



City of Rochester

OFFICE OF PUBLIC INTEGRITY

*City's Response to the Arrest of Mr. Daniel Prude on
March 23, 2020*

Administrative Investigation

December 10, 2020

OPI Investigation #21-009

Received and Approved _____

Timothy Weir, Director of OPI

Distribution: Lovely Warren, Mayor
James Smith, Deputy Mayor
Timothy Curtin, Corporation Counsel
Justin Roj, Director of Communications
Yvette Green, Municipal Attorney

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Executive Summary

This administrative investigation was initiated subsequent to the Deputy Mayor conducting a cursory managerial review of the handling of the mental hygiene arrest (MHA) of Mr. Daniel Prude on March 23, 2020 and the ensuing actions of Rochester Police Department (RPD) members and other City employees. In a memorandum to the Mayor dated September 14, 2020, the Deputy Mayor outlined the results of his review and provided eight recommendations, all of which were endorsed by the Mayor. One of these recommendations directed the Office of Public Integrity (OPI) to initiate an investigation to determine if any employees, including the Mayor or Deputy Mayor, violated City or departmental policies or ethical standards and to determine if additional policies and procedures should be implemented to improve the City's response to such events in the future.

OPI's investigation did not preclude the Mayor from taking any immediate disciplinary action as she deemed appropriate. As a result, the Director of Communications and the City's Corporation Counsel were suspended for 30 days on September 14, 2020 for failure to act and inform the Mayor of this matter in a timely manner. Although OPI was unable to identify any Senior Management Team (SMT) policy which defines "a failure to act and inform", it is well within the Mayor's authority to take disciplinary action against SMT members when the Mayor determines they failed to meet her expectations. These suspensions came on the same day that the Deputy Mayor's review was made public and OPI was directed to initiate this investigation.

The scope of this investigation, consistent with OPI's jurisdiction, was limited to the actions of non-sworn City employees who fall under the supervision of the Mayor. In this instance, at the Mayor's request, OPI evaluated the conduct of the Mayor, Deputy Mayor, Director of Communications, Corporation Counsel and staff members relating to their response to the MHA of Mr. Daniel Prude on March 23, 2020 and subsequent actions taken thereafter. OPI has no authority to investigate or review the actions of sworn RPD officers or City Councilmembers and therefore defers to other independent agencies with respect to reviewing their actions. All City records reviewed by OPI were identified as records relevant to the investigation and generated or received by City employees who fall within OPI's investigative authority. Records generated or received by RPD officers and City Councilmembers were not specifically requested by OPI.

On September 14, 2020, OPI commenced this investigation, in coordination with the City's Law Department and Information Technology (IT) Department. The objectives of this investigation were to gain a better understanding of the flow of communication and actions taken by City employees, including the Mayor and Deputy Mayor, to determine whether their actions were in violation of any City policies or ethical standards, and to identify areas in which policies, procedures, or standards could be enhanced or created in order to better safeguard against similar instances in the future.

After interviewing City employees, reviewing relevant City records, and examining related policies, procedures, and ethical standards, OPI found no evidence that any City employee within its jurisdiction, violated City or departmental policies or ethical standards with respect to their actions in response to the death of Mr. Prude. Based on this finding and the limited scope of the investigation, this matter is closed as "Not Provable".

However, OPI did identify several opportunities for policies, procedures, and standards to be created or enhanced in order to better safeguard against similar occurrences in the future.

Recommendations

Based on our investigation, OPI recommends that a policy addressing SMT notification of critical events to the Mayor be established. Such a policy would provide more clarity as to what type of events should be immediately brought to the attention of the Mayor and how this reporting should be documented. This policy would ensure greater consistency in reporting and aid in bridging the gap between current standard practice and the expectations of the Mayor.

In addition, with the rise in the number of Freedom of Information Law (FOIL) requests received by the City and the risks associated with non-compliance, OPI recommends the City restructure its FOIL program to centralize the overall management of the FOIL process, staff, and technical resources. As part of this restructuring, OPI recommends that the Records Access Officer and FOIL Appeals Officer positions be realigned to ensure there is a clear chain of command. These positions would be focused on administering the City's FOIL responsibilities. Such realignment would ensure that designated personnel are more comprehensively focused on the FOIL requests received by the City, ensuring compliance with New York State FOIL requirements, improving and analyzing available FOIL metrics, and centralizing oversight of FOIL staff.

Furthermore, OPI recommends that the Records Access Officer and FOIL Appeals Officer roles, responsibilities, and involvement in the FOIL process be reviewed, more clearly defined, and formally documented.

OPI also recommends establishing FOIL metric requirements for reporting to the Mayor and FOIL administrators. Implementation of improved technology to enhance reporting and address FOIL system limitations is also recommended.

Additionally, OPI recommends that the IT Department conduct a review of access and control measures in place relating to the body worn camera (BWC) system. It is also recommended that a senior manager within the IT Department be adequately trained on accessing and exporting audit data from the BWC system in response to requests from the Mayor or other senior leadership.

Background

On September 2, 2020, BWC footage from the March 23, 2020 MHA of Mr. Daniel Prude and subsequent use of force by officers against him, was released to the public by Mr. Prude's family. The BWC footage from March 23, 2020 was released by the City on August 12, 2020 to Mr. Elliot Shields, the attorney representing members of Mr. Prude's family. This footage was released in response to Mr. Shields' FOIL request, which was submitted on April 3, 2020.

Also, on September 2, 2020, in response to the public release of the BWC footage by Mr. Prude's family, the Mayor, accompanied by RPD Chief La'Ron Singletary, held a press conference. During the press conference, they provided the public with a timeline of events and

confirmed that investigations were ongoing by both the City and the New York Attorney General's Office. The Mayor also indicated that the City's Law Department had previously advised her not to discuss this matter publicly, due to the ongoing investigation by the New York Attorney General's Office.

During a press conference on September 3, 2020, the Mayor stated that in March 2020 she was informed by Chief Singletary that Mr. Prude had died from a drug overdose while in police custody. The Mayor advised that she was not aware of any further details until Corporation Counsel Timothy Curtin showed her the BWC footage on August 4, 2020. The Mayor expressed to the public that she shared with Chief Singletary how deeply disappointed she was that he failed to fully and accurately inform her on what occurred with Mr. Prude. Going forward, the Mayor directed Chief Singletary to provide her with all video footage of any in-custody death or use of force within 24 hours of an incident.

On September 8, 2020, Chief Singletary announced his retirement at the end of the month and that members of his command staff were retiring or returning to their previously held rank.

On September 14, 2020, the Mayor publicly announced that it would be Chief Singletary's last day and that Director of Communications Justin Roj and Corporation Counsel Timothy Curtin would be suspended for 30 days. Additionally, the Mayor released the Deputy Mayor's managerial review memorandum with supporting documentation and directed OPI to initiate this investigation.

For a timeline of events from March 23, 2020 to September 14, 2020 please refer to Appendix G.

Scope and Methodology

The scope of this investigation, consistent with OPI's jurisdiction, was limited to the actions of non-sworn City employees who fall under the supervision of the Mayor. In this instance, OPI evaluated the conduct of the Mayor, Deputy Mayor, Director of Communications, Corporation Counsel and other staff members relating to their response to the MHA of Mr. Daniel Prude on March 23, 2020 and subsequent actions taken thereafter. In addition, OPI reviewed City policies and procedures with a focus on the City's FOIL process and the responsibilities of SMT members to report critical events to the Mayor.

OPI has no authority to investigate or review the actions of sworn RPD officers or City Councilmembers, and therefore defers to other independent investigative agencies to evaluate their actions with respect to this matter.

During this investigation, Municipal Attorney Yvette Green served as OPI's legal advisor. Ms. Green had no involvement in the City's response to Mr. Prude's arrest prior to serving as OPI's legal advisor for this investigation. In this role, Ms. Green reviewed digital records relating to employees of the Law Department prior to such records being made available to OPI. The purpose of Ms. Green's review was to identify attorney-client privileged documents pertaining to unrelated legal matters involving the City.

OPI conducted this investigation in accordance with the Principles and Standards for Offices of Inspector General, specifically the Quality Standards for Investigations, as outlined by the Association of Inspectors General.

Investigation

Investigative Actions

During this investigation, OPI conducted the following investigative steps:

- Reviewed the Deputy Mayor's memorandum to the Mayor, which was publicly released on September 14, 2020.
- Prepared a timeline of significant events.
- Reviewed copies of pertinent suspensions letters produced by the Department of Human Resource Management.
- Researched City and departmental policies and procedures.
- Reviewed the City's Code of Ethics and Administrative, Professional, and Technical (APT) Employee Handbook.
- Examined New York State's Public Officers Law, Article 6 Sections 84-90: Freedom of Information Law.
- Reviewed related public statements, interviews and media releases.
- Reviewed job descriptions for Corporation Counsel and the Director of Communications.
- Sought a description of the roles and responsibilities of the Records Access Officer and FOIL Appeals Officer.
- Coordinated with the City's IT Department to obtain the results of keyword searches against the City's email system.
- Reviewed keyword search results for the email accounts of Mayor Warren, Deputy Mayor Smith, Corporation Counsel Curtin and Municipal Attorney Prince.
- Reviewed access logs and related system-generated records regarding BWC footage.
- Attempted to obtain and review access logs for BWC footage shared via ShareFile.
- Attempted to obtain and review metadata associated with a virtual meeting.
- Reviewed Laserfiche Action History for FOIL request RR20-01479, which sought all documentation and information related to the March 23, 2020 arrest of Mr. Daniel Prude.
- Reviewed FOIL metrics provided by the Bureau of Communications.
- Examined content retrieved from City issued cell phones of individuals within OPI's jurisdiction.

- Conducted voluntary interviews with City employees within OPI's jurisdiction.
- Extended a written invitation to participate in a voluntary interview to former RPD Chief La'Ron Singletary.
- Reviewed a copy of a Notice of Claim, which included a sworn statement from Mr. Singletary. This Notice of Claim was received by OPI on December 3, 2020.
- Based upon interviews and other related documentation, assessed whether there were any policies, rules, regulations, and standards that were identified as being violated.
- Based upon interviews and other related documentation, identified policies, rules, regulations, and standards that could be enhanced or created to better ensure such occurrences do not occur in the future.
- Summarized findings and drafted this final report.

All records obtained were within the scope of OPI's authority and jurisdiction to examine and relevant to the issues under review.

OPI conducted voluntary interviews with City personnel regarding their role and actions taken in this matter. Summaries of these interviews can be found as appendices to this report. OPI conducted the following voluntary interviews:

- Ms. Lovely Warren, Mayor (Appendix A)
- Mr. James Smith, Deputy Mayor (Appendix B)
- Mr. Justin Roj, Director of Communications and Records Access Officer (Appendix C)
- Mr. Timothy Curtin, Corporation Counsel and FOIL Appeals Officer (Appendix D).
- Ms. Stephanie Prince, Municipal Attorney (Appendix E)
- Mr. Joseph Fratta, Communications Assistant (Appendix F)
- Ms. Amalia Bullucci, Communications Aid (Appendix F)

On September 18, 2020 a written invitation to participate in a voluntary interview with OPI was extended to former Police Chief La'Ron Singletary. On October 8, 2020, OPI received a representation letter from attorney Michael Tallon who requested that OPI refrain from communicating with Mr. Singletary. As of the date of this report, Mr. Singletary has not been made available for an interview. However, on December 3, 2020, Mr. Tallon provided OPI with a copy of a Notice of Claim, which included a sworn statement from Mr. Singletary setting forth his recitation of events. OPI has not had the opportunity to question Mr. Singletary.

Information Technology Department Support

The City's IT Department provided the following:

- Requested emails that fit OPI's search criteria. The search criteria consisted of keywords and individuals. The City email account of: Mayor Warren, Deputy Mayor Smith, Corporation Counsel Curtin and Municipal Attorney Prince were included in this search.
- Confirmation that access logs for BWC footage shared via ShareFile were not available, due to the time elapsed since the content was placed on ShareFile.
- Confirmation that Microsoft Teams meeting metadata is not retrievable after 30 days.

The IT Department confiscated several City issued cell phones in order to facilitate review of content in connection with this matter. Analysis of these phones was conducted by a third party vendor that was contracted specifically for this purpose. Of the phones analyzed, four of them were issued to individuals within OPI's jurisdiction. The phones were issued to: Mayor Warren, Deputy Mayor Smith, former Chief of Staff Alex Yudelson, and Assistant to the Director of Communications Ted Capuano.

The IT Department also took immediate control over the BWC system on September 9, 2020, in order to secure its source data. Prior to this, the City's IT Department was only responsible for platform management of the system and RPD controlled the day-to-day system operations and management. When it came to navigating the BWC system to retrieve audit access logs and other requested information, IT personnel advised OPI they were not proficient in retrieving the audit information from the system. OPI requested assistance from the Law Department, who coordinated with RPD to obtain access logs from the BWC system.

Review of Policies and Procedure

City's Code of Ethics

Section 2-18C of the City's Charter outlines ethical standards for City employees pertaining to conflicts of interest, favoritism, use of City property for non-city employment purposes, gifting limits, disclosure of non-public information, City officer and employee adherence to property regulations, and restrictions to current and former city officers or employees serving as a representative for another in a matter in which the City is involved. OPI determined that none of these standards were applicable to this matter.

Freedom of Information Law Policies and Procedures

OPI reviewed process documents available on the employee portal and requested to review FOIL policies and procedures used by the Law Department. The Law Department indicated that they do not have any formal policies or procedures pertaining to the FOIL process. Rather, they stated that the FOIL process is based on the requirements of the New York State Public Officers Law and the City's FOIL system, Laserfiche. Although there were no policies or procedures, the Law Department did provide previously prepared PowerPoints that laid out the process as directed by

the law as well as factors to consider when determining whether a record can be disclosed. Refer to Appendix H for a summary of this information.

Standards of Reporting for Senior Management Team Members

OPI reviewed the APT handbook for relevant standards of conduct. Timothy Curtin, Justin Roj, and Stephanie Prince are designated as APT employees. No standards of conduct or policies were identified as applicable to these individuals in this situation.

Additionally, through interviews conducted and documentation requested, OPI determined that the City has no formal policy regarding SMT member reporting of critical events to the Mayor.

Conclusions and Recommendations

Actions by City Employees

During this investigation, OPI did not obtain any evidence that an employee within its jurisdiction, including the Mayor and Deputy Mayor, violated City policies, procedures, or ethical standards as a result of their actions in connection with this matter. In addition, there was no evidence obtained throughout this investigation to indicate that any employee under review by OPI took actions to intentionally mislead their supervisor, the Mayor, or the public while carrying out their respective roles in response to the arrest and subsequent death of Mr. Prude.

Although no City violations were identified, a primary objective of OPI's investigation was to determine what the Mayor, Deputy Mayor, Corporation Counsel, and the Director of Communications knew regarding Mr. Prude's death and when they became aware of material facts. Simply put, the question of "who knew what and when they knew it" was relevant and explored, through the review of records, public statements and the interview of City personnel.

In summary, OPI did not find any evidence that a City employee within its jurisdiction was more aware or more involved in the City's response to the death of Mr. Prude than each has publicly stated. Specifically, evidence obtained by OPI appears to corroborate the following information:

- Mayor Lovely Warren viewed the BWC footage for the first time on August 4, 2020. Email keyword search results did not reveal any emails on this topic that the Mayor was included in prior to August 4, 2020. In addition, none of the individuals interviewed expressed knowledge or belief that the Mayor was more informed of this matter prior to viewing the BWC footage with the Deputy Mayor and Corporation Counsel on August 4, 2020.

The Mayor has also expressed publicly that she received text messages from Chief Singletary on this topic but that the messages did not provide detailed information regarding the MHA of Mr. Prude or the medical examiner's ruling. These messages were not available for OPI to review via phone content retrieved off of the Mayor's City issued cell phone. During an interview with the Mayor, OPI confirmed that all text messages from Chief Singletary were sent to the Mayor's personal cell phone. Email keyword

search results revealed that the Mayor forwarded the Deputy Mayor an attachment, which she identified as containing the text messages she received from Chief Singletary on this topic. Although not retrieved through independent analysis, which would provide greater corroboration, the images did contain text messages that were consistent with the Mayor's public comments. Additionally, these messages, along with others, were referenced in the Notice of Claim filed by Mr. Singletary on December 3, 2020.

- Deputy Mayor James Smith was unaware of this matter until August 4, 2020. Email communications and text messages reviewed did not reveal the Deputy Mayor having, or being included in, correspondence on this topic prior to August 4, 2020 and when interviewed no other City employee expressed knowledge or belief that he was aware of this matter prior to viewing the BWC footage with the Mayor and Corporation Counsel Curtin on August 4, 2020.
- Director of Communications Justin Roj had minimal involvement and knowledge of this matter. Although Mr. Roj serves as the Records Access Officer, a review of the FOIL process as well as FOIL request RR20-01479 revealed that Communications FOIL staff address most FOIL requests independently without input or guidance from Mr. Roj. Additionally, with regards to FOIL request RR20-01479, the Bureau of Communications had minimal involvement in the processing of this request. Beyond receiving an email from Chief Singletary on April 10, 2020, where the Chief provided an overview of Mr. Prude's arrest and subsequent death, outlined the medical examiner's ruling, and indicated the Mayor and the Law Department were in the loop, Mr. Roj appears to have had no other involvement in this matter prior to viewing the BWC footage. Through information obtained, it appears that Mr. Roj first viewed the BWC footage on August 5, 2020 at the Deputy Mayor's request.
- Corporation Counsel Timothy Curtin viewed the BWC footage in preparation for its release under FOIL request RR20-01479 on August 4, 2020 and upon viewing the footage, brought it to the Mayor's attention. Email keyword search results revealed that on June 4, 2020, in response to attorney Elliot Shields appealing the City's constructive denial of FOIL request RR20-01479, RPD forwarded Municipal Attorney Prince the case package and reached out to Corporation Counsel Curtin to set up a virtual meeting. Due to the time that has passed, retrievable IT content could not confirm the details of this meeting or confirm that it occurred. While being interviewed, Mr. Curtin expressed that Chief Singletary had correspondence with him on a few occasions regarding this topic but that it was always presented to him as a fatality due to a drug overdose. During an interview with OPI, Mr. Curtin noted receiving an email from Chief Singletary in early April where the Chief characterized the death of Mr. Prude as the result of a drug overdose. Mr. Curtin also noted that in May, Chief Singletary sent video footage to his cell phone but due to the quality of the video, he had to follow up with the Chief to ask for more details concerning the content of the video. Upon seeking clarification from Chief Singletary, he learned the video pertained to this matter. All text messages sent to Mr. Curtin were sent to his personal device and, as a result, were not available for review by OPI.
- Ms. Stephanie Prince's involvement in FOIL request RR20-01479 was minimal until attorney Shields filed a constructive denial appeal on May 28, 2020. This is consistent

with standard practice, as the Law Department assumes responsibility for FOIL requests once an appeal has been filed. Additionally, email keyword search results revealed limited correspondence by Ms. Prince in regards to this FOIL request prior to the appeal. Of the communications identified, the content was consistent with statements made by Ms. Prince during her interview with OPI. Based upon reviewed correspondence, interviews conducted, and an examination of New York State FOIL documentation, it appears that all actions taken by Ms. Prince complied with the law and were consistent with the Law Department's standard practice for handling FOIL requests.

Further details regarding the above City employees' actions are reflected in their interview summaries, which can be found in the attached appendices to this report. Also, refer to Appendix M for a synopsis of actions taken by City employees with regards to FOIL request RR20-01479.

Senior Management Team Notification of Critical Events to the Mayor

During the course of this investigation, OPI determined that the City does not have a policy addressing SMT reporting of critical events to the Mayor. Currently, the decision to report and when to report such information is vague and to some extent left to the discretion of each SMT member. This approach increases the risk of senior leadership failing to meet the expectations of the Mayor with respect to timely disclosure of such events.

OPI recommends that the Mayor, in coordination with the Department of Human Resource Management, establish a written policy addressing SMT reporting of critical events. Such a policy would provide greater guidance to SMT members by providing a criteria for the types of events that require notification to the Mayor. Additionally, this policy would establish a deadline for when such notification should be made. It is recommended that a standardized reporting form be created, which SMT members can electronically submit to the Mayor.

For consideration, OPI recommends the criteria for critical events include, but not be limited to, any event that results in:

- Death or injury requiring medical treatment to a third-party vendor, while on City time, or to a member of the public while interfacing with City personnel or on City property.
- The compromise of City data.
- Destruction or damage to City property that would cost in excess of \$20,000 to replace or repair.
- Destruction or damage to non-city property by a City employee while on City time that would cost in excess of \$20,000 to replace or repair.
- Known intent or the actual filing of a Notice of Claim, which could result in a significant financial liability to the City as defined by the Mayor and Corporation Counsel.
- The criminal arrest or conviction of a City employee or vendor relating to City operations.

Freedom of Information Law

City Freedom of Information Law Policy

The City of Rochester has implemented a process in which FOIL requests can be made by the public and requests are to be reviewed and processed by the City within the necessary time constraints of the law. All FOIL requests are initially received by the Bureau of Communications, however fulfillment of such requests is often achieved through collaboration with the department(s) that is the owner/creator of the records being requested as well as the Law Department.

OPI requested to review the Law Department's FOIL policies, procedure, and process documents. OPI was provided with PowerPoint presentations prepared in 2015 and retained on file. These PowerPoints, provide a basic understanding of New York State FOIL by outlining record versus non record requests, mandatory versus discretionary denials, and the FOIL processing time constraints. The information provided in the PowerPoints is consistent with New York State FOIL. None of the PowerPoints provide City specific administrative guidance for Law Department personnel who are involved in the FOIL process. See Appendix H for an overview of this content.

Additionally, OPI reviewed FOIL process documents crafted by the Bureau of Communications and available on the City's employee portal. This documentation was last updated in 2017 and largely addressed the review of records submitted for a particular request, redacting information as needed, selecting the method in which the records would be delivered to the requestor, determining and inputting the cost of processing the request, and the examination of any associated notes as well as adding notes as deemed warranted. All actions covered in these process documents involved the use of Laserfiche, the software used by the City to receive and process FOIL requests. Similar to the Law Department's PowerPoints, these documents did not provide administrative guidance on several components of the FOIL process.

Upon review of City records, which included communication with the Law Department and New York State FOIL documentation, OPI concluded that policies and procedures for the City's FOIL program were not adequately documented and administrative guidance was limited.

Specifically, administrative guidance in regards to reporting requests that are in connection with critical events records, inter and intra departmental reporting on the status of a request, approving discretionary denials, managing concerns regarding non-compliance, and metric reporting requirements were not provided in any of the documentation reviewed by OPI. In addition, OPI determined the City does not have a policy addressing when the Mayor should be advised of the City's decision to discretionarily deny a FOIL request for records. Currently, discretionary denials are approved by FOIL staff in the Law Department or Bureau of Communications and reporting to the Mayor is left to the discretion of the Records Access Officer or the FOIL Appeals Officer.

Additionally, reporting metrics available through Laserfiche, the City's FOIL system, and accessible to Law Department or Bureau of Communications personnel is limited. Frequently,

individuals interviewed by OPI, who were familiar with Laserfiche, remarked on the complexities of the system and the lack of reporting features. Specifically, in regards to inadequate notification and the inability to produce aging reports. Improved system reporting would enhance administration and oversight of the FOIL process, identify requests that present a higher risk of non-compliance, and provide insight into whether a requests should be brought to the Mayor attention.

Based on these conclusions, OPI recommends that pre-existing City FOIL process documents and PowerPoints on this topic be reviewed and updated. OPI also recommends that a FOIL policy, which includes administrative guidance be established. Once drafted this guidance would provide direction for City employees involved in the FOIL process, would help to ensure consistency in the management of FOIL requests, and allow for greater clarity in regards to the roles, responsibilities, and authority of individuals within the FOIL process. This policy could also be used to establish FOIL reporting requirement. Implementation of improved technology to enhance reporting and address FOIL system limitations is also recommended.

Decentralized Management Oversight

As part of OPI's review of the City's FOIL process, management oversight was examined. The City's Code Section 18-1 provides the following designations:

- A. The Director of Communications shall be the records access officer of the City of Rochester to whom requests for access to City records shall be made pursuant to the Freedom of Information Law. The records access officer may establish procedures governing access to records in accordance with the Freedom of Information Law.*
- B. The Corporation Counsel of the city of Rochester shall hear and determine appeals regarding a denial of access to records under the Freedom of Information Law.*

OPI was unable to locate a description of the Records Access Officer role or any information relating to the duties of the Records Access Officer. However, OPI did locate the Director of Communications job description which states this position "oversees the preparation of responses to inquiries under the Freedom of Information and Open Meeting Laws".

When interviewed, Director of Communications Justin Roj was asked whether the roles and responsibilities of the Records Access Officer were documented. Mr. Roj indicated that he was unaware of written documentation pertaining to this role and that he inherited the approach used by his predecessors. Mr. Roj also indicated that he is the designated Records Access Officer but generally does not get involved in the processing of FOIL requests unless the requestor is a member of the media or contacts him directly. Rather, FOIL staff within the Bureau of Communications coordinate with the Law Department to process requests received. Refer to Appendix C for a summary of OPI's interview with Mr. Roj.

OPI was unable to locate any information relating to the role or duties of the FOIL Appeals Officer. OPI also reviewed the Corporation Counsel job description which did not directly reference involvement in the FOIL process.

When Corporation Counsel Timothy Curtin was questioned as to the existence of any written documents outlining the roles and responsibilities of the FOIL Appeals Officer or administrative procedures for the FOIL process, he indicated that he was unaware of any such documentation.

A review of the Laserfiche Action History for FOIL request RR20-01479, revealed that the Action History spanned from April 3, 2020 to April 6, 2020. This highlights the limited role the Bureau of Communications played in this request.

Prior to the appeal, there were minimal email communications available that pertained to this request and involved Law Department personnel. However, emails produced via a keyword search conducted by the IT Department identified communications between Municipal Attorney Prince, attorney Shields, Corporation Counsel Curtin, and RPD members on this topic, subsequent to the appeal. Within the communications reviewed, neither members of the Bureau of Communications nor the Mayor or Deputy Mayor were listed as recipients.

OPI reviewed available documentation, conducted interviews with personnel, and examined each department's role with respects to processing this request. OPI determined the Bureau of Communications had minimal involvement in processing this request and the Law Department had minimal participation, until the appeal. FOIL request RR20-01479 highlights the decentralization of the City's current FOIL process. Such decentralization can lead to process inefficiencies, inadequate communication between personnel, and challenges with compliance to New York State FOIL. Refer to Appendix M for a summary of FOIL request RR20-01479.

FOIL metrics received by the Law Department revealed a rise in the number of FOIL requests during the period of 1991 to 2015. The Bureau of Communications provided metrics for 2019. A review of these metrics showed 3,821 request were received in 2015 and 5,316 requests were received in 2019, for an increase of approximately 40%. Refer to Appendix J for the Law Department's FOIL Request Volume Over Time chart with the addition of more current data by OPI.

OPI found the oversight of the FOIL process to be decentralized, requiring various levels of supervision and input from the Bureau of Communications, Law Department, and other City departments.

It is OPI's recommendation that the City restructure the management of its FOIL program to centralize the overall management of the FOIL process, staff, and technical resources. As part of this restructuring, OPI recommends that the Records Access Officer and FOIL Appeals Officer positions be realigned to ensure there is a clear chain of command. These positions would be focused on administering the City's FOIL responsibilities. Such realignment would ensure that designated personnel are more comprehensively focused on the FOIL requests received by the City, ensuring compliance with New York State FOIL requirements, improving and analyzing available FOIL metrics, and centralizing oversight of FOIL staff.

Information Technology Department Body Worn Camera Support

When it came to navigating the BWC system to retrieve audit access logs and other requested information, IT personnel advised OPI they were not proficient in retrieving the audit information from the system.

OPI recommends that the IT Department conduct a review of access and control measures in place relating to the BWC system. It is also recommended that a senior manager within the IT Department be adequately trained on accessing and exporting audit data from the BWC system in response to requests from the Mayor or other senior leadership.

Respectfully submitted,



Timothy Weir
Director of OPI



Bobbi Paternico
Senior Field Auditor/ Investigations

APPENDIX A

Interview Summary: Ms. Lovely Warren, Mayor

On November 16, 2020 at 11:30 a.m., Mayor Lovely Warren was interviewed via videoconference by Office of Public Integrity Director Weir and Senior Field Auditor/ Investigations Paternico. The Mayor voluntarily provided the following information:

The first time the Mayor was informed of the mental hygiene arrest of Mr. Prude was on March 23, 2020 when she received a call from Rochester Police Department (RPD) Chief La’Ron Singletary. The Mayor recalled that during this phone conversation, Chief Singletary told her that a gentleman had contacted 911 and indicated his brother was high on PCP and having a “psychotic break”. Chief Singletary advised the Mayor that RPD officers located the gentleman and placed him in custody but that once in custody, he stopped breathing. The Mayor recalled Chief Singletary stating the individual was revived and taken to the hospital but that the prognosis did not look good. The Mayor also noted that Chief Singletary mentioned, if the gentleman were to pass away, that it would be considered an in-custody death and the Monroe County District Attorney’s Office and New York Attorney General’s Office would investigate. The Mayor recalled that upon receiving this briefing, she asked if everything was “done by the book”. Chief Singletary responded that, based on the information he had at the time, it appeared everything was handled appropriately but that he would let her know if anything arose indicating otherwise.

Subsequent to the call on March 23, 2020, the Mayor received a text message a week later from Chief Singletary, which stated that the gentleman high on PCP had died and the Medical Examiner’s Office would be investigating.

When asked about a one-on-one meeting that may have occurred on March 23, 2020 between the Mayor and Chief Singletary, the Mayor indicated that she did not recall this meeting and believed she was not in the office on March 23, 2020 due to COVID-19 restrictions. The Mayor indicated that the meeting may have been cancelled or may have occurred via Zoom.

The Mayor expressed that she viewed the body worn camera footage of the arrest for the first time on August 4, 2020, when Corporation Counsel Timothy Curtin brought it to her attention. The Mayor recalled that Corporation Counsel Curtin had reviewed the footage in response to a FOIL appeal the Law Department was processing and that upon viewing the footage, determined it was something the Mayor needed to see.

After viewing the footage, the Mayor called Chief Singletary to her office to discuss her concerns regarding what she had seen on the video. The Mayor indicated that the Deputy Mayor and Corporation Counsel Curtin were also present for this meeting. During this meeting, Chief Singletary assured the Mayor everything was handled appropriately by the officers during the arrest. The Mayor reviewed the body worn camera footage with Chief Singletary and paused at certain points to question him as to why he believed the actions of the RPD officer were “by the book”. In response to the Mayor’s questioning, Chief Singletary continued to express his view that all actions taken by the officers were appropriate trained techniques for the situation. As a result, the Mayor requested Chief Singletary provide more information regarding the use of these techniques and the policies associated with their use when making arrests. The Mayor also stated

that, although the body worn camera footage was the focus of this meeting, the medical examiner's report was also discussed. Specifically, the Mayor noted a discussion in regards to the homicide ruling and the medical definition of a homicide. The Mayor also noted that the release of the body worn camera footage was discussed during this meeting. Corporation Counsel Curtin explained the New York Attorney General's Office had requested that the City not release the footage, at that time, as it could impact their investigation. The Mayor accepted Corporation Counsel Curtin's guidance to not release the footage to the public, at that time, but stated she needed to brief the City Council President about this matter. The Mayor confirmed that she spoke with the City Council President shortly thereafter.

The Mayor confirmed the first time the New York Attorney General's Office investigation was discussed with her was on August 4, 2020.

Following the August 4, 2020 meeting, the Mayor indicated that the Deputy Mayor drafted a letter to Chief Singletary, which the Mayor reviewed and e-mailed to the Chief shortly thereafter. This email was one of the emails made publicly available on September 14, 2020 as part of the supporting documentation that accompanied the Deputy Mayor's memorandum on his review of this matter.

The Mayor expressed that approximately one month after the footage was released through the FOIL process, it was released publicly by members of Mr. Prude's family. Subsequent to this footage becoming public, the Mayor indicated that she felt Chief Singletary's perspective on this matter contributed to his missteps in adequately informing her. As a result, she spoke with Chief Singletary regarding why their views of the footage were so different. During this conversation, Chief Singletary told the Mayor that he had previously updated her in a text message and also during a conversation in an elevator at an unrelated press conference. Chief Singletary told the Mayor that during the elevator conversation, he'd mentioned the medical examiner's ruling of homicide.

Note: In Mr. Singletary's Notice of Claim served on the City on December 3, 2020, he asserts that this elevator conversation occurred on April 13, 2020.

The Mayor advised that she did not recall receiving the text message referenced by Chief Singletary in which he updated her on the medical examiner's ruling. As a result, she reviewed text messages on her personal cell phone, and discovered a text from Chief Singletary, which she received on Good Friday (April 10, 2020). The Mayor expressed that, upon review, the message did not provide any details as to the medical examiner's ruling on the cause of death, but rather the message indicated that the ruling had been received and for her to give Chief Singletary a call. The Mayor indicated that she did not follow up with Chief Singletary in regards to this text but reiterated that she did not recall receiving it. The Mayor explained how she had received an earlier message from Chief Singletary on Good Friday which included several pages of press release reports and that as a result she may not have seen this message. Additionally, the Mayor pointed out that Chief Singletary had sent her several unrelated press release reports via text message earlier that day but for unknown reasons did not send her the medical examiner's report on Mr. Prude's death.

The Mayor stated that she does not recall having any conversation with Chief Singletary in an elevator during which he informed her of the medical examiner's homicide ruling. The Mayor also indicated that from on or about March 30, 2020 until August 4, 2020 she did not recall any conversations with Chief Singletary or others regarding Mr. Prude's arrest or the subsequent medical examiner's ruling.

The Mayor recalled Chief Singletary advising her that he had previously briefed the Director of Communications and the Law Department on this matter. Based upon learning that others in her administration had knowledge of this matter, she felt she did not have a complete picture of the events that transpired after March 23, 2020.

The Mayor expressed how she initially had given Chief Singletary the benefit of the doubt, believing this to be an instance in which the Chief unintentionally failed to inform her of all of the details regarding this matter. In light of learning others in her administration had knowledge of this matter, the Mayor directed the Deputy Mayor to "do a deep dive" into available information technology records in order to obtain a clearer picture of what transpired. After reviewing the Deputy Mayor's report, the Mayor stated that she felt information was intentionally withheld from her and, based on this, decided to dismiss Chief Singletary.

APPENDIX B

Interview Summary: Mr. James Smith, Deputy Mayor

On October 14, 2020 at 10:20 a.m., Deputy Mayor James Smith was interviewed via videoconference by Office of Public Integrity Director Weir and Senior Field Auditor/ Investigations Paternico. The Deputy Mayor voluntarily provided the following information:

The Deputy Mayor indicated that the first time he recalled hearing of Mr. Prude was on August 4, 2020.

When asked to outline the events that took place on August 4, 2020. The Deputy Mayor indicated that Corporation Counsel Timothy Curtin came to him expressing the need to show him and the Mayor the body worn camera (BWC) footage from the mental hygiene arrest of Mr. Daniel Prude on March 23, 2020. The Deputy Mayor indicated that he could not recall if Corporation Counsel Curtin had the opportunity to show him a piece of the footage prior to them going to the Mayor's office or if they went directly to the Mayor's office in response to receiving a notification that she was available. The Deputy Mayor did however acknowledge that the first time he viewed the footage at length was in the Mayor's office with the Mayor and Corporation Counsel Curtin.

The Deputy Mayor indicated that upon viewing the footage, the Mayor was visibly angry about how this matter was previously portrayed to her and immediately called Rochester Police Department (RPD) Chief La'Ron Singletary into her office. The Deputy Mayor stated that Chief Singletary did not say a lot nor refute the Mayor's overview of how he had previously described the arrest to her.

The Deputy Mayor also expressed that after Chief Singletary left the Mayor's office, he recommended that the Mayor fire the Chief but, at that time, the Mayor was adamant about not firing him. Additionally, the Deputy Mayor confirmed that the suspension of RPD officers was mentioned but after discussing with Corporation Counsel Curtin, no suspensions were imposed upon any RPD members at that time.

The Deputy Mayor indicated that after the August 4, 2020 meeting, he was not a part of any formal meetings regarding this matter until after the footage was released to the public by Mr. Prude's family on September 2, 2020. The Deputy Mayor acknowledged that he may have been included in informal communications that occurred between August 4, 2020 and September 2, 2020 but that he suspected the Mayor had more direct communications on this topic with RPD and Corporation Counsel Curtin that he was not involved in.

The Deputy Mayor confirmed that he was not present for any briefing that occurred between Chief Singletary and the Mayor on March 23, 2020 nor for the elevator conversation that has been noted in media statements. The Deputy Mayor also indicated that the timeline of when that elevator conversation may have happened was not something he was able to determine through his investigation of this matter.

The Deputy Mayor recalled that he was given the directive from the Mayor to conduct an investigation into "who knew what and when they knew it" over the Labor Day weekend. The

Deputy Mayor advised that Communications Bureau personnel assisted him with the review of digital records. As for the methodology used by the Deputy Mayor, he referred OPI to the information provided at the end of his memorandum outing the results of his investigation. This memorandum was issued to the Mayor and subsequently released to the public on September 14, 2020.

The Deputy Mayor confirmed that he has no knowledge that the Mayor was present for discussions or meetings that provided more detailed information than she has publicly stated regarding BWC footage or the Medical Examiner's report, prior to August 4, 2020.

APPENDIX C

Interview Summary: Justin Roj, Director of Communications and Records Access Officer

On October 19, 2020 at 1:00 p.m., Mr. Justin Roj was interviewed via videoconference by Office of Public Integrity Director Weir and Senior Field Auditor/ Investigations Paternico. Mr. Roj voluntarily provided the following information:

Mr. Roj confirmed the content within his public statement that was released on September 14, 2020.

Mr. Roj stated that he had no knowledge of this matter prior to receiving an email from Rochester Police Department (RPD) Chief Singletary on April 10, 2020 and that in between responding to Chief Singletary's email and being asked by the Deputy Mayor to view the footage, he was not involved in any discussions pertaining to this matter.

When asked about the email he received briefing him on the mental hygiene arrest (MHA) of Mr. Prude, his subsequent in-custody death, and the medical examiner's ruling on the cause of death, which was emailed on April 10, 2020 from Chief Singletary, Mr. Roj indicated that he had no recollection of the email nor responding to the email until about a week prior to his suspension on September 14, 2020. Mr. Roj elaborated by stating that on September 9, 2020 or September 10, 2020, Corporation Counsel Timothy Curtin viewed the email Mr. Roj had received from Chief Singletary as well as Mr. Roj's response to the Chief while reviewing email communications with a connection to this matter. Mr. Roj explained that upon being informed of this email by Corporation Counsel Curtin, he went back to review the email and his response, at which time he viewed the attachments that were provided by Chief Singletary for the first time.

Mr. Roj indicated that upon reviewing the April 10, 2020 email and attachments he prepared a memo for himself about what happened. Mr. Roj stated that the memo is consistent with the personal statement he released publicly on September 14, 2020 following notification of his 30 day suspension.

In regards to his suspension, Mr. Roj stated that he was working and in communication with the Mayor on Sunday, September 13, 2020 and later that evening, he received an email about a meeting with the Mayor at 9:30 a.m. on September 14, 2020. Mr. Roj indicated that at this meeting he was informed of his suspension. Mr. Roj stated he requested to read the Deputy Mayor's report and that upon doing so, accepted the suspension.

Mr. Roj expressed that the Bureau of Communications is not the PIO (Press and Information Office) for RPD, as RPD has specific staff assigned to this role. Therefore, Mr. Roj indicated that upon reading that the Mayor and Law Department were already in the loop, he did not examine the email or the attachment any further nor take any action beyond responding to Chief Singletary. Mr. Roj also acknowledged that the Bureau of Communications is not typically involved unless something needs to be communicated to the public at the Mayor's request or a response to public inquiry is being made, neither of which applied to this matter on April 10, 2020.

Mr. Roj confirmed that he was not a part of the meeting that took place on or about August 4, 2020 between the Mayor, Deputy Mayor, Corporation Counsel Curtin, and Chief Singletary after the Mayor had viewed the body worn camera (BWC) footage from the MHA of Mr. Prude. Mr. Roj indicated that he received a call from the Deputy Mayor later that evening, at which time, the Deputy Mayor asked him to view the BWC footage. Mr. Roj explained that he had left the office for the day, so the Deputy Mayor requested he watch it first thing the next morning. Mr. Roj, could not recall the specific date that he viewed the BWC footage but was able to confirm that it was the day after the Mayor and Deputy Mayor viewed the footage for the first time.

Mr. Roj indicated that upon watching the BWC footage he remarked to Corporation Counsel Timothy Curtin and Deputy Corporation Counsel Patrick Beath how he felt the officers should be suspended. Mr. Roj acknowledged sharing those thoughts with the Mayor and Deputy Mayor as well. In response, they advised that no such action would be considered until the New York Attorney General's investigation had concluded. Mr. Roj indicated that upon receiving this feedback, he had no further communication in regards to this matter until the BWC footage was released to the public by Mr. Prude's family. Upon release of this footage Mr. Roj recalled helping to prepare materials for the September 2, 2020, September 3, 2020, and September 6, 2020 press conferences held by the City.

When asked about his involvement with FOIL request RR20-01479, Mr. Roj expressed that he did not have any direct involvement. Mr. Roj expanded upon this by stating that, although he is the Records Access Officer and listed as such on FOIL communications to the public, he generally does not get involved in FOIL requests unless the requestor is a member of the media or a requestor contacts him directly. Rather, Mr. Roj explained that Bureau of Communications FOIL staff, Amalia Bellucci and Joseph Fratta largely assist with the fulfillment of FOIL requests. Mr. Roj also acknowledged that as FOIL questions arise amongst the staff, that such questions are often routed to the Law Department as opposed to him.

Mr. Roj agreed that the administration of the FOIL process within the City can be improved. Mr. Roj highlighted that the split responsibilities between the Law Department and the Bureau of Communications can be cumbersome and that the current FOIL software lacks features, specifically in regards to reporting, that would be insightful and help ensure proper action is being taken for outstanding requests. Mr. Roj also expressed that there has been prior conversations about centralizing the responsibilities for FOIL administration within the Law Department, with the Bureau of Communications only becoming involved in media related inquiries. Additionally, Mr. Roj expressed that the replacement of the current FOIL software in place as well as the creation of a full-time Records Access Officer may be options to consider further.

Mr. Roj confirmed that he has no knowledge of any information that the Mayor or Deputy Mayor were present for discussions or meetings that provided more detailed information than publicly presented regarding BWC footage or the medical examiner's report, prior to August 4, 2020.

When asked, Mr. Roj acknowledged being aware of public statements made regarding an elevator conversation between the Mayor and Chief Singletary where this matter and the medical

examiner's ruling were potentially discussed but indicated that he was not present for such a conversation. Mr. Roj stated he was with the Mayor and Chief Singletary on April 13, 2020 for a press conference related to violence but that no conversation regarding Mr. Prude occurred, with him present, on this day.

APPENDIX D

**Interview Summary: Mr. Timothy Curtin, Corporation Counsel and
Freedom of Information Law Appeals Officer**

On October 22, 2020 at 11:00 a.m., Mr. Timothy Curtin was interviewed via videoconference by Office of Public Integrity Director Weir and Senior Field Auditor/ Investigations Paternico. Mr. Curtin voluntarily provided the following information:

Mr. Curtin indicated that he was first introduced to this matter in response to attorney Elliot Shields, who was representing members of Mr. Prude's family, filing a Freedom of Information Law (FOIL) request and submitting a preservation letter to the City on April 3, 2020. However, Mr. Curtin expressed that it is standard practice for the Bureau of Communications to handle the FOIL process, including requests that pertain to body worn camera (BWC) footage, until an appeal is filed. Once an appeal is filed, responsibility for the request transfers to the Law Department and specifically, Mr. Curtin who is also the FOIL Appeals Officer. Therefore, Mr. Curtin indicated that the Law Department was really not involved in the FOIL process until the constructive denial appeal was filed by Mr. Shields on May 28, 2020.

Mr. Curtin also indicated that from the information and responses received at the onset of the FOIL request process, there were no red flags. Mr. Curtin specifically noted that the Rochester Police Department (RPD) Chief La'Ron Singletary emailed him prior to receiving the medical examiner's ruling but characterized the death of Mr. Prude as a result of an overdose. Additionally, Mr. Curtin stated that he was not involved in this FOIL request until the appeal was filed, consistent with standard practice.

As per the New York State FOIL, once a request is received, the City has 20 business days from acknowledgement of receipt to provide the record or an update to the requestor, otherwise the requestor can file a constructive or no-response denial appeal. Mr. Curtin stated that Mr. Shields was able to file an appeal sooner than May 28, 2020 but did not, contributing to several weeks of delay in processing this. Additionally, Mr. Curtin stated that subsequent to the appeal by Mr. Shields, the Law Department requested a HIPPA release form from him but that he did not provide the release form for several weeks, once again further delaying the process.

Mr. Curtin indicated that on a Sunday afternoon in May, in response to a reverend in the community being scheduled to make a public statement, Chief Singletary texted him and sent him a video. Mr. Curtin stated that he attempted to view the video on his cell phone but was unable to clearly view the footage. Mr. Curtin indicated that he followed up with Chief Singletary to clarify what the footage was of and learned that it related to this matter. Upon receiving this information from Chief Singletary, Mr. Curtin told him to tell the Mayor and not to delay. However, Mr. Curtin noted that his instructions for Chief Singletary to go to the Mayor with this information was given while he was still under the impression that this matter was in regards to a man that died of an overdose while in police custody.

In regards to a meeting between RPD and Corporation Counsel, which was listed on a timeline prepared by the Law Department as occurring on June 4, 2020, Mr. Curtin did not recall being a part of such a meeting and indicated that no such event was listed on his calendar for that day.

Mr. Curtin stated that he only reviews BWC footage prior to it being sent out if it is being sent out under the appeal phase of the FOIL process, which falls within Mr. Curtin's responsibility as the City's FOIL Appeals Officer, or in connection with ongoing litigation. Mr. Curtin also stated that the medical examiner's ruling may not have been included in the case package that was received from RPD and reviewed and sent to Mr. Shields by the Law Department.

Mr. Curtin indicated that on August 4, 2020, Ms. Stephanie Prince, the Municipal Attorney assigned to this FOIL request, came to his office and noted that she had a phone conversation with the local New York Attorney General's Office. Ms. Prince expressed to him that the local New York Attorney General's Office did not want the City to release the footage requested by Mr. Shields, due to their ongoing investigation. However, with the HIPPA release being provided by Mr. Shields, the City had no legal grounds to deny or delay the release of the requested BWC footage. At this time, Mr. Curtin reviewed the footage prior to release, as is standard practice.

Mr. Curtin stated that upon viewing the footage on August 4, 2020, he texted Chief Singletary asking if the Mayor had seen the footage. Mr. Curtin indicated Chief Singletary had stated that he advised the Mayor about this matter a few times but that he did not believe she had seen the footage.

In response to Chief Singletary's reply, Mr. Curtin stated that he took the following actions: went to the Mayor's office and told her not to leave, as he would be sending her the BWC footage; returned to his office to email her the footage; and then went back to the Mayor's office, where he viewed the footage with the Mayor. Mr. Curtin indicated that upon viewing the footage, Chief Singletary was immediately called to the Mayor's office.

Mr. Curtin confirmed that on August 4, 2020 he met with the Mayor, Deputy Mayor, and Chief Singletary to discuss the BWC footage. As for the content of the meeting, Mr. Curtin indicated that the Mayor was deeply offended by the officers' use of force captured on the footage as well as the surrounding officers' response (i.e. laughing, joking, etc.). Mr. Curtin also acknowledged that during this meeting, Chief Singletary expressed that the technique used on Mr. Prude's neck was a technique that the officers were trained on and voiced to the Mayor that the officers followed trained procedures. Mr. Curtin also indicated that Chief Singletary followed up by providing a RPD training book. Mr. Curtin stated that this meeting concluded with a discussion about the release of the BWC footage to Mr. Prude's family, via Mr. Shields. Specifically, Mr. Curtin recalled mentioning that the New York Attorney General's Office had requested the City not release the footage until their investigation was concluded but that the City was legally required to release the footage.

A few days after the August 4, 2020 viewing, Mr. Curtin indicated the footage was mailed to Mr. Shields and he advised the Mayor that the City not make any public statements in regards to this footage and its release. The Mayor responded that she had to tell City Council President Loretta Scott about this matter.

Mr. Curtin outlined his experience in regards to the flow of communication to Council as follows: first Mr. Curtin communicates matters to the Mayor, the Mayor in turn communicates

these matters to City Council President Loretta Scott, and then President Scott communicates these matters with the rest of Council. Based on his experience and knowledge of this matter, Mr. Curtin expected to receive a call from Council; however, in this case, he was not contacted. Mr. Curtin stated that in the past, once a matter was communicated to Council there would be a request to view the BWC footage but that no such request came. Based on this fact, Mr. Curtin does not believe that the matter was ever communicated to the rest of Council.

Mr. Curtin confirmed he was not present for any elevator conversation that allegedly occurred between the Mayor and Chief Singletary, which has been noted in media statements by the Mayor.

Mr. Curtin confirmed that he has no knowledge of any information that the Mayor or Deputy Mayor were present for discussions or meetings that provided more detailed information than publicly presented regarding BWC footage or the Medical Examiner's report, prior to August 4, 2020.

When asked about the FOIL process, Mr. Curtin re-affirmed that as the FOIL Appeals Officer, his involvement in this request did not start until May 28, 2020 when the constructive denial appeal was filed by Mr. Shields. Up until this point, the Bureau of Communications was responsible for processing this FOIL request.

As for the time commitment of being the FOIL Appeals Officer, Mr. Curtin expressed that the majority of FOIL requests are filed by the Bureau of Communications and the ones that are not or are appealed are reviewed by the Law Department. Mr. Curtin stated that the Law Department has three other attorneys who review FOIL requests as part of their job responsibilities. Therefore, many appeals are resolved without his involvement. Mr. Curtin indicated the requests that are brought to his attention pertain to policy and/or complex legal issues. During his analysis, he refers to the exceptions noted in the New York State FOIL, reviews the request, and determines if there is a legal basis for affirming or reversing the denial.

When questioned as to the existence of any written documents outlining the roles and responsibilities of the FOIL Appeals Officer or administrative procedures for the FOIL process as a whole, Mr. Curtin indicated that he was unaware of any such documentation.

In regards to suggestions on how the FOIL process could be improved, Mr. Curtin indicated that he has expressed to the Mayor that the oversight of the FOIL process should be moved into the Law Department.

Additionally, Mr. Curtin noted that a memorandum regarding the need for senior management members to report, in writing, on events qualifying as a critical incident to the Mayor, City Council President Scott, and himself within 24 hours is being drafted.

APPENDIX E

Interview Summary: Ms. Stephanie Prince, Municipal Attorney

On October 13, 2020 at 2:00 p.m., Ms. Stephanie Prince was interviewed via teleconference by Office of Public Integrity Director Weir and Senior Field Auditor/ Investigations Paternico. Ms. Prince voluntarily provided the following information:

Ms. Prince outlined that in her role, she is assigned a variety of tasks which can pertain, but are not limited to, commercial financing, contracts and contract issues, real estate matters, and Freedom of Information Law (FOIL) requests. Ms. Prince stated that she is one of two attorneys who handle FOIL requests as part of their duties, the other municipal attorney assigned to FOIL requests being Ms. Shani Mitchell.

When asked to provide an estimate of the amount of time she dedicates to FOIL requests, Ms. Prince estimated that she spends about one third of her time addressing FOIL matters. Ms. Prince was unable to speak to the amount of time Ms. Mitchell spends on FOIL requests but believed it could be comparable to her estimate.

Ms. Prince explained that the Law Department (i.e. her or Ms. Mitchell) reviews FOIL requests under the following circumstances:

- a) The department determined to be the creator and/or maintainer of the requested record(s) has a question about the FOIL process or what records are to be provided.
- b) The Bureau of Communications receives a FOIL appeal or a FOIL request that relates to ongoing civil litigation.

Ms. Prince outlined that the Director of Communications Justin Roj serves as the Records Access Officer and that Corporation Counsel Timothy Curtin serves as the FOIL Appeals Officer. Based on these roles and the departments that the assigned individuals represent, Ms. Prince stated that the Bureau of Communications has primary responsibility for addressing FOIL requests until an appeal is filed. Upon an appeal being filed, primary responsibility transfers to the Law Department.

Ms. Prince indicated that there are not specific departmental policies or procedures that specify when reporting to Deputy Corporation Counsel or Corporation Counsel is required. However, Ms. Prince did express that they may be notified of a particular FOIL request the Law Department has some involvement in if the request pertains to a sensitive issue that is known by the assigned FOIL Attorney or when the request comes from an attorney that is known for having a more aggressive litigation history.

Through keyword email search results, OPI identified a timeline Ms. Prince prepared and emailed to Corporation Counsel Curtin on September 3, 2020. Corporation Counsel Curtin subsequently sent this timeline to then Chief of Staff Alex Yudelson for the Mayor to review. Ms. Prince confirmed the content of this timeline. While reviewing the timeline with OPI, Ms. Prince also provided additional information.

Information confirmed or provided by Ms. Prince included:

- Mr. Elliot Shields, an attorney representing members of Mr. Prude's family, filed a FOIL request on April 3, 2020. This request was assigned request number RR20-01479.
- Ms. Prince acknowledged becoming involved in FOIL request RR20-01479 on April 6, 2020.
- Ms. Prince indicated that when she reached out to the Rochester Police Department (RPD) in regards to this request, he indicated that the investigation was ongoing and that once finished, he would pass along all requested records.
- Ms. Prince stated that as she was waiting on RPD's investigation to be completed, she moved on to other assignments and did not revisit this FOIL request until the constructive denial appeal was filed on May 28, 2020.
- Ms. Prince confirmed that the constructive denial was not a denial actively made by the Law Department, rather the allotted time that a requestor has to wait for records or an update to be provided (20 business days from the request being acknowledged by the City) had passed and therefore, Mr. Shields was able to file the appeal.
- Ms. Prince indicated that she was unaware that the New York Attorney General's Office had taken over the investigation until after the constructive denial appeal.
- Ms. Prince specified that she did not receive the case package from RPD until June 4, 2020.
- To Ms. Prince's knowledge, Corporation Counsel Curtin first became aware of this FOIL request on June 4, 2020, when Chief Singletary's office reached out to him in regards to this FOIL appeal. Ms. Prince stated that, to her knowledge, Corporation Counsel Curtin did not view the body worn camera (BWC) footage at this time. Ms. Prince also confirmed that she was not present for the teleconference that took place between RPD and Corporation Counsel Curtin on this day.
- Ms. Prince expressed that, as standard practice, the Law Department does not review BWC footage requested via the FOIL process. Review of BWC footage is only conducted if RPD recommends it be reviewed by the Law Department.
- Ms. Prince indicated redaction of the records provided by RPD began on or about June 9, 2020. Ms. Prince noted that the redaction process does not entail a substantive review of the records.
- Ms. Prince expressed that HIPPA authorization was requested from Mr. Shields on June 11, 2020, at which time he indicated he would provide it. Ms. Prince indicated that, based on this communication, she waited to request the processing of the non-redacted BWC footage until such authorization was received. Ms. Prince stated that the authorization was not received until on or about July 23, 2020, which delayed the delivery of the requested records by several weeks.
- Ms. Prince indicated that she was not present when Deputy Corporation Counsel or Corporation Counsel viewed the BWC footage on August 4, 2020.

- Ms. Prince confirmed that she was not present for the meeting that included the Mayor, Deputy Mayor, Corporation Counsel, and Chief Singletary on August 4, 2020 subsequent to Corporation Counsel showing the Mayor the BWC footage.

Ms. Price indicated that although not standard practice, in some circumstances, BWC footage is reviewed by the Law Department based on a recommendation from RPD. In regards to FOIL request RR20-01479, Ms. Prince stated that she was briefed by RPD personnel that the FOIL request pertained to a man who was “very high on PCP, went through a glass window, had a run in with the police, and left the scene alive” but subsequently died a week later. Ms. Prince stated that, based on the information presented, BWC footage for this request was not reviewed by the Law Department until a Notice of Claim was received from Mr. Shields.

Additionally, Ms. Prince indicated that it is not uncommon for RPD to meet with Corporation Counsel Curtin or other members of the Law Department to discuss the release of RPD records to the public.

Ms. Prince confirmed that she has no knowledge of any information that the Mayor or Deputy Mayor were present for discussions or meetings that provided more detailed information than publicly presented regarding BWC footage or the medical examiner’s report, prior to August 4, 2020.

Ms. Prince explained that the Law Department as well as FOIL staff in the Bureau of Communications have the ability to make discretionary denials in accordance with New York State FOIL and that there is no formal approval process when making such decisions.

Ms. Prince stated that FOIL requests pertaining to RPD are handled by both her and Ms. Mitchell in the Law Department. It was also Ms. Prince’s understanding that Ms. Amalia Bellucci in the Communications Department handles most RPD related FOIL requests.

Ms. Prince expressed that the number of FOIL request have increased annually and that the Law Department’s involvement in processing these requests has increased as well. Beyond the increase in time required to process all these requests, Ms. Prince stated that the City’s organizational structure, as it pertains to the administration of the FOIL process, is unique compared to other municipalities. According to Ms. Prince, the FOIL process in many other municipalities is administered through the Law Department. In addition, Ms. Prince indicated that Laserfiche, the software used to process the City’s FOIL requests, is not the most efficient system.

APPENDIX F

**Interview Summary: Ms. Amalia Bellucci, Communications Aid
Mr. Joseph Fratta, Communications Assistant**

On October 29, 2020 at 10:30 a.m., Ms. Amalia Bellucci and Mr. Joseph Fratta were interviewed via videoconference by Office of Public Integrity Director Weir and Senior Field Auditor/ Investigations Paternico. The purpose of this interview was to obtain background information the FOIL process. Ms. Bellucci and Mr. Fratta voluntarily provided the following information:

Ms. Bellucci outlined that in her role as a full time Freedom of Information Law (FOIL) staff member within the Bureau of Communication, she is primarily assigned FOIL requests that pertain to Rochester Police Department (RPD) records or are requests submitted by the media. Ms. Bellucci indicated that when she receives a FOIL request, she reviews the details of the request and sends the request to a designated point of contact within the department that is the custodian of the records requested. Once notified, the department then gathers and reviews the documents collected. Ms. Bellucci explained that during the departmental review stage, the department may enlist the help of the Law Department for guidance on what is releasable under the New York State FOIL. Once the department is finished with their review, Ms. Bellucci explained that she reviews the gathered content and if the review does not result in any questions or identify outstanding items, then she will send the documentation to the requestor.

When asked about her involvement with the Law Department, Ms. Bellucci indicated that her primary points of contact within the department are Municipal Attorney Stephanie Prince and Municipal Attorney Shani Mitchell. Ms. Bellucci noted that sometimes the Law Department will redact documents to be released through the FOIL process, as opposed to her handling the redactions process. Additionally, beyond the requesting department seeking assistance from the Law Department, Ms. Bellucci stated that she may notify the Law Department of certain FOIL requests received. For example, Ms. Bellucci indicated that for the past couple of years, any FOIL request submitted by Mr. Elliot Shields is routed to the Law Department.

When asked about communication with the Director of Communications and Records Access Officer Justin Roj, Ms. Bellucci stated that most FOIL requests are handled without his involvement. Ms. Bellucci indicated that there are specific types of requests, such as those submitted by the media or that are more sensitive in nature that are brought to Mr. Roj's attention.

Mr. Joseph Fratta stated that as Ms. Bellucci primarily handles FOIL requests that pertain to RPD and that these types of FOIL requests account for approximately 50% of all the FOIL requests received, he handles the majority of FOIL requests that pertain to the other departments across the City. Mr. Fratta is also a full time FOIL staff member.

As for Mr. Fratta's interaction with the Director of Communications and Records Access Officer Justin Roj, he indicated that it was less than Ms. Bellucci's due to the nature of the requests he processes. Specifically, Mr. Fratta indicated that he handles less requests dealing with non-public or sensitive information and rather deals with voluminous requests that require more review time prior to release.

Consistent with Ms. Bellucci's response, Mr. Fratta indicated that for certain types of requests, involvement of the Law Department is required. An example that Mr. Fratta provided was requests for City employee email communications. Mr. Fratta indicated that the Information Technology Department runs the necessary searches against the City's email system and then provides the results directly to the Law Department for review prior to release.

When asked specifically about FOIL request RR20-01479 "BWC recording and all documentation of incident involving Daniel Prude", which was submitted by Mr. Shields on April 3, 2020, Ms. Bellucci indicated that she was assigned the request, as it pertained to RPD records. Ms. Bellucci also acknowledged that Mr. Fratta had no involvement with this request. Ms. Bellucci expressed that, as standards practice with this requestor, the Law Department was notified when the request was received.

When asked about Laserfiche system limitations, Mr. Fratta and Ms. Bellucci provided the following points:

- Lack of System Notifications
 - o The system does not provide notification when departmental responses are received. As a result, FOIL staff need to continuously check to see if a department has responded to a request within the system.
 - o The system does not provide notification as response grace-periods set by New York State FOIL are approaching for a particular FOIL request.
- Limited Communication Capabilities
 - o Attachments submitted with a FOIL request are viewable by FOIL staff but not by departmental points of contact. When a request is routed to the department in the Laserfiche system, the request will note an attachment but the department member will not see an attachment. This is due to licensing restrictions. Therefore, in order for the department to receive the attachment, FOIL staff need to save the attachment and then attach it to an email.
 - o The opportunity to correspond with others within the system is minimal. FOIL staff indicated that outside of adding a message at the time of departmental notification, Outlook has to be used. FOIL staff indicated that such separation enhances the likelihood of the communication chain breaking down and a particular request not being processed in the most efficient manner.
- Bottlenecks to Case Closure
 - o FOIL staff cannot close a FOIL request in the system until all departments assigned to the request close their fulfillment tasks. This often requires FOIL staff to send frequent email reminders to the departments asking them to close their tasks in the system. Again, no notification is received when this action is taken by the departments so, in some instances releasable documentation is sent to the requestor but the case remains open in the system. Both FOIL staff members advised that override authority would be beneficial to closing department tasks in a timelier manner.

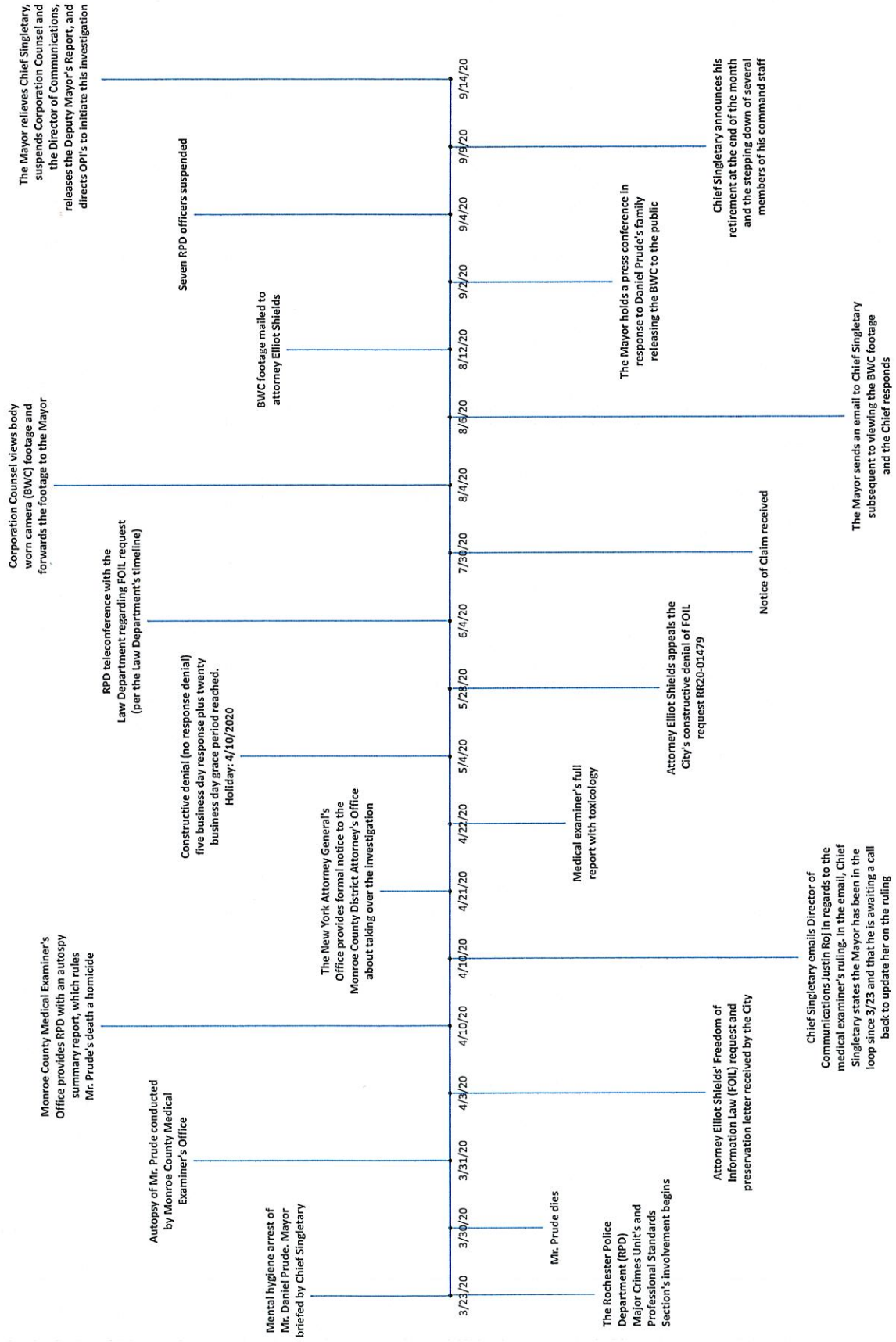
- Within the document repository, redacted files need to all be open before the files are sent to the requestor, otherwise the un-redacted versions will be sent out.
 - The Laserfiche system will notify FOIL staff if a file is too large to be sent over Laserfiche but not if the file was too large to be received by the recipient. As a result, records for a particular request may be sent to the requestor and the City may believe the request has been fulfilled when in fact, the requestor has not received the documentation.
- Reporting Capabilities
- Limited reporting metrics, to include the generation of aging reports to identify delinquent requests and advanced search capabilities.

Ms. Bellucci indicated that realigning all full-time FOIL staffing under the supervision of Corporation Counsel could improve coordination and centralize the management of the City's FOIL staffing and resources.

The FOIL staff also noted that training and reporting is minimal and that all members who are involved in the FOIL process in some capacity could benefit from streamlined education and training.

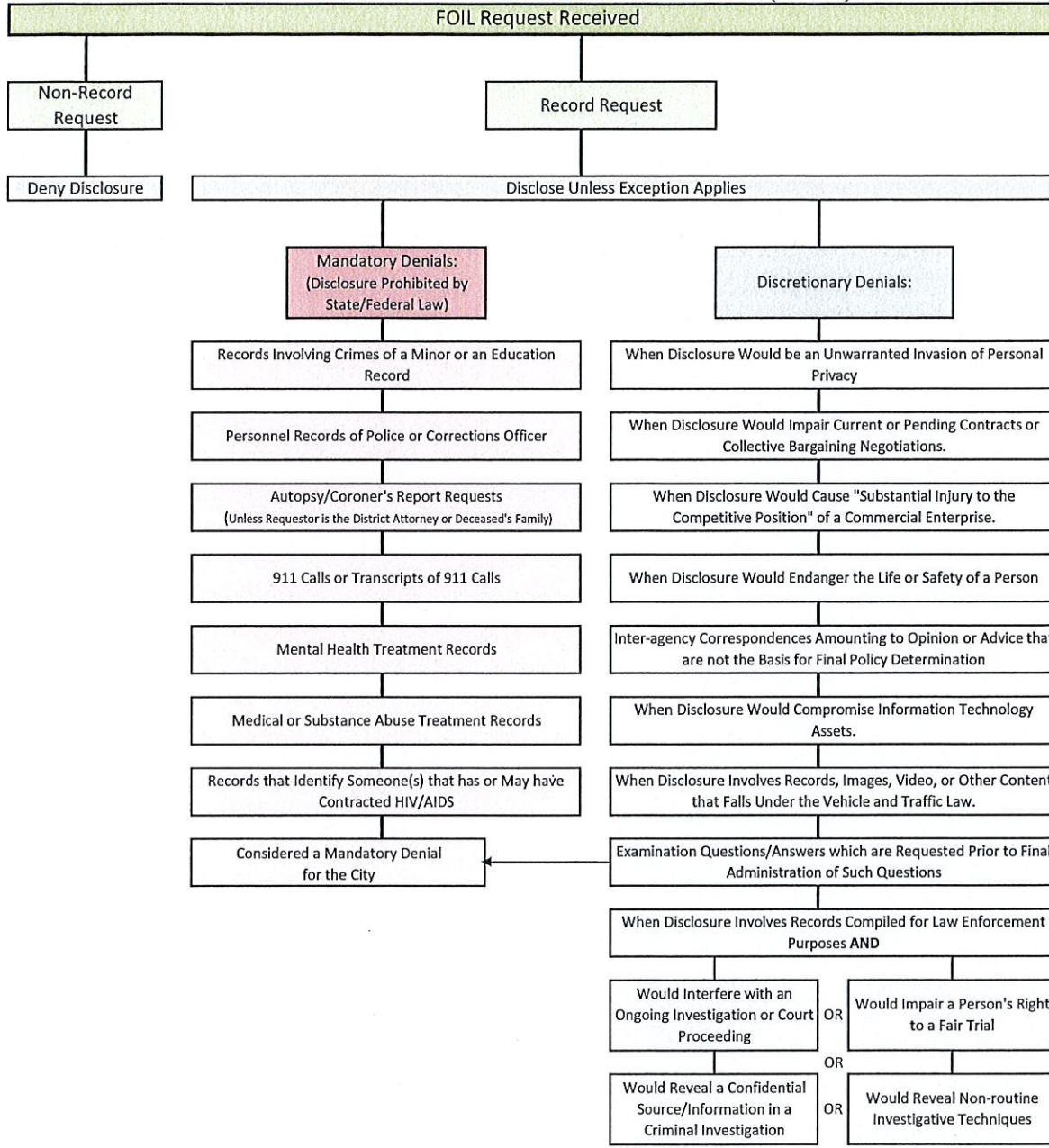
APPENDIX G

Timeline of Events

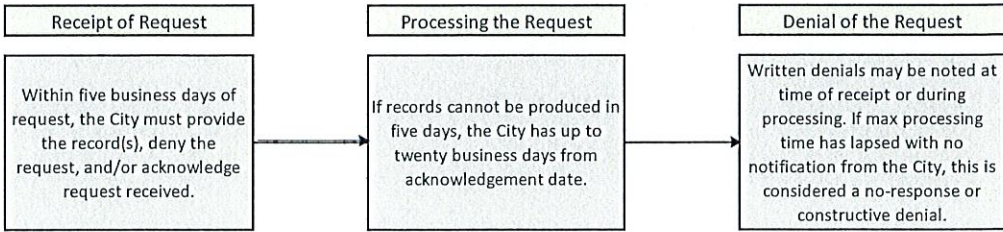


APPENDIX H

Outline of Freedom of Information Law (FOIL)

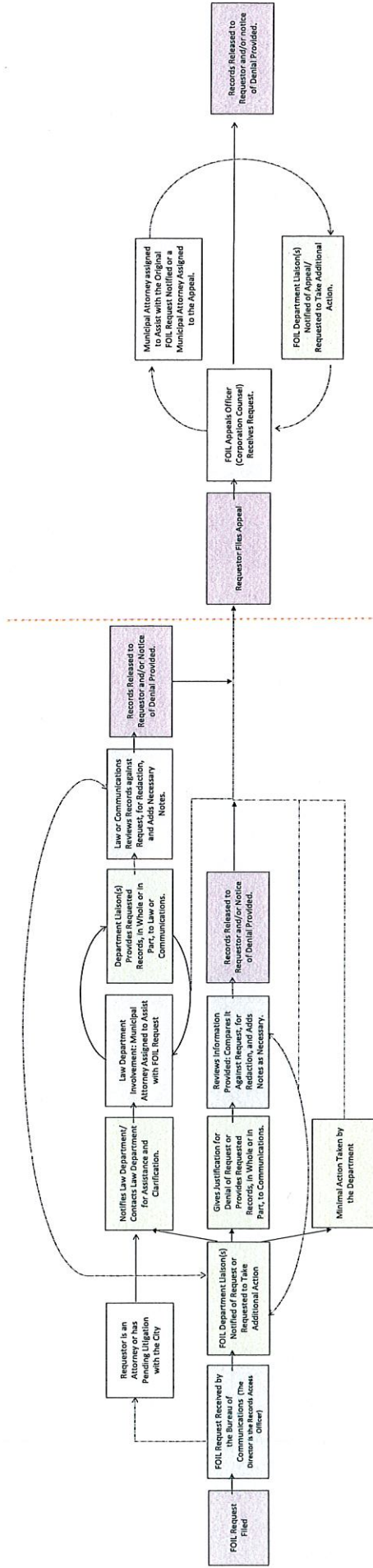


FOIL Time Requirements:



APPENDIX I

Flowchart of the City's Current Freedom of Information Law (FOIL) Process



--- Acknowledgment within 5 Business Days

--- Provides Records or Update within 20 Business Days

--- Requestor Action

--- Bureau of Communications Action

--- FOIL Department Liaison Action

--- Department Action

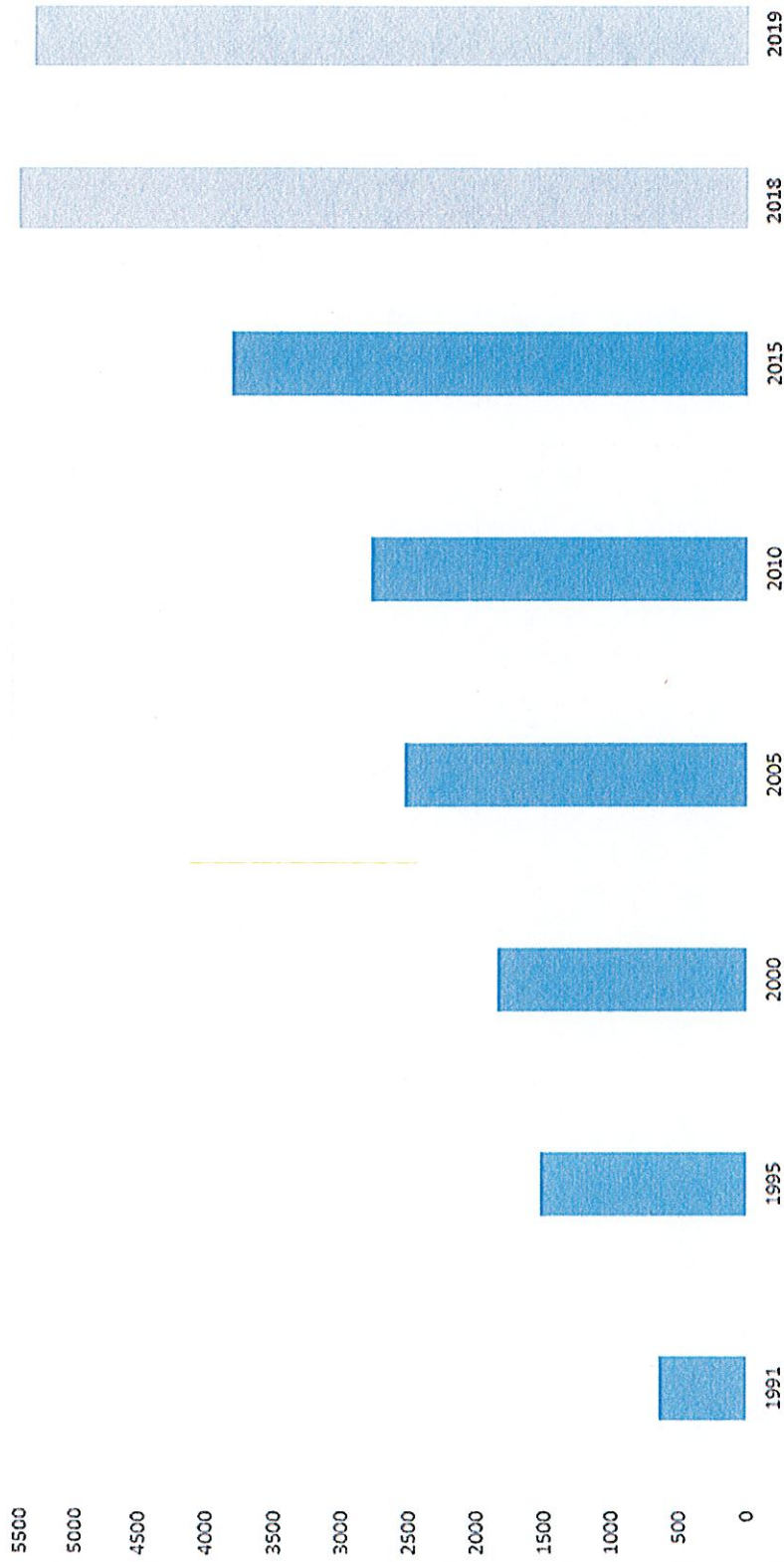
--- Requester Option

--- Indicated Next Step

--- Indicated What can Occur if Certain Conditions are Met/Not Met.

APPENDIX J

Chart of Freedom of Information Law (FOIL) Request Volume Over Time

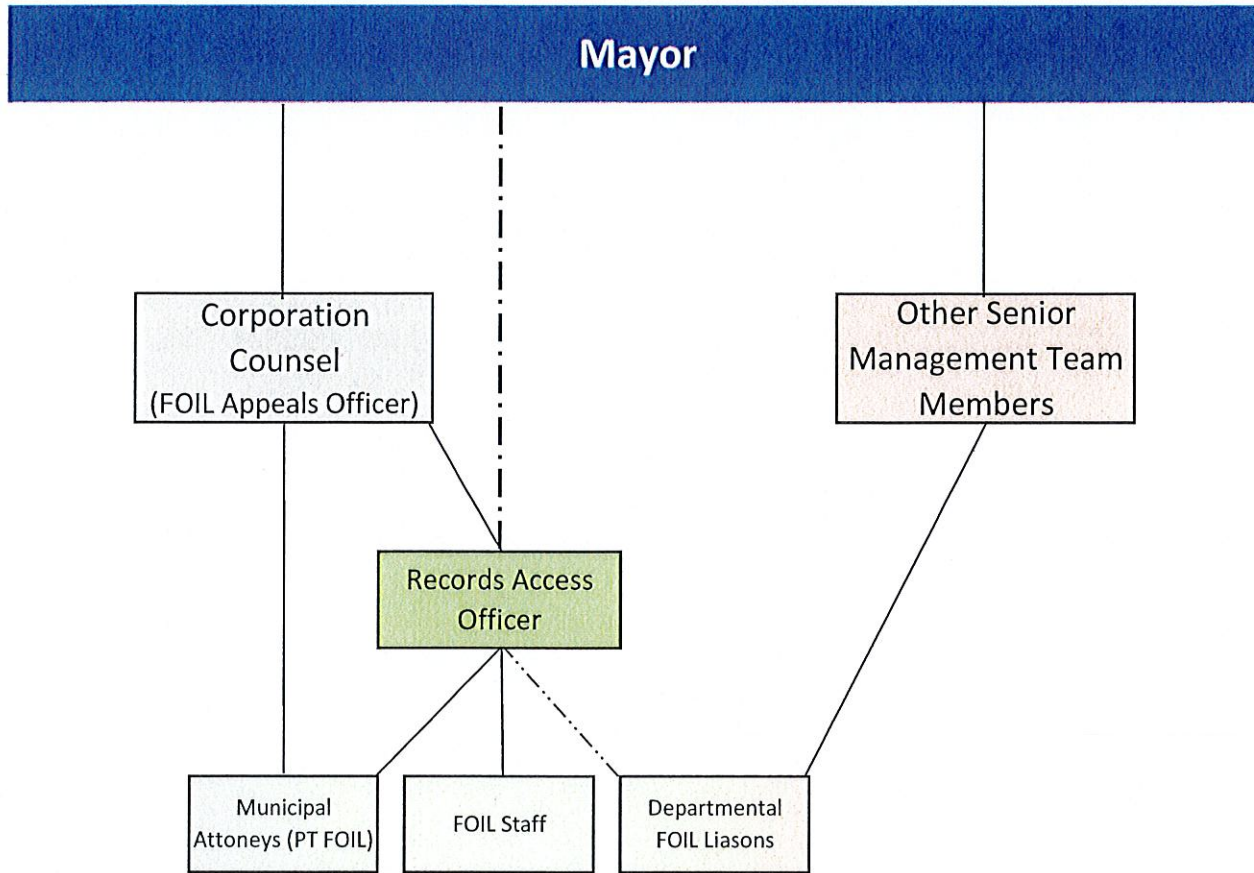


■ Totals included in Powerpoint chart from the Law Department
 ■ Bureau of Communications FOIL metrics added to chart by OPI

Note: Due to FOIL system changes, source data may vary.

APPENDIX K

Organizational Chart Depicting Recommended Freedom of Information Law
(FOIL) Staff and Resource Restructuring



APPENDIX L

Timeline for Freedom of Information Law (FOIL) Request RR20-01479 (Body Worn Camera Recording and All Documentation of Incident Involving Daniel Prude) Submitted by attorney Elliot Shields on April 3, 2020

31 Days	20 Business Days	4/3/2020 FOIL Request Submitted by attorney Elliot Shield.	4/3/2020 Acknowledgement of FOIL Request Sent to Mr. Shields, Request Assigned FOIL No. RR20-01479.																																	
24 Days	17 Business Days	5/4/2020 20 Business Day Response Period Ends (Friday, April 10).	5/28/2020 Constructive Denial Appeal Filed by Mr. Shields.	<p>The Law Department notified to RR20-01479 by Bureau of Communications FOIL staff on 4/6/2020. Interview with FOIL staff revealed this was standard practice. The Law Department reached out to the Rochester Police Department (RPD) in regards to this FOIL request on 4/6/2020. RPD indicated investigations were ongoing. Law Department email communications from 4/6/2020 stated, "[RPD is] going to forward the case package when they finish the investigation -- should be 7-10 days. At that point, I'll review and make a determination as to what to send to Elliot. It involves an MHA, so some of these records are going to be withheld". Email communications did not revealed any follow-up during this time and during an interview with OPI, Municipal Attorney Prince indicated that she moved on to other assignments with the understanding that RPD would provide the necessary documentation when their investigation was complete.</p> <p>Bureau of Communications FOIL staff expressed that LaSerticche, the City's FOIL system, does not provide notifications when the response period is ending.</p> <p>New York State Public Officers Law Article 6 § 89.3.A states, "if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the agency shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part". The City's non-response within 20 business days was considered a constructive-denial.</p> <p>New York State Public Officers Law Article 6 § 89.4.A states, "any person denied access to a record may within thirty days appeal in writing such denial".</p> <p>New York State Public Officers Law Article 6 § 89.4.A states, "within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought".</p> <p>The Law Department reaches out to RPD on 6/2/2020 requesting the case package and learns the Attorney General's Office is now investigating this matter. RPD provides the case package (with BWC) to Law on 6/4/2020. Law indicated redaction of case package content to be released began on or about 6/9/2020.</p> <p>Manual BWC access logs reveal RPD began redaction of BWC footage on 6/10/2020 and completed on 6/24/2020. Emails reveal process formally started on 6/16/2020.</p> <p>The City was waiting for the HIPPA release form and as a result did not process unredacted BWC footage nor provide such footage to Mr. Shields. However, on 6/11/2020 the City indicated that it would mail "rough notes", color copies of photos related to the incident, and witness statements/supporting depositions to Mr. Shields. These documents were not mailed separately and as a result were not released until 8/12/2020.</p> <p>Manual BWC access logs reveal RPD finished detailed redaction of BWC footage on 6/24/2020.</p> <p>The Law Department received the HIPPA release form from Mr. Shields on or about 7/23/2020. Law's requested unredacted footage from BWC Support on 7/27/2020.</p> <p>Manual BWC access logs reveal RPD began redaction (redo) of BWC footage on 7/27/2020 and finished on 7/28/2020. Priority was given to this request.</p> <p>Corporation Counsel reviewed BWC footage prior to release. Upon review, Corporation Counsel emailed BWC footage and the medical examiner's report to the Mayor. Corporation Counsel views footage with the Mayor. Subsequently a meeting with the Mayor, Deputy Mayor, Chief Singleary, and Corporation Counsel takes place.</p> <p>Footage released five business days later.</p>																																
14 Days	10 Business Days	6/11/2020 Law Requests HIPPA release for unredacted BWC. Partial Release of Requested Documentation to Mr. Shields.	6/12/2020 Mr. Shields indicates he will Provide a HIPPA Release Form for Unredacted BWC Footage.	<p>The Law Department notified to RR20-01479 by Bureau of Communications FOIL staff on 4/6/2020. Interview with FOIL staff revealed this was standard practice. The Law Department reached out to the Rochester Police Department (RPD) in regards to this FOIL request on 4/6/2020. RPD indicated investigations were ongoing. Law Department email communications from 4/6/2020 stated, "[RPD is] going to forward the case package when they finish the investigation -- should be 7-10 days. At that point, I'll review and make a determination as to what to send to Elliot. It involves an MHA, so some of these records are going to be withheld". Email communications did not revealed any follow-up during this time and during an interview with OPI, Municipal Attorney Prince indicated that she moved on to other assignments with the understanding that RPD would provide the necessary documentation when their investigation was complete.</p> <p>Bureau of Communications FOIL staff expressed that LaSerticche, the City's FOIL system, does not provide notifications when the response period is ending.</p> <p>New York State Public Officers Law Article 6 § 89.3.A states, "if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the agency shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part". The City's non-response within 20 business days was considered a constructive-denial.</p> <p>New York State Public Officers Law Article 6 § 89.4.A states, "any person denied access to a record may within thirty days appeal in writing such denial".</p> <p>New York State Public Officers Law Article 6 § 89.4.A states, "within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought".</p> <p>The Law Department reaches out to RPD on 6/2/2020 requesting the case package and learns the Attorney General's Office is now investigating this matter. RPD provides the case package (with BWC) to Law on 6/4/2020. Law indicated redaction of case package content to be released began on or about 6/9/2020.</p> <p>Manual BWC access logs reveal RPD began redaction of BWC footage on 6/10/2020 and completed on 6/24/2020. Emails reveal process formally started on 6/16/2020.</p> <p>The City was waiting for the HIPPA release form and as a result did not process unredacted BWC footage nor provide such footage to Mr. Shields. However, on 6/11/2020 the City indicated that it would mail "rough notes", color copies of photos related to the incident, and witness statements/supporting depositions to Mr. Shields. These documents were not mailed separately and as a result were not released until 8/12/2020.</p> <p>Manual BWC access logs reveal RPD finished detailed redaction of BWC footage on 6/24/2020.</p> <p>The Law Department received the HIPPA release form from Mr. Shields on or about 7/23/2020. Law's requested unredacted footage from BWC Support on 7/27/2020.</p> <p>Manual BWC access logs reveal RPD began redaction (redo) of BWC footage on 7/27/2020 and finished on 7/28/2020. Priority was given to this request.</p> <p>Corporation Counsel reviewed BWC footage prior to release. Upon review, Corporation Counsel emailed BWC footage and the medical examiner's report to the Mayor. Corporation Counsel views footage with the Mayor. Subsequently a meeting with the Mayor, Deputy Mayor, Chief Singleary, and Corporation Counsel takes place.</p> <p>Footage released five business days later.</p>																																
42 Days	Approximately 29 Business Days	On or about 7/23/2020 Mr. Shields Provides HIPPA Release Form to the City.	8/12/2020 BWC Footage and Items too Large to Send via File Share mailed to Mr. Shields.	<p>The Law Department notified to RR20-01479 by Bureau of Communications FOIL staff on 4/6/2020. Interview with FOIL staff revealed this was standard practice. The Law Department reached out to the Rochester Police Department (RPD) in regards to this FOIL request on 4/6/2020. RPD indicated investigations were ongoing. Law Department email communications from 4/6/2020 stated, "[RPD is] going to forward the case package when they finish the investigation -- should be 7-10 days. At that point, I'll review and make a determination as to what to send to Elliot. It involves an MHA, so some of these records are going to be withheld". Email communications did not revealed any follow-up during this time and during an interview with OPI, Municipal Attorney Prince indicated that she moved on to other assignments with the understanding that RPD would provide the necessary documentation when their investigation was complete.</p> <p>Bureau of Communications FOIL staff expressed that LaSerticche, the City's FOIL system, does not provide notifications when the response period is ending.</p> <p>New York State Public Officers Law Article 6 § 89.3.A states, "if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the agency shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part". The City's non-response within 20 business days was considered a constructive-denial.</p> <p>New York State Public Officers Law Article 6 § 89.4.A states, "any person denied access to a record may within thirty days appeal in writing such denial".</p> <p>New York State Public Officers Law Article 6 § 89.4.A states, "within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought".</p> <p>The Law Department reaches out to RPD on 6/2/2020 requesting the case package and learns the Attorney General's Office is now investigating this matter. RPD provides the case package (with BWC) to Law on 6/4/2020. Law indicated redaction of case package content to be released began on or about 6/9/2020.</p> <p>Manual BWC access logs reveal RPD began redaction of BWC footage on 6/10/2020 and completed on 6/24/2020. Emails reveal process formally started on 6/16/2020.</p> <p>The City was waiting for the HIPPA release form and as a result did not process unredacted BWC footage nor provide such footage to Mr. Shields. However, on 6/11/2020 the City indicated that it would mail "rough notes", color copies of photos related to the incident, and witness statements/supporting depositions to Mr. Shields. These documents were not mailed separately and as a result were not released until 8/12/2020.</p> <p>Manual BWC access logs reveal RPD finished detailed redaction of BWC footage on 6/24/2020.</p> <p>The Law Department received the HIPPA release form from Mr. Shields on or about 7/23/2020. Law's requested unredacted footage from BWC Support on 7/27/2020.</p> <p>Manual BWC access logs reveal RPD began redaction (redo) of BWC footage on 7/27/2020 and finished on 7/28/2020. Priority was given to this request.</p> <p>Corporation Counsel reviewed BWC footage prior to release. Upon review, Corporation Counsel emailed BWC footage and the medical examiner's report to the Mayor. Corporation Counsel views footage with the Mayor. Subsequently a meeting with the Mayor, Deputy Mayor, Chief Singleary, and Corporation Counsel takes place.</p> <p>Footage released five business days later.</p>																																
20 Days	14 Business Days			<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2">Business Days*</th> <th colspan="2">HOLIDAYS</th> </tr> </thead> <tbody> <tr> <td>City</td> <td style="text-align: center;">65</td> <td>Good Friday</td> <td style="text-align: center;">- April 10, 2020</td> </tr> <tr> <td>Attorney</td> <td style="text-align: center;">66</td> <td>Memorial Day</td> <td style="text-align: center;">- May 25, 2020</td> </tr> <tr> <td>Total</td> <td style="text-align: center;">131</td> <td>Independence Day (observed)</td> <td style="text-align: center;">- July 3, 2020</td> </tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2">Total Days*</th> <th colspan="2">Business Days*</th> </tr> </thead> <tbody> <tr> <td>City</td> <td style="text-align: center;">65</td> <td>City</td> <td style="text-align: center;">44</td> </tr> <tr> <td>Attorney</td> <td style="text-align: center;">66</td> <td>Attorney</td> <td style="text-align: center;">46</td> </tr> <tr> <td>Total</td> <td style="text-align: center;">131</td> <td>Total</td> <td style="text-align: center;">90</td> </tr> </tbody> </table> <p>*Nothing precluded the City from filling the request once in the constructive denial phase but before Mr. Shields filed an appeal.</p>	Business Days*		HOLIDAYS		City	65	Good Friday	- April 10, 2020	Attorney	66	Memorial Day	- May 25, 2020	Total	131	Independence Day (observed)	- July 3, 2020	Total Days*		Business Days*		City	65	City	44	Attorney	66	Attorney	46	Total	131	Total	90
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APPENDIX M

Summary of Freedom of Information Law Request RR20-01479

Freedom of Information Law (FOIL) request RR20-01479, which sought all documentation and information related to the March 23, 2020 arrest of Mr. Daniel Prude, was submitted by attorney Elliot Shields on April 3, 2020. Upon submission, Mr. Shields received an automatic reply indicating his request had been received and that the requested materials or an updated response would be supplied within approximately 20 business days. The email signature on this automatic reply listed Justin Roj, the City's Records Access Officer. Mr. Roj is also the Director of Communications.

When Director of Communications Roj was asked about his involvement with FOIL request RR20-01479, he expressed that he did not have any direct involvement. Refer to Appendix C for further comments made by Mr. Roj in regards to this matter.

Bureau of Communications FOIL staff advised OPI that they were previously instructed to notify the Law Department of any FOIL request submitted by Mr. Shields. Consistent with this practice, the Law Department was notified of request RR20-01479 on April 6, 2020.

Upon the Law Department receiving notification of this request, Municipal Attorney Stephanie Prince sought to obtain the requested records from the Rochester Police Department (RPD). At this time, she was informed that the FOIL request was seeking records that pertained to a matter under investigation. Based on this information, Ms. Prince indicated that she did not obtain the requested records at that time and, as a result, worked on other assignments while awaiting further notification from RPD. The Law Department received Mr. Shields' constructive denial appeal on May 28, 2020 and as a result of this appeal, Ms. Prince revisited this request.

Municipal Attorney Prince stated she first learned the New York Attorney General's Office was investigating this matter upon revisiting this FOIL request. Additionally, Ms. Prince advised that she received the case package from RPD on June 4, 2020 and that the Law Department's redaction process for these records began on or about June 9, 2020. Ms. Prince noted that, as standard practice, the redaction process did not entail a substantive review of the records.

Part of Mr. Shields' request was filled on June 11, 2020 via email. Along with this initial release of documentation, the City's Law Department indicated they could release unredacted BWC footage to Mr. Shields if he submitted a HIPPA release form to the City. On June 12, 2020 Mr. Shields indicated that he would provide a HIPPA release form. The Law Department stated that the HIPPA release form was received on or about July 23, 2020 and the remaining items, including the BWC footage, were sent via certified mail to Mr. Shields on August 12, 2020.

Ms. Prince emphasized that as standard practice, the Law Department does not review BWC footage requested via the FOIL process. Ms. Prince indicated that a review of BWC footage is only conducted by Law if RPD recommended it be reviewed by the Law Department. Ms. Prince stated that, based on the information presented, the BWC footage for this request was not reviewed by the Law Department until after a Notice of Claim was filed by Mr. Shields. The Notice of Claim was received on July 30, 2020. For further comments made by Ms. Prince in regards to the FOIL process as well as this specific request, see Appendix E.

Corporation Counsel Curtin confirmed the Law Department's minimal involvement in this FOIL request up to the constructive denial appeal on May 28, 2020. Mr. Curtin stated that the responsibility for the request formally transferred to the Law Department and specifically him, as the FOIL Appeals Officer, once the appeal was filed. Mr. Curtin also advised that Mr. Shields' delay in filing the constructive denial appeal and subsequently providing the requested HIPPA release form to the City added several weeks to the time it took for this request to be filled. Mr. Curtin indicated that when BWC footage is being released through the appeals process, he personally reviews the footage prior to it being sent out. For this particular request, Mr. Curtin stated that he reviewed the BWC footage for the first time on August 4, 2020, in preparation for its release. Refer to Appendix D for further comments made by Mr. Curtin in regards to this matter.

Municipal Attorney Prince and Corporation Counsel Curtin, indicated to OPI that constructive denials or no-response denials, such as which occurred in FOIL request RR20-01479, are not intentionally made by the City. Rather, time simply passes and members involved in the FOIL process do not provide the requested records, formally deny the request, or update the requestor on the status of their request within the necessary time constraints of the law, allowing the requestor the opportunity to file an appeal.

OPI reviewed available documentation, interviewed personnel involved in the City's FOIL process, in particular this request, reviewed the New York State FOIL, and examined where and how this request flowed through the involved departments. As a result of this investigation, OPI determined that the actions taken by City personnel in regards to FOIL request RR20-01479 were in compliance with New York State FOIL and consistent with the City's current organizational division of the FOIL process and FOIL administration. Refer to Appendix K for a timeline on the processing of this FOIL request.