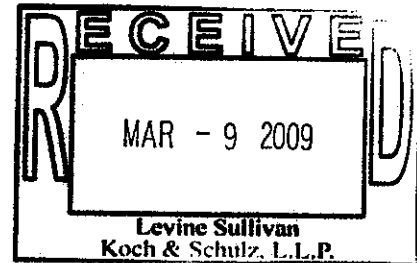


file
802
CITY OF COLORADO SPRINGS

March 5, 2009

Steve Zansberg, Esq.
LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.
1888 Sherman Street, Suite 370
Denver, CO 80203



Re: Document Request

Dear Steve,

The Gazette requested from Colorado Springs Police Department (CSPD) all sustained, Level II, case summaries involving its employees from 2007-2008 that resulted in dispositions of "sustained," "misconduct not based on complaint" or "closed by mediation." As you know, such a request is extremely voluminous.

You indicated that it was the Gazette's expectation that these summaries would have no redactions. Section 24-72-305, C.R.S. allows the custodian of criminal justice records to deny inspection of such records if disclosure is contrary to the public interest. The City of Colorado Springs (City) upon the sound exercise of its discretion, reviews each request, case-by-case, pursuant to the criteria outlined in the Colorado Supreme Court decision in *Freedom Colorado Information v. El Paso County Sheriff's Department*, No. 196 P.3d 892 (Colo. 2008). Among the criteria the City considers in its disclosure analysis are the privacy interests of individuals who may be impacted by decision to inspect; CSPD's interest in keeping the information confidential; the public interest to be served by allowing inspection; and other considerations such as whether the record is relevant to the performance of CSPD's functions.

In my discussion with you on this issue, we agreed that the City would produce a sampling of cases, including cases in which the City has determined are not subject to disclosure; cases in which the City will disclose with redactions of the subject employee's name and possibly the witnesses' names; and cases in which the City will disclose without redaction of the subject employee's name but may include redaction of witnesses' names. It is the City's position that redaction, at times, is the proper disclosure method in order to carry out the General Assembly's intent regarding disclosure of these types of records. As you know, the release of these records is within CSPD's sound discretion and will only be overturned upon a finding of "abuse of discretion."

The following is the City's sampling of cases:

Category One (City will not release the IA summary): Under this category, the City will not release the summary based on the totality of circumstances, which may include the fact that the subject person is a civilian employee; the complaint involves off-duty conduct; the offense is very minor; the conduct has very little or nothing to do with CSPD's function as a criminal justice agency; or release is prohibited by the Colorado Open Records Act. In short, the public interest under these circumstances is minimal when weighed against the privacy interests of the subject employee and/or CSPD.

Case No. 08-017: Involves a Marshal (civilian employee) who allegedly accessed his/her Utility information (via computer) when speaking to Utilities regarding his/her residential account. Access of this information is prohibited when done for personal use.

Case No. 07-038: Incident between two police officers in which one officer denigrated another member of CSPD when discussing an issue with a second officer. Although the incident occurred on duty, it was not done in public or in front of members of the public.

Case No. 07-043: Involved two civilian employees in which an isolated incident of sexual harassment was alleged by one employee. The incident was completely unrelated to CSPD's function as a criminal justice agency. Additionally, the Colorado Open Records Act prohibits the release of this information except to the victim and subject employee (with limitations). § 24-72-204(3)(a)(X)(A), C.R.S.

Category Two (Release the record with redaction of the subject employee's name and possible redaction of victim/witness names): Under this review, the incident may or may not have occurred on duty, was of a more serious nature than those cases in category one, but the public's interest is minimal. It is the City's position that redaction is appropriate as it balances the public's interest against the privacy interests of the individuals involved.

Case No. 07-018: The City redacted the officer's name as the violation was administrative in nature; there was no civilian complainant.

Case No. 07-053: First, the City redacted the officer and complainant's name as the violation was minor in nature and was for accessing a document that was otherwise a public document. Second, the City redacted other information that would identify the subject officer (dates and case number). Third, the City redacted the discipline imposed. It is the City's position that the information redacted is the type of information protected under the Colorado Open Records Act. §24-72-204 (3)(a)(II).

Category Three (Release of employee's name and possible redaction of victim/witness names): Under this category, the incident generally occurred on duty; may have occurred in public; may be more serious in nature than the other categories; and is relevant to the functions of the criminal justice agency.

Case No. 07-013: No redaction of any names.

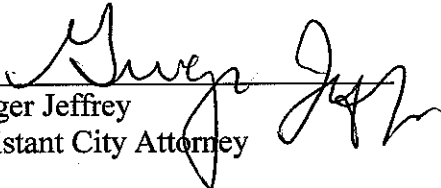
Case No. 08-003: Redacted the names of witnesses who are minors to protect their privacy interests.

The factors the City considered when evaluating whether it would release the name of victims and/or witnesses included: whether the individual was a minor; personal sensitivity of the allegation; the level of public interest; and whether disclosure of identity would chill the public from coming forward in the future.

After you review the attached cases, feel free to call me to discuss this matter further.

Sincerely,

FOR THE CITY ATTORNEY/CHIEF LEGAL OFFICER



Ginger Jeffrey
Assistant City Attorney

GJ/hmc

cc: Pete Carey
Kirk Wilson

CASE SUMMARY

IA 07-013

On Saturday – March 17th, 2007 – the *Saint Patrick's Day* holiday, Sergeant Knollhoff was the duty sergeant in charge of Shift II at the Stetson Hills Division. Nine officers were assigned to work that night and Sergeant Knollhoff took a third of those officers (three) and assigned them to a special detail involving patrol of a police sergeant's neighborhood where graffiti and criminal mischief activity had been ongoing. Sergeant Knollhoff had deployed officers on the same detail the previous night and it resulted in a number of arrests, including an individual thought to be a primary suspect.

Activity in the targeted neighborhood was very quiet the night of March 17th, so Sergeant Knollhoff elected to terminate the detail at 10:30 PM and have the officers go off-shift, early. Those officers were normally scheduled to work until 3:00 AM. Sergeant Knollhoff subsequently joined the three officers in a social setting, at the home of one of the officers.

Shortly after Sergeant Knollhoff and the three officers went off-shift, calls-for-service activity in the Stetson Hills area command increased severely and continued to do so, until almost 3:00 AM. All six of the remaining Shift II officers ended up working overtime that night, some with over three hours each, for a total of almost fourteen hours.

On the following day, Sunday – March 18th, Lieutenant Scott was the scheduled Lieutenant of the Day (LOD). Upon arriving for work, he was inundated with complaints from both officers and supervisors concerning what had occurred on St. Patrick's Day, with Sergeant Knollhoff and the three officers leaving early. Lieutenant Scott conducted a preliminary inquiry and determined that what had occurred was in appropriate and likely violated Department policy(s). A formal personnel investigation was initiated, and conducted, by Lieutenant Scott.

The three officers who were let off-shift were interviewed, along with several other officers from Shifts II and III who were working that night. The on-duty Shift III Lieutenant of that night was interviewed and so was the Division Commander. Sergeant Knollhoff was also interviewed.

**Colorado Springs Police Department
Allegation of Employee Misconduct**

Personnel Investigation Number
08-003

Specific Allegation (Brief)

Location of Occurrence

612 E. YAMPA ST. 'NORTH MS'

Courtesy and discretionary judgment

In Person Other
 By Telephone

Date & Time Reported

12/20/07

Date & Time Occurred

12/18/07

Reporting Party's Name

[REDACTED]

Address

Res. [REDACTED]
City **COLORADO SPRINGS** State **COLO** Zip [REDACTED]
Bus. [REDACTED]
City [REDACTED] State [REDACTED] Zip [REDACTED]

Race **B** Sex **F** Age **13** DOB **07-14-94** Home Telephone **719 [REDACTED]** Alternate Telephone [REDACTED]

Codes: PA - Person Alleged Misconduct (if different than RP above) W - Witness		Address	Telephone
a. Code	b. Name		
PA	Melva Moore	Res. 3620 Summer Breeze Dr. Colo Spgs. Co 80918 Bus. [REDACTED]	321-7260
W	Robert Jefferson	Res. [REDACTED] Bus. North Middle School	238-2400
W	Dan Forbeck	Res. [REDACTED] Bus. North Middle School	238-2400
W	Mary Ley	Res. [REDACTED] Bus. North Middle School	238-2400

Employee(s) Named and IBM
Officer Dan McCormack 9605

Details of Allegation and/or Statement of Reporting Party

12-18-07 Officer McCormack was invited to a distributive classroom at North Middle School. When he tried to obtain order with the students, some students continued to be disruptive and disrespectful to the teacher and to Officer McCormack. He yelled at the students and cursed "Get you frickin ass out of the class". He took two students out of the class and to the office where they were disciplined by the school. The student stated that Officer McCormack used the word "Fuck" but numerous teachers and Officer McCormack said he used the word "Frickin". All parties agree he used the word "ass". Officer McCormack met with the student and her aunt and apologized for his use of cuss words and for losing his temper. Numerous problems were addressed at the school (teacher's and principal's actions).

Connecting Case Report Number(s) Supervisor Submitting Report - IBM#
SGT. TOMMY THOMPSON 416

Connecting Summons Number(s) Reviewing Supervisor

C O N F I D E N T I A L

CASE SUMMARY

Thursday, December 13, 2007 Lieutenant [REDACTED] contacted Lieutenant Sapp by phone to advise him of a possible complaint the Internal Affairs Section might be receiving against her. The complainant is a [REDACTED] of [REDACTED], that she is suing in Small Claims Court over some property that was stolen. During the hearing on [REDACTED] [REDACTED] complained to the judge that Lieutenant [REDACTED] was coercing other officers to appear in court and testify on her behalf.

Friday, December 14, Lieutenant Sapp received an email from Commander Walker. The email was a complaint that [REDACTED] had filed with City W\WEBFORM-Citiquest system. [REDACTED] had two specific complaints he wished to file against Lieutenant [REDACTED]. The first was that Lieutenant [REDACTED] subpoenaed an on-duty police officer to appear on her behalf in Small Claims Court. [REDACTED] claims that Lieutenant [REDACTED] told the judge that she had subpoenaed the officer through a process server. [REDACTED] who says he is an attorney, stated that, "As a matter of law, process servers have no power to issue a subpoena." Additionally, the paperwork Officer Owen Scott produced at the hearing was, "clearly not a subpoena" according to [REDACTED].

Secondly, [REDACTED] complained that Lieutenant [REDACTED] had a copy of the police report and he did not. [REDACTED] felt that Lieutenant [REDACTED] abused her position by not providing him or his business with a copy of the report. [REDACTED] stated that, "It is fairly obvious to us that [REDACTED] a lieutenant for the Colorado Springs Police Department, is abusing her position to require a police officer to attend a small claims court hearing and also was able to obtain police reports that were not available to the business that had the theft."

On December 21, Lieutenant Sapp conducted an interview with [REDACTED] at the Internal Affairs Office. [REDACTED] complained that Lieutenant [REDACTED] was lying to the judge or someone about how the subpoena was issued. [REDACTED] kept reminding Lieutenant Sapp that he was an attorney and that "of course, she's not an attorney, so she doesn't have subpoena power, and basically, you know, it was - it stunk. Something was wrong, and so I felt it was appropriate to report it, and I said so to the judge. I told the judge that I would report it."

[REDACTED] stated that his other complaint dealt with Lieutenant [REDACTED] having a police "file" (report) and she didn't provide him with a copy of the report. When questioned, [REDACTED] said that he was aware that the hearing was going to be about the stolen motorcycle wheels. He further stated that he is aware anybody could ask for and get a copy of the police report after paying for it, but that he never requested a copy. [REDACTED] advised that he is an attorney and is "fairly familiar with the process."

██████████ said his complaint didn't have anything to do with his Small Claims Court case rather he was questioning why Lieutenant ██████████ would be able to have a police file at a civil hearing.

JoAnne Eckrich, the Police Court Liaison representative, advised that Lieutenant ██████████ told her that she was involved in a Small Claims matter and that she, Lieutenant ██████████, had sought out information of how to properly subpoena an officer. Ms. Eckrich advised that Lieutenant ██████████ did everything by the book and that she showed her no special favors. A carrier service served the subpoena on Ms. Eckrich which was duly accepted and entered into our system. As a result of the proper subpoena service, Officer Owen Scott was provided with a CSPD court notice to appear in Small Claims Court, which he did.

Officer Owen Scott stated that he did receive a subpoena on ██████████ to appear in Small Claims Court and did so on ██████████. Officer Scott said that he was the officer who took the initial report on ██████████. Officer Scott advised that he was not forced to appear in Small Claims Court nor was he intimidated by Lieutenant ██████████ to do so. Officer Scott said that Lieutenant ██████████ did contact him and asked if he would have any problem with her subpoenaing him and he indicated no, that it was part of his job.

When interviewed, Lieutenant ██████████ said that she had filed a small claims suit against ██████████ holding him accountable for the theft of some motorcycle wheels that he was selling for her. The wheels were valued at \$3,584.42 but were allegedly stolen from ██████████ shop. Because it wasn't a burglary, for which ██████████ was insured, rather a theft, the insurance company would not pay the claim and the responsibility for restitution would fall to ██████████.

Lieutenant ██████████ said that she has been dealing with her small claims suit off-duty. The following came up during her interview with Lieutenant Sapp. Lieutenant ██████████ had accessed CRIS II, on-duty, on ██████████ and obtained a copy of Case Report ██████████. A copy of the report was then faxed from Falcon Division on ██████████ at 4:45 p.m. from ██████████ to Brenda Williams of H.H. EMC Insurance. A printout of the CRIS II Document Audit Report for ██████████ confirmed that the report was accessed and copied by Lieutenant ██████████.

Lieutenant ██████████ indicated that she was aware there was a policy that prohibited this action. The CSPD GO Readership Log confirmed that General Orders 1501 and 1510 had been opened and apparently reviewed by Lieutenant ██████████.

Lieutenant ██████████ said that a copy of the police report was not given to ██████████ however, if her case had been heard, she had been prepared to provide him with a copy as part of her exhibits.

Confidential

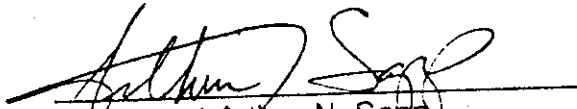
Personnel Investigation Case 07-053

Lieutenant [REDACTED] advised that she followed the proper procedure and utilized off-duty time in subpoenaing Officer Scott. She had also sought legal assistance regarding her small claims suit from Mr. Rick Callison, of Radabaugh, Barker and Callison, Ltd., Attorneys at Law.

The complaint by [REDACTED] indicated that Lieutenant [REDACTED] did not provide him with a copy of the police report, which is factual. That Lieutenant [REDACTED] forced an on-duty police officer to appear at Small Claims Court on her behalf and that the officer was not subpoenaed, are both incorrect.

MISCONDUCT NOT BASED ON COMPLAINT

Lieutenant [REDACTED] accessed CRIS II for personal use in a Civil Court proceeding and did not follow protocol once the police report was released.


Lieutenant Arthur N. Sapp



CITY OF COLORADO SPRINGS

DATE: April 22, 2007
TO: Commander Bob Kean
FROM: Lt. Skip Arms
SUBJECT: Complaint on Officer [REDACTED]

I have reviewed the memo submitted by Sgt. Montoya concerning Officer [REDACTED] failure to submit a case report in a timely fashion. I agree with his disposition to sustain the complaint for her failure to submit the report, and I concur with his recommendation for a [REDACTED] as the appropriate discipline in this incident.

This incident was actually reported to Officer [REDACTED] the day before she had to take time off to get home safely. The victim (complainant) came to the Falcon Division on April 11, 2007 to report what constitutes Unlawful Sexual Contact. She did not initiate a case report at that time as she believed that this would fall under the jurisdiction of the Postal Inspectors. It is my contention that this does not absolve her of the responsibility from documenting the incident. A case report should still have been initiated at that time, and if in fact the Postal Inspectors would prosecute at the Federal level, the case would become Exceptionally Cleared.

When Postal Inspector Godfrey contacted Officer [REDACTED] the next day, advising that there was no Federal statute for this offense, he requested that she pursue the criminal portion of this case. Godfrey further requested that a summons be served on the suspect at a meeting that Godfrey had scheduled with the suspect at 2:00 PM that afternoon. Officer [REDACTED] arranged to have someone else serve the summons as she determined she needed to leave work early due to worsening weather conditions and the fact she was driving a rental vehicle and not her normal 4WD vehicle.

The summons was not able to be served as Officer [REDACTED] did not complete the affidavit on the back of the summons. This is what sparked the complaint by the victim. As a result, another officer had to recontact the victim, obtain the necessary information to subsequently prepare an Arrest Warrant and arresting the suspect.

Coincidentally, the officer who had to "clean up" this case was the subject of a similar complaint within the past 6 months. He had also failed to complete a case report, and another officer had to conduct the investigation. This officer received a Written Reprimand for his actions, which was the prescribed discipline in General Order 150.15 Timely Submission.

While Officer [REDACTED] felt the need to leave work in order to safely navigate to her home in Cascade, that does not relieve her of the responsibility of completing her work. In this case, the department let the victim down when no one arrived at the scheduled meeting to serve the suspect. This reflects poorly on the department and the other parties involved surely have a lesser opinion of the department than they would have, had we done what was required. That goes against our philosophy of CREATE in that it does not foster excellence, accountability, or commitment in our service.

Even though I agree that Officer [REDACTED] is a good officer and this was not due to laziness or any maliciousness, I do believe that it was a judgment error on her part. I do not find any mitigating circumstances to support deviating from the discipline outlined specifically in the General Order. Therefore, I support the issuance of [REDACTED]

[REDACTED]