. We have also created a graphical representation of a sample of the overlapping hours, located at **Exhibit A-2**, to aid in the understanding of our narrative.

While analyzing the payroll data, Kroll identified 22 Outside Details where the name of the third party who requested the Outside Detail (**Exhibit B**) could not be identified. Listed below are several characteristics identified by Kroll that relate to these 22 Outside Details. Kroll believes that a further inquiry with the Town and the SPD's payroll department to determine the reason for these gaps in data may be warranted.

1. 12 of the 22 Outside Details occurred on a Friday, with the remaining 10 occurring on a Saturday;
2. The Outside Details span from June 9 to September 29, 2017; and
3. 11 of the 22 Outside Details were worked by [REDACTED], a Patrol Officer within the SPD.

In addition to the allegations surrounding the overlap of Outside Details and regular shifts, the Town became aware of suspicions raised regarding social media posts made by three SPD employees. Specifically, the Town believed that these employees were getting paid for working their regular shifts even though Facebook posts appeared to indicate that each were on vacation during these times. Kroll analyzed the Facebook posts in question in addition to other social media posts made regarding these three employees. The results of the initial analysis are presented below, along with clarifying findings that occurred after interviews were conducted.

[REDACTED]

Kroll Daily #6263 & 6264

On Thursday, January 12, 2017, [REDACTED] worked an Outside Detail for Asplundh Tree where he provided traffic control. The invoice (**Schedule 1 - [REDACTED], page 3**), signed by [REDACTED] and an Asplundh Tree foreman and arborist, stated that [REDACTED] worked from 7:00am to 4:00pm, a nine-hour shift. This shift is supported by the SPD Schedule showing that [REDACTED] was scheduled to work an Outside Detail from 7:00am to 3:00pm. Based on Kroll's understanding of [REDACTED] regularly scheduled shift, an overlap of eight hours occurred from 8:00am to 4:00pm. As [REDACTED] Outside Detail hourly rate is \$51.00, it appears that he was overpaid by \$408.00 (8 x \$51.00).

Kroll Daily #6323, 6324, 6325, & 6326

On Monday, June 26, 2017 [REDACTED] worked an Outside Detail for Asplundh Tree where he provided traffic control. The invoice (**Schedule 1 - [REDACTED], page 6**), signed by [REDACTED] and an Asplundh Tree foreman and arborist, stated that [REDACTED] worked from 7:00am to 4:00pm, a shift of nine hours. Based on Kroll's understanding of [REDACTED] regularly scheduled shift, an overlap of eight hours occurred from 8:00am to 4:00pm. As [REDACTED] Outside Detail hourly rate is \$51.00, it appears that he was overpaid by \$408.00 (8 x \$51.00).

On Tuesday, June 27 [REDACTED] worked an Outside Detail at Canobie Lake Park. The invoice (**Schedule 1 - [REDACTED], page 7**), signed by [REDACTED] and a Canobie Lake Park representative, stated that [REDACTED] worked from 10:00am to 4:00pm, a shift of six hours. Based on Kroll's understanding of [REDACTED] regularly scheduled shift, an overlap of six hours occurred from 10:00am to 4:00pm. As [REDACTED] Outside Detail hourly rate is \$51.00, it appears that he was overpaid by \$306.00 (6 x \$51.00).

On Thursday, June 29, [REDACTED] worked an Outside Detail at Canobie Lake Park. The invoice (**Schedule 1 - [REDACTED], page 8**), signed by [REDACTED] and a [REDACTED] representative, stated that [REDACTED] worked from 10:00am to 4:00pm, a shift of six hours. Based on Kroll's understanding of [REDACTED] regularly scheduled shift, an overlap of six hours occurred from 10:00am to 4:00pm. As [REDACTED] Outside Detail hourly rate is \$51.00, it appears that he was overpaid by \$306.00 (6 x \$51.00).

Interview of [REDACTED]

[REDACTED]

[REDACTED]

A series of horizontal black bars of varying lengths, arranged vertically. The bars are of different widths and heights, creating a pattern of alternating short and long segments.

A series of horizontal black bars of varying lengths, arranged vertically. The bars are solid black and have irregular, slightly jagged edges. They are set against a plain white background.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In total, it appears that 36 of the Outside Detail assignment hours overlap with the [REDACTED] regularly scheduled shifts. There were no notices that [REDACTED] was taking a vacation day or other contractual benefit day for any of these dates. On these occasions, [REDACTED] worked outside work details during what everyone else would consider his normal work hours. In some instances, [REDACTED] worked two or three Outside Details during a single week. He worked no details on a Saturday or a Sunday or after or before regular work hours.

[REDACTED]

Kroll Daily #5908

On Wednesday, October 4, [REDACTED] worked two Outside Details that appear to overlap with each other. From 8:00am to 12:00pm, [REDACTED] worked a four hour Outside Detail at Apple Computer. This shift is supported by a Salem NH Police Detail Voucher (**Schedule 2 - [REDACTED]**, page 4) submitted by [REDACTED]. Kroll notes that the voucher has a handwritten notation of "Late cancel". The cancellation time of the Outside Detail is unknown. On the same day, [REDACTED] worked another Outside Detail shift for Comcast from 10:00am to 1:00pm (**Schedule 2 - [REDACTED]**, page 5). This Outside Detail is supported by a Comcast Police Detail slip that was signed by a Comcast technician. As previously noted, although this shift was only three hours, [REDACTED] would have been paid for the minimum four hours. Although the Apple Computer Outside Detail was cancelled, and may have eliminated the overlapping hours, the SPD Schedule still indicates that if both details were worked, overlapping hours would have occurred. In addition to working two Outside Details that contained overlapping hours, Kroll believes that these two shifts overlapped with [REDACTED] regularly assigned shift of 8:00am to 4:00pm. Based on [REDACTED] Outside Detail hourly rate of \$51.00, it appears that he was overpaid by \$408.00 (4 x \$51.00 + 4 x \$51.00).

Interview of [REDACTED]

MR. LINSKEY: For you specifically, [REDACTED] it is – there's twenty-five instances.

[REDACTED]: Okay.

MR. LINSKEY: Just plugged, I think they put one together as a sample for me. So this is -- it looks like [REDACTED] you're doing 10 to -- to 10 a.m. to 10 p.m., number of hours four. [REDACTED] 8 a.m. to 12 p.m., number of hours four.

[REDACTED]: On the same day?

MR. LINSKEY: And then -- That's -- that's what it's showing. And then -- so 10a to 10p, but only four, which that could just very well be -- oh no, I'm sorry 10a to -- I'm sorry, my glasses, 10a to 1p for four hours and at the same time you had an 8 to 12, and this is -- what date is that, 10/04/2017, now, I got the things down here I think. It shows you working inside 8 to 12 and this is [REDACTED]; is this cancelled?

[REDACTED]: Late cancel.

MR. LINSKEY: Okay. So, --

[REDACTED]: So I never worked it.

MR. LINSKEY: You might have not even shown up but --

[REDACTED]: But I was probably going --

MR. LINSKEY: -- you were on your way there.

[REDACTED]: -- I was probably going that day and they didn't need -- they didn't need me.

MR. LINSKEY: So they -- they filled that 8 to 12, --

[REDACTED]: Yup.

MR. LINSKEY: -- they gave you four hours, --

[REDACTED]: Yup.

MR. LINSKEY: -- so that shows up.

[REDACTED]: Yup.

MR. LINSKEY: You said all right, well I'm up, let me do a detail while I'm here, you call up; Basil is it?

[REDACTED]: No, he probably would have called me.

MR. LINSKEY: Okay.

[REDACTED]: Or I came in.

MR. LINSKEY: In -- in any event, you wouldn't have -- you wouldn't have had this detail prior to that detail, you couldn't --

[REDACTED]: No, I wouldn't -- it wouldn't end up --

MR. LINSKEY: -- taken details that overlap.

[REDACTED]: No.

MR. LINSKEY: Okay. There was a lieutenant --

[REDACTED]: Because they're -- on -- on that one, and I'll go back to that, [REDACTED] hires us, it -- it's a shit show over there [REDACTED], so they'll hire us ahead of time and they'll be all right, we need six guys, and they'll just go and then as the crowds lessen they lessen their hiring.

MR. LINSKEY: Yup.

[REDACTED]: So it could be we could have shown up and there was no line and they're like we don't need these guys and as the senior guy I'm -- I'm leaving because I'm there and I'm getting --

MR. LINSKEY: Yup.

[REDACTED]: -- I'm getting my hours, and then we'll keep some there, but I wouldn't be -- I wouldn't be needed.

MR. LINSKEY: Okay. And then this, you did 10 to 1, so the [REDACTED] you never even showed up at, so that's a -- that's an administrative thing and, you know, I think a lot of these probably will be.

It appears two factors are contributing to many of the conflicts in the time and attendance issues. The first being that Comp Time at the SPD is not entered into the Town of Salem's system as it is for all other town departments, thereby the MuniSmart data is showing regular pay being given during days individuals took a compensation day they were entitled to. There also is an issue with details that do not go over 4 hours. Although the officer may get a late cancel and never spend a minute on site, or only be needed for an hour many of the detail slips where an officer performed less than 4 hours have a signature from the vendor indicating that the officer was there for the full four hours. If the officer takes another assignment it shows up as a conflict.

[REDACTED]
Kroll Daily #20356

On Saturday, July 22, 2017, Sergeant [REDACTED] worked an Outside Detail at Canobie Lake Park from 10:00am to 2:00pm, a period of four hours. This Outside Detail is supported by a Police Officer Detail Slip (**Schedule 3 - [REDACTED]**, page 3) which is signed by both [REDACTED] and a Canobie Lake Park representative. This shift is also supported by the SPD Schedule showing that [REDACTED] was scheduled to work an Outside Detail from 10:00am to 2:00pm. However, the payroll data indicated that [REDACTED] worked an assigned shift on the same day from 8:00am to 4:00pm, an overlap with his Outside Detail of four hours. Based on [REDACTED] Outside Detail hourly rate of \$45.00, he was apparently overpaid by \$180.00 (4 x \$45.00).

Kroll Daily #20368

On Thursday, August 3, 2017 [REDACTED] worked an Outside Detail at EJ Paving, Inc. from 7:00am to 12:00pm, a period of five hours. This Outside Detail is supported by a Salem NH Police Detail Voucher (**Schedule 3 - [REDACTED]**, page 5). This shift is also supported by the SPD Schedule showing that [REDACTED]

[REDACTED] was scheduled to work an Outside Detail from 6:00am to 12:00pm. However, the payroll data indicated that [REDACTED] worked an assigned shift from 8:00am to 4:00pm on the same day, an overlap of four hours. Based on [REDACTED] Outside Detail hourly rate of \$45.00, he was apparently overpaid by \$180.00 (4 x \$45.00).

[REDACTED]
Kroll Daily #2841

On Friday, January 27, 2017 [REDACTED] worked an Outside Detail for Asplundh Tree where he provided traffic control services. The invoice (**Schedule 4** - [REDACTED] page 3), signed by [REDACTED], and an [REDACTED] [REDACTED], stated that [REDACTED] worked from 7:00am to 4:00pm, a period of nine hours. This shift is also supported by the SPD Schedule showing that [REDACTED] was scheduled to work an Outside Detail from 7:00am to 3:00pm. However, the payroll data indicated that [REDACTED] took five hours of Vacation Pay and worked his assigned shift on the same day for three hours. Unfortunately, the payroll data did not indicate the specific hours that [REDACTED] took as vacation. As such, two different overlapping scenarios exist:

1. [REDACTED] took five vacation hours from 8:00am to 1:00pm resulting in an overlap between his assigned shift and Outside Detail of three hours from 1:00pm to 4:00pm.
2. [REDACTED] took five vacation hours from 11:00am to 4:00pm resulting in an overlap between his assigned shift and Outside Detail of three hours from 8:00am to 11:00am.
3. Based on [REDACTED] Outside Detail hourly rate of \$42.00, he was apparently overpaid by \$126.00 (3 x \$42.00) under either scenario.

Kroll Daily #2891

On Tuesday, March 28, 2017 [REDACTED] worked an Outside Detail for Liberty Utilities where he provided traffic protection assistance. The invoice (**Schedule 4** [REDACTED] page 5), signed by [REDACTED] and a Liberty Utilities foreman, stated that [REDACTED] worked from 8:30am to 2:30pm, a period of six hours. This shift is supported by the SPD Schedule showing that [REDACTED] was scheduled to work an Outside Detail from 8:30am to 2:30pm. However, the payroll data indicated that [REDACTED] worked two different assigned shifts; two and a half hours during shift 2 (1:30pm to 4:00pm) and five and a half hours during shift 3 (4:00pm to 9:30pm). Based on this hourly split, it appears that [REDACTED] worked eight hours from 1:30pm to 9:30pm, resulting in an overlap with his Outside Detail of one hour (1:30pm to 2:30pm). Based on [REDACTED] Outside Detail hourly rate of \$42.00, he was apparently overpaid by \$42.00 (1 x \$42.00).

Interview of [REDACTED]

Linskey: So, we got, we got all the information, and I don't know, I'm not an accountant, um, but we have these kids who are accountants that we send all the data, and they do all this data input and they come up with some type of – um – system, and they punch it out, and we got, we just looked at one year, and we come up with basically 135 instances of where it looked like on the payroll records, people were being paid for two different types –

[REDACTED] Correct.

Linskey: -- of work at the same time. And we've come in and done some interviews, and some of it has been – um – there's no Comp Time code, so people would – there's another form that's – um – Sharon has that's basically like the – um – she calls it the master schedule, I think, and it's like – ah – says "working, working, comp" or whatever it is, and then she uses that to download or upload the data into the system. Um, some of it is that comp is on her form, but they don't put comp in the computer system, so therefore it's showing up as full hours pay, so it looks like you're on a regular day's pay. So we had – people had sent – ah – and let me just be clear, we didn't go on anyone's Facebook or – but people had sent and complained about "Hey, so and so is in Mexico, yet he's on a pay day. Hey, so and so was in – ya know – Cape Cod. So and so was here." Um, but yet, they're away for vacation but it shows they're being paid for the entire week, and what we discovered is that if you use Comp Time, that goes in as regular pay as opposed to – ah – Comp Time so, therefore, it looks like regular pay. So, we've been able to kinda go through a lot of these, but some of them – ah – I think are systems issues – um – I think some of them, and I'll ask this and we can work through it. So, one of them is on 1/27/17, and it shows vacation pay five hours, regular earnings 8 a.m. to 4 p.m., three hours overlapping, took five vacation – um – and then this is the slip, so it shows "state and shed," I assuming that's the detail? 7 to –

[REDACTED] Aslundah, yuh.

Linskey: -- to 3 --

[REDACTED] Yup.

Linskey: -- for a detail, right?

[REDACTED] Yup.

Linskey: Okay. So, 7 to 3, you're at the detail.

[REDACTED] Yup.

Linskey: Payroll shows you 8 to 4 here—

[REDACTED] Yup.

Linskey: -- with three hours overlapping. Um, the regular earnings, 8 to 4 – ah – 2.5, 4 to 12 a.m., 5.5, you might have down a second detail?

[REDACTED]: Nope, let me, can I just see –

Linskey: Yup.

[REDACTED] Oh, so this is how you guys break it down.

Shanahan: Let me have this slip.

Linskey: Yup.

[REDACTED] Okay, so what this is, I took five hours vacation –

Linskey: Okay.

[REDACTED] Is the 20, is this, that's on a Friday. So, I worked Asplunduh 7 to 1.

Linskey: And that's trees?

[REDACTED]: Yup.

Linskey: Okay.

[REDACTED] He cuts me loose at 1.

Linskey: Yup.

[REDACTED] I come back to work 1 to 4.

Linskey: Okay.

[REDACTED] So, he paid you for the whole day?

[REDACTED] Yup. 9 hours. Yup.

Linskey: But he paid you nine?

[REDACTED] Paid me nine.

Shanahan: He paid you nine, but he cut you loose at 1?

[REDACTED] Correct. This happened –

Shanahan: Now, how is that, how is that – um – how do you write that? Because it says here like 9 to 4?

[REDACTED] Right, but if you saw the town side – this is outside detail – if you saw the town where I would have had [REDACTED], 5 slash vacation."

Shanahan: No, but this says – excuse me Dan – um, that it was 7 to 4?

[REDACTED] Right, the job starts at 7, he pays me 'til 4, I was done this job, I've had a couple more like this, at 1 o'clock. After lunch, he didn't want to work. He gives me that slip in the morning, when we show up, that's accurate. At 1 o'clock, he goes, 'I'm not working – I'm done.' I come back into work on straight time from 1 to 4. So, the three hours that you have overlap, I worked. It's an eight hour day, I take – I burn five vacation because I'm on 8 to 4, so I burn 8 to 1 is five, and then I work straight time 1 to 4.

Linskey: Okay, how many hours did you get paid by this company?

[REDACTED] 9.

Linskey: But why would he pay you nine when you only worked 5?

[REDACTED] That's what they do.

Shanahan: So, you have an automatic nine hour shift every time you do Asplunduh – ah – Tree?

[REDACTED] No, no, that's not accurate. There are some days if it rains –

Linskey: It depends on the supervisor or something?

[REDACTED] Absolutely, you're talking all the utility companies. This isn't just this.

Shanahan: So, my question –

[REDACTED] This is the utility company cut him – this is – we, we don't have any control of this. Obviously, I'm the Asplund, I'm the foreman for Asplunduh, and they come over and said [REDACTED], we're working 7 to 4 today. At 1 o'clock for whatever reason, and it happens with some of these guys, they decide the day's over – my equipment's not working or what not – and they say, 'This is your slip. Here you go.'"

[REDACTED]
Kroll Daily #13630

On Friday, June 30, 2017, [REDACTED] worked an Outside Detail at Canobie Lake Park from 11:00am to 4:00pm, a period of five hours. The invoice (**Schedule 5** [REDACTED] page 3), signed by [REDACTED] and a Canobie Lake Park representative, stated that [REDACTED] worked from 11:00am to 4:00pm. This shift is also supported by the SPD Schedule showing that [REDACTED] was scheduled to work an Outside Detail from 10:00am to 4:00pm. Based on Kroll's understanding of [REDACTED] regularly assigned shift (8:00am to 4:00pm), an overlap of five hours (11:00am to 4:00pm) occurred. With an Outside Detail hourly rate of \$51.00, [REDACTED] was apparently overpaid by \$255.00 (5 x \$51.00).

Kroll Daily #13669

On Saturday, August 26, 2017 [REDACTED] worked two Outside Details that appear to overlap with each other. From 10:00am to 2:00pm, [REDACTED] worked an Outside Detail at Canobie Lake Park. The invoice (**Schedule 5** - [REDACTED] page 6), signed by [REDACTED] and a Canobie Lake Park representative, stated that [REDACTED] worked from 10:00am to 2:00pm, a shift of four hours. On the same day, [REDACTED] worked an Outside Detail shift for Sodexho Food Service from 12:00pm to 2:00pm (**Schedule 5 - RM**, page 7) resulting in an overlap of two hours. This overlap is supported by the SPD Schedule indicating that [REDACTED] was scheduled to work two Outside Details and that an overlap between the end time of the first detail (3:00pm) and the start of the second detail (12:00pm) was present.

During Kroll's interview of [REDACTED], he stated that he was released from the detail at Canobie Lake Park at 12:00pm. However, the Canobie Lake Park documentation, signed by a Canobie Lake Park employee, states he worked the full four hours. When confronted with this documentation, [REDACTED] [REDACTED] stated that this discrepancy was Canobie Lake Park's fault and that he was not responsible for filling out the form. Based on [REDACTED] Outside Detail hourly rate of \$51.00, it appears that he was overpaid by \$102.00 (2 x \$51.00).

It appears that this is another example of a flaw in how the minimum four hours are recorded at a detail leading to these conflicts.

Interview of

Questions, what are your hours?

[REDACTED]: My hours? Thirty-seven and a half hours a week.

MR. LINSKEY: What -- what's your schedule?

A series of horizontal black bars of varying lengths, arranged vertically. The bars are solid black and have thin white borders. They are set against a white background.

A series of horizontal black bars of varying lengths, arranged vertically. The bars are solid black and have thin white borders. They are set against a white background. The lengths of the bars decrease from top to bottom.

[REDACTED]: Could, but I don't.

In addition to [REDACTED] description of his time and attendance those who spoke to Kroll concerning [REDACTED] time and attendance indicated that he often spends more than the 37.5 hours he is required to work. In addition, once sworn in as [REDACTED] he changed the previous practice of his [REDACTED] using Comp Time to take time off to perform a detail due to it appearing to be improper. With the exception of the [REDACTED] any detail assignment performed during what are considered personnel's normal scheduled work hours requires a prior approval of a day off they are entitled to such as a vacation, or other contractual day off with the exception of sick time. It appears some of the [REDACTED] conflicts that were examined are clerical errors mentioned previously.

[REDACTED]

MR. LINSKEY: Okay.

[REDACTED]: -- even though they cut me loose at 1:30, I was back in my office until 4, 4:30 when I go home every day.

MR. LINSKEY: Okay.

[REDACTED]

Kroll Daily #7576

On Wednesday, September 6, 2017 [REDACTED] worked an Outside Detail for Asplundh Tree where he provided traffic control. The invoice (**Schedule 6 - [REDACTED]**, page 4), signed by [REDACTED] and an Asplundh Tree foreman and arborist, stated that [REDACTED] worked from 7:00am to 11:00am. This shift is supported by the SPD Schedule showing that [REDACTED] was scheduled to work an Outside Detail from 7:00am to 3:00pm. However, the payroll data indicated that [REDACTED] worked an assigned shift on the same day from 8:00am to 4:00pm, an overlap with his Outside Detail of three hours. [REDACTED] assigned shift of 8:00am to 4:00pm is supported by another section of the SPD Schedule (**Schedule 6 - KF**, page 3) showing that his assigned shift was to start at 7:45am. Based on [REDACTED] Outside Detail hourly rate of \$48.00, he was apparently overpaid by \$144.00 (3 x \$48.00).

Not interviewed

After interviewing [REDACTED] and those civilians responsible for time and attendance issues, a decision was made not to interview everyone but to provide the identified issues to the Town to examine the instances to determine if they were clerical errors or a true conflict.

[REDACTED]

Kroll Daily #888

On Wednesday, December 6, 2017, [REDACTED] worked an Outside Detail for Liberty Utilities where he provided traffic protection assistance. The invoice (**Schedule 7 - [REDACTED], page 3**), signed by [REDACTED] and a Liberty Utilities foreman, stated that [REDACTED] worked from 8:30am to 3:00pm, a shift of six and a half hours. This shift is also supported by the SPD Schedule indicating that [REDACTED] was assigned to work an Outside Detail from 8:30am to 2:30pm. However, the payroll data showed that [REDACTED] worked his regularly assigned shift from 8:00am to 4:00pm on the same day, an overlap with his Outside Detail of six and a half hours. Based on [REDACTED] Outside Detail hourly rate of \$45.00, it appears that he was overpaid by \$292.50 (6.5 x \$45.00).

Not interviewed

After Interviewing [REDACTED] and those civilians responsible for time and attendance issues a decision was made not to interview everyone but to provide the identified issues to the Town to examine the instances to determine if they were clerical errors or a true conflict.

[REDACTED]

Kroll Daily #6805

On Tuesday, August 1, 2017, [REDACTED] worked an Outside Detail for Asplundh Tree where he provided traffic control services. The invoice (**Schedule 8 - [REDACTED], page 3**), signed by [REDACTED], and an Asplundh foreman, stated that [REDACTED] worked from 7:00am to 4:00pm, a period of nine hours. On the same day, [REDACTED] worked another Outside Detail shift for EJ Paving, Inc. from 2:00pm to 5:00pm (**Schedule 8 - RF, page 4**). This Outside Detail is supported by a Salem NH Police Detail Voucher which shows that [REDACTED] worked from 2:00pm to 5:00pm. As such, Kroll believes that an overlap of two hours between each of his details occurred. The SPD Schedule shows that [REDACTED] was supposed to work for Asplundh Tree from 7:00am to 3:00pm and EJ Paving from 3:00pm onward. However, the supporting documentation suggests that [REDACTED] worked a longer shift for Asplundh Tree and began working an earlier shift for EJ Paving. In addition to working two Outside Details that contain overlapping hours, Kroll believes the Outside Detail worked for EJ Paving overlapped by one hour with [REDACTED] regularly worked shift of 4:00pm to 12:00am. Based on [REDACTED] Outside Detail hourly rate of \$42.00, it appears that he was overpaid by \$126.00 (2 x \$42.00+ 1 x \$42.00).

Not interviewed

After Interviewing [REDACTED] and those civilians responsible for time and attendance issues a decision was made not to interview everyone but to provide the identified issues to the Town to examine the instances to determine if they were clerical errors or a true conflict.

[REDACTED]
Kroll Daily #8167

On Friday, June 23, 2017, [REDACTED] worked an Outside Detail at Canobie Lake Park. The invoice (**Schedule 9** [REDACTED] page 3), signed by [REDACTED] and a Canobie Lake Park representative, stated that [REDACTED] worked from 10:00am to 4:00pm, a shift of six hours. This shift is supported by the SPD Schedules showing that [REDACTED] was scheduled to work an Outside Detail from 10:00am to 4:00pm. However, the payroll data indicated that [REDACTED] worked an assigned shift from 8:00am to 4:00pm on the same day, an overlap with his Outside Detail of six hours. Based on [REDACTED] Outside Detail hourly rate of \$45.00, he was apparently overpaid by \$270.00 (6 x \$45.00).

Not interviewed

After Interviewing [REDACTED] and those civilians responsible for time and attendance issues a decision was made not to interview everyone but to provide the identified issues to the Town to examine the instances to determine if they were clerical errors or a true conflict.

[REDACTED]
Kroll Daily #18687

On Tuesday, November 28, 2017, [REDACTED] worked an Outside Detail for Neuco from 7:00am to 3:00pm, a shift of eight hours. This Outside Detail is supported by an invoice (**Schedule 10** - [REDACTED] page 3) which is signed by both [REDACTED] and a Neuco representative. This shift is also supported by the SPD Schedule showing that [REDACTED] was scheduled to work an Outside Detail from 7:00am to 3:30pm. However, the payroll data indicated that [REDACTED] worked his assigned shift on the same day from 12:00am to 8:00am, an overlap with his Outside Detail of one hour. Based on [REDACTED] Outside Detail hourly rate of \$48.00, it appears that he was overpaid by \$48.00 (1 x \$48.00).

Not interviewed

After Interviewing [REDACTED] and those civilians responsible for time and attendance issues a decision was made not to interview everyone but to provide the identified issues to the Town to examine the instances to determine if they were clerical errors or a true conflict.

[REDACTED]
Kroll Daily #21365

On Friday, March 3, 2017 [REDACTED] worked an Outside Detail for Asplundh Tree where he provided traffic control services. The invoice (**Schedule 11** - [REDACTED], page 4), signed by [REDACTED], and an Asplundh foreman and arborist, stated that [REDACTED] worked from 7:00am to 11:00am, a period of four hours. This shift is also supported by the SPD Schedule showing that [REDACTED] was scheduled to work an Outside Detail from 7:00am to 3:00pm. However, the payroll data indicated that [REDACTED] worked an assigned shift from 8:00am to 4:00pm on the same day, an overlap with his Outside Detail of three hours. [REDACTED] assigned shift of 8:00am to 4:00pm is supported by another section of the SPD Schedule (**Schedule 11** [REDACTED], page 3) showing that his assigned shift was to start at 7:45am. Based on [REDACTED] Outside Detail hourly rate of \$45.00, it appears that he was overpaid by \$135.00 (3 x \$45.00).

Not interviewed

After Interviewing the [REDACTED] and those civilians responsible for time and attendance issues a decision was made not to interview everyone but to provide the identified issues to the Town to examine the instances to determine if they were clerical errors or a true conflict.

[REDACTED]

Kroll Daily #20763

On Friday, November 24, 2017 [REDACTED] worked an Outside Detail at Best Buy from 7:00am to 11:00am, a period of four hours. This Outside Detail is supported by a Salem NH Police Detail Voucher (**Schedule 12** [REDACTED] page 3). This shift is also supported by the SPD Schedule showing that [REDACTED] was scheduled to work an Outside Detail from 7:00am to 11:00am. Based on Kroll's understanding of [REDACTED] regularly assigned shift (8:00am to 4:00pm), an overlap of three hours occurred from 8:00am to 11:00am. As [REDACTED] Outside Detail hourly rate is \$51.00, it appears that he was overpaid by \$153.00 (3 x \$51.00).

[REDACTED]

[REDACTED]: *They vary, it's -- it's a seven and -- it's -- for -- for purposes of the salary position --*

MR. LINSKEY: *Yup.*

[REDACTED]: *-- it's seven and a half hours a day.*

MR. LINSKEY: *Okay.*

[REDACTED]: You know, so --

MR. LINSKEY: If you want to do a detail, you have to do it before or after a certain time or is there a process where you can do a detail in the middle of your time?

MS. SHANAHAN: Five.

MR. LINSKEY: Looks like there's five, and some of it is, it's -- it's data stuff, so --

[REDACTED]: You know, [REDACTED] when [REDACTED] took [REDACTED] position he made it pretty clear that although it was allowable and legal, he didn't like the optics of us working details when we -- we would normally be here during the day.

MR. LINSKEY: Okay.

[REDACTED] So, not a big deal to me, Dan, because I -- I -- I don't work a lot of details, it's not my thing. I have a wife that works, I've never been an -- an overtime grinder, I -- I've, you know, I'm salary now so I don't get overtime, town overtime, I get detail overtime only so it -- it's -- it's not my thing, I have no interest, you know, I'll -- I -- I've done one here, one there, but that's it.

MR. LINSKEY: Okay. So, in this particular day it's 11/24/17, --

[REDACTED]: Yup.

MR. LINSKEY: -- looks like your work hours were 8 a.m. to 4 p.m. they had you down for and then there's a Best Buy detail from 7 a.m. to 11 a.m.

[REDACTED]: Yup, that was the day after Thanksgiving.

MR. LINSKEY: Okay. Would you have filled out a form for that, was there -- or, you know, hey, I'm going to take comp time? So, you -- you couldn't use sick time for that.

[REDACTED]: No.

MR. LINSKEY: You could use vacation time or Comp Time or P time or --

[REDACTED]: Well, -- no, there's no P time.

MR. LINSKEY: You don't have personal days?

[REDACTED]: I have personal days. I could use a personal day, vacation day, holiday, can't -- I wouldn't use sick time --

MR. LINSKEY: Okay.

[REDACTED] -- because you -- you can't be sick and work, but this is going on the -- I -- and I remember that clearly, that was the -- I do that detail every year and have for a long time because I -- I'm friendly with the Best Buy people and I work it -- I work it every year for -- it's Black Friday essentially.

MR. LINSKEY: Yup.

[REDACTED]: So yes, I worked a four hour morning detail with them and then I would come to work or -- or do work activities after that, so that probably was not a -- a full day. I didn't -- I didn't put in a slip, if you're asking if I put in a slip that day, no, I didn't.

MR. LINSKEY: So you came in, you worked 7 to 11 and then you would have worked the seven --

[REDACTED]: If that's what the hours were, 7 to 11.

MR. LINSKEY: Yeah, and then you would have worked --

[REDACTED] Yeah, that was a detail.

MR. LINSKEY: -- 7.5 after the 11?

[REDACTED]: Not necessarily, no.

MR. LINSKEY: Okay.

[REDACTED]: No, because there's days where I might be here for ten hours.

MR. LINSKEY: You might have a town meeting, --

[REDACTED]: Town meeting at night.

MR. LINSKEY: -- community meeting, extra hours that you put -- you're putting in a fourteen, fifteen hour day some days and you're only getting 7.5.

[REDACTED] I don't think I put in a -- well, I -- it's hard -- it's to say exactly how many hours I put in in a day, but I put in more than -- more than seven and a half hours a day many days and yes, we have -- we have the -- the Monday night meetings, the selectmen meetings, the budget meetings, we go to -- I've gone to events, I've, you know, police academy graduations, come back late from that so damn phone rings all weekend long, dealing with issues back and forth, so yeah, there is time outside of work that I consider hours worked.

MR. LINSKEY: And to do the detail is there -- there's no form you fill out to say, you know, hey, I'm going to take --

[REDACTED]: There's a form to say I did the detail.

MR. LINSKEY: The detail, the hours, --

[REDACTED]: Yeah.

MR. LINSKEY: -- but there's no hey, I'm taking four hours to do this detail based on the four hours I did from Monday night.

[REDACTED]: Yeah, some -- yes, sometimes there is, that particular, that -- that's the only one that, you know, that I've done.

MR. LINSKEY: Okay.

[REDACTED]: And that was right in the beginning before [REDACTED] really came, that was right -- it's 11/24; right --

MR. LINSKEY: Yup.

[REDACTED]: -- you said?

MR. LINSKEY: He came 11/7 and he kind of said look, --

[REDACTED]: No, 19.

MS. SHANAHAN: 19.

MR. LINSKEY: 11/19?

[REDACTED]: So, that was right about then, but regardless that -- that's -- that's one that I would do every year anyway because it's a four-hour gig, there's still time for me to come in after, get my job done, but typically if I'm going to -- if I'm not going to be here all day I put a slip in.

MR. LINSKEY: A form.

[REDACTED]: Yeah -- no, actually you fill out a -- I don't know, is there one in here? There isn't, but I'm sure you've seen them.

MR. LINSKEY: We have it, yeah.

MS. SHANAHAN: Yeah.

[REDACTED]: So, I would fill out a -- I'd pick a vacation day, holiday, personal day, whatever the case may be.

MR. LINSKEY: Okay. And just, you know, there's some information that I don't know if [REDACTED] shared with you since we spoke with him, but some of the stuff that I think the town manager started to get for time and attendance issues was people were sending hey, here's a post on Instagram that somebody's away on vacation yet here's their payroll record saying that they're --

[REDACTED] Yeah.

MR. LINSKEY: -- working a -- regular tour of duty, so that's some of the stuff that came in that we're dealing with.

[REDACTED]: Yeah, you're not going to find it.

MR. LINSKEY: Not -- not -- not you, I'm just saying --

[REDACTED]: I'm not talking about me, I'm talking any of them.

MR. LINSKEY: That -- that's --

[REDACTED]: I will guarantee you anything that -- that is out there -- I think I know what you're referring to is [REDACTED] was at, which by the way I think this whole -- that's a scumbag move going on people's Facebook, but either way, that was out --

MR. LINSKEY: I didn't go on anyone's Facebook.

[REDACTED]: Someone did.

MR. LINSKEY: Yeah, and forwarded it to us --

[REDACTED] Yeah.

MR. LINSKEY: -- and we got involved in the investigation, yup.

[REDACTED]: Anyway, that -- she's explained it to me and -- and she'll be able to explain it to you and I'm not -- it's not my -- I'm not the payroll guy, I understand our vacation, you know, our time off slips work, how our details work, when you can work a detail, when you can't, but you're going to find that when you review their paperwork and -- it's going to be all square.

Facebook Analysis: Personnel not identified in the below narrative as our investigation revealed they had submitted requests and had been approved to take the time off in question.

Kroll received documentation from the Town regarding specific Facebook posts made by Civilian A during January 2017 and Civilian B in January and April 2017. As well as a sworn member of the department. Although Kroll tried to review their Facebook profiles, they had enabled privacy settings that allowed only friends to view their public profile. As such, Kroll's analysis of their social media postings are solely based on the documentation provided by the Town.

[REDACTED]

On Monday, January 9, 2017, Civilian A posted on Facebook that she had a "flight tomorrow" although no mention of her destination was noted. Her apparent next post was made on Friday, January 13th in which she stated that she was in Las Vegas with her husband and daughter to celebrate her birthday. The last sentence of her post "...see you in the 603!!!" references the New Hampshire area code and appeared to indicate that she had not yet left Las Vegas as of January 13th . This timeline appeared to show that Civilian A flew to Las Vegas on Tuesday, January 10th and returned on Saturday, January 14th . However, instead of taking a vacation day, the payroll data indicated that Civilian A was paid for working her regular shift of 7.5 hours on Thursday, January 12th.

Kroll interviewed Civilian A and was informed that she had taken a comp day which was not accurately reflected in the Town of Salem system as the Police Department does not enter Comp Time in accordance with the policy that all the other departments do.

[REDACTED]

On Friday, April 28, 2017, [REDACTED] posted a series of photos on Facebook which document a Royal Caribbean cruise that she appeared to have taken with her family. Based on the geolocation of the post, [REDACTED] uploaded the photos from Cape Canaveral, Florida. However, instead of taking a vacation day, the payroll data indicated that [REDACTED] was paid for working her regular shift of 7.5 hours on Friday, April 28th . When confronted with this discrepancy, [REDACTED] provided Kroll with an SPD Schedule showing that [REDACTED] was listed as having taken a "Comp" day on Friday, April 28th.

In another post, [REDACTED] uploaded a series of photos on Saturday, August 5, 2017 with the caption of "Amazing beach week has ended...". Kroll learned from the Town that [REDACTED] vacationed in the town of Salisbury, MA the first week of August 2017. Although the exact dates that [REDACTED] was on vacation are currently unknown, her payroll data indicated that she was paid for working her regular shifts of 7.5 hours

from Tuesday, August 1st through Friday, August 4th . The only vacation date that [REDACTED] is credited for taking is Monday, July 30th.

Kroll was informed that Civilian B had submitted the appropriate request for Comp Time by [REDACTED]. [REDACTED] He also stated that the Town payroll system (MuniSmart) does not have a code for "Comp" time and therefore the time is listed as "Regular" time within the system. Based on a review of correspondence between Town officials, [REDACTED] statement about Muni-Smart appears to be incorrect as Kroll understands that the Town has other departments who enter "Comp" time into the payroll system. Kroll was shown the paystub of other town employees that shows their Comp Time being tracked. The police department is the only town department not entering Comp Time in MuniSmart. [REDACTED] who is the department time and attendance manager stated that she would prefer to track the Comp Time but she stated that she was informed by the Town HR department a while ago not to. There seems to be some confusion with that direction as the previous Town HR Director stated that all departments were informed to limit the use of Comp Time if possible but to record it with the MuniSmart system.

Supervisor A

Kroll was presented with a social media post that was sent to the town manager that showed a supervisor of the SPD out of the country while payroll records reflected that he was paid as working. Kroll reviewed the records and interviewed the supervisor. This appears to be another case of the requests at the police department for time off not getting entered into MuniSmart.

3. Interviews of Previous Town Manager

Interview of Keith Hickey

Linskey: What was your role and responsibility with the police department at the time? Would you – ah – would the [REDACTED] report directly to you?

Hickey: He did.

Linskey: And, did you, um, negotiate, ah, a contract or did you have any agreement with him relative to outside employment or his ability to do other duties than his assigned duties as a- a- [REDACTED]?

Hickey: I don't believe there was any written – uh – written agreement on that, no. Not that I'm aware of. Not that I recall anyways.

Linskey: Was there any – ah – verbal agreement on – um – his ability to do details or do outside employment?

Hickey: Yes, ah, the [REDACTED] approached me at one point asking if he could – ah – do some outside details to supplement his income and – ah – I told him at that point that it was fine to do outside details as long as the rest of his [REDACTED] responsibilities had been satisfied. That those were the priorities.

Linskey: Would that mean – ah – that he could do them during – what would you think his regular work hours were?

Hickey: 8 to 5? 8 to 4:30?

Linskey: Monday through Friday?

Hickey: Yes sir.

Linskey: And was it your understanding that outside details were to be after those hours or on weekend time?

Hickey: Ah, no, he could work those during the day, as well, as long as he took – ah – personal time of some kind. You know, vacation time or what not.

Linskey: Okay, but – ah – if he – um – if he wanted to work during the day time, he would have to fill you, you know, vacation day or a personal day? Obviously, it couldn't be a sick day, um--Hickey: That's correct.

Linskey: --or he could do them after hours if he was getting off work at 5:00, he could do a detail that night at a- a- um – an IHOP or a road job or something like that?

Hickey: Yes sir.

Linskey: Okay. If- if you were, as the town manager, you were – um – to look at your payroll sheet and discover that during the day time hours – say, 8 to 4 – two or three days a week, the [REDACTED] was working – um – detail assignments and not putting in days off requests or vacation time, would that be different than the agreement you thought you had with the [REDACTED]?

Hickey: Absolutely.

Linskey: Okay. Katy, you have anything?

Shanahan: Um, I don't think, Dan, you mentioned flexing. Can he flex his time? So, could he come in at 8, go to a detail from 10 to 2, and then come back and work four hours past a normal shift ending?

Hickey: Ah, no, I mean, we never had that conversation. Ah, if he had asked me to do that, I guess I would, hindsight, I would probably say no.

Shanahan: Okay, so you never had that conversation with him?

Hickey: No m'am. No m'am.

4. Findings and Recommendations

Finding – The Salem Police Department is currently not tracking Comp Time in the same manner as the rest of the departments in the Town of Salem. As such, conflicts appear in the MuniSmart data. This has led to speculation that individuals were given special preference and not being charged for some of their contractual days off.

Recommendation – The Police Department needs to utilize and track Comp Time in the same manner as all the other Town of Salem departments.

Finding – Kroll found that the [REDACTED] works a significant amount of outside detail assignments that are supposed to be worked during off hours according to the previous Town Manager Hickey who verbally agreed to allow him to work them. The prior Town Manager was also ok if [REDACTED] put in for a contractual day off such as a vacation day and then worked a detail during usual work hours instead if his job functions were not impacted. However, there was never an agreement for him to perform details during work hours. On 36 occasions, [REDACTED] worked outside details during what everyone else considers his normal work hours. During some weeks, he worked two or three Outside Details during a single week. All 36 of his details were during his normal work hours, meaning that none of his outside details occurred on a Saturday or a Sunday or after or before regular work hours Monday through Friday. Assuming a five-day work week of 260 work days in a year, 13 paid holidays, 25 vacation days, and an average of 10 PTO days in an average year, it would result in 212 days of service. When considering time off for details on 36 days, he would have worked 176 days during the year, which is an average of 14 days a month. As stated, this is contrary to the agreement as understood by the prior Town Manager who was only offering to allow him to do details after or before normal business hours or on weekends if other duties did not call, or if he submitted a request to take a contractual day off and worked a detail instead. [REDACTED] informed Kroll that he comes in and works after hours on those days he performs details. Kroll received information that [REDACTED] is often not available and that the [REDACTED] runs most of the department functions on a day to day basis. [REDACTED] does not keep an electronic calendar or a journal of the hours that he logs outside of regular hours. There is no time stamped video or swipe card access that documents these outside hours of work. There is no procedure of logging on and off on the recorded police radio that can attest to the hours performed. The [REDACTED] is not just a 37.5-hour position as a salaried non-union employee. He is expected to work all hours needed to perform his functions.

In addition, Kroll was informed that the department heads in the departments of the Town of Salem are required to notify the Town Manager if they are going to be out of the office for more than a day or two.

The Town manager was informed that the [REDACTED] was out on leave only when the [REDACTED] could not make the initial meeting regarding the Kroll investigation.

Recommendation – Evaluate the impact of [REDACTED] performing details and their impact on operations of the SPD. If a decision is made to continue the practice [REDACTED] doing details, clear guidance as to when these details can be performed needs to be documented with a side letter of agreement. Develop a process for documenting hours worked that can be tracked.

Finding – There were instances uncovered by Kroll in which a private vendor appeared to pay an officer for more hours than the officer worked (these incidents exclude the 4-hour minimum when it is regulated by contract). When questioned about how an officer could get paid for extra hours Kroll was informed that it was OK as the supervisor at the detail gave the officer the extra hours. There seemed to be no understanding that accepting extra hours that were not worked or required by union contract could be a problem. If the vendor is conducting work on behalf of a state or federal government contract, there can be potential civil and criminal consequences. If the vendor's supervisor is not authorized by the owner of the company to overpay for hours not worked, it again presents civil and criminal concerns. Even if the owner is willing to pay officers more than they are entitled to, if they are working as a member of the SPD, officers are conflicted from receiving such overpayments.

Recommendation – Salem Police Department should develop a policy and procedure which clearly explains that officers may only receive compensation for actual hours worked during details (except for the minimum four hours they are entitled to by union contract). Vendors should be sent a notice of the policy. The management of the department should conduct random reviews of the detail payment schedules to ensure compliance. Consideration should be given to return over payments.

Finding – There are issues with the SPD detail assignment program. The current system determines the number of detail/overtime hours each member of the department will have an opportunity to work in the upcoming week. The list is then presented to the Chief for his first pick. It then goes through the supervisors and seniority list for their desired extra duty assignments. As it currently is, the system is unfair and presents concerns. There are some jobs/assignments that are more desirable than others. The current system would allow the Chief and other supervisors to select the plum assignments week after week and leave fewer, possibly less desirable, opportunities for the less senior officers. As a result, the Chief and senior members could work the same details repeatedly for a private contractor, developing a relationship that could impact the officer's ability to perform their assignment. ie; If an officer can work the same barroom detail whenever it is available and develops a friendship with the owner and management, there could appear to be a conflict of interest when they are performing their duties. Rotating as many officers through these assignments prevents the appearance of conflict.

Patrons could engage in behavior that is concerning and might be related to the operation of the bar, such as overserving or serving a minor. The officer could be required to act against the bar, but may be conflicted by the relationship with the owner if the officer works there every possible occasion.

Recommendation – Instead of the list of detail assignment opportunities each week going through the Chief first, then supervisors and down the seniority list, the SPD should establish a system where on January 1st of each year a randomization process is established to create a list of all the members of the SPD eligible for details/overtime assignments. (Alphabetical order, names assigned randomly from the pool) once established the first person on the list is given the choice to pick assignments first with the others taking their turns. After that, the list exhausted and in the next week, the list should start with the person who was offered the least number of extra hours. All hours worked, and all hours offered and refused should be added together and recorded. Each week the assignments should give the first choice to those with the lowest number of hours year to date. This process would ensure fair access to all the different opportunities for all officers and limit conflicts.

Finding – Some officers have an ability to change their work schedule to accommodate the potential of performing details while others do not. The [REDACTED] has reported that [REDACTED] has come into work and observed a detail that was unfilled that he determined needed coverage. [REDACTED] then took vacation time or altered [REDACTED] work hours to perform the detail. This gives [REDACTED] over other patrol officers who do not have [REDACTED] to take extra work assignments. There is also no current way to accurately track actual hours worked which leads to conflicts.

Recommendation – Change the practice of being able to change shifts the day of an assignment. Develop a system to accurately document all hours worked. These can range from swiping an ID card when reporting to work and leaving work; to signing a form attesting to hours that is then approved by a supervisor, or merely having an officer log on and off when working a regular, overtime, or detail assignment over the air on the recorded police communication frequency.

Finding – There is a seemingly large number of disability retirements at the Salem Police Department. Kroll was informed that the police department had 18 people retire with disability retirements during the same time frame in which one member of the Salem Fire Department retired on disability. There were several members who were involved in incidents in which they had to utilize lethal force during their duties. Some were physically injured and others had other complications that caused them to retire. The department currently has not lite duty assignment program.

Recommendation - These events are highly stressful incidents and officers need to have appropriate critical incident stress support after them. It seems there is an initial referral to EAP when

these circumstances present, but the department does not have a current ongoing robust peer support program. The police department also does not currently have light duty assignments. There are officers who sustain injury who may be able to perform other functions for the police department in a light duty capacity. Kroll was informed that some of those who retired on disability from the Salem Police Department have gone on to work at other police departments or sheriff's offices after leaving Salem in other capacities. The Town should evaluate other light duty options for officers and develop a robust internal, if not regional, critical incident peer support program that is law enforcement based.

EXHIBIT 5



State of New Hampshire
POLICE STANDARDS & TRAINING COUNCIL
ARTHUR D. KEHAS
LAW ENFORCEMENT TRAINING FACILITY & CAMPUS
17 Institute Drive — Concord, N.H. 03301-7413
603-271-2133 FAX 603-271-1785
TDD Access: Relay NH 1-800-735-2964



Chief David P. Cahill
Chairman

PUBLIC MINUTES
Police Standards and Training Council
September 22, 2020

John V. Scippa
Director

Present: at PSTC with below listed staff

Chief Morency, Vice Chairman, Berlin Police Department; Sheriff Valerino, Coos County Sheriff's Office; Mr. Edward Lecius; Dr. Maureen Sullivan; Assistant Commissioner Benjamin Jean, New Hampshire Department of Corrections

Zoom:

Chief Cormier, Tilton Police Department, alone;

Jason Bishop, Community College System of New Hampshire, alone;

Judge Gardner, Circuit Court Judge; in Rye, alone

Major John Marasco, New Hampshire State Police, at his office alone

Attorney General MacDonald briefly

Judge Vetanze, 3rd Circuit District Division, Ossipee alone

Sheriff Massahos, Rockingham County Sheriff's Office; at his office alone

Not present: Chairman, Chief Cahill, Sunapee Police Department, Chief Capano, Manchester Police Department

Staff Present: Director Scippa, Major Parenteau, (Ret.), Lt. Hawkins, Lt. Towers, and Anne Paquin, Investigative Paralegal at PSTC in PSTC classroom two.

Guests: Attorney Mark Beaudoin, Michael Verrocchi, Attorney Andrew Cotrupi,
Witnesses by Zoom:

Christopher Dillon, Town Manager for Salem;

Deputy Chief James Chase, retired;

Sergeant Steven Woidyla;

Attorney Jason Grosky;

Chief Joel Dolan;

Brian Pattullo, Civilian Administrator, Salem Police Department;

Deputy Chief, Shawn Patten, Retired;

This month's Council meeting was held using "Zoom" due to COVID-19 restrictions for gathering of people. Per instruction for remote meetings, voting was done by roll call for every motion. Public and Nonpublic sessions were held by using separate log ins for "Zoom".

Vice Chairman Chief Morency called the meeting to order at 9:05 a.m. Anne took roll as listed above.

Chief Morency welcomed Jason Bishop, he will be the ex officio representative from the Community College System of New Hampshire, a position formerly held by Charles Ansell.

Motion by Chief Cormier, seconded by Judge Vetanze to approve the public minutes from the August 25, 2020 meeting.

Anne took the roll call vote:

| | |
|------------------------------|-------------|
| Vice Chairman, Chief Morency | Yes |
| Attorney General MacDonald | no response |
| Major Marasco | abstain |
| Assistant Commissioner Jean | Yes |
| Judge Vetanze | Yes |
| Judge Gardner | Yes |
| Chief Cormier | Yes |
| Mr. Jason Bishop | abstain |
| Sheriff Valerino | Yes |
| Sheriff Massahos | Yes |
| Dr. Maureen Sullivan | Yes |
| Mr. Ed Lecius | Yes |

The motion passed.

Motion by Mr. Lecius, seconded by Assistant Commissioner Jean to approve the minutes of the nonpublic session regarding Timothy Julian on August 25, 2020

Anne took the roll call vote:

| | |
|------------------------------|-------------|
| Vice Chairman, Chief Morency | Yes |
| Attorney General MacDonald | no response |
| Major Marasco | abstain |
| Assistant Commissioner Jean | Yes |
| Judge Vetanze | Yes |
| Judge Gardner | Yes |
| Chief Cormier | Yes |
| Mr. Jason Bishop | abstain |
| Sheriff Valerino | Yes |
| Sheriff Massahos | Yes |
| Dr. Maureen Sullivan | Yes |
| Mr. Ed Lecius | Yes |

The motion passed.

Director's Report

No written report submitted.

Full-Time Academy and Corrections Academy are in session.

There have been a couple of close calls with illness during the Full Time Academy

Last Friday, with the assistance of the Fire Marshal and DHHS, an expedited Covid test was conducted with a recruit and was returned negative, as well as a recruit exposure that was not reported over the past weekend, also returned negative.

There are two recruits out presently with possible Covid exposure. Director Scippa will speak with DHHS about a plan for rapid testing.

It is not safe to assume, even in the fall season, that someone has the common cold (and not Covid). Steps will be in place for expedited tests.

Director Scippa is meeting with PSTC staff regarding more ideas to deliver academy classes with social distancing.

The Department of Corrections Academy class does not have the student volume that the Full-Time Academy has; the staff has ideas on how to keep each academy group separate due to Covid, the staff will be prepared to manage Covid concerns.

The LEACT Commission's final recommendations have been approved by the Governor. The Governor supports all of the recommendations and wants them expedited.

- By Executive order;
- Legislative process;
- Administrative rule;
- Taking into consideration budget issues to be sure each recommendation is carried out.

Of the forty-one (41) recommendations, twenty (20) are the responsibility of the Police Standards and Training Council. Some are being addressed currently, some will take the full effort of the Council because many involve rule changes.

Before LEACT recommendations were discussed with the Governor, Director Scippa, Major Parenteau and Program Assistant III, Loralee Ames, conversed with the Governor's Office Budget Personnel. They discussed the budget situation, stating that PSTC would be unable to maintain itself as an agency if it is required to return any of its operating funds currently.

The Governor's Budget Personnel were supportive, PSTC has no funds to spare, and any cuts would mean eliminating staff, which would be a detriment to PSTC.

- A flat budget was submitted filling three positions;
- In addition, Lieutenant Gerald Taylor will retire at the end of September;
- A records management system and a learning management system must be acquired.

The Governor's Budget Personnel staff were in support of the requests.

There will be much more work ahead. Many LEACT items discussed have been given a deadline of the end of this calendar year, with others to be completed by April, 2021.

Chief Morency thanked Director Scippa for his diligence in LEACT and the budget process.

Director Scippa discussed future in-service training as a part of the recommendations.

Two staff members are scheduled to complete the ABLE training, and two more staff members will complete ABLE 'Train the Trainer' training in October.

Director Scippa and the staff are currently working with Fair and Impartial Policing, however there is not enough time for PSTC staff to be trained to deliver it until after April 1, 2021.

Lieutenant Christopher Paquette is working to make up for all of the firearms recertification classes that were not available due to Covid earlier this year.

The block of instruction on Train the Trainer for the staff will be held at the beginning of 2021.

There is a staff member developing a new ethics class.

Lieutenant Hawkins has developed the I CAT communication program that is ready for the next academy. The goal is to get all of the new classes into the January academy.

PSTC staff is working with Primex and the NH Chiefs Association to develop a plan of action for implicit bias training, and intervention training. Primex would like to partner with PSTC, which is a financial advantage.

Director Scippa and all of the LETS' staff are working with vendors for the LMS RMS system and it is in the final stages with a vendor-created program. The software is being reviewed, and creation of silos that other state agencies could have access to and use also. It could be ready as soon as the end of the week.

Covid will continue to have an affect on those in PSTC's training facility. Staff will continue to train in the safest way possible. Driving, simunitions and defensive tactics are the areas that are most concerning.

Any recruit that needs to stay at PSTC because of travel distance, it is available, but all other recruits will commute.

There is still a possibility that someone may get sick and the academy may face closing again.

Chief Morency inquired if the academy was prepared to return to remote learning if it became necessary.

Director Scippa confirmed and noted that classes had been provided remotely to anyone that was sick by using Zoom. The academy is front loaded to do classroom courses first, with the hands on training after, which would be difficult for social distancing but not impossible.

Chief Morency commended the Director and staff on the work completed to train recruits during the Covid pandemic.

Director Scippa thanked the staff.

Financial Report

Major Parenteau noted that Director Scippa had included much of the financial report; however, the budget for fiscal years 22 and 23 PSTC had been given an essential figure from the Governor's office which would have required PSTC to make significant cuts. Therefore it would have made a severe impact on PSTC. During a call with the Governor's budget director, the concerns were made known.

Fiscal year 2022 represented a four percent cut from the prior operating budget, which had been previously cut and wasn't reinstated to the (previous higher) level.

Fiscal year 2023 represented a five percent cut from the Governor's office.

The Governor's budget director is taking the Director's concerns to the Governor to discuss the needs of the Police Standards and Training Council.

Chief Morency inquired about supplemental funding because of LECTA.

Director Scippa responded that the Governor spoke to address financial issues as that came up as part of completing the LECTA recommendations. The Governor is ready to make whatever moves he needs to in order to support the efforts of LECTA, and quoting "finances should not be an issue to move the recommendations forward."

New Business

NH Department of Corrections' made a request for an additional attempt for CO Joshua Ellis, Jr. to pass the exit fitness test and achieve Corrections Certification. CO Ellis was present with Lt. Scott Towers who explained that:

- CO Ellis failed the exit fitness test;
- Failed the additional two attempts allowed;
- Has sought medical attention and was successful;
- Per protocol, was requesting approval from Council for another attempt.

Motion to allow CO Joshua Ellis to complete the exit fitness test in 30 days was made by Dr. Sullivan and seconded by Mr. Lecius.

Roll call vote:

| | |
|------------------------------|-------------|
| Vice Chairman, Chief Morency | Yes |
| Attorney General MacDonald | No response |

| | |
|-----------------------------|-----------|
| Major Marasco | Yes |
| Assistant Commissioner Jean | Abstained |
| Judge Vatanze | Yes |
| Judge Gardner | Yes |
| Chief Cormier | Yes |
| Mr. Jason Bishop | Abstained |
| Sheriff Valerino | Yes |
| Sheriff Massahos | Yes |
| Dr. Maureen Sullivan | Yes |
| Mr. Ed Lecius | Yes |

The motion passed.

Psychological Test Reimbursement

Major Parenteau summarized that House Bill 1645 was passed and signed by the Governor in July. This bill is related to PSTC's administrative rule Pol 301.07, Psychological Screening Tests. Agencies should complete psychological testing if they have funding to do so. HB 1645 provides funding in the amount of \$100,000.00, to pay for testing officers for agencies that have not budgeted for it, as reimbursement through PSTC.

When the bill was passed, it was unclear how to institute the process. Staff contacted the Department of Administrative Services for assistance:

- The funds are distributed from the Drug Asset Forfeiture Fund through the Attorney General's Office;
- There was no guidance to initiate the reimbursement process;
- PSTC requested an accounting unit from the Department of Administrative Services to transfer funds into the psychological screening account;
- The reimbursement became effective September 14, 2020;
- PSTC has received one request for reimbursement;
- A form has been developed by the staff;
- The staff is asking for Council approval for the form;
- There must be a mechanism for the Council to approve reimbursement of the testing fees;
- In order to track the process, the form requires that a paid invoice be attached, letter requesting reimbursement and specific questions;
- Staff would verify criteria on the form, then present the information to Council for approval.

Major Parenteau asked the Council for opinions on the draft form.

- Assistant Commissioner Ben Jean asked if there was a cap on the amount of reimbursement.

Major Parenteau noted that in general, some test fees are \$500.00, some are more expensive. The fund deposit from Drug Asset Forfeiture will be \$100,000.00 per year.

- Dr. Sullivan asked if the agency would mandate a psychologist or if the officer could choose.
Major Parenteau noted that it typically is an in-state psychologist who performs the test. PSTC would accept whomever the agency chooses. PSTC has no oversight on who they choose, or the fees.
- Assistant Commissioner Jean asked if the reimbursement would be limited to the agencies that had not budgeted for psychological testing, and if it was for agencies that had not otherwise funded their testing.
- Director Scippa noted that Chairman Cahill wanted to be sure that only candidates that an agency has hired would qualify for reimbursement.

The statute does not make the reimbursement process clear.

- Chief Morency asked whether or not there were agencies that did not engage in psychological testing for their candidates for hire.
- Director Scippa noted that during a previous planning session it was noted that thirty percent (30%) of NH agencies do not use psychological testing for candidates because of funding.
- Chief Morency asked how to determine whether or not agencies had budgeted for testing.
- Major Parenteau read RSA 106-L:9 into the record: Reimbursement of Expenses: "The Council may reimburse political subdivisions or the state for, or may pay for a portion of expenses incurred by the officer for psychological stability screening for candidates for law enforcement certification."
- Mr. Lecius asked if there was a cap per each agency.
- Major Parenteau responded that once the account is depleted, the reimbursements wouldn't be available. There is no cap on tests per agency.
- Should the Council make a determination that this reimbursement is for agencies that have not historically done psychological testing because they don't have the funding?

Major Parenteau noted that the matter could be explored by further discussion. Does the Council have the authority to mandate reimbursement criteria only to those agencies that have not budged due to financial constraints?

Staff concerns are that due to the statute, agencies would no longer budget because they could now be reimbursed.

Further discussion and review may be in order, and contacting PSTC's legal counsel to discuss the new law, and the intent of the law.

Dr. Sullivan commented:

- There should be standards
- Should there be a committee to work on it?
- There should be rules and regulations

Chief Morency has been asked to develop a subcommittee to overlap with LECT and PSTC's rules and procedures that need updating.

The following Council members volunteered to be on the committee:

Chairman Cahill

Ed Lecius

Chief Cormier

Dr. Sullivan

Vice Chairman Morency

The subcommittee would work on the administrative rules, and discuss their findings with the Council.

Assistant Commissioner Jean stated that Commissioner Hanks may be interested in participating on the committee.

Director Scippa noted that he and Major Parenteau would be available for subcommittee discussions, topics, regarding LECT and administrative rules.

Assistant Commissioner Jean commented that the statute relative to reimbursement for agencies' psychological testing was in place – should the form or some other mechanism be adopted so the staff can begin gathering information and provide the agency an opportunity to begin submitting requests?

Ideas included:

- The volume of requests;
- The costs;
- Using the form to organize rather than depending on random notes and emails;
- Continuing to explore whether the reimbursement process would require rulemaking.

Major Parenteau, noted that some forms do not require rulemaking, others do. The requirement for psychological testing was part of the Performance Audit that was conducted by the Legislative Budget Assistant on PSTC. Many agencies were not completing psychological testing.

There should be a formal mechanism, a plan or procedure, to follow for the reimbursement request.

Staff has a rough idea of the number of new hires based upon the academy classes.

Chief Morency noted that the variables should be addressed before any reimbursement is done.

Director Scippa stated that the form, when approved, can be made available online.

The approval of the reimbursement form was not completed as further research is needed.

Informal Conference Aaron Brown

Major Parenteau summarized that he, Director Scippa and Chairman Cahill had met with Attorney Krupski and Aaron Brown on September 11, 2020. Chairman Cahill had advised Attorney Krupski that his client's case would require review by the entire Council. The matter will be on the agenda for October 27, 2020.

Michael Verrocchi Hearing

Michael Verrocchi was present with his attorney, Marc Beaudoin, for a hearing for the temporary suspension of his police certification.

When asked, Attorney Beaudoin stated that the witnesses he would call would attend via Zoom technology, and those with him in person were for moral support of Michael Verrocchi.

Major Parenteau was sworn in by Vice Chairman, Chief Morency.

Attorney Beaudoin, when asked, requested a public session.

Major Parenteau summarized the reason for the temporary suspension hearing was Pol 402.02(b):

"A certification shall be temporarily suspended pending resolution of criminal charges if the officer has been arrested, indicted, bound over with prior to or after certification for a felony or any crime involving moral turpitude or a crime which tends to bring discredit on the police, corrections or probation parole service unless the Council, in its discretion, determines that the safety of the public or confidence of the criminal justice system would not be adversely affected."

- (c) Examples of crimes involving moral turpitude or a crime which tends to bring discredit on the police, corrections or probation parole service shall include, but not be limited to,
Reckless conduct.

Major Parenteau noted that the exhibits he used would be provided to those participating via Zoom later, as would Attorney Beaudoin's exhibits.

Major Parenteau provided exhibits for Michael Verrocchi's history of employment and certification as a police officer to the Council members in attendance at PSTC's training facility.

Officer Verrocchi was placed on administrative leave by the Salem Police Department on February 15, 2019. PSTC received a Form G, Report of Arrest, of Michael Verrocchi on January 16, 2020 by the Attorney General's Office for Reckless conduct and Disobeying a police officer.

A complaint was filed with the Rockingham County Superior Court charging Michael Verrocchi with Disobeying a police officer contrary to RSA 265:4, a Class A misdemeanor. The complaint reads:

On or about November 10, 2012, Michael Verrocchi did purposely, while driving or in charge of a motor vehicle, neglect to stop when signaled to stop by Officer Sean York of the Salem Police Department, complaint brought by Jeffrey Ward of the Attorney General's Office.

A complaint was filed at the Rockingham Superior Court on January 15, 2020 charging Michael Verrocchi with Reckless conduct with a deadly weapon contrary to RSA 631:3, 11(a) a Class B felony. The complaint reads:

On or about November 10, 2012, Michael Verrocchi did recklessly engage in conduct which placed or may have placed others in danger of serious bodily injury in that Michael Verrocchi, while operating a Jeep Cherokee on Route 28 in Salem, operated the motor vehicle in excess of the posted speed limit, failed to stop when signaled to stop by Officer Sean York of the Salem Police Department by means of audible and visible emergency warning signals and instead fled from Officer York and engaged in a high speed motor vehicle pursuit over a distance of approximately two miles, during which Michael Verrocchi ran a red light and avoided spike strips placed in the roadway by Officer Kevin Swanson of the Salem Police Department, and continuously failed to stop for Officer York, the vehicle being operated by Michael Verrocchi being a deadly weapon as defined in RSA 625:11, that complaint also brought by Assistant Attorney General Jeffrey R. Ward.

The two charges are currently pending in the Rockingham County Superior Court.

Attorney Beaudoin made an opening statement regarding his client.

The Michael Verrocchi incident had been dealt with by the Salem Police Department in 2012. What transpired was a common prank, the command staff conducted an investigation.

It was an ongoing prank in the Salem Police Department with veteran officers pulling it on younger, rookie police officers.

The incident was brought to the attention of command staff who said:

- We need to put an end to this;
- They completed an internal investigation;
- Chief of Police sustained the internal investigation and allegations that were made;
- Discussion between the Union and command staff.

Disposition

- Michael Verrocchi should take responsibility for his actions and temporary lack of Judgment;
- Waived right to appeal and filing grievance;
- He was sanctioned with a one-day suspension from the Department;
- Town agreed to no further action against Michael Verrocchi regarding the incident as far as motor vehicle violations or punishments.

- It was put to rest back then;
- Client understood it was put to rest;
- He was a stellar officer after that;
- He was never disciplined again, and was promoted;
- He taught driving at PSTC and brought up his mistake to those that he taught.

The Town of Salem did an audit, they used this investigation as an example of a proper internal investigation that had been conducted. The Attorney General's Office learned of the incident through the audit.

- Keeping his police certification will not erode the public's confidence in the criminal justice system;
- He is not a danger to the community;
- He wants vindication and wants to continue working at the Salem Police Department.

Witnesses

Christopher Dillon, Town Manager for Salem;

Deputy Chief James Chase, retired;

Sergeant Steven Woidyla;

Attorney Jason Grosky;

Acting Chief Joel Dolan;

Brian Pattullo, Civilian Administrator, Salem Police Department;

Deputy Chief, Shawn Patten, Retired;

Christopher Dillon provided testimony on:

- Internal investigation provided to Kroll Auditors;
- Attorney General's Office subpoenaed records;
- Attorney General's Office scheduled a meeting with Town Manager, Christopher Dillon and Brian Pattullo;
- Kroll Auditors asked for internal investigations going back five years;
- Verrocchi's internal investigation was in the five-year window;
- Internal investigations five years or less provided;
- Kroll Auditors identified Verrocchi's internal investigation as being completed correctly;
- Verrocchi did not present himself to Christopher Dillon as being a danger to the community.

Deputy Chief James Chase – Retired, provided testimony on:

- Had heard rumors of Salem officers pranking other officers by baiting them;
- In November, 2012, he was made aware of the incident the Monday after it happened.
- Deputy Chief Chase assigned the internal investigation to Kevin Fitzgerald;
- The allegations were sustained;
- Michael Verrocchi is charismatic, intelligent, report writing is great, good police work, good driving instructor.
- Does not consider him a danger to the community;
- No adverse effect on the public's opinion of the criminal justice system.

Chief Morency asked retired Deputy Chief Chase if he agreed that the events that happened were reckless and a criminal act.

Deputy Chief Chase's response was "one hundred percent," it was egregious putting people's lives in jeopardy that night". It was a stunt gone too far.

Attorney General MacDonald joined the meeting via Zoom.

It is confirmed that the meeting is in public session. Attorney General MacDonald confirms that he is recused.

Attorney Beaudoin provided exhibits which included Salem Police Department's internal administrative letters and a letter from retired Deputy Chief, Shawn Patten.

Retired Sergeant Steven Woidyla provided testimony on:

- Was aware of the incident, he was Vice President of the Union, learned about it after the weekend.
- Approached early to resolve the matter;
- Administration wanted a five-day suspension, the Union asked for one day. Michael Verrocchi's admitted responsibility and his lapse of judgment, he admitted to his wrongdoing.

Chief Morency asked Steven Woidyla if the act that was committed on that date put the public at risk.

Steven Woidyla responded that it had put the public at risk.

The agreement with the administration was that they not proceed with criminal charges.

Judge Gardner asked if there was communication with the Attorney General's office at the time.

Steven Woidyla confirmed that he was not aware of any at the time.

Attorney Jason Grosky, Prosecutor at Salem Police Department, provided testimony:

- Heard rumors or indirect comments at the police department about Michael Verrocchi;
- Alleged to have been driving too fast in a prank that went too far;
- It wasn't criminal from his position.
- Michael Verrocchi, as a police officer, is outstanding and conscientious;
- No concerns that Michael Verrocchi was a danger to the community;
- Does not think that Michael Verrocchi maintaining his police certification would erode the public's confidence in the criminal justice system.

Acting Chief Joel Dolan, Salem Police Department, provided testimony:

- Heard about incident when it happened. He was midnight Shift Commander, he was not working that night, heard about it on the following Monday;
- Had a conversation with the Town Manager who made him aware that an audit was coming;
- Internal Affairs Investigations to review for the audit were selected by Chief Donovan, Deputy Chief Morin and Captain Wagner;
- He has worked with Michael Verrocchi and he is a good officer;
- He is not a danger to the public.
- Worked midnight shift approximately five years;
- He was aware of pranks;
- He was not personally involved in pranks.

Brian Pattullo, Civilian Administrator for Salem Police Department, provided testimony:

- He was brought in because of Kroll Report.
- The Kroll Report noted that the internal affairs report on Michael Verrocchi was done correctly.
- Worked with Sergeant Verrocchi in his capacity in the Union.
- Verrocchi did a good job, very professional.

Retired Deputy Chief Shawn Patten provided testimony:

- Was aware of a prank, older officers would pull a prank on younger officers and try to get an officer to chase them, then pull over, then kind of laugh like it was a joke, it had been done to him, and he probably engaged in that behavior when he was no longer a rookie officer. It was not done to him to the level of Michael Verrocchi.
- Found out the Monday after the incident;
- No discussion of bringing the investigation result to the Attorney General's Office. Did not look at it as criminal behavior;
- Does not think the public was in danger because of the conditions at the time – no traffic on Route 28.
- Letter with his own opinion to Chief Cahill, his thought that the investigation is politically motivated;
- Internal investigation conclusion eight years after the incident occurred;
- Not a danger to the public and his maintaining a certification does not have an adverse effect on the public's confidence of the criminal justice system;
- This was a prank, one that happened a lot, eight years ago and he was properly disciplined.

Judge Vetanze asked how many times the prank occurred?

Deputy Chief Patten stated:

- The four to midnight shift was staffed by veteran/senior officers; when leaving work at midnight if they saw an officer running radar they would speed up, be pulled over and then say "You got me";
- It happened to him a dozen times over ten years;
- He probably engaged in it a couple of times;
- Back then, it wasn't a big deal, in the 80's and 90's.

Vice Chairman Morency noted that the Council was asked to look at the conduct to determine if the conduct would jeopardize the safety of the public or the confidence in the criminal justice system?

The charges are pending:

- (1) Disobeying a police officer, Class A misdemeanor;
- (2) Reckless conduct with a deadly weapon, the car, Class B felony.

Attorney Andrew Cotrupi, the criminal defense attorney for Michael Verrocchi, provided information that:

- Michael Verrocchi was indicted last week on two counts. He noted that trial may be at least ten months to a year away.
- Equitable argument
- Occurred well in the past; eight years ago
- Addressed and dealt with.
- Statute of limitations dispositive, court has ruled that it is a jury question.
- State of the New Hampshire's legal theory is the statute of limitations is not tolled because of the illegal conduct of the police chief, the police chief had a legal obligation under Laurie to disclose the information, his criminal act of non-disclosure tolls the statute of limitations;
- Never heard the theory;
- There is no Superior or Supreme Court decision on it.

Motion by Chief Morency that the certification of Michael Verrocchi be temporarily suspended pending resolution of criminal charges.

There was no second, the motion failed.

Discussion ensued regarding the statute of limitations.

Motion by Judge Vetanze, seconded by Sheriff Valerino, to not suspend the certification, amended by Assistant Commissioner Jean, to not suspend the certification pending the resolution of criminal charges, due to the length of time since the event took place, it has been determined that the safety of the public and the confidence in the criminal system would not be adversely affected.

Judge Gardner stated that if the events happened at the current time, the Council may not have come to the decision it did, which is a distinguishing factor.

Chief Morency and Dr. Sullivan agreed.

Roll call vote:

| | |
|------------------------------|---------------|
| Vice Chairman, Chief Morency | Yes |
| Attorney General MacDonald | (exited Zoom) |
| Major Marasco | Abstained |
| Assistant Commissioner Jean | Yes |
| Judge Vetanze | Yes |
| Judge Gardner | Yes |
| Chief Cormier | Yes |
| Mr. Jason Bishop | Abstained |
| Sheriff Valerino | Yes |
| Sheriff Massahos | Yes |

| | |
|----------------------|-----|
| Dr. Maureen Sullivan | Yes |
| Mr. Ed Lecius | Yes |

Nine in favor, two abstained, the motion passed.

Consent Calendar

PT&E Requests

Christopher G. Chappell, Northumberland Police Department

(DOH: 06/17/20) will be granted certification upon successful completion of the medical exam, entrance fitness test, and the NH full time law package, with the stipulation that the officer must work in the direct presence of a certified officer unless the officer completes the agency's FTO program and then may work under normal supervision.

Brittany N. Lewis, Hudson Police Department

(DOH: 10/05/20) will be granted certification upon successful completion of the medical exam, entrance fitness test, and the NH full time law package, with the stipulation that the officer must work in the direct presence of a certified officer unless the officer completes the agency's FTO program and then may work under normal supervision.

Sean E. Welch, Sr., Tamworth Police Department

(DOH: 08/24/20) will be granted certification upon successful completion of the medical exam (valid date 12/30/2020), and entrance fitness test with the stipulation that the officer must work in the direct presence of a certified officer unless the officer completes the agency's FTO program and then may work under normal supervision.

Albert Tien, Nashua Police Department

(DOH: 09/21/20) will be granted certification upon successful completion of the medical exam (06/23/2020), entrance fitness test , and the law package classes of the full time academy, with the stipulation that the officer must work in the direct presence of a certified officer unless the officer completes the agency's FTO program and then may work under normal supervision.

Requests for Fitness Testing Extensions were granted to:

William R. Haynes, Jr., New Hampshire State Police

Richard Pappalardo, Rockingham County Sheriff's Office

Motion to approve the Consent Calendar by Mr. Lecius, seconded by Sheriff Valerino

Anne took the roll call vote:

| | |
|------------------------------|---------------|
| Vice Chairman, Chief Morency | Yes |
| Attorney General MacDonald | (exited Zoom) |
| Major Marasco | abstain |
| Assistant Commissioner Jean | Yes |
| Judge Vetanze | Yes |
| Judge Gardiner | Yes |

| | |
|----------------------|---------|
| Chief Cormier | Yes |
| Mr Jason Bishop | abstain |
| Sheriff Valerino | Yes |
| Sheriff Massahos | Yes |
| Dr. Maureen Sullivan | Yes |
| Mr. Ed Lecius | Yes |

Mr. Lecius abstained from the Nashua Police Department prior training and experience item.

Emergency Rule for Limitation of Hours of Part Time Officers

Major Parenteau informed the Council members that the emergency rule initiated at the beginning of the pandemic, removing the limitation of 1300 hours for part time officers would expire on October 6, 2020.

The Attorney General's Office is working with Executive branch agencies on the ability to extend the rule by Executive order, which the Governor can do. The question is does the Council wish to extend for another period of time and make the request that the procedure go forward upon the Council's approval.

This falls under the emergency declaration order, but according to administrative rules the same emergency rule cannot be renewed. The manner in which to do this is that the Governor's Office can issue an Executive order. The Attorney General's office is assisting the Governor's Office and executive agencies in drafting an amendment or an exhibit to present to the Governor to approve the extension, if that is the Council's desire.

Motion by Assistant Commissioner Jean, seconded by Mr. Lecius, to move forward to the Governor's Office to get the declaration to cover the extended period, and in the future draft a permanent rule. The roll call vote

Anne took the roll call vote:

| | |
|------------------------------|---------------|
| Vice Chairman, Chief Morency | Yes |
| Attorney General MacDonald | (exited Zoom) |
| Major Marasco | abstain |
| Assistant Commissioner Jean | Yes |
| Judge Vetanze | Yes |
| Judge Gardiner | Yes |
| Chief Cormier | Yes |
| Mr Jason Bishop | abstain |
| Sheriff Valerino | Yes |
| Sheriff Massahos | Yes |
| Dr. Maureen Sullivan | Yes |
| Mr. Ed Lecius | Yes |

The next Council meeting will be on October 27, 2020.

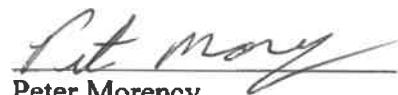
Motion to adjourn at 11:45 by Assistant Commissioner Jean, seconded by Chief Morency

Anne took the roll call vote:

| | |
|------------------------------|---------------|
| Vice Chairman, Chief Morency | Yes |
| Attorney General MacDonald | (exited Zoom) |
| Major Marasco | yes |
| Assistant Commissioner Jean | Yes |
| Judge Vetanze | Yes |
| Judge Gardiner | Yes |
| Chief Cormier | Yes |
| Mr Jason Bishop | abstain |
| Sheriff Valerino | Yes |
| Sheriff Massahos | Yes |
| Dr. Maureen Sullivan | Yes |
| Mr. Ed Lecius | Yes |

October 27, 2020

Respectfully Submitted



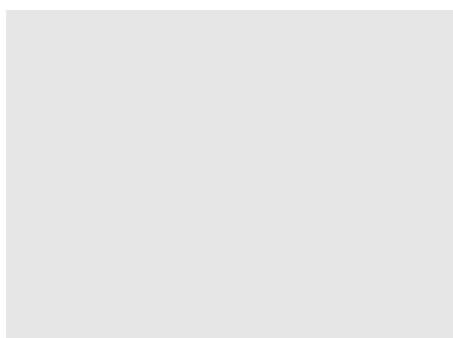
Peter Morency
Vice Chairman

EXHIBIT 6

https://www.unionleader.com/news/crime/police-prank-salem-sergeant-keeps-his-certification/article_4b6c5a4b-ccc2-5011-bb00-f2405c54b752.html

Police 'prank': Salem sergeant keeps his certification

By Mark Hayward New Hampshire Union Leader
Dec 1, 2020



MICHAEL VERROCCHI

Still faces criminal charges

Suspended Salem police Sgt. Michael Verrocchi has kept his certification for police work, after convincing a certification board that a high-speed chase in 2012 was a mere prank that veteran Salem police officers play on rookies.

Verrocchi, the blunt-speaking former police union president, still faces criminal charges stemming from the high-speed, off-duty chase that took place in Salem on Route 28.

But his defense strategy prevailed and became clear in September, when he appeared before the Police Standards and Training Council in Concord for a hearing on whether to suspend his certification.

Verrocchi, 42, asked for the hearing to be open. Six current or retired Salem police officials, some implicated in the ongoing saga involving the department, testified.

"Older officers would pull a prank on younger officers and try to get an officer to chase them, then pull over, then kind of laugh like it was a joke," retired Deputy Police Chief Shawn Patten testified. The hearing was detailed in recently posted minutes.

Patten fell victim to the prank when he was a rookie, and he testified that he "probably" pulled the stunt once he rose in the ranks.

 **Download PDF**



Chief David P. Cahill
Chairman

**State of New Hampshire
POLICE STANDARDS & TRAINING COUNCIL**
ARTHUR D. KEHAS
LAW ENFORCEMENT TRAINING FACILITY & CAMPUS
17 Institute Drive — Concord, N.H. 03301-7413
603-271-2133 FAX 603-271-1785
TDD Access: Relay NH 1-800-735-2964



John V. Scippa
Director

PUBLIC MINUTES
Police Standards and Training Council
September 22, 2020

Present: at PSTC with below listed staff

Chief Morency, Vice Chairman, Berlin Police Department; Sheriff Valerino, Coos County Sheriff's Office; Mr. Edward Lecius; Dr. Maureen Sullivan; Assistant Commissioner Benjamin Jean, New Hampshire Department of Corrections

Zoom:

Chief Cormier, Tilton Police Department, alone;
Jason Bishop, Community College System of New Hampshire, alone;
Judge Gardner, Circuit Court Judge; in Rye, alone
Major John Marasco, New Hampshire State Police, at his office alone
Attorney General MacDonald briefly
Judge Vetanze, 3rd Circuit District Division, Ossipee alone
Sheriff Massahos, Rockingham County Sheriff's Office; at his office alone

Not present: Chairman, Chief Cahill, Sunapee Police Department, Chief Capano, Manchester Police Department

Staff Present: Director Scippa, Major Parenteau, (Ret.), Lt. Hawkins, Lt. Towers, and Anne Paquin, Investigative Paralegal at PSTC in PSTC classroom two.

Guests: Attorney Mark Beaudoin, Michael Verrocchi, Attorney Andrew Cotrupi,
Witnesses by Zoom:

Christopher Dillon, Town Manager for Salem;
Deputy Chief James Chase, retired;
Sergeant Steven Woidyla;
Attorney Jason Grosky;
Chief Joel Dolan;
Brian Pattullo, Civilian Administrator, Salem Police Department;
Deputy Chief, Shawn Patten, Retired;

This month's Council meeting was held using "Zoom" due to COVID-19 restrictions for gathering of people. Per instruction for remote meetings, voting was done by roll call for every motion. Public and Nonpublic sessions were held by using separate log ins for "Zoom".

Vice Chairman Chief Morency called the meeting to order at 9:05 a.m. Anne took roll as listed above.

Chief Morency welcomed Jason Bishop, he will be the ex officio representative from the Community College System of New Hampshire, a position formerly held by Charles Ansell.

After hearing the testimony, the council voted unanimously with two abstentions not to suspend Verrocchi's certification.

Attorney General Gordon MacDonald, who is heading a criminal investigation into the Salem Police Department and sits on the council, was on hand for the testimony during the teleconference meeting.

He departed shortly before the vote, according to the Sept. 22 minutes.

MacDonald will not comment on the council's decision, Justice Department spokesman Kate Giaquinto said.

"That's because it's an ongoing criminal case and ongoing investigation," Giaquinto said.

In November 2018, an audit reported a host of issues with the Salem Police Department, including mismanaging internal investigations and violations of department policies.

Paul Donovan resigned as Salem police chief shortly afterward. MacDonald's office launched an investigation in early 2019, and Verrocchi was one of two people eventually charged with crimes. One of the targets in the investigation, former deputy police chief Robert Morin, has never been charged.

Former police captain Michael Wagner faces federal tax evasion charges stemming from an alleged firearms trafficking scheme.

When allegations first surfaced about Salem police, Verrocchi took to social media to defend his department. The president of the local union representing Salem officers called the audit a waste of money and a "complete and utter pile of (expletive)."

He also wrote: "Wolves don't lose sleep over the opinion of sheep."

Indictments allege Verrocchi drove at a high speed for more than two miles while pursued by rookie Officer Sean York. He ran a red light and avoided a spike strip. He faces a felony charge of

reckless conduct with a deadly weapon and disobeying a police officer, a misdemeanor.

According to the Police Standards and Training Council minutes, Verrocchi admitted to the prank in 2012 when confronted by his superiors. He received a one-day suspension.

His lawyers have gone as far as writing his side of the story in documents filed in the criminal case, but that document has been sealed, according to the court system.

"No part of this case is a surprise to anyone," said his criminal defense lawyer, Andrew Cotrupi of Hampton. "He told people in 2012 what he did and told investigators. If he has to tell a jury, he will."

Cotrupi has tried to get the case thrown out, arguing it exceeds the statute of limitations. He has also sought any instructions that prosecutors gave to the grand jury on the legal issues involving the case. A judge has rejected the requests.

The decision by the council means that Verrocchi will be cleared to get a job in law enforcement if he is found eventually innocent or prosecutors drop the charges.

"He fully plans to return to law enforcement. It's his life's work," Cotrupi said. He now works at his family's restaurant because of the case.

Meanwhile, Wagner has had his case transferred from a federal court in Massachusetts to U.S. District Court in Concord. His lawyers argued he just had a kidney transplant and is immunocompromised and at a greater risk of contracting the coronavirus in Boston than in Concord.

The case was transferred in September and District Court Judge Joseph Laplante, a former homicide prosecutor, quickly recused himself. The case rests with Judge Paul Barbadoro.

mhayward@unionleader.com

Union Leader Correspondent Ryan Lessard contributed to this article.

Mark Hayward

<]

EXHIBIT 7

**The State of New Hampshire
SUPERIOR COURT COMPLAINT**

Case Number:

Charge ID:

| | | | | |
|------------------------------------|-------------|---|----------------------------------|--|
| <input type="checkbox"/> VIOLATION | MISDEMEANOR | <input checked="" type="checkbox"/> CLASS A | <input type="checkbox"/> CLASS B | <input type="checkbox"/> UNCLASSIFIED (non-person) |
| | FELONY | <input type="checkbox"/> CLASS A | <input type="checkbox"/> CLASS B | <input type="checkbox"/> SPECIAL |

You are to appear at the: **Rockingham Superior Court**
address: **10 Route 125 Brentwood NH 03833**
in: **Rockingham County**
at:
on:

Under penalty of law to answer to a complaint charging you with the following offense:

THE UNDERSIGNED COMPLAINS THAT:

| | | | | | |
|--|---|--|----------------------|--|----------------------------|
| <u>Verrocchi</u> Last Name | <u>Michael</u> First Name | <u>D.</u> Middle | | | |
| <u>30 Silyer Brook Road</u> Address | <u>Salem</u> City | <u>NH</u> State | <u>03079</u> Zip | | |
| <u>Male</u> Sex | <u>White</u> Race | <u>5'11"</u> Height | <u>210</u> Weight | <u>Unknown</u> Eye Color | <u>Brown</u> Hair Color |
| <u>05/13/1978</u> DOB | <u>NH19728102</u> License #: | <u>New Hampshire</u> OP License State | | | |
| <input type="checkbox"/> COMM. VEH. | <input type="checkbox"/> COMM. DR. LIC. | <input type="checkbox"/> HAZ. MAT. | | <input type="checkbox"/> 16+ PASSENGER | |

AT: **Salem, New Hampshire**

On or about Between November 10, 2012
commit the offense of:

in the above county and state, did

RSA Name: **Disobeying a Police Officer**

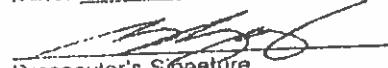
Contrary to RSA: **265:4**

Inchoate:

And the laws of New Hampshire for which the defendant should be held to answer, in that the defendant did:
purposely, while driving or in charge of a motor vehicle, neglect to stop when signaled to stop by Officer Sean York of the Salem Police Department by means of authorized audible and visual emergency warning signals,

Additional allegations are attached.
against the peace and dignity of the State.

Date: 01/15/2020


Prosecutor's Signature

Assistant Attorney General

NHJB-2486-S (12/01/2016)

18367
NH Bar ID # Printed Name

Geoffrey W.R. Ward

NH Attorney General
Prosecuting Attorney's Office

**The State of New Hampshire
SUPERIOR COURT COMPLAINT**

Case Number:

Charge ID:

| | | | | | |
|------------------------------------|-------------|----------------------------------|---|--|--|
| <input type="checkbox"/> VIOLATION | MISDEMEANOR | <input type="checkbox"/> CLASS A | <input type="checkbox"/> CLASS B | <input type="checkbox"/> UNCLASSIFIED (non-person) | |
| | FELONY | <input type="checkbox"/> CLASS A | <input checked="" type="checkbox"/> CLASS B | <input type="checkbox"/> SPECIAL | <input type="checkbox"/> UNCLASSIFIED (non-person) |

You are to appear at the: Rockingham Superior Court
address: 10 Route 125 Brentwood NH 03833
in: Rockingham County
at:
on:

Under penalty of law to answer to a complaint charging you with the following offense:

THE UNDERSIGNED COMPLAINS THAT:

| | | | | | |
|-------------------------------------|---|------------------------------------|--|-----------|------------|
| Verrocchi | Michael | D. | | | |
| Last Name | First Name | Middle | | | |
| 30 Silver Brook Road | Salem | NH | | | |
| Address | City | State | Zip | | |
| Male | White | 5'11" | 210 | Unknown | Brown |
| Sex | Race | Height | Weight | Eye Color | Hair Color |
| 05/13/1978 | NH19728102 | New Hampshire | | | |
| DOB | License #: | OP License State | | | |
| <input type="checkbox"/> COMM. VEH. | <input type="checkbox"/> COMM. DR. LIC. | <input type="checkbox"/> HAZ. MAT. | <input type="checkbox"/> 16+ PASSENGER | | |

AT: Salem, New Hampshire

On or about Between November 10, 2012
commit the offense of:

in the above county and state, did

RSA Name: Reckless Conduct - Deadly Weapon

Contrary to RSA: 631:3, II

Inchoate:

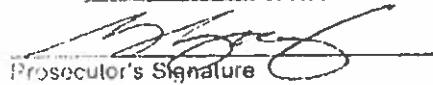
And the laws of New Hampshire for which the defendant should be held to answer, in that the defendant did:

recklessly engage in conduct which placed or may have placed others in danger of seriously bodily injury, in that Michael Verrocchi, while operating a Jeep Cherokee on Route 28 in Salem, operated the motor vehicle in excess of the posted speed limit, failed to stop when signaled to stop by Officer Sean York of the Salem Police Department by means of audible and visual emergency warning signals, and instead fled from Officer York and engaged in a high-speed motor vehicle pursuit over a distance of approximately two miles during which Michael Verrocchi ran a red light and avoided spike strips placed in the roadway by Officer Kevin Swanson of the Salem Police Department and continuously failed to stop for Officer York, the vehicle being operated by Michael Verrocchi being a deadly weapon as defined in RSA 625:11,

Additional allegations are attached.

against the peace and dignity of the State.

Date: 01/15/2020


Prosecutor's Signature

18367 Geoffrey W.R. Ward
NH Bar ID # Printed Name

NH Attorney General
Prosecuting Attorney's Office

Assistant Attorney General

NHJD 2480 S (12/01/2016)



Salem Police Department

Paul T. Donovan
Chief of Police

TO: Officer Michael Verrocchi
FROM: Deputy Chief Shawn J. Patten *SP*
DATE: December 17, 2012
RE: Internal Investigation #02-12 – Day Correction

Officer Verrocchi,

An internal investigation was conducted based on your conduct on November 10, 2012. I am in receipt of the investigative packet and have reviewed it thoroughly. I concur with the finding of SUSTAINED. I am also aware that there has been a negotiated discipline in this matter in which you and your union representation have agreed that you will serve a *1 Day Suspension Without Pay*. This agreement stipulates that based on the aforementioned discipline, you have waived any and all hearings, time constraints, and grievance procedures. You will serve this one day suspension on *Sunday December 16th, 2012*. Based on the short time frame of the suspension, you will not be required to turn in your firearm, badge and police identification.

I applaud your decision to take full responsibility for your actions that evening. My expectations are that behavior of this type will not occur again in the future. You are well liked by your peers and supervisors, and are an extremely intelligent and competent Police Officer. It is my hope that you will take this as a lesson learned and avoid this type of behavior in the future.

Cc: Chief Paul T. Donovan
Sgt. Shane Smith, Union President
Off Steve Woidyla, Union Vice President

SJP/sjp



Salem Police Department

Paul T. Donovan
Chief of Police

TO: Chief Paul T. Donovan

FROM: Deputy Chief Shawn J. Patten

DATE: November 20, 2012

RE: IA #02-12

Chief,

Enclosed is the complete internal investigation into an incident which occurred on November 10, 2012 involving Officer's Michael Verrocchi and Joseph DeFeudis. I concur with the findings of the investigating officer Detective Lieutenant Kevin Fitzgerald, and the disciplinary recommendations put forth by Captain Chase.

After speaking with Union officials, the Salem Police Relief Union on behalf of Officer Verrocchi, submitted a letter waiving all hearings, time frames, and the grievance procedure in exchange for a reduced, yet still substantial discipline of 1 DAY SUSPENSION w/o Pay in the matter. It is my recommendation to proceed with this level of discipline and to make the effective day served December 16, 2012.

Please see me with any questions or concerns.

SJP/sjp

SALEM POLICE RELIEF

N.E.P.B.A. LOCAL # 22

P.O. BOX 971
SALEM, NH 03079

To: Captain James S. Chase
From: Union Vice President S. Woidyla *Saw*
Date: November 20, 2012
Re: Officer Verrocchi internal investigation

In reference to the on-going investigation into the off-duty actions of Officer Verrocchi, and to quickly resolve the matter, the Union would agree the following settlement:

1. Officer Verrocchi will take full responsibility for a temporary lack in judgment and look forward to put this matter behind him.
2. Officer Verrocchi, through the Union would agree to waive any/all hearings and time constraints and the grievance process afforded under the CBA.
3. Officer Verrocchi would accept a one day unpaid suspension with the day to be agreed upon by both parties. This one day suspension to be served within thirty (30) days of the date of acceptance of this agreement.
4. ~~The Town agrees that there will be no further action against Officer Verrocchi in regards to the incident in question as far as enforcement into any alleged m/v violations or additional punishment.~~

SAW/saw

000406

August 14, 2020

New Hampshire Police Standards & Training Council
17 Institute Drive
Concord, NH 03301
ATTN: Chairman Chief David Cahill

RE: Officer Michael Verrocchi

Dear Chief Cahill & Esteemed Council Members,

I felt compelled to write a letter of support and clarification on behalf of Salem Police Officer Michael Verrocchi, who I understand is scheduled for a hearing regarding his certification. It is my sincere belief that any adverse action towards Officer Verrocchi at this time is not only unnecessary, but a significant overreaction with regards to an incident which occurred in 2012. This incident was handled appropriately at that time, within Salem Police General Orders, Union Contract, and the discretion that NH State Statutes provide for law enforcement.

In 2012 I was employed as the Deputy Chief of Police at the Salem Police Department, overseeing all matters of operation and answerable to the Chief of Police, Paul T. Donovan. On or about Monday November 12, 2012 I was made aware of an incident by Captain James Chase which occurred over the weekend involving Officer Verrocchi. The incident involved Officer Verrocchi (who was off duty in a POV) speeding and trying to trick a fellow on-duty Salem Officer into attempting a motor vehicle stop. Then, not stopping for a short period before pulling over and the on-duty officer realizing he has been fooled. This sort of prank had been happening ever since I had been a police officer, done to me personally several times, always after midnight by the usually more senior officers, trying to raise the hackles of the newer officers on the midnight shift. This was always done after midnight, on a main thoroughfare, with no traffic, and no danger to anyone in the community. Most assuredly, this sort of prank has and continues to this day in every agency.

In this particular incident, and self-admittedly by Officer Verrocchi, he continued this prank for too long, took it too far, subsequently resulting in an internal investigation being conducted. At the time, Officer Verrocchi was an excellent police officer, had no prior discipline in his file, and was very forthcoming, honest, and regretful during the internal investigation. I concurred with the results of then Lt. Kevin Fitzgerald's IA and Captain Chase's disciplinary recommendations. I forwarded the IA and Captain Chase's recommendations to the Chief of Police with my approval. Officer Verrocchi accepted and served a 1 Day No Pay Suspension with no further action by the Agency or Town, and waived all grievance rights he was entitled under the current union contract. To my knowledge, Officer Verrocchi never engaged in this behavior again, continued to excel as a police officer and earned a promotion to Sergeant. The point of discipline is not only punitive, but to teach and change behavior. This happened 100%.

At no time did we consider criminal charges, from the on-duty Sergeant and Lieutenant (Shift Commander) right up through Captain Chase, myself, and the Chief of Police. This was a long-standing prank which was obviously taken too far. Due to the time of night, lack of any traffic, and other conditions there was no real danger to the public. To my knowledge, the IA was placed into his

personnel file, he was docked 1 day's pay, and the appropriate people who had access to personnel files were made aware of the incident, discipline, and loss of pay.

I am aware an audit was recently conducted on the Salem Police Department. As law enforcement professionals, I think we all know when an audit is requested by Town Hall, Politicians, and appointed Town Managers, and without input from the Agency, the outcome is predetermined. Even though this audit states clearly that none of the findings were to be used in any adverse personnel actions and weren't corroborated, the audit was forwarded to the NH AG's Office by Salem Town Manager Chris Dillon.

I am frankly shocked the NH Attorney Generals' Office allowed itself to not only become entangled in the mess of Salem politics, but actually somehow through legal gymnastics felt it appropriate to not only charge Officer Verrocchi for an 8 year old incident, but stretch it into felony level charges. If the AG took a deeper look or talked to the right people, they would have seen the recent audit targeted a long time and often politically targeted and maligned Chief, 2 Union Presidents, and several others. This same exact playbook was used against the Salem DPW a couple years prior, which resulted in the termination / retirement of the DPW Director, and attempted discipline of other employees who did not deserve it.

Officer Verrocchi by all accounts has had an outstanding career in law enforcement, accepted discipline for an incident that occurred 9 years ago, and now finds himself the victim of not only local politics, but in my opinion, an unnecessary and overzealous prosecution by NH AG's Office who is taking an often done prank and wrongfully trying to magnify it into something it simply wasn't.

In closing, I sincerely believe Officer Verrocchi made a mistake, took responsibility, was disciplined, learned from it, and has since excelled in his career. I also do not believe this will be a successful prosecution and is in fact a waste of valuable resources. I would respectfully urge the Council to table this issue until the completion of the case, so as not to victimize Officer Verrocchi even further.

I hope you are all well and I wish you safety and good health in the future.

Sincerely,


Shawn J. Patten
Deputy Chief (Retired)
Salem, NH Police Department
ShawnJimmmy80@gmail.com
(603)235-9329

EXHIBIT 8

https://www.unionleader.com/news/politics/local/high-ranking-salem-police-officers-take-to-social-media-to-criticize-report/article_31adc0df-2917-5be1-8b5e-25eaff311d1e.html

High-ranking Salem police officers take to social media to criticize report

By RYAN LESSARD Union Leader Correspondent
Nov 27, 2018



Salem Police Department

SALEM — High-ranking Salem police officers have taken to social media to express their displeasure with a town-commissioned report that included criticism of the negative culture inside the department.

Deputy Police Chief Robert Morin, in a post to the Salem, NH Residents Facebook group on Tuesday, wrote that the Salem police will always strive to do better and will work to implement “a number” of recommendations in an audit report released Friday.

But Morin took issue with the 177-page report by Kroll Inc., writing that “significant portions” are “without merit and contain speculation, opinion and hearsay presented as fact without any

attempt to seek the truth from first-person witnesses."

Morin featured prominently in the report, particularly in a 15-page addendum about the department's culture, which Kroll reported appeared to disregard town authority, post apparently insubordinate statements on social media, display an "us versus them" mentality between the department and the town, issue disciplinary judgments based on whether officers were viewed to be aligned with management or not, and an adversarial relationship with the town's human resources department.

A March 20 post by Morin to the same Facebook group was highlighted in the addendum, wherein he said he was "confused" by the need for an audit, and that while the department will cooperate with investigators, he is "confident" in its policies and procedures.

"We are not intimated or concerned about this assessment, but feel there are more critical things that 40-50K could pay for," Morin said in the March post.

The audit cost \$77,000.

Later, on the public Facebook account of Sgt. Michael Verrocchi, the union president for sworn personnel, Morin was less tactful, saying he was outraged and "pissed off," and called the audit a waste of money and a "complete and utter pile of (expletive) ."

On Saturday, Verrocchi posted a meme on his Facebook page saying #istandwithsalempd, with the heading "Wolves don't lose sleep over the opinion of sheep."

In the Kroll report, investigators quote current HR Director Anne Fogarty as saying, "(Police) do not believe they work for the town of Salem. They do not believe they have to follow our policies."

Fogarty said the police department is the only town department with this issue.

"We are civilians, and we are basically no good," Fogarty said, describing the Salem Police Department attitude.

Fogarty said she had a better relationship with the previous deputy chief, who she could ask questions of and get a civil response. It's not like that anymore, she said.

"They can come across very intimidating. If you don't agree with them, it's like a bulldog gnawing at your ankle," she said.

In Tuesday's post, Morin said Kroll was not thorough enough in the section on the department's culture, saying investigators based it on interviews with only nine people out of approximately 100 employees.

"There was no attempt to study the true culture among the people who work for the department," Morin wrote.

Reached by phone Tuesday, Morin declined comment.

He directed all questions to Town Manager Christopher Dillon and County Prosecutor Patricia Conway. Calls to Dillon and town selectmen were not returned. Attempts to reach Police Chief Paul Donovan were unsuccessful.

The report outlines several ways in which the department needs to overhaul its internal affairs investigations after finding a pattern of insufficient investigations, ignored or discouraged complaints and incomplete records. It also found officers, including Chief Donovan, had been working outside details during their regular shifts.

Donovan, in his written response to the audit, wrote he had permission from the past and current town managers to work those details, citing his salary, which he said was less than what area chiefs are making.

Conway said her office is currently reviewing the audit report. She said any allegations of excessive use of force or payroll issues would be investigated by the state Attorney General's office. The AG's office said Tuesday it is also evaluating the audit.

Donovan, in a statement released Friday, agreed to work with a civilian administrator being hired by the town to implement Kroll's recommendations. But Donovan disagreed with some allegations in the report, including about the department's culture.

"I believe that the SPD culture is inclusive, collegial and respectful to those inside and outside the department," Donovan wrote.

ldnews@unionleader.com



Embattled Salem chief settles suit against town over his suspension





Salem police chief announces resignation under cloud of critical audit, allegations of wrongdoing

MORE INFORMATION



+2

More than \$275K paid out in settlements against Salem police since 2012





Salem police chief who left under a cloud now wants to be a selectman

<]

EXHIBIT 9



December 2, 2020

VIA EMAIL (jdolan@salempd.org)

Joel Dolan
Chief of Police
Salem Police Department
9 Veterans Memorial Parkway
Salem, NH 03079

Re: Right-to-Know Request

Dear Chief Dolan:

This is a Right-to-Know request to the Salem Police Department (“the Department”) pursuant to RSA 91-A and Part I, Article 8 of the New Hampshire Constitution by the American Civil Liberties Union of New Hampshire (“ACLU-NH”). The ACLU-NH defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Hampshire Constitutions. In furtherance of that mission, the ACLU-NH regularly conducts research into government activities in New Hampshire. We ask that your Department waive all fees associated with responding to this request. Please contact me to discuss the fee waiver in advance of preparing any copies.

Below is the specific request:

1. All reports, investigatory files, and disciplinary records concerning the actions of suspended Salem police Sgt. Michael Verrocchi on November 10, 2012 that led to his criminal prosecution, and that led to a sustained finding of misconduct with a one-day suspension without pay issued as discipline. More information on this incident is attached. This request is *not* seeking any information in the 2018 Kroll internal audit report addressing this incident.¹

¹ In conducting public interest balancing with respect to an internal audit report of the Salem Police Department, the Rockingham County Superior Court concluded: “A balance of the public interest in disclosure against the legitimate privacy interests of the individual officers and higher-ups strongly favors disclosure of all but small and isolated portions of the Internal Affairs Practices section of the audit report.” *See Union Leader Corp. and ACLU-NH v. Town of Salem*, No. 218-2018-cv-01406, at *3 (Rockingham Cty. Super. Ct. Apr. 5, 2019) (emphasis in original), available at https://www.aclu-nh.org/sites/default/files/field_documents/salem_final_order.pdf. The analysis is no different here. *See also Union Leader Corp. v. Town of Salem*, 173 N.H. 345 (2020) (overruling 1993 *Fenniman* decision in holding that the public’s interest in disclosure must be balanced in determining whether the “internal personnel practices” exemption applies to requested records).

In responding to this request, please consider the time limits mandated by the Right-to-Know law. In discussing those limits in *ATV Watch v. N.H. Dep’t of Res. & Econ. Dev.*, 155 N.H. 434 (2007), the New Hampshire Supreme Court has stated that RSA 91-A:4, IV requires that a public body or agency, “within 5 business days of the request, make such records available, deny the request in writing with reasons, or to furnish written acknowledgement of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied.” *Id.* at 440.

If produced, these records must be produced irrespective of their storage format; that is, they must be produced whether they are kept in tangible (hard copy) form or in an electronically-stored format, including but not limited to e-mail communications. If any records are withheld, or any portion redacted, please specify the specific reasons and statutory exemption relied upon. See RSA 91-A:4, IV(c) (“A public body or agency denying, in whole or part, inspection or copying of any record shall provide a written statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.”).

Thank you for your anticipated cooperation. I look forward to hearing from you as soon as possible. Of course, if you have any questions or concerns, do not hesitate to contact me.

Very truly yours,

/s/ *Gilles Bissonnette*

Gilles Bissonnette
ACLU-NH, Legal Director
Gilles@aclu-nh.org

Moreover, disclosure of this information would not deprive Sgt. Verrocchi of a right to a fair trial or an impartial adjudication, especially where Sgt. Verrocchi agreed to have his decertification hearing concerning this incident be public. At this hearing, six current and former Salem police officers testified. See Mark Hayward, “Police ‘Prank’: Salem Sergeant Keeps His Certification,” *Union Leader* (Dec. 1, 2020), https://www.unionleader.com/news/crime/police-prank-salem-sergeant-keeps-his-certification/article_4b6c5a4b-ccc2-5011-bb00-f2405c54b752.html?block_id=1000290. Any such concerns about fair trial rights can be addressed through voir dire. See *State v. Andersen*, No. 218-2018-cr-00241 (Rockingham Cty. Super. Ct. Aug. 31, 2018), which is also attached. Nor could disclosure reasonably be expected to interfere with enforcement proceedings. New Hampshire courts have given a general sense of the severity of interference they consider sufficient to justify withholding information, stating that “disclosure of information may interfere with enforcement proceedings by [resulting] in destruction of evidence, chilling and intimidation of witnesses, and revelation of the scope and nature of the Government’s investigation.” *38 Endicott St. N., LLC v. State Fire Marshal*, 163 N.H. 656, 667 (2012) (quoting *Solar Sources, Inc. v. United States*, 142 F.3d 1033, 1039 (7th Cir. 1998)). None of these considerations is applicable here. Indeed, the criminal investigations into this incident is complete, and there has been a decision to prosecute and issue a press release concerning the prosecution. Simply put, it is inappropriate to blanketly view something as “interfering with enforcement proceedings” simply because there is a criminal case pending.

New Hampshire

Department of Justice

Office of the Attorney General

News Release

For Immediate Release

January 15, 2020

Contact:

Kate Spiner, Director of Communications
(603) 573-6103 kate.spiner@doj.nh.gov

Geoffrey W. R. Ward, Senior Assistant Attorney General
Chief, Criminal Justice Bureau
(603) 271-3671 geoffrey.ward@doj.nh.gov

Arrest of Sergeant Michael Verrocchi of the Salem Police Department on Charges of Reckless Conduct and Disobeying an Officer

Concord, NH – Attorney General Gordon J. MacDonald announces that Michael D. Verrocchi, age 41, of Salem, New Hampshire was arrested on Wednesday, January 15, 2020, and charged with one class B felony count of reckless conduct with a deadly weapon and one class A misdemeanor count of disobeying an officer. Mr. Verrocchi is currently employed as a Sergeant with the Town of Salem Police Department.

The reckless conduct charge alleges that on November 10, 2012, in Salem, New Hampshire, Michael Verrocchi did recklessly engage in conduct which placed or may have placed others in danger of seriously bodily injury, in that Mr. Verrocchi, while operating a Jeep Cherokee on Route 28 in Salem, operated the motor vehicle in excess of the posted speed limit, failed to stop when signaled to stop by Officer Sean York of the Salem Police Department by means of audible and visual emergency warning signals, and instead fled from Officer York and engaged in a high-speed motor vehicle pursuit over a distance of approximately two miles during which Mr. Verrocchi ran a red light and avoided spike strips placed in the roadway by Officer Kevin Swanson of the Salem Police Department and continuously failed to stop for Officer York. The vehicle being operated by Mr. Verrocchi constitutes a deadly weapon as defined in RSA 625:11.

The disobeying an officer charge alleges that on November 10, 2012, in Salem, New Hampshire, Michael Verrocchi did purposely, while driving or in charge of a motor vehicle, neglect to stop when signaled to stop by Officer Sean York of the Salem Police Department by means of authorized audible and visual emergency warning signals.

Mr. Verrocchi is scheduled to be arraigned in the Rockingham County Superior Court on January 30, 2020, at 1:00 p.m.

The charges and allegations contained in the complaints are merely accusations, and Mr. Verrocchi is presumed innocent unless and until he is proven guilty.

New Hampshire Department of Justice
33 Capitol Street | Concord, NH | 03301
Telephone: 603-271-3658

disruptive to essential police functions. Given the situation at hand, the investigative function of a matter so serious should have been retained by the chief himself. The incident being investigated resulted in [REDACTED] being arrested by the Salem PD and transported to the hospital after a single vehicle crash where [REDACTED] was allegedly driving while intoxicated. This crash was preceded by an incident at a shopping mall in a neighbouring jurisdiction where [REDACTED] was behaving in a disoriented manner. Witness statements were gathered, evidence was collected, the accident was photographed, and full and complete police reports were generated. During this internal investigation, the [REDACTED] union representation. [REDACTED] was placed first on administrative leave but worked with human resources to request time off under the Family Medical Leave Act (FMLA) to seek medical treatment. While [REDACTED] was on [REDACTED], [REDACTED] tendered a letter of resignation.

This investigation **was not** compliant with the Salem PD policy (assigning a person of the same rank to conduct the investigation). This investigation **did meet** acceptable best practices for internal reviews.

Internal Investigation (formal): Officer B and Officer C

A review of this investigation shows a formal inquiry into the conduct of Officer B and Officer C regarding off duty conduct on [REDACTED]. The investigation was assigned to [REDACTED]. During this incident, Officer B, while off duty, was seen traveling 62 MPH in a 30 MPH zone by [REDACTED], also of the Salem PD. [REDACTED] activated his emergency lights to initiate a traffic stop, and Officer B did not pull over. [REDACTED] deployed stop sticks in attempt to stop Officer B's vehicle but Officer B maneuvered his vehicle around them. [REDACTED] caught up with Officer B's vehicle and when Officer B exited the vehicle, he was laughing, thinking the whole incident to be a joke. Officer C was a passenger in Officer B's vehicle during the events, and he was exonerated of any wrongdoing. Officer B was charged with being in violation of the Salem Police Code of Conduct, and the allegations were sustained with a one-day suspension without pay issued as discipline.

This investigation **was** compliant with the Salem PD policy. This investigation **did meet** acceptable best practices for internal reviews.

Internal Investigation (Informal): Officer D

A review of this incident shows [REDACTED] assigning [REDACTED] to investigate a complaint made by a citizen against an officer for unnecessary use of force. In this one-page total offering of the internal packet, it was found Officer D did make physical contact with the complainant but that it was a necessary and lawfully applied control tactic (seemingly placing his hand on her chest to stop her from moving forward). It is unknown if this occurrence was documented in the police report as the report is

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

Rockingham, ss

STATE OF NEW HAMPSHIRE

v.

ROBERT S. ANDERSEN

218-2018-CR-241

ORDER

The matter before the court is the defendant's motion to amend the dispositional conference order (Docket Document 26). The court held a hearing on this motion on August 22, 2018. The defendant's motion is now GRANTED as follows:

The dispositional order of May 23, 2018 is VACATED to the extent that it restricts the parties and their attorneys from disclosing information learned from the police reports.

The court's May 23 order was intended to be an interim, stop-gap order that preserved the status quo. Upon careful consideration, the court finds that this sweeping protective order violates the First Amendment to the United States Constitution and Part 1, Article 22 of the New Hampshire Constitution.

Make no mistake, an order that forbids the parties and counsel in a criminal case from speaking about the facts of the case is a prior restraint on speech. Therefore, such an order implicates the core protections of the First Amendment and Part 1, Article 22. See e.g., Capital Cities Media, Inc. v. Toole, 463 U.S. 1303, 1304 (1983) ("[E]ven a short-lived "gag" order in a case of widespread concern to the community constitutes a substantial prior restraint and

causes irreparable injury to First Amendment interests as long as it remains in effect."); In re N.B., 169 N.H. 265, 270 (2016).

That said, the court has both the jurisdiction and the obligation to impose carefully tailored constraints on the litigants and their attorneys with respect to extrajudicial statements that (a) reveal privileged information that was disclosed through court mandated discovery (such as, for example, medical records, trade secrets or the identity of confidential government informants), or (b) creates a substantial likelihood of material prejudice to the parties' rights to a fair and impartial trial. See e.g., Gentile v. State Bar of Nevada, 501 U.S. 1030, 1075 (1991) (discussing the "substantial likelihood of material prejudice" standard); United States v. Scarfo, 263 F.3d 80, 94, (3d Cir. 2001) (same); United States v. Brown, 218 F.3d 415, 424 (5th Cir. 2000) (same).

Neither of these circumstances is present in this case. Neither party has suggested that the discovery contains privileged or confidential information. Likewise, there has been no claim of a likelihood of material prejudice to the adjudicative process. There is not yet a jury and there is no serious concern that the jury pool will be poisoned by extrajudicial statements. This case is primarily of interest to residents of Salem but the jury pool will be drawn from the entire county, including cities and towns that are outside Salem's orbit (such as Portsmouth, Derry, Raymond, Epping, etc.). To the extent that the case has, and may in the future, garner statewide publicity, it is unlikely to be so pervasive as interfere with jury selection. Exposure to media coverage can be adequately addressed through routine juror voir dire.

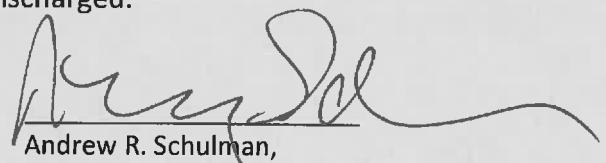
The State's concern appears be, that, if the case is "tried in the media," the resulting news coverage could be unfair due the lack of a complete factual record. No doubt, a criminal

jury trial, conducted under the aegis of an impartial judiciary, subject to the dispassionate application of the rules of evidence, with both sides represented by competent counsel, is likely to lead to a better understanding of the admissible facts than a two-minute interview on the nightly news. Yet, the only material prejudice that the court can consider is material prejudice to the fairness of the adjudication.

In the mine run of cases—including very serious cases that attract substantial media interest, such as first degree murder prosecutions—the State does not seek, and the court does not impose gag orders. Counsel in all cases, remain subject to N. H. R. Prof. R. 3.6, which imposes reasonable and constitutional restraints on extrajudicial statements, as well as a number of safe harbors for certain types of extrajudicial statements to the media. The Rule's restraints kick in only when extrajudicial statements "will have a substantial likelihood of materially prejudicing an adjudicative proceeding." Rule 3.6(a). The court has no reason to believe that counsel will discard their obligations under the rule.

The court also notes that the calculus will change once a jury is selected. The court does not anticipate that any party will make any substantive statement to the media between the time the jury is first empaneled and the time it is finally discharged.

August 31, 2018



Andrew R. Schulman,
Presiding Justice

EXHIBIT 10



Salem Police Department

December 30, 2020

Mr. Gilles Bissonnette
ACLU-NH Legal Director
18 Low Avenue
Concord, NH 03301

Gilles,

I am writing in response to your NH RSA 91-a request dated December 2, 2020 regarding the release of an Internal Affairs investigation and report conducted by the Salem Police Department on Officer Michael Verrocchi. As part of your request, you also provided a recent Grafton County Superior Court Public Order, Samuel Provenza v. Town of Canaan.

Also taken into consideration in this request is the recent New Hampshire Supreme Court decision in Union Leader Corporation & a. v. Town of Salem and Seacoast Newspapers, Inc. v. City of Portsmouth. As you know this decision eliminated the per se exemption of Internal Affairs investigations being exempt under 91-a as "internal personnel practices". Which would lead to a case-by-case analysis on the release of records.

Therefore, in analyzing this case I looked at the six-prong test of 5 U.S.C. 552(b)(7). As a result, the release of this investigation, at this time, would (a) interfere with law enforcement proceedings. This is still an active prosecution/investigation by the New Hampshire Attorney General's Office. Under a second prong, (b) the release could also deprive a person, Michael Verrocchi, of a right to a fair trial or an impartial adjudication.

Based on the above reasons I am going to deny your request for release of this report.

Respectfully,


Joel P. Dolan
Chief of Police (A)

EXHIBIT 11



Salem Police News

Official News Blog of the Salem, N.H. Police Dept.

[Home](#)[Salem Police Website](#)[Town of Salem](#)[Contact](#)

Salem Police Charge Local Man with Felony Criminal Threatening

🕒 December 28, 2020 👤 Melissa Proulx

Department's Brand New K-9 Locates His First Firearm



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Salem Police News

Official News Blog of the Salem, N.H. Police Dept.

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Salem NH
16,996 likes



Chief Joel Dolan reports that the Salem Police Department arrested and charged a local man for an alleged criminal threatening incident involving a handgun and baseball bat earlier today.



Salem NH Police Department
22 hours ago

FOR IMMEDIATE RELEASE
DATE: January 4, 2021

Felon in Possession of a Deadly Weapon Arrest... See More

LEM POLICE DEPARTMENT

ARREST

Contact: Captain Jason Smith
[03890-2014](tel:03890-2014) / jsmith@salemnh.gov

MEDIATE RELEASE:
January 4, 2021

Felon in Possession of Deadly Weapon Arrest

1/1/2021, at 0352 hours, Salem Police responded to Shadow Lake Road for a report of an individual with a samurai sword. Responding officers located a male subject, in possession of numerous knives and a machete, on Shadow Lake Road. The subject refused verbal commands of the officers to drop the knives he threw on the ground. He refused repeated demands to move away from the officers. He was ultimately struck with a bean bag to the head and was arrested without further incident. He was identified as:

Recent Posts

[Salem Police Charge Local Man with Felony Criminal Threatening December 28, 2020](#)

[Salem Police to Hold Toys for Tots Donation](#)



Salem Police News

RYAN BROCHU, AGE 33, OF MANCHESTER, was charged with one count of Criminal Threatening with a Deadly Weapon and one charge of Falsifying Physical Evidence. All three charges are felonies.

[Home](#)

[Salem Police Website](#)

Salem Police responded to 90 North Broadway at 9

a.m. for a report of criminal threatening. Based on the initial investigation, police determined that a suspect, later identified as BROCHU, threatened the victim with both a handgun and a baseball bat.

The suspect fled the scene prior to the arrival of the responding officers. No one was injured.

BROCHU was taken into custody near Mall Road at approximately 10:30 a.m. After a subsequent investigation, it was determined that the firearm used in the incident had been discarded in Hampstead, N.H. in the area of Gigante Road. Salem Police, along with officers from the Hampstead Police Department, conducted a search of the area and the firearm was located by Salem Police K-9 Apollo and his handler Officer Dan Nelson.

K-9 Apollo began his patrol work with the Salem Police Department last week after successfully completing the Boston Police K-9 Academy and is Officer Nelson's second K-9 partner. His first, K-9 Trigger, retired earlier this year.

BROCHU was released on personal recognizance bail and is scheduled to appear in the Rockingham County Superior Court at a later date.

These are allegations. All suspects are considered innocent until proven guilty.

← [Salem Police to Hold Toys](#)

Drive December

9, 2020



Salem Police

Investigating

After Pedestrian

Struck and Killed

Last Week

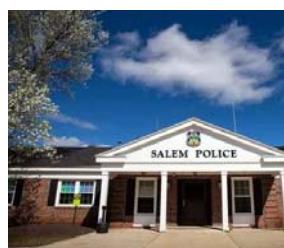
November 24,
2020

Salem Police Hold
Pumpkin
Painting, Carving
Contest

November 2,
2020

Salem Police
Share Halloween
Health and Safety
Tips October 16,
2020

Photo Gallery



for Tots Donation Drive



Salem Police News

Official News Blog of the Salem, N.H. Police Dept.

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SALEM POLICE DEPARTMENT

ARREST

**Contact: Captain Jason Smith
(603)890-2014 / jsmith@salemnh.govb**

**FOR IMMEDIATE RELEASE:
DATE: January 4, 2021**

Felon in Possession of Deadly Weapon Arrest

On Friday, 1/1/2021, at 0352 hours, Salem Police responded to the area of Shadow Lake Road for a report of an intoxicated male with a samurai sword. Responding officers located an intoxicated male subject, in possession of numerous knives, including a machete, on Shadow Lake Road. The male repeatedly refused verbal commands of the officers to move away from the knives he threw on the ground.

The male refused repeated demands to move away from the knives and was ultimately struck with a bean bag to force compliance and was arrested without further incident.

The subject was identified as:

George Deveau (age 56) from Aransas Pass, Texas

Deveau was processed and charged with:

Felon in Possession of a Deadly Weapon (Machete)

Resisting Arrest

Disorderly Conduct

He was held without bail and is scheduled for an arraignment today before the Rockingham Superior Court.

About

[See All](#)

 9 Veteran's Memorial Pkwy, Salem, NH 03079

To report a crime online, please click on the link below

<https://www.townofsalemnh.org/police-department>

Then click on the tab for Online Reporting and Records Request on the top left corner

 16,996 people like this including 3 of your friends



 17,959 people follow this

 <http://www.townofsalemnh.org/police-department>

 (603) 893-1911

 Send Message

 Police Station · Government Organization

Photos

[See All](#)

Salem NH Police Department is in Salem, New Hampshire.

22h ·

FOR IMMEDIATE RELEASE:

DATE: January 4, 2021

Felon in Possession of Deadly Weapon Arrest

On Friday, 1/1/2021, at 0352 hours, Salem Police responded to the area of Shadow Lake Road for a report of an intoxicated male with a samurai sword. Responding officers located an intoxicated male subject, in possession of numerous knives, including a machete, on Shadow Lake Road. The male repeatedly refused verbal commands of the officers to move away from the knives he threw on the ground.

Due to the male refusing repeated commands to move away from the knives, he was ultimately struck with a bean bag to force compliance and was arrested without further incident.

The subject was identified as:

George Deveau (age 56) from Aransas Pass, Texas

Deveau was processed and charged with:

Felon in Possession of a Deadly Weapon (Machete)

Resisting Arrest

Disorderly Conduct

He was held without bail and is scheduled for an arraignment today before the Rockingham Superior Court.

This incident highlights the importance of Salem Police possessing numerous different tools for different situations.

Due to Salem Officers having bean bag shotguns at their disposal, they were able to bring this incident to an end with minimal injury and without serious bodily injury or death.

SALEM POLICE DEPARTMENT

ARREST

Contact: Captain Jason Smith
[\(603\)890-2014 / jsmith@salemnh.govb](tel:(603)890-2014)

IMMEDIATE RELEASE:
E: January 4, 2021

Felon in Possession of Deadly Weapon Arrest

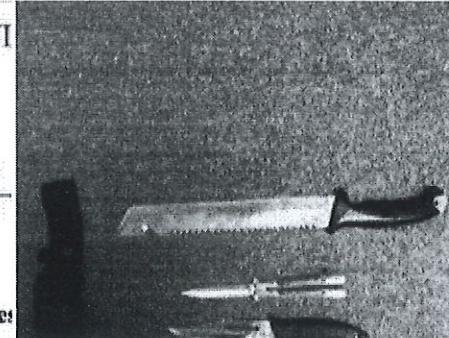


EXHIBIT 12

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Rockingham Superior Court
Rockingham Cty Courthouse/PO Box 1258
Kingston NH 03848-1258

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

File Copy

Case Name: **State v. Robert S. Andersen**
Case Number: **218-2018-CR-00241**

Enclosed please find a copy of the court's order of August 31, 2018 relative to:

Court Order

September 04, 2018

Maureen F. O'Neil
Clerk of Court

(834)

C: William D. Pate, ESQ; Michael A. Delaney, ESQ; Henry R. Klementowicz, ESQ

cc: [redacted]

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

Rockingham, ss

STATE OF NEW HAMPSHIRE

v.

ROBERT S. ANDERSEN

218-2018-CR-241

ORDER

The matter before the court is the defendant's motion to amend the dispositional conference order (Docket Document 26). The court held a hearing on this motion on August 22, 2018. The defendant's motion is now GRANTED as follows:

The dispositional order of May 23, 2018 is VACATED to the extent that it restricts the parties and their attorneys from disclosing information learned from the police reports.

The court's May 23 order was intended to be an interim, stop-gap order that preserved the status quo. Upon careful consideration, the court finds that this sweeping protective order violates the First Amendment to the United States Constitution and Part 1, Article 22 of the New Hampshire Constitution.

Make no mistake, an order that forbids the parties and counsel in a criminal case from speaking about the facts of the case is a prior restraint on speech. Therefore, such an order implicates the core protections of the First Amendment and Part 1, Article 22. See e.g., Capital Cities Media, Inc. v. Toole, 463 U.S. 1303, 1304 (1983) ("[E]ven a short-lived "gag" order in a case of widespread concern to the community constitutes a substantial prior restraint and

causes irreparable injury to First Amendment interests as long as it remains in effect."); In re N.B., 169 N.H. 265, 270 (2016).

That said, the court has both the jurisdiction and the obligation to impose carefully tailored constraints on the litigants and their attorneys with respect to extrajudicial statements that (a) reveal privileged information that was disclosed through court mandated discovery (such as, for example, medical records, trade secrets or the identity of confidential government informants), or (b) creates a substantial likelihood of material prejudice to the parties' rights to a fair and impartial trial. See e.g., Gentile v. State Bar of Nevada, 501 U.S. 1030, 1075 (1991) (discussing the "substantial likelihood of material prejudice" standard); United States v. Scarfo, 263 F.3d 80, 94, (3d Cir. 2001) (same); United States v. Brown, 218 F.3d 415, 424 (5th Cir. 2000) (same).

Neither of these circumstances is present in this case. Neither party has suggested that the discovery contains privileged or confidential information. Likewise, there has been no claim of a likelihood of material prejudice to the adjudicative process. There is not yet a jury and there is no serious concern that the jury pool will be poisoned by extrajudicial statements. This case is primarily of interest to residents of Salem but the jury pool will be drawn from the entire county, including cities and towns that are outside Salem's orbit (such as Portsmouth, Derry, Raymond, Epping, etc.). To the extent that the case has, and may in the future, garner statewide publicity, it is unlikely to be so pervasive as interfere with jury selection. Exposure to media coverage can be adequately addressed through routine juror voir dire.

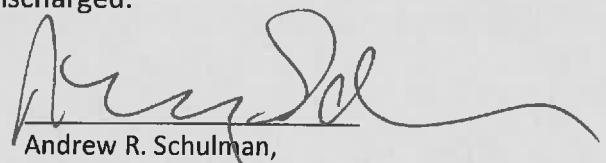
The State's concern appears be, that, if the case is "tried in the media," the resulting news coverage could be unfair due the lack of a complete factual record. No doubt, a criminal

jury trial, conducted under the aegis of an impartial judiciary, subject to the dispassionate application of the rules of evidence, with both sides represented by competent counsel, is likely to lead to a better understanding of the admissible facts than a two-minute interview on the nightly news. Yet, the only material prejudice that the court can consider is material prejudice to the fairness of the adjudication.

In the mine run of cases—including very serious cases that attract substantial media interest, such as first degree murder prosecutions—the State does not seek, and the court does not impose gag orders. Counsel in all cases, remain subject to N. H. R. Prof. R. 3.6, which imposes reasonable and constitutional restraints on extrajudicial statements, as well as a number of safe harbors for certain types of extrajudicial statements to the media. The Rule's restraints kick in only when extrajudicial statements "will have a substantial likelihood of materially prejudicing an adjudicative proceeding." Rule 3.6(a). The court has no reason to believe that counsel will discard their obligations under the rule.

The court also notes that the calculus will change once a jury is selected. The court does not anticipate that any party will make any substantive statement to the media between the time the jury is first empaneled and the time it is finally discharged.

August 31, 2018



Andrew R. Schulman,
Presiding Justice

EXHIBIT 13

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

Rockingham, ss

UNION LEADER CORPORATION et al.

v.

TOWN OF SALEM

218-2018-CV-01406

FINAL ORDER ON REMAND

This matter is back before the court on remand from the New Hampshire Supreme Court. For the reasons set forth below, this court now concludes that the only redactions to the audit report that are permissible under RSA 91-A:4 and 5 are:

- (a) The specific redactions at pages 40 and 92-98 of *Internal Affairs Investigative Practices* section of the audit report (attached as Exhibit A to the Complaint) that are detailed in Section V(D) of this order at pages 28-30 below; and
- (b) The specific redactions in the *Time And Attendance* section of the audit report that are detailed in Section IV(C) of this order, at pages 18-19, below.

The balance of the unredacted audit report must be provided to the plaintiffs.

I. Relevant Procedural History And Governing Law

The plaintiffs brought this case under the Right To Know Act, RSA Ch. 91-A, to obtain an unredacted copy of an audit report that was highly critical of the Salem Police Department. The audit report was prepared by an outside vendor retained by the Town of Salem. The Town agreed that the audit report was a government record within the meaning of RSA 91-A:1-a, III.

Government records may be inspected and obtained by the public pursuant to RSA 91-A:4 except to the extent that they fall within a statutory exemptions set forth in RSA 91-A:5. The Town argued that the redacted portions of the audit report are protected from disclosure by virtue of the exemptions in RSA 91-A:5, IV for (a) “[r]ecords pertaining to internal personnel practices” and (b) “personnel . . . and other files whose disclosure would constitute invasion of privacy.”

Following an exhaustive, line-by-line, *in camera* comparison of the redacted and unredacted audit reports, this court issued a final order concluding that:

- (a) some of the redacted material was not exempt under RSA 91-A:5, and, therefore, must be disclosed;
- (b) a few redactions were justified because disclosure would constitute an invasion of privacy; and
- (c) a great many more exemptions were justified under Union Leader Corp. v. Fenniman, 136 N.H. 624 (1993), which authoritatively construed the exemption for “records pertaining to internal personnel practices.”

Fenniman held that the “internal personnel practices” exemption applied broadly to internal affairs and workplace investigations that may lead to internal personnel discipline. Fenniman also held that the exemption was categorical and absolute, in contrast to the other exemptions in RSA 91-A:5, IV which require a case-specific balancing of the benefits of disclosures and nondisclosure. The Supreme Court later expanded Fenniman’s categorical exemption to investigations conducted by third parties retained by a government agency for that purpose. Housnell v. North Country Water Precinct, 154 N.H. 1, 6 (2006).

In this case, the audit report described the substance of internal affairs and workplace investigations and thus fell within the scope of the broad, categorical and absolute exemption recognized by Fenniman. The plaintiffs took the position that Fenniman should be overruled. Although this court noted its dissatisfaction with Fenniman, it was nonetheless bound by the precedent and, therefore, ruled the way it did.

The plaintiffs appealed this court's final order to the New Hampshire Supreme Court. The Town did file a cross-appeal.

On appeal, the New Hampshire Supreme Court did what the plaintiffs asked and overruled Fenniman. More particularly, the Court held that the exemption for "internal personnel practices" is now qualified, rather than absolute, and is subject to the same balancing test as the other exemptions in RSA 91-A:5, IV:

In the future, the balancing test we have used for the other categories of records listed in RSA 91-A:5, IV shall apply to records relating to "internal personnel practices." . . . Determining whether the exemption for records relating to "internal personnel practices" applies will require analyzing both whether the records relate to such practices and whether their disclosure would constitute an invasion of privacy.

Union Leader Corp. v. Town of Salem, 173 N.H. 345, 357 (2020); see generally, Professional Firefighters of New Hampshire v. Local Government Center, Inc., 159 N.H. 699, 707 (2010):

When considering whether disclosure of public records constitutes an invasion of privacy under RSA 91-A:5, IV, we engage in a three-step analysis. First, we evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. Second, we assess the public's interest in disclosure. Third, we balance the public interest in disclosure against the government's interest in nondisclosure and the individual's privacy interest in nondisclosure. If no privacy interest is at stake, then the Right-to-Know Law mandates disclosure. [citation omitted]. Further,

whether information is exempt from disclosure because it is private is judged by an objective standard and not a party's subjective expectations.

(internal citations, parentheticals, quotations and bracketing omitted).

In a separate case, the Supreme Court further narrowed the breadth of the "internal personnel practices" exemption by holding that it "applies narrowly to records pertaining to internal rules and practices governing an agency's operations and employee relations." Seacoast Newspapers, Inc. v. City of Portsmouth, 173 N.H. 325, 338 (2020).

The Supreme Court remanded this case for this court to determine—with respect to the redactions that it previously upheld under Fenniman—whether the redacted information falls within either (a) the exemption for of "internal personnel practices" as clarified by the Supreme Court on appeal or (b) the exemption for "personnel files."

II. Nomenclature

In its previous final order this court used the terms "sustained" and "overruled" as shorthand for finding that that particular redactions were justified or unjustified under RSA 91-A:5, IV. As this court noted in its last order, the language is an imperfect match for the concept, but it gets the point across. The court uses the same terms to denote the same concepts in this order.

III. Specific Rulings On Remand With Respect To The Addendum To The Audit Report (i.e., Complaint Ex. B, "Culture Within The Salem Police Department")

All of the redactions in the 15 page Addendum to the audit report (attached to the complaint as Exhibit B, and captioned as "*Culture Within The Salem Police Department*") are now overruled. The court's reasoning follows with respect those

redactions that the court previously sustained in its final order. No further analysis is required with respect to the redactions that were previously overruled.

A. The redactions on pages 1 and 2 of the Addendum are overruled because the benefits of public disclosure strongly and definitively outweigh any privacy concerns. These redactions relate to the manner in which the former Chief of Police arranged to take vacation leave and FMLA time off from work. Town policy, as made clear by the Town manager, required the former Chief to (a) provide advance notice of multiple days off and (b) obtain advance approval for FMLA leave. Implicit in the policy is that the Chief needed to coordinate his leave days with the Town. The Town manager told the auditors that the Chief instead unilaterally approved his time off and did so without notice to the Town.

This issue cannot be viewed in isolation. Elsewhere in the audit report (in the *Time and Attendance* Section attached to the Complaint as Exhibit C), the auditors raised a related concern. The Chief told the auditors that, (a) his employment contract gave him flexible hours and (b) he sometimes arranged his work week so that he could perform outside details during normal, daytime working hours. However, the Chief did not maintain time cards or other records to document his working hours. Therefore, there was no auditable record of the Chief's hours and the Town was forced to rely on the his say-so. (To be clear: The auditors did not allege that the former Chief worked details for private employers during hours for which he also received compensation from the Town. The auditors said only that due to the Chief's failure to keep records, there was no way to determine what hours he worked for the Town.)

The manner in which the Chief arranged for and documented his vacation, FMLA leave and working hours clearly relates to “internal personnel practices” within the meaning for RSA 91-A:5, IV. Much of the information upon which the auditors relied also falls within the scope of a “personnel file” for the purpose of the statute. However, the redactions must be overruled because the public interest in disclosure outweighs any concerns relating to the Chief’s privacy and any reasons for nondisclosure.

The former Chief was the highest ranking manager of the police department. He had the benefit of a written employment contract, as well as statutory protections to ensure his independence from Town politics. See RSA 105:2-a. Yet he was still accountable to the taxpayers, the public and the Town. The manner in which the Chief interacted with Town officials, and the extent to which he complied with Town personnel policies, is a proper matter for public inquiry. Ultimately it is the public, through their representatives, that determines the extent to which the police department is autarkic or, alternatively, integrated into the Town’s personnel system. Likewise, it is the public, through those who negotiate on the Town’s behalf, who determine not only who the next Chief will be, but also the terms of the next Chief’s contract. To do so, the public must be informed and alert to the concerns raised by the Town Manager as reflected in pages 1 and 2 of the Addendum to the audit report.

The court does not see the Chief as having a particularly strong privacy interest in these matters. The audit report does not disclose the reasons for the Chief’s use of vacation or FMLA leave. Thus, the report does not provide any details into the Chief’s personal or family life. It only discloses information regarding the manner in which he carried out his duties for the Town.

B. The redactions on pages 7 to 12 of the Addendum are all overruled because the benefits of public disclosure outweigh the relevant privacy concerns. These redactions relate to internal affairs investigations into conduct by the former Deputy Chief. The auditors opined that these IA investigations were emblematic of an “us versus them” mentality,” both with respect to “police department versus town,” and with respect to “those aligned with management versus everyone else.” Addendum, p. 6. Additionally, the auditors believed that this pro-management bias “result[ed] in a discriminatory application of discipline for some members of the police department, with some being disciplined in one way for an action and other officers, considered aligned with management, receiving a less severe punishment.” Id.

The auditors’ recounting of the former Chief’s comments about one of the investigations is especially salient. The auditors wrote that the former Chief “discredited complaints relative to [the former Deputy Chief] based on his own bias against the complainant.

One of the complaints against the former Deputy Chief was particularly concerning. According to the audit report, the former Deputy Chief flashed a firearm at an individual in a courtroom in Massachusetts. The allegation was that the Deputy Chief acted with the specific purpose of intimidation in violation of Massachusetts law. The Deputy Chief disputed this allegation. The audit report states that a criminal complaint was filed against the Deputy Chief with a Massachusetts police department. There is no suggestion in the audit report that a criminal charge was ever brought. (To be 100% clear: The auditors did not opine on whether the former Deputy Chief intentionally brandished his firearm in a courtroom with the intent to intimidate a civilian.

The auditors reported only that such allegations were the subject of a criminal investigation by a police department in Massachusetts. The Deputy Chief)

According to the auditors, the Town Manager was upset because the former Chief kept Town HR officials in the dark about the undisputed fact that his deputy was under investigation by a Massachusetts criminal justice agency for allegedly using a firearm to threaten a civilian in a courtroom. The auditors opined that the former Chief's silence about the investigation was symptomatic of the more general approach the Chief took in his dealings with the Town.

The redacted materials also reference a widely publicized incident that occurred at a hockey rink. That incident was investigated by the New Hampshire Attorney General and the details of that incident are largely in the public realm.

The court finds that (a) all of the redacted information in pages 7 through 12 that the court previously sustained relates to "internal personnel practices" within the meaning for RSA 91-A:5, IV and (b) the same information arguably falls within the meaning of a "personnel file" within the meaning of the same statute. However, the public interest in disclosure of the information outweighs any privacy concerns on the part of the Chief or Deputy Chief. The public has a compelling interest in overseeing its police department to ensure that the type of dysfunction described by the auditors, if it exists, is remedied. The redactions on pages 7 through 12 unduly occlude the auditors' factual argument, making it impossible for the public to understand why the auditors reached the conclusion they did.

The fact that it was the former Deputy Chief who was the subject of the investigations is critical to the auditors' analysis. After all, the auditors alleged that the

former Chief, the former Deputy Chief and a few other high ranking managers benefited from a culture that gave them greater leeway and less oversight than others. Therefore, the Deputy Chief's rank cannot be redacted without obscuring the substance of the auditor's report.

The court recognizes that the former Deputy Chief has a significant privacy interest. He denied all of the accusations of misconduct and provided plausible innocent explanations. He was never criminally charged and, as best the court can tell from the audit report, was not found to have violated any departmental rules. The disclosure of unproven accusations could cause embarrassment and adversely affect his reputation.

On the other hand, all of the conduct at issue occurred in public and has been the subject of public controversy. During the incident in the Massachusetts courtroom, the former Deputy Chief was wearing his Salem Police Department badge and carrying his Salem Police Department firearm. During the incident at the hockey rink, he was identified as a Salem Police Officer. Thus, the matters at issue relate to the Deputy Chief's interactions with the public under color of the Town's authority. The matters do not relate to what he did in private, or in his home, or with respect to purely private concerns.

C. The redactions on **pages 13 to 15 of the Addendum** are overruled based on balancing the same criteria. Many of the redactions refer to a few allegedly inappropriate social media posts and work place comments by the former Deputy Chief. These were not the subject of internal disciplinary investigations and were not included

in any personnel file. Rather, the auditors obtained the information from witnesses who wanted the auditors to hear their accounts.

The court finds that the information relating to the former Deputy Chief in pages 13 through 15 relates to “internal personnel procedures, but do not fall within the scope of a “personnel file” within the meaning for RSA 91-A:5, IV. The court does not see any privacy concerns regarding the disclosure of this information to the public. The Deputy Chief made social media posts for the world to see and his workplace comments were not made under circumstances suggestive of confidentiality or privacy. The Deputy Chief occupied a high position of public trust and the public has a compelling interest in understanding how his alleged statements and behavior may have had a deleterious effect on police department culture.

Some of the redacted information on page 13 of the addendum relates to an unnamed former dispatcher. The report details some improper comments on the part of the former Deputy Chief regarding the dispatcher’s medical condition. However, the identity of the former dispatcher is not disclosed and the year of the incident is not mentioned. The paragraph contains only the most general information regarding the dispatcher. A member of the public would not be able to identify the dispatcher from the text. The court finds that (a) the information relates to a “personnel practice or procedure,” (b) the information is not part of a “personnel file,” and (c) any privacy interest is far outweighed by the public’s interest in disclosure.

IV. Specific Rulings On Remand With Respect To The "Time And Attendance" Section Of The Audit Report (i.e., Complaint Ex. C)

The redactions in the *Time And Attendance* section of the audit report (attached to the Complaint as Exhibit C) sustained in part, and overruled in part, as explained Section IV(C) of this order, at pages 18-19, below.

A. Preface Regarding Page References

The *Time and Attendance* section of the audit report is not paginated. Because the court must refer to page numbers in its rulings, it will treat the cover page of the section as page 1. To make sure that the reader is oriented, this means that the following page, which bears the caption "Privileged & Confidential" is page 2.

The court will also refer to the page numbers in the redacted PDF that was attached to the complaint. The PDF page numbers are easy to determine when viewing the exhibit in a PDF reader. However, the PDF document includes several different exhibits and the *Time and Attendance* section of the audit report begins on PDF page 18. Thus, the cover page will be referred to as "page 1 (PDF page 18)."

B. Factual Background And Legal Reasoning

Introduction: The *Time and Attendance* section of the audit report raised disparate concerns relating to four distinct groups of employees:

- The former Chief of Police;
- High ranking officers;
- Rank and file police officers; and
- Civilian employees.

In general terms, the *Time and Attendance* section looked into (a) whether police department employees were paid for hours they did not work and (b) whether the police

department's record-keeping system was adequate to document its employees' attendance and compensation.

To be clear: The auditors did not find a single instance in which any employee, was overpaid or paid for unworked hours. Further, putting Chief's unique situation (addressed below) aside, the auditors did not find a single instance in which an employee even arguably failed to follow department procedures with respect to time-keeping and compensation. The employees mentioned in the audit report played by the rules. That the auditors critiqued those rules should not be misconstrued as an allegation of individual wrongdoing.

The Former Chief: The auditors' concerns about the former Chief had to do with the way he arranged and documented his working hours and leave time. As explained above, the Chief believed his employment contract gave him the flexibility to arrange his work week so that he could work details for private employers during regular business hours. The Town Manager disagreed with this reading of the Chief's employment contract. The Town Manager opined that the Chief needed to use his leave time if he wished to work outside details for private employers during ordinary, weekday business hours.

The auditors were also critical of the former Chief because he did not keep permanent records of his specific working hours. His time cards said only that he worked the requisite total number of 37.5 hours per week. Additionally, the former Chief did not notify the Town, or necessarily others within the department, regarding how he was arranging his hours. However, it bears repeating that the auditors did not allege the Chief short-changed the Town on hours.

The Town redacted the former Chief's name and rank to preserve his privacy.

The Town also redacted much of his interview, and the Town Manager's interview to keep the former Chief's identity confidential.

With respect to the former Chief, the *Time and Attendance* section of the audit report relates to "internal personnel practices" and the auditors relied on information obtained from a the Chief's "personnel file." However, the public interest in disclosure far outweighs the Chief's privacy interest.

The public has a strong interest in ensuring that its department heads, who serve as role models for their agencies, turn square corners with respect to time and attendance. Further, the public has a compelling interest in determining the terms of future police chief contracts. In fairness, a police department is a 24 hour a day institution and the Chief no doubt needs a somewhat flexible schedule. Further, there is nothing wrong with the Chief working outside paid details during hours when he or she is not working for the Town. However, the concerns raised by the auditors are not ones that should remain hidden from public view.

Further, the adequacy of the former Chief's record-keeping (and more generally that of the police department) is a matter of public concern. Record-keeping for time and attendance is critical function for any employer. The public has a strong interest in discovering and remedying any deficiencies.

The former Chief's privacy concerns are muted. The facts do not relate to any personal matter (such as a medical condition or family situation) but merely to the manner in which the Chief arranged his working hours. As framed by the audit report, this is a matter of policy and contract rather than personal integrity.

Finally, because the issues are particular to the Chief's position, and because there is only one Chief at a time, it is impossible to disclose the relevant facts without also disclosing the former Chief's identity. Thus, the redacted version of the report does not provide the public with a meaningful understanding of the issues.

Therefore, as specifically detailed in Section IV(C) below, the redactions that serve only to obscure the former Chief's identity are overruled.

High Ranking Officers And Ordinary Police Officers: The issues with respect to both high ranking officers and officers of lower ranks have to do with primarily with paid details and comp time. The auditors' review of selected personnel records suggested the possibility that officers worked private details for outside employers during hours for which they were paid by the Town. After interviewing most of the officers whose records were reviewed, the auditors did not find any chicanery. However, the auditors raised significant concerns about departmental policy and record-keeping.

One concern arose from the fact that the department requires private employers to pay a minimum price for a detail equal to four hours of paid detail time. This means that if an officer shows up for a private detail that lasts half an hour, he receives the equivalent of four hours of detail pay from the private employer. Indeed, as reflected in the audit, if an officer shows up for a detail and is immediately told he is not needed, he is still paid as if he worked for the private employer for four hours.

The department also permits an officer who leaves a scheduled detail early to immediately start working for the department if the officer is needed. Thus, an officer who works only thirty minutes on a detail can work the rest of the day as a police officer on the Town payroll. Although this may be perceived as a kind of double-dipping, in

reality it has no ill effect on the Town fisc. The Town pays only for the hours that the officer actual works for the Town.

The problem is that the police department records do not adequately reflect the specific hours that officers actually perform detail work. Instead, the relevant records show only the scheduled detail hours and the hours for which Town payroll was paid. Looking only at those records, one would conclude (contrary to fact) that some officers worked outside details during the very same hours that they were supposed to be working for the town.

A second issue arose from the officers' use of comp time. As the court understands the audit, some officers used their comp time so that they could do outside details. The problem was that the department record-keeping system did not properly record their comp time as relating to those particular hours. The officers (or at least those who were interviewed by the auditors) explained that they filed the correct forms and followed the right procedures.

The audit report redacted the officers' names, ranks, pay rates and other information in an effort to shield their identities. The court sustains the redactions of the names but overrules the other redactions based on the balancing test described above. The information clearly relates to "internal personnel practices" and much of it comes directly from "personnel files." The officers have some legitimate privacy concerns:

(a) Although the auditors did not find wrongdoing, they looked for it. A police officer's reputation may be unfairly tarnished by publication of the fact that he or she was investigated for possibly submitting false timesheets. This would be so even if the officer was exonerated.

(b) While some of the officers were interviewed and gave exculpatory accounts, a few were not even interviewed. Thus, they were denied the opportunity to have their accounts included in the audit report.

(c) The auditors did not look at every police officer, or even at every police officer who worked details. Instead, they looked at only a handful of officers. Singling out these officers, while allowing other similarly situated officers to remain anonymous is not fair.

At the same time, the officers' privacy interest is not such that the audit report must be scrubbed of any clue that a sleuth could use to unmask their identities. This is true even with respect to the high ranking officers whose identities may be more easily inferred from their ranks. The auditors focused on high ranking officers because of the large number apparent discrepancies in the department's records. The public interest is particularly acute with respect to the manner in which a Town department accounts for its higher-ups' time, hours and compensation.

Civilian Employees: Because the police department did not properly account for comp time, the auditor's attention was drawn to civilian employees who appeared to be paid for days they used for vacations. The auditors spoke with two civilian employees, and a supervisor who were not identified by name in the audit report. They had posted on social media about their vacations. They used their comp time (i.e. earned time off) for their vacations. None of the employees did anything wrong.

However, while the payroll records for all other Town departments accounted for comp time, the police department's payroll records did not. Instead, for payroll and paystub purposes, comp time was treated as regular time (i.e. as time when the

employee should have been working rather than as earned time off from work). The employees' requests for comp time are presumably stored but not reflected in the database.

The information regarding the civilian employees relates to "internal personnel procedures" and the auditors pulled the information from "personnel files." Nonetheless, the public interest in disclosure outweighs the employees' privacy concerns. The public has an obvious interest in ensuring that comp time (i.e. time off) is properly reflected as in the police department's payroll database.

The employees have a privacy interest because—even though they were exonerated—their reputations might be unfairly tarnished by public disclosure of the fact they were investigated. However, the employees' privacy is substantially protected by the fact that their names are not included in the unredacted audit report. They are referred to by pseudonyms such as "Civilian A."

To further protect the employees' privacy, the court sustains those redactions that obscure (a) the specific travel destination, (b) the type of travel destination (for example, "theme park," "beach," "city," etc.), (c) the means of travel (for example "plane," "car," etc.), (d) the relationships of travelling partners, and (e) the purpose for the trips. These details could be used to unmask the identities of the employees and they add nothing of public interest.

Other redactions—including redactions of the pertinent dates—are overruled. The dates are important to the public's understanding and are unlikely to aid in the unmasking of the identities of the civilian employees.

C. Page-Specific Rulings With Respect To The Time And Attendance Section Of The Audit Report

Based on the facts and legal reasoning provided above, the court makes the following page-specific rulings with respect to the *Time and Attendance* section of the audit report:

Page 13 (30 of the PDF)

- The redacted reference to the former chief in the chart at the top of page 13 of the section (i.e. page 30 of the PDF attached to the Complaint) is overruled.
- The references to hourly rates in that chart are also overruled.
- The redacted references in that chart to other individuals' names and ranks are sustained.
- The references to the former chief in the two paragraphs below that chart are overruled.
- The references to other individuals by name and rank in those two paragraphs is sustained.
- The redaction in the first line of the last paragraph on that page is overruled (thereby making the term "higher-ranking" visible).

Page 14 (31 of the PDF)

- The redactions on the topmost (carryover) paragraph on page 14 of the section (i.e., Page 31 of the PDF) are sustained.
- The redactions to the names in the chart on that page are sustained.
- The redactions to the number of instances in that chart are overruled.
- The redaction to the name of the officer in the second to last paragraph of that page (i.e., the paragraph that begins "3. 11 of the 22 Outside Details. . .") is sustained.

-All of the redactions in the last, carryover paragraph on that page are overruled.

Pages 15-18 (32-35 of the PDF)

-All of the redactions on from the top of page 15 through the middle of page 18, (Pages 32-35 of the PDF) are overruled. All of these redactions relate to the former Chief of Police

Pages 18-34 (35-51 of the PDF)

-All of the redactions to individual names and ranks, starting in the middle of page 18 through page 34 (i.e. pages 35-51 of the PDF) are sustained,
-The redaction of so much of the employee's statement, at the top of page 26 (43 of the PDF), that reveals the location and purpose of the intra-state travel is sustained.

-The remaining redactions on pages 18-34 (i.e. 35-52 of the PDF) are overruled.

Pages 35 (52 of the PDF)

-The redactions on page 35 (i.e. 52 of the PDF) are sustained but only with respect to the civilian employees' (a) specific travel destinations, (b) type of travel destination, (c) means of travel, (d) traveling partners, and (e) purposes of travel. The other redactions on page 35 (52 of the PDF), including specific dates, are overruled.

Page 36-42 (53-59 of the PDF)

-All of the redactions on pages 36-42 (i.e. 53-59 of the PDF) are overruled).

V. Specific Rulings With Respect To The *Internal Affairs Investigative Practices* Section Of The Audit Report (i.e., Complaint Ex. A)

All of the redactions in the *Internal Affairs Investigative Practices* section of the audit report (attached to the Complaint as Exhibit A) are overruled except for certain redactions on pages 40 and 92-99, as detailed in Section V(D), at pages 28-30 below.

A. Introduction

The *Internal Affairs Investigative Practices* section of the audit report looked at the manner in which the police department investigated, adjudicated and resolved both (a) citizen complaints and (b) internally generated disciplinary complaints against police officers. The unredacted report does not identify any officer, complainant or witness by name. Instead, it uses pseudonyms such as "Officer A" or "Citizen B." However, the report does identify the higher ranking officers who were in charge of the investigations.

With some exceptions, the Town's redactions are as follows:

- (a). The Town redacted the names, ranks and pronouns of the higher ranking officers who conducted IA investigations.
- (b) The Town also redacted the names, ranks and pronouns of the supervising officers who assigned officers to lead specific IA investigations.
- (c) The Town similarly redacted the identities of witnesses or complainants whose identities were not already obscured through the use of pseudonyms.
- (d) To prevent unmasking, the Town redacted virtually all of the pertinent dates and many of the specific locations.
- (e) To further prevent unmasking, the Town redacted factual details that could be used to deduce the identities of those involved. In many instances, the underlying

facts were stated in the unredacted report in general and abstract terms. In those instances the Town redacted very little beyond names, ranks, pronouns, dates and locations. However, in other instances the auditors provided more factual details, resulting in far more aggressive redactions.

The auditors' sources included (a) IA and related department files, (b) interviews conducted by the auditors with the high ranking officers involved in some particular IA investigations, and (c) input from members of the community who contacted the auditors directly and without solicitation.

B. Classifications Under RSA 91-A:5, IV

Most of the IA investigations relate to alleged misconduct by police officers in the course of their employment. Regardless of whether the alleged misconduct was committed in the workplace or in public, the resulting IA file related to an "internal personnel practice" within the meaning of RSA 91-A:5, IV. The court will also assume, *arguendo* (and to some extent *dubitante*), that these IA investigations became part of the officers' "personnel files." Finally, the court will treat the auditors' interviews of the participants in these IA investigations as sufficiently grounded in the underlying investigations to qualify for analysis under both the "internal personnel practices" and "personnel files" exemptions.

A few of the IA investigations relate solely to misconduct allegedly committed by police officers when they were off duty and acting as private individuals. For example, one officer was arrested for DUI following a motor vehicle crash that occurred *when he was on his own time and acting as a civilian*. These IA investigations likely do not qualify as "internal personnel practices," as that term has been construed by Seacoast

Newspapers. However, the court will assume that the IA proceedings (and the auditors' related interviews) must be analyzed as components of the officers' personnel files.

As noted above, several members of the community parachuted into the auditors' investigation when they responded to the Town's request for citizen input. The resulting interviews were not part of the police department's "internal personnel practices" and were not part of any officer's "personnel file." Nonetheless, this information comes from "other records" the court must still consider whether public disclosure of the information would result in an unfair invasion of personal privacy. RSA 91-A:5, IV.

Thus, the court must apply the same balancing test to all of the redactions in the Internal Affairs Practices section of the audit report.

C. Balancing

In balancing the public interest in disclosure against the privacy concerns of accused officers, complainants and witnesses, the court makes the following observations:

1. The Presiding Officers' Identities:

Disclosing the identities of the high ranking officers who presided over IA investigations is not invasive of their privacy. By definition, they were not the ones accused of misconduct but rather the ones charged with determining whether misconduct took place. It is one thing to protect the identities of parties and witnesses, and another thing altogether to hide the identity of the presiding officers. Whatever privacy concerns the presiding officers may have are outweighed by the public interest in disclosure. (Thus, to use an analogy, the New Hampshire Supreme Court uses

pseudonyms to protect the privacy of juvenile litigants and witnesses, but will always disclose the identity of the trial judge.)

The redactions of the names and ranks of the presiding officers, as well as the high ranking officers who appointed them are all overruled.

2. Complaints Of Workplace Misconduct

The officers accused of workplace misconduct have the most significant privacy concerns. For the purpose of this order, the court uses the term “workplace misconduct” to mean misconduct that occurs in the course of employment but does not involve any interaction with the public. For example, one officer was accused of showing up for work under influence of prescription drugs. Another was accused of making inappropriate comments to a coworker. These are the type of workplace concerns that are usually addressed confidentially by human resource managers.

The officer who showed up for work under the influence had an apparent substance misuse disorder, i.e., a medical issue. There is no suggestion in the audit report that the officer interacted with the public while impaired or drove while impaired. The officer left the department many years ago. The officer’s present privacy interest is palpable.

That said, the public has a strong interest in understanding how workplace misconduct is handled by the police department. Mishandling of workplace complaints could result in expensive litigation (brought either by complaining coworkers or improperly disciplined officers). The public also has a strong interest in ensuring that workplace rules are enforced fairly, without favoritism or bias, and in a manner consonant with the enforcement of workplace rules in other Town departments.

Therefore, the public has the right to know both the auditors' opinions and the factual basis for the auditors' opinions..

Fortunately, the auditors wrote the unredacted report in a way to protect the privacy of (a) the officers who were accused of workplace misconduct and (b) any complainants and witnesses. In all of the specific cases of alleged workplace misconduct, the identities of all officers and civilians were fully obscured through the use of pseudonyms. The facts were stated in general terms. With one exception, the additional redactions of specific dates, timeframes and other information does not provide a measurable increase in protection of privacy.

That one exception is limited to the redacted dates on page 40, relating to specific dates involving the internal investigation of Officer A. These redactions are sustained because Officer A has a heightened privacy interest. Officer A is a former officer who had a substance misuse disorder. Officer A resigned from the department many years ago. Because (a) the former officer has been separated from the department for a long time, (b) the former officer's difficulties were the result of a medical disorder, and (c) there was no allegation that the former officer committed any act of dishonesty or interacted improperly with any member of the public, the court finds that disclosing information that might help identify former officer would result in a potential invasion of privacy. (The court notes that the audit report found that the department handled the investigation relating to the former officer properly.)

All of the other redactions relating to IA investigations of workplace misconduct (as the court has idiosyncratically defined that term of the purpose of this order) are overruled.

3. Alleged Misconduct Towards Members Of The Public Under Color Of Law

The public interest is at its zenith, and the officers' privacy concerns are at their nadir, with respect to accusations of misconduct towards members of the public under color of law. These accusations involve claims of abuse or misuse of government power. The IA investigations at issue include allegations of unjustified assaults (i.e. excessive force), arrests without probable cause, unlawful seizures of vehicles, verbal intimidation and other inappropriate interactions with members of the public. The public has a compelling interest in having such complaints investigated fairly and impartially. The public also has a right to expect (a) that all officers, regardless of rank will receive procedural due process, (b) that founded complaints will result in proportionate and substantively reasonable discipline, and (c) that when an incident reveals a lack of training, rather than misconduct, that adequate training will be provided,

Thus, the public has the right to learn how such complaints are handled by the police department. Are citizen complaints properly logged and vetted? Is it easy or difficult to file a complaint? Are citizen complainants treated with dignity and respect? Are complaints investigated without bias? Are proper officers chosen to preside? Is discipline meted out equally and fairly? Are the accused officers provided with adequate due process? These are the same questions the auditors asked and answered in their report. It is impossible to understand the auditors' conclusions without also understanding the factual basis for those conclusions.

Although, as discussed below, many of the officers have legitimate privacy concerns, those concerns are reduced because the conduct at issue occurred in the public sphere (i.e. in the presence of third parties) and under color of law. Thus, the

officers never had an expectation of privacy with respect to what a third party might disclose. Indeed, most of the IA complaints were made by members of the public and in no case did the complainant specifically ask for confidentiality. Further, because the officers were on-the-job, in most cases, bystanders would have had the First Amendment right to video record the officer and then publish the recording.

Further—and this applies only to a few of the IA investigations—if an officer has been found, following a fair disciplinary proceeding, of committing a serious disciplinary offense against a member of the public (such as excessive force, or an unlawful arrest, or a false report), why should the law hide that finding beneath an veneer of confidentiality? What social value or policy would it serve?

To be sure, even founded cases may become stale through the passage of time and so a justification for confidentiality may accrue over time. Likewise, some founded disciplinary infractions may result from a lack of training rather than a rogue spirit. Here too, confidentiality would serve a benign purpose, even in cases of founded allegations.

Innocent officers have a less controversial privacy interest in their reputations. Public disclosure of an IA complaint could harm an officer's reputation even if the resulting investigation revealed that the officer did nothing wrong. This is especially so today because it is so easy for partial information to be spread widely through social media.

With these thoughts in mind, the court re-reviewed the Internal Affairs Investigation section of the audit report and notes the following:

(a) In some of instances, the facts are stated so generally that the use of the pseudonyms provides adequate protection for the officer's privacy. In these cases,

even when the dates are unredacted, it would be very difficult to unmask the identities of the officers.

(b) In those instances in which the auditors provide greater factual detail, they do so for a reason. The public interest in learning those facts outweighs the potential privacy concerns arising from the marginally greater risk of unmasking. Further, some of the IA investigations that the auditors detail involve facts that have already been placed in the public domain by other means.

(c) Because there are fewer higher ranking officers, they may be more easily identified from their ranks. However, the public has a keen interest in understanding how the police department processed IA complaints against senior officers. In the addendum to the audit report, the auditors opined that the police department treated those in senior management differently from rank and file officers. Because the officers' ranks are necessary to the public's understanding of the audit report, the public interest in disclosing those ranks outweighs the privacy concern.

4. Off Duty Misconduct Not Committed Under Color Of Law

The IA investigations into off duty behavior fall into a middle ground as far as privacy and public interest are concerns. A police officer has a weighty and enforceable expectation of privacy in his or her personal affairs. Furthermore, the public has no legitimate interest in knowing how its officers spend their time off. But there are limits to all general rules and when a police officer's off-duty conduct includes the alleged commission of serious crimes, or actions that endanger public safety, the expectation of privacy is lower and the public interest is higher.

The IA investigations into off-duty misconduct all involved either accusations of criminal conduct or conduct that endangered safety. In one instance an officer was alleged to have committed DUI. In another instance an officer committed a minor motor vehicle infraction but then refused to pull over and led the police on a dangerous chase. Another officer lost track of a department issued firearm which was then found in public. Yet another officer accidentally discharged his department issued firearm. In these instances, the public interest in disclosure is significant, and the officer's privacy interest is at reduced.

D. Ultimate Conclusions And Specific Rulings

The court has re-reviewed the Internal Affairs Investigations section of the audit report. To verbally analyze each specific redaction would require the court to write a voluminous, repetitive and likely turgid order. Such an order would not provide the parties with any further insight into the court's reasoning.

Further, the court notes that while the parties all filed supplemental memoranda of law, none of the parties isolated and provided particularized argument with respect to specific redactions or sets of redactions in the Internal Affairs Investigations section of the audit report. The court presumes that the parties themselves thought that an inch-at-a-time, redaction-by-redaction approach was neither necessary nor good advocacy.

Thus:

Page 40

The redactions on page 40 of the *Internal Affairs Investigative Practices* section of the audit report, relating to specific dates are sustained. These specific

redactions relate to the officer who had a substance misuse disorder, as discussed and analyzed above.

Pages 92 Through 99

The redactions on pages 92 through 99 are sustained in part and overruled in part. More particularly:

- (a) the redactions on page 92, starting with the paragraph numbered "1" and continuing through the bottom of the page are sustained;
- (b) the redactions on pages 93-97 are sustained;
- (c) the redactions on page 98 are sustained, except for the redactions of the bottom carryover paragraph that continues onto page 99;
- (d) The redactions on page 99 are overruled.

The redactions on pages 92 through 99 relate to a claim that a police supervisor made gruff and inappropriate comments to his daughter's prom date because he disapproved of him as a potential boyfriend. The supervisor was not on duty and was not acting under color of law. Thus, the public interest is reduced, because (a) the conduct did not allege the misuse of official authority, (b) the conduct did not involve the Town or the police department, and (c) the conduct was not alleged to be either criminal or otherwise a matter of public concerns. Further, the redactions at Pages 92-99 include unsourced information about the civilian. Disclosing this information could prove harmful to the police supervisor, his family, and the young man.

That said, the public does have an interest in the facts set forth on the carryover paragraph on pages 98-99 and the following paragraphs. These paragraphs relate to

the manner in which a police Captain discouraged a civilian witness from complaining about the incident.

Other Redactions

All of the remaining redactions in the Internal Affairs Investigations section of the audit report are overruled. In each instance the court engaged in the balancing required by RSA 91-A:5, IV and by the New Hampshire Supreme Court's order remanding the case.

V. Conclusion

On remand this court sustains only those redactions specified in Sections IV(C) and V(D) of this order at pages 18-19 and 28-30 above, respectively. All other redactions are overruled.

January 21, 2021



Andrew R. Schulman,
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 01/22/2021

EXHIBIT 14

**THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT**

CHESHIRE, SS.

Marianne Salcetti, et al.

v.

City of Keene

No. 213-2017-CV-00210

ORDER ON RELEASE OF IN CAMERA MATERIALS

Marianne Salcetti, a journalism professor at Keene State College, brought this petition against the City of Keene (“the City”), alleging the City has violated RSA Chapter 91-A, New Hampshire’s Right-to-Know law, when it denied several requests made by five of her students. Ultimately, the Court sided with the City on most of its claims. However, on appeal the final order in this case was vacated by the Supreme Court and remanded for evaluation, in part, in light of more recent jurisprudence interpreting RSA 91-A exemptions applicable to this case. As explained below with respect to the internal investigation materials, the Court has concluded that unredacted copies of the statistical summaries be released, and that redacted copies of the substantive reports that support the summaries be released. The redaction made by the Court are minor and apply to personal identifiable information (PII). The Court is providing both sets of material, *ex parte*, to the City for review. The Court will release them to the Plaintiff in 45 days unless the City takes an appeal of this order.

Issues before the Court

Currently before the Court are three issues: first, the parties disagree about certain arrest summaries; second, the parties disagree about the documents held in camera for review. And third, the parties disagree about attorney's fees.

The parties first disagree about arrest summaries for Alex Flemming and Abbygail Vassas. The arrest summaries contain a variety of identifiable information regarding arrestees.¹ The parties agree that the person's name can be disclosed, but the City wants to redact the address, cell phone number, SSN, DOB, etc. Ms. Salcetti argues that such information is in the public domain and should be unredacted. Both parties submitted memoranda which will be discussed below. The Court notes, however, that the City's spreadsheet differs from what its counsel identified at the hearing. The spreadsheet does not mention SSNs, but at the hearing it was discussed.

The parties next disagree about the police misconduct reports held *in camera*. The *in camera* review contains two parts: 1) statistical summaries, and 2) substantive documents of the internal investigations of the citizen complaints. The statistical summaries contain charts listing the types and number of complaints as well as charts listing officer names, the complaint type, and the finding. There is also the issue of the extent to which citizen complaints about police misconduct may be redacted by the Court if released; but Ms. Salcetti conceded that the City may redact personal identifying information of the complainants in those complaints.

¹ The spreadsheet provided by the City also indicates that some of the reports list the victim and any suspects.

Ms. Salcetti also asked for attorney's fees under RSA 91-A arguing that the City has "dragged its feet" on the document requests. The City objected.

Legal Standard – Citizen Complaints and In Camera Materials

RSA 91-A exempts personnel files and confidential information from disclosure.

In the past, the Supreme Court ruled that all "personnel files" were exempt from disclosure. See Union Leader Corp. v. Fenniman, 136 N.H. 624, 627 (1993). However, recently, the Court substantially overruled Fenniman. It concluded that the broad interpretation – creating a categorical per se exemption -of the "internal personnel practices" under RSA 91-A should be (much) narrower. See Seacoast Newspapers, Inc. v. City of Portsmouth, 173 N.H. ____ (decided May 29, 2020); Union Leader Corporation & a. v. Town of Salem, 173 N.H. ____ (decided May 29, 2020). Union Leader Corporation & a. v. Town of Salem, established that trial courts must conduct a three part balancing test to determine whether withheld records qualify for the exemption. Of course, this analysis also addresses whether certain information in the records should be redacted because redacted information is considered "withheld" even if the substantive document is disclosed.²

Analysis

The balancing test has three prongs. First, the Court evaluates whether there is a privacy interest at stake that would be invaded by the disclosure. Second, the Court assesses the public's interest in disclosure. Third, the Court balances the public interest in

² Under the Seacoast Newspapers, Inc. v. City of Portsmouth interpretation of the exemption, the summaries and substantive internal investigative reports are clearly not exempt because they do not "relate to the personnel rules or practices" of the City of Keene. Seacoast Newspapers, Inc. v. City of Portsmouth, slip op at 12.

disclosure against the government's interest in nondisclosure and the individual's privacy interest in nondisclosure. Importantly, “[i]f no privacy interest is at stake, then the Right-to-Know Law mandates disclosure.” Union Leader Corporation & a. v. Town of Salem, slip op at 9. As to the assessment of a privacy interest, the Court uses an objective expectation rather than a subjective one. Id. (cleaned up).

Upon review of the summaries and substantive reports in this case, the Court concludes that they are disclosable but the substantive reports must be subjected to minor redactions to protect privacy concerns.

The Summaries

The summaries invoke one minor privacy interest: the identity of the officer and the administrative “finding” about the claim of misconduct. The documents are essentially tallies of spreadsheets, with some brief narrative explanations. They are authored by the Chief and are issued to “File” – based on the context of these forms and the corresponding underlying investigations, the Court finds that the “File” is the department’s Citizen Complaint file, not a personnel file. They simply identify the fact that a complaint was made against a particular “member,” the member’s last name, the name of the investigator, the nature of the complaint, and the finding. Thus, any privacy interest is nominal. This balances in favor of disclosure without redaction.

Second, the public has an elevated interest in the disclosure given the nature of the work the department performs. Law Enforcement officers, in contrast to those who work at the State Library, are vested with considerable power and authority. They are authorized to use deadly force when necessary. They are routinely critical witnesses in

criminal cases. As such powerful public servants, the public has an elevated interest in knowing whether officers are abusing their authority, whether the department is accounting for complaints seriously, and how many complaints are made. This factor strongly favors unredacted disclosure.

Third, balancing the public interest in disclosure against the government's interest in nondisclosure and the individual's privacy interest in nondisclosure, the Court finds public interest in disclosure is compelling. The City has not articulated any compelling interest in non-disclosure. Lastly, given the *de minimus* privacy interest involved, the public interest in unredacted disclosure carries the day.

The Substantive Reports³

The in camera material also contain substantive reports of interviews and conclusions conducted in response to the Citizen Complaints. They all follow the same format: the cover sheet identifies the nature of the complaint, the date and time received, the name of the officer(s) subject to the complaint, and the personal identifying information of the complainant. The report is copied, via an email distribution list, to the Captain, Supervisor and the Officer(s). The following pages in the reports contain narrative interviews of any witnesses and the officer. Many of the reports contain the underlying arrest reports, correspondence with attorneys involved in the underlying criminal case, and some photographs.⁴ Upon review of the reports, it is not always clear who conducts the investigative interviews. The narrative is followed by a

³ The Court notes that there is currently a legislative proposal to specifically exempt internal investigations from disclosure under RSA 91-A. See SB39.

⁴ The substantive reports, are, in the Court's review, very detailed and well-documented.

conclusion from the Chief, and a letter to the complainant letting him/her know the outcome of the investigation.

Applying the balancing test factors discussed above, the Court finds the substantive reports are to be disclosed subject to the following redactions: personally identifiable “victim” information must be redacted, any reference to personnel action taken (if any) against the officer; and any discussion of internal personnel practices or procedures, if any, within the City. The Court will provide a redacted copy of what it intends to release to the City, but delay disclosure to the plaintiff for 45 days to allow the City to determine whether to take an appeal.

The Court finds that any privacy interest is minor in the records, and that victim information must be redacted by virtue of RSA 21-M:8-k II (m) Rights of Crime Victims (right of confidentiality of personal information). The Court cannot discern any privacy interest vested in an officer against whom a citizen has filed a complaint.

Second, the Court finds that the nature of police work invokes a very significant public interest in disclosure. Because law enforcement officers are entrusted with significant authority, granted additional protection for the use of force, and are mandated to act with honesty and integrity, the public has a heightened interest in knowing of the content of the investigation of such complaints.⁵ This weighs in heavy favor of disclosure. Additionally, upon review,

⁵ See RSA 105:19 (mandating that police investigate complaints of police misconduct).

much of the information contained in the reports is contained in arrest reports that are subject to disclosure, or interviews with civilian witnesses (and complainants) none of whom are bound by any confidentiality. In other words, the “facts” that they convey to the interviewer are not subject to any confidentiality. The Court finding on this prong also dictates the result of the third prong of the balancing test.

Legal Standard – Arrest Records

There is scant authority regarding the redaction or disclosure of arrest records under RSA 91-A. RSA 594:14-a notes that arrest records are “governmental records as defined in RSA 91-A and subject to disclosure in accordance with that chapter, with the exception noted in RSA 106-B:14.” RSA 594:14-a then specifies what an arrest record must contain: the identity of the arrestee, the identity of the arresting officer, a statement of reasons why/how the arrest was made, the alleged crime, and whether the arrest was made pursuant to a warrant. RSA 106-B:14 notes that “[a]ny person may, for a fee, obtain the public criminal history record information on another person.” (emphasis added). Neither party has identified whether “public criminal history records” includes records in which a person was arrested but not convicted of an offense. It is the Court’s belief that the public portion of criminal records obtainable under RSA 106-B:14 contains only records of arrests that are accompanied by convictions. Compare RSA 106-B,II (defining “confidential criminal history record”) with RSA-B,XI (defining “public criminal history record”). But even though RSA 594:14-a allows for disclosure of arrest records as “governmental records” under RSA 91-A, it doesn’t mention if they fall under an exemption. Moreover, RSA 594:14-a qualifies that disclosure of arrestee information

is “subject to the exception in RSA 106-B:14” which appears to limit public disclosure (by the State Police) to arrest records that result on a conviction. Obviously, local law enforcement routinely issue press releases and report arrest records publicly. However, the issue is whether RSA 91-A mandates disclosure or whether it is confidential information.

Federal case law provides some helpful examples. A federal district court dealing with similar facts noted that “[s]ince an individual's right of privacy is essentially a protection relating to his or her private life, this right becomes limited and qualified for arrested or indicted individuals, who are essentially public personages.” Tennessean Newspaper, Inc. v. Levi, 403 F. Supp. 1318, 1321 (M.D. Tenn. 1975). However, the court warned that “this decision does not provide the plaintiffs with a license to obtain from the defendants any type and amount of information about an arrested or indicted individual which they desire to publish.” Id. Other federal cases have similarly struck that balance. See Ctr. for Investigative Reporting v. United States Immigration & Customs Enf't, 2019 U.S. Dist. LEXIS 207840 at *13 (finding that even though an ICE detainee's name and country of origin can be found online, other more personal information held by ICE carried a “significant privacy interest.”); see also United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 764 (1989) (“there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information.”)

A secondary source, the 2015 Attorney General RSA 91-A Law Enforcement Memorandum, addresses the issue of what should be redacted from law enforcement

records due to privacy interests (though it does not provide citations). The AG recommends always redacting items like SSNs, DOBs, driver's license numbers, criminal records⁶, and many other less-relevant items. The AG then recommends generally redacting addresses and telephone numbers but also suggests doing a privacy analysis on those items.⁷

In light of the foregoing analysis, the Court finds that the City may redact from the disclosure of arrest records in its possession, aside from the arrestee's name, any PII from the arrest records, specifically the arrestees': street address, date of birth, social security number; and any other information protected by federal law. The Court finds that the limitation to conviction-only arrest records under RSA 106-B:14 applies to the records maintained by the City. By its express terms, members of the general public may make a request of records, but the request is limited to "public criminal history record[s]." The court construes this limitation as "the exception noted in RSA 106-B:14" carved out in RSA 91-A.

Attorney's Fees

Under RSA 91-A, the statute "requires two findings by the superior court: (1) that the plaintiff's lawsuit was necessary to make the information available; and (2) that the defendant knew or should have known that its conduct violated the statute." N.H. Challenge v. Commissioner, N.H. Dep't of Educ., 142 N.H. 246 (1997).

⁶ From the central repository. I think that is different from arrest summaries.

⁷ The Court notes that prior to the AG memo, and after RSA 91-A was enacted societal concerns about personally identifiable information (PII) have escalated. It is beyond dispute that "data breaches," "data mining," and the fraudulent use of PII are of great societal concern.

In this case, the court finds that there is no evidence that the City knew or should have known that its conduct violated the statute. Thus, an award of fees is not warranted under the statute. In light of this finding, it follows that the plaintiff is not entitled to a common law award of fees. Therefore, the request for attorney's fees is denied.

SO ORDERED.



Date: January 22, 2021

Hon. David W. Ruoff

Clerk's Notice of Decision
Document Sent to Parties
on 01/22/2021

EXHIBIT 15

The State of New Hampshire

Strafford SS.

Superior Court

State of New Hampshire

v.

Ronald A. Letendre, Jr.

No. 219-2020-CR-0792

Order on Defendant's Motion to Delay Disclosure of Internal Investigation Report

The defendant, a former Dover Police Officer, is charged by indictment with one felony count of Falsifying Physical Evidence in violation of RSA 641:6. According to the indictment, the defendant is alleged to have removed a portion of a quantity of controlled drugs seized during a drug investigation on or about September 16, 2016, prior to the seized drugs being entered into evidence at the Dover Police Department. An internal police department investigation revealed the occurrence of other unrelated alleged improprieties and culminated with the production of a 49-page report (the Report). The defendant was terminated from his employment.

The New Hampshire Chapter of the American Civil Liberties Union (ACLU) filed a Right-to-Know request with the Dover Police Department seeking disclosure of the Report. By letter to the ACLU dated November 6, 2020, Dover City Attorney Joshua Wyatt thoroughly analyzed the RSA 91-A request, identified certain exemptions to disclosure, and indicated that he would disclose a redacted version of the report in compliance with RSA 91-A. The City Attorney further indicated that he would make the disclosure on Monday November 23, 2020. He provided copies of the letter to multiple interested parties, including the defendant and his criminal defense counsel. On Friday November 20, 2020, defense counsel in the within criminal case filed a motion under seal seeking an order delaying the RSA 91-A disclosure until after the

criminal case is resolved, on the grounds that disclosure would result in prejudicial pretrial publicity and deprive the defendant of a fair trial in this county. The State, the City, and the ACLU have filed responses. All of the related pleadings and the Report are under seal pending further order of the court. The court conducted a Webex video hearing on the motion on Thursday December 3, 2020. Following the hearing, the ACLU submitted additional authorities in support of its objection to the defendant's motion.

The question before the court is whether the defendant has sufficiently proved prejudice to his right to a fair trial under Part I, Article 15 of the New Hampshire Constitution by disclosure of the Report such that its disclosure should be delayed until after the criminal trial.¹ With one limited exception, the defendant does not challenge the RSA 91-A determinations made by the City that the contents of the Report should be disclosed under the Right to Know law. The one exception is that the City determined in its decision to release the redacted report "that any potential impact of pretrial publicity on fair jury trial rights can be best addressed through voir dire or other tools available to the presiding justice." Letter from Dover City Attorney, dated November 6, 2020. The court's focus, then, is solely on the issue of whether pretrial disclosure will impair the right to a fair trial.

I. Background Facts

This case began in the summer of 2020 when, on July 10, 2020, the defendant called police to his Rollinsford home to report that his wife, Sarah Letendre, was assaulting him. As a

¹ The ACLU challenges the jurisdiction of the court in this criminal case to interfere with the RSA 91-A process. The ACLU notes that RSA 91-A:7 provides for a remedy for persons aggrieved by a decision of a government body with respect to its determination whether to disclose information under the Right to Know law. By statute, that remedy is an action for injunctive relief in Superior Court wherein all interested parties to the RSA 91-A procedure can fully litigate the issues. Letendre did not avail himself of the remedy provided by the legislature and, the ACLU argues, he should not be allowed to circumvent the RSA 91-A process through his criminal case. In light of the court's decision on the merits, the court declines to address this issue at this time.

result of the Rollinsford investigation, Mrs. Letendre was arrested for assault and obstructing the report of a crime, and later for stalking and resisting arrest. She fled when police attempted to arrest her. She later turned herself in and, in turn, accused the defendant of assaulting her and breaking her ribs. According to the defendant, local media reported extensively on the case, especially the protests brought on by the decision to charge Mrs. Letendre. The matter was ultimately transferred to the Merrimack County Attorney's office to investigate the case and make a prosecution decision. After its investigation, the Merrimack County Attorney decided not to prosecute either Mrs. Letendre or the defendant for any offense related to the July 2020 assault complaints.

During the investigation of the assault allegations, Mrs. Letendre provided several recorded statements which are summarized in the Report. On August 6, 2020, the Merrimack County Attorney provided Mrs. Letendre with a letter of immunity and she spoke with Dover police for three hours. The Report summarizes Mrs. Letendre's accusations that the defendant assaulted her on several prior occasions; that he sometimes used marijuana; her admission that she abused controlled substances; and her marital infidelities. In addition, in the August, 2020 interview, Mrs. Letendre told investigators that the defendant had on occasion brought home marijuana that he had seized as part of his work as a police officer. She alleged one such instance occurred in 2016 when she claims the defendant brought home THC infused candies for her use.

The information provided by Mrs. Letendre about the THC candies led to an investigation into the defendant's past involvement in drug seizures as a police officer. The Report sets forth in detail the investigation into the instant charge relating to the 2016 drug investigation.

As part of the internal investigation, police questioned the defendant on August 11 and 25, 2020. During those interviews, the defendant was represented by a lawyer and was advised of his administrative rights. None of the defendant's statements can be used against him in this case. His statements are compelled testimony and under part I, Article 15, "cannot be put to any use whatsoever by the State in a criminal prosecution." State v. Burris, 170 N.H. 802, 811 (2018) (use and derivative use immunity applies by operation of law when a government employee is compelled to provide a statement). The Report summarizes the content of the interviews in significant detail.²

II. Pretrial Publicity and the Right to Fair Trial

The defendant argues that pretrial release of the Report will prejudice his ability to have fair trial in Strafford County. He basis his claim on the fact that his case has particular notoriety because he is a former police officer; that the events with Mrs. Letendre have already garnered extensive press attention; the report discloses not only salacious details about their relationship, but also myriad other allegations and information that will not be admissible at trial; and the Report contains a detailed summary of the evidence that supports the instant charge, as well as his own protected statements about the allegations.

Part I, Article 17 of the New Hampshire Constitution provides:

In criminal prosecutions, the trial of facts, in the vicinity where they happened, is so essential to the security of the life, liberty and estate of the citizen, that no crime or offense ought to be tried in any other county or judicial district than that in which it is committed; except in any case in any particular county or judicial district, upon motion by the defendant, and after a finding by the court that a fair and impartial trial cannot be had where the offense may be

² The content of the defendant's statements during the internal investigation are not set forth in this order in an effort to avoid unintended disclosure of the statements to the prosecution. The necessity of omitting the defendant's statements points up the problem with allowing a challenge to an RSA 91-A decision in the context of this criminal case. The State is a party and is entitled to litigate the issue fully, but is hamstrung by the need to avoid tainting its prosecution. If the issue had been litigated as RSA 91-A:7 seems to require, the State would not need to be a party and could more effectively insulate itself from exposure to the content of the report.

committed, the court shall direct the trial to a county or judicial district in which a fair and impartial trial can be obtained.

Our Supreme Court has explained that Part I, Article 17 grants a criminal defendant the right to be tried where the crime was committed and the right to obtain a change of venue upon proof that he cannot obtain a fair trial there. State v. Gribble, 165 N.H. 1, 16 (2013) The due process requirements of Part I, Article 15 of the New Hampshire Constitution and the Sixth Amendment to the United States Constitution guarantee a defendant the right to a trial by a fair and impartial jury. State v. Smart, 136 N.H. 639, 646 (1993). As such, if there is community prejudice impairing a trial by a fair and impartial jury, a defendant has a right to a change of venue. See Petition of State of N.H. (State v. Johanson), 156 N.H. 148, 154 (2007).

Our Supreme Court has discussed two types of prejudice that can result from publicity in a case. State v. Laaman, 114 N.H. 794, 798 (1974). The first is inherent or presumptive prejudice, which exists when the publicity by its nature has so tainted the trial atmosphere that it will necessarily result in a lack of due process. Id.; see State v. Smart, 136 N.H. 639, 647 (1993). The second type of prejudice is actual prejudice which exists when the publicity has infected the jurors to such an extent that the defendant cannot receive, or has not received, a fair and impartial jury trial. Laaman, 114 N.H. at 798, 331 A.2d 354. In this latter situation, the defendant must show that the nature of the opinions formed by the jurors as a result of the publicity are such that they cannot be set aside to enable them to render a verdict based upon the evidence presented in court. Id.; see also Irvin v. Dowd, 366 U.S. 717, 723 (1961).

The defendant here does not distinguish which type of prejudice will likely result from pretrial publicity potentially arising from release of the Report. Since his focus is on the potential for the jury pool to be tainted by media coverage of the details around his termination, the court assumes that he is referring to the type of prejudice brought on by publicity that the

jurors will be unable to set aside and render a verdict based solely on the evidence. See Def. Mot., ¶ 16. For this type of prejudice, the defendant is obligated to show actual prejudice that has so infected the jurors in this county that they cannot render a fair and just verdict on the evidence.

At this stage of the proceedings, the risk of actual prejudice is purely conjectural. Based on the record, however, at least some helpful observations can be made. On the one hand, the prosecution involves an alleged corrupt act by a sworn police officer. The case is likely therefore to draw greater public attention than routine felony prosecutions. In addition, the report summarizes the evidence against the defendant that led to his indictment here. Thus, the potential jurors may well be exposed to the evidence before the trial and make prejudgments about the evidence. Finally, the report sets forth a great deal of information about the defendant's relationship with his wife and their conduct in their marriage. Some of the information could fairly be described as salacious or disturbing, and might cause the public to draw negative conclusions about their character or credibility.

On the other hand, this case does not run much risk of causing widespread community outrage. The defendant asserts that following the decision not to prosecute the defendant for domestic violence offenses in late summer 2020, the media covered the understandable backlash from protestors who were deeply upset by the decision. The defendant has not, however, submitted any evidence to this court of the actual coverage or how widespread or persistent the media coverage actually was. The court also notes that this case does not involve the kind of gruesome violence or other horrific details that might cause widespread community prejudice against the defendant.

In balance, the court finds that the defendant has not demonstrated that he will likely suffer actual prejudice by the pretrial disclosure of the Report. To the extent that pretrial publicity is an issue at jury selection, the voir dire process is designed to ferret out potentially contaminated jurors. If the defendant is able to demonstrate at the time of trial that his right to a fair trial has been sufficiently impacted by the pretrial publicity, he can seek a change of venue.

III. RSA 91-A and the Right to Fair Trial

As a constitutional matter, the defendant has not demonstrated that the Report should not be disclosed. The same answer obtains under the Right to Know law.

The New Hampshire Right-to-Know Law does not explicitly address requests for police investigative files. To fill the void, the New Hampshire Supreme Court in Lodge v. Knowlton, 118 N.H. 574, 577 (1978) and Murray v. N.H. Div. of State Police, 154 N.H. 579, 582 (2006), has looked to the language of the federal Freedom of Information Act (FOIA) to evaluate whether police investigative reports should be disclosed under the RSA 91-A. Pertinent to the issue in this case, the so-called (7)(B) exemption relates to a request for law enforcement records and precludes disclosure “only to the extent that the production of such law enforcement records or information … (B) would deprive a person of a right to a fair trial or an impartial adjudication 5 U.S.C. § 552 (b)(7)(B).

Though the New Hampshire Supreme Court has not directly addressed the contours of the (7)(B) as it relates to a request under RSA 91-A, federal courts have devised an analysis for applying the (7)(B) exemption. “[T]o withstand a challenge to the applicability of (7)(B) the government bears the burden of showing: (1) that a trial or adjudication is pending or truly imminent; and (2) that it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings.” Wash. Post Co. v. United States

Dep’t of Justice, 863 F.2d 96, 102 (D.C. Cir. 1988); see also Seacoast Newspapers, Inc. v. City of Portsmouth, 173 N.H. 325, 338 (2020) (“we often look to federal case law for guidance when interpreting the exemption provisions of our Right-to-Know Law, because our provisions closely track the language used in FOIA’s exemptions”). In this case, Letendre’s trial is not “pending or truly imminent.” He was only recently indicted by the grand jury on October 15, 2020, and there have been no preliminary proceedings. A Dispositional Conference is scheduled for March 16, 2021, at which trial dates are likely to be selected. In the ordinary course, trial would not likely be scheduled until the summer of 2021. However, due to the Covid-19 pandemic, criminal trials in Strafford County have been cancelled since March of 2020, and have not yet resumed, despite efforts to do so. Given the significant backlog of jury trials, this case is not likely to be scheduled until after the summer of 2021. The lengthy interval between any press coverage from the disclosure of the Report and trial will likely cause any public attention to lessen. See People v. DeBeer, 774 N.Y.S.2d 314, 316 (N.Y. Cnty. Ct. 2004) (lengthy interval between disclosure and trial will allow public attention to subside).

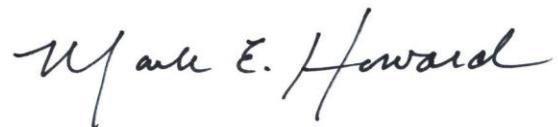
As to the second prong, the defendant’s contention that disclosure of the Report would result in a serious interference with his ability to obtain a fair trial is speculative. First, the court cannot predict with certainty if, or to what extent, the media will cover the details in the Report. Similarly, the court cannot predict how widespread the coverage will likely be, or more importantly, how many potential jurors will likely follow any coverage or be impacted by it. While the case may be of some interest to Dover citizens, it is not a given that people in the surrounding towns and cities in this county will take an interest in the details of one terminated Dover police officer.

As the D.C. Circuit held, the burden of proof for invoking the 7(B) exemption cannot be met by “merely conclusory statements.” 863 F.2d at 101. Though the defendant faces a criminal charge, “it [does] not automatically follow that disclosure . . . would deprive [him] of a fair trial.” Id. at 102. Instead, he “must show how release of the particular material would have the adverse consequence that [FOIA] seeks to guard against.” Id. at 101; See also, Playboy Enterprises, Inc. v. United States Dep’t of Justice, 516 F. Supp. 233, 246 (D.D.C. 1981) (denying 7(B) exemption because “the degree of publicity that might come about as a result of the disclosure . . . [was] speculative at best”); Dow Jones Co. v. FERC, 219 F.R.D. 167, 174–75 (C.D. Cal. 2003) (denying 7(B) exemption in part because “defendant has failed to demonstrate that disclosure . . . would generate pretrial publicity that could deprive the companies or any of their employees of their right to a fair trial”). Of course, all criminal prosecutions involve information that is unflattering, prejudicial, and sometimes inflammatory, but “pre-trial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial.” Nebraska Press Ass’n v. Stuart, 427 U.S. 539, 554 (1976). To the extent that pretrial publicity leads to any potential juror prejudice, voir dire of the jurors during selection is a sufficient safeguard. State v. Andersen, No. 218-2018-CR-241 (Rock. Super. Ct.)(Schulman, J.)(August 31, 2018)(any exposure to media coverage from the disclosure of police reports while case is pending can be adequately addressed through voir dire).

In sum, the court finds and rules that the defendant has not demonstrated a sufficient risk of actual prejudice to his rights to a fair and impartial jury; that there is an effective alternative to delaying disclosure of the report, i.e. voir dire of the prospective jurors or, if proven necessary, a change of venue; and that the public’s right to know is paramount under these circumstances. Accordingly, the motion is DENIED.

The pleadings related to this issue will be unsealed (Court Index ## 4, 5, 6, 8, 9, 10, 12, 13, 15, 16, 20, 23 and 30) on February 15, 2021, in the absence of a motion to reconsider the within order. The Report (Court Index #24) will remain under seal as a court exhibit on the basis that public disclosure of the Report should be done through RSA 91-A process and not this court.

So Ordered.

A handwritten signature in black ink, appearing to read "Mark E. Howard".

Date: February 4, 2021

Mark E. Howard
Presiding Justice