

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE OHIO ATTORNEY GENERAL'S OFFICE  
AND  
THE CITY OF COLUMBUS

WHEREAS, it is the desire of the City of Columbus, Department of Public Safety (the "City"), to assure that an independent, professional, unbiased and prompt investigation is performed after sworn personnel of the Columbus Division of Police or Columbus Division of Fire, who are duly authorized to carry a firearm, are involved in a discharge of a firearm (not including the shooting of an animal, training accidents, or accidental discharges where no injuries occur); a use of force resulting in life-threatening injury or death that occurs as a result of persons being taken into custody, while in custody, or while being detained by sworn personnel of the Columbus Division of Police or Columbus Division of Fire personnel who are duly authorized to carry a firearm (hereinafter collectively referred to as a "critical incident"); and

WHEREAS, the Ohio Attorney General's Office, Bureau of Criminal Investigation ("BCI"), in certain circumstances, provides such investigative services to local law enforcement agencies; and

WHEREAS, to assure that an independent, professional, unbiased and prompt investigation is always performed, the City desires that BCI perform all investigations of critical incidents for the City involving sworn personnel of the Division of Police or Columbus Division of Fire personnel who are duly authorized to carry a firearm; and

WHEREAS, it is thus the desire of the City and BCI to set forth the terms under which BCI will perform an investigation for the City; and

NOW, THEREFORE, be it agreed by the parties hereto, each in consideration of the mutual promises and obligations set forth herein, that:

SECTION 1. Upon the occurrence of a critical incident as described in this Memorandum of Understanding (the "MOU") the City shall:

- a. Immediately submit an official request for investigation of the critical incident investigation to BCI from the City's Police Chief or the Chief's designee by calling its communications center, at 855-BCI-OHIO (855-224-6446).
- b. Provide the following information:
  - An overview of the incident, including the number of involved employees and witnesses.
  - An agency contact name and that contact's direct phone number. The contact person shall be the Major Crimes Supervisor assigned to the critical incident.
  - The number and location of scenes; GPS-recognizable addresses are preferred.
  - The current location and status of the individuals involved, whether those involved are deceased, at the hospital, in custody or at large.

- Environmental details, i.e., indoors or outdoors, any hazards or special circumstances such as weather conditions that could alter evidence, multiple scenes or a large volume of evidence.
- c. Provide the following assistance:
- Ensure that the safety and well-being of the public, employees, subjects and investigators are maintained. Summon medical assistance for the injured.
  - Preserve the crime scene. Establish and maintain an adequate perimeter with physical barriers (crime scene tape, for example) and preserve all evidence without disturbing or moving it. Remove nonessential personnel from the scene.
  - Maintain a crime scene access-control log. Document the people who were within the scene during or after the incident, including all police, fire and EMS personnel.
  - Provide personnel (uninvolved in the incident) to control traffic, crowds and the scene.
  - If necessary, notify the county coroner.
  - Notify the county prosecutor.
  - If necessary, make notifications to next of kin.
  - If necessary, provide uniformed employees to accompany BCI agents when conducting interviews related to the critical incident.
  - The City agrees not to conduct any *Garrity* interviews of involved employees until notified by BCI that doing so would not hamper the criminal investigation.
  - Provide a briefing to BCI personnel that omits any *Garrity*-derived statements or evidence.
  - To the extent possible, ensure all witnesses and/or the involved employee(s) are kept apart (though not necessarily alone).
  - Transport the involved employee(s) to a single, safe location (such as a hospital or police facility) to await contact by BCI.
    - Direct the employee(s) to remain clothed as the employee was at the time of the incident until the employee is photographed.
    - Direct the employee to keep the employee's firearm holstered until it is inspected/collected by BCI.
    - Assure that all involved employees remain separated from one another.
  - Make involved employees reasonably available to BCI investigators for interviews when requested.
  - Determine whether any photographs or recordings (including photos or videos from civilian and employee cellphones) were taken prior to BCI's arrival and, if so, obtain and preserve them.
    - Determine whether any additional physical evidence exists outside of the scene and, if so, identify its location and take steps to assure the evidence is maintained until BCI arrives.
    - Should exigent circumstances arise which could lead to the potential destruction of evidence, assist BCI by collecting and preserving said evidence.

- Identify all witnesses and request that they remain available for interviews with BCI, and if need be, detain such witnesses until BCI can attempt to obtain a statement from said witnesses. The City will not question the involved employee(s) regarding the incident except as directed in the "Involved-Employee Statements" section of the BCI Law Enforcement Guide to Requesting BCI Investigative Services for an Officer-Involved Critical Incident ("BCI Booklet").
  - If requested by BCI, and if available for use, bring the CPD mobile command bus to the scene for use by BCI.
  - Take responsibility for filling out the Uniform Crime Reporting (UCR) information for the incident as well as any additional optional or mandated statistical incident reports.
  - Assign a Major Crimes Supervisor to serve as a liaison for the investigation in order to facilitate communication.
- d. Provide the following records:
- Audio and video recordings, including dashcam, bodycam, surveillance footage, etc.
  - Incident reports, including any witness statements or use-of-force reports (excluding any *Garrity*- derived reports)
  - Dispatch logs, radio logs, CAD reports
  - Audio recordings from 911 or other phone calls related to the incident
  - Photographs, videos (including personal cellphone videos) or other recordings taken by employees, witnesses or anyone else
  - Radio recordings for the time frame in question
  - Crime scene log (see BCI Booklet, Page 4 for a sample log)
  - EMS run reports and a list of all first responders
  - The involved employee's personnel file (including disciplinary or internal affairs records for previous incidents) but excluding copies of any internal affairs investigation or *Garrity* statements related to the current incident under investigation
  - The involved employee's training records
  - Ohio Peace Employee Training Commission (OPOTC) certification records for any involved employee
  - Firearm qualification records for the involved employee(s)
  - Copy of agency's use-of-force policy
  - Mobile data terminal (MDT) entries and instant messages from the vehicle of the involved employee(s)
  - Police reports/recordings of any previous law enforcement encounters with the subject(s)
  - Any other pertinent records or recordings that would help provide a complete and accurate understanding of the incident under investigation

SECTION 2. Upon receiving a request as described in Section 1, above, from the City, BCI shall:

- a. Contact a BCI special agent supervisor, who will contact the City's point of contact to gather further details to assist in the dispatching of appropriate personnel. The special agent supervisor shall provide the City an estimated time of arrival. A team of BCI special agents from multiple disciplines, to include agents from BCI's Crime Scene Unit and Special Investigations Unit, as determined by the situation, shall respond. The time of day and the agents' physical proximity to the incident location are the primary factors affecting response time. BCI will make every effort to ensure the agents assigned will be free of any perceived conflict of interest regarding the investigation.
- b. Conduct the investigation as a criminal investigation, not internal or administrative, hereinafter called "the investigation." One Major Crimes Supervisor from the City shall be permitted to accompany BCI special agents during most activities to the extent that his/her participation does not hamper the investigation, that independence is maintained, and that *Garrity* information does not impact the criminal investigation. Regardless, no employee of the City will be permitted to be present during interviews with the involved employee(s).
- c. Coordinate and lead the investigation. Allowing the presence of a representative from the City is a courtesy that can be revoked. The investigation takes precedence over any internal or administrative investigation. BCI does and will work independently of the City's policies, procedures and chain of command in the investigation. In order to preserve BCI's independence, professionalism, lack of bias and promptness, BCI is not and will not be bound by any collective bargaining agreement between the City and the Fraternal Order of Police, Capital City Lodge #9, or Lodge #67 of the International Association of Firefighters.
- d. Collect all evidence secured by the City and maintain all evidence gathered during the course of the investigation at a facility controlled by BCI.
- e. If, during the course of the investigation, BCI learns of any issues of an exigent/emergent nature which could pose a danger to police or public safety, BCI shall inform the Chief of Police of their concerns. This would include provision to the Chief of Police/Fire Chief of a copy of any additional video footage of the incident discovered during the course of the investigation. Additional video footage will be provided only after the BCI investigation has been completed.
- f. Prior to releasing the scene, but at the conclusion of the on-scene investigation, BCI will notify the City and allow a member of the CPD Firearms Death Review Board and the Chief of Police or Fire Chief, or the designee of the Chief to conduct a walk-through of the scene.
- g. Make no determination or provide any opinion on whether a use of force was legally justified. After the investigation is completed, BCI will provide the completed investigative report to the county prosecutor's office and, with the county prosecutor's approval, to the City.
- h. Investigate potentially related crimes only when the investigation into the employee-involved critical incident leads to evidence of other criminal conduct by the employee(s) involved in the critical incident. Otherwise, the City is responsible for any investigation, filing of charges and prosecution of other potential crimes leading up to, contemporaneous with or subsequent to the employee-involved critical incident.

- i. BCI, with the assistance of the City, will coordinate with the Fraternal Order of Police, Capital City Lodge #9 to arrange the formal interview of any involved employee(s) and with Lodge 67 of the International Association of Firefighters to arrange the formal interview of any involved firefighter(s). As part of the interview process, BCI at a minimum will provide the employee with an admonition (Criminal Investigation Notification – BCI-INVEST-34) informing the employee that the investigation is criminal, not internal; that the employee’s participation in the interview is voluntary; that the employee has the right to refuse to answer any questions; and that, the employee is not compelled to cooperate. At the investigating agent’s discretion, the *Miranda* warning may also be read to involved individuals. The interview shall be recorded, and the employee(s) shall be afforded his/her right to legal counsel should the employee express such desire verbally or in writing.

Section 3. Miscellaneous

- a. Entire Agreement. This MOU constitutes the entire understanding between the parties. Neither party may further modify or amend the terms of this MOU except by a written agreement signed by both parties. Neither this MOU, nor any rights, duties, or obligations described herein, shall be assigned by either party hereto without the prior written consent of the other party. This MOU shall be construed under the laws of the State of Ohio. No modification, amendment, alteration, addition or waiver of any section or condition of this MOU shall be effective or binding unless it is in writing and signed by an authorized representative of the City and BCI.
- b. Term and Termination. This MOU is made effective as of the latest date of signature below, and shall continue in effect for three (3) years from the date this agreement is signed. Either party may terminate this MOU upon sixty (60) days prior written notice to the other party for any reason whatsoever.

IN WITNESS WHEREOF, the parties have executed this MOU as of latest day and year written below.

AGREED:

The City of Columbus  
Department of Public Safety  
Division of Police

Ohio Attorney General  
Dave Yost

  
Ned Pettus, Director of Public Safety

By:   
Joseph A. Morbitzer, Superintendent, BCI

Date: 8/25/2020

Date: 08-27-20