Independent Investigation of the City of Rochester's Response to the Death of Daniel Prude

Commissioned by the Council of the City of Rochester

Pursuant to Ordinance 2020-283

SPECIAL COUNCIL INVESTIGATOR

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INTRODUCTION AND SUMMARY OF CONCLUSIONS

On Monday, March 23, 2020, at approximately 3:17 a.m., officers of the Rochester Police Department ("RPD") encountered Daniel Prude, a 41-year-old Black man, outside 435 Jefferson Avenue. Mr. Prude was unarmed, naked, acting erratically, and appeared to be under the influence of drugs. In the course of what would later be described as a "mental health arrest," officers placed Mr. Prude in handcuffs, covered his head with a hood (or "spit sock"), and restrained him on the ground, gravely injuring him. Mr. Prude was transported by ambulance to a local hospital, where he remained in critical condition for seven days, until his death on March 30. On April 10, the Monroe County Medical Examiner declared Mr. Prude's death a homicide; the immediate cause was found to be "asphyxia in the setting of physical restraint"—the police restraint killed Daniel Prude—with "excited delirium" and PCP intoxication listed as contributing factors.

The interaction between the RPD officers and Mr. Prude on March 23 (the "Prude Arrest") was captured on the body-worn cameras borne by multiple officers on the scene.

The fact and circumstances of Mr. Prude's arrest and death did not become widely known until September 2, 2020, when the family of Mr. Prude released body-worn camera ("BWC") footage showing the RPD officers on the scene restraining Mr. Prude. Mr. Prude's family had obtained the BWC footage in August, in response to an April 3 request made under New York's Freedom of Information Law ("FOIL"). The Prude Arrest, the Prude-related FOIL request, Mr. Prude's death, and the communications, decisions, and actions within the government of the City of Rochester concerning these matters prior to September 2, 2020 shall be referred as the "Prude Matter."

When the BWC footage of the Prude Arrest was released by the family on September 2, public reaction and outcry was immediate.[1] How and why had the death of an unarmed man in RPD custody remained unknown to the public for over four months? Had Mayor Lovely Warren or her administration, or members of the City Council, suppressed information about Mr. Prude's arrest and death? In the context of the national reckoning about the death of unarmed Black people in police custody—a reckoning stimulated by the killing of George Floyd in Minneapolis on May 25, 2020—these questions took on an even greater urgency.

On September 16, 2020, the Rochester City Council ("City Council") appointed Emery Celli Brinckerhoff Abady Ward & Maazel LLP (the "Special Council Investigator" or the "Independent Investigator") to conduct an independent investigation of the Prude Matter. As set forth in Ordinance 2020-283, the City Council tasked the Independent Investigator to produce an investigation report that would address the three goals of the investigation, namely: (i) to establish a comprehensive timeline of events regarding the Prude Matter; (ii) assess the nature of non-public internal statements made by City of Rochester officials and employees related to the death of Daniel Prude; and (iii) to evaluate the public statements of City officials and employees

related to the death of Daniel Prude. The Special Council Investigator's role, as set forth in the authorizing legislation, is to investigate and report on how the City government responded internally and externally to the Prude Arrest and Mr. Prude's death; an evaluation of the conduct of RPD officers interacting with Mr. Prude on the scene is therefore outside the scope of this report.

This Report summarizes the Independent Investigator's work and the results of the Investigation ("the Report"). It describes events and actions that the Independent Investigator found to be supported by the evidence collected during the Investigation. In making the findings of fact described in the Report, the Independent Investigator applied the "preponderance of the evidence" standard applicable in civil legal matters, meaning to prove that something is more likely than not true.[2] In doing so, the Independent Investigator has acted analogously to a judge or jury in a civil trial. The Investigation's methodology is discussed in greater detail in Section III, *infra*.

In summary, the Report concludes as follows:

By mid-April 2020, four key officials in Rochester City government—Mayor Warren, then Police Chief La'Ron Singletary, Corporation Counsel Timothy Curtin, and Communications Director Justin Roj—had learned that RPD officers had physically restrained Daniel Prude during the course of an arrest on March 23, 2020; that the restraint had caused Mr. Prude's death; and that the officers were the subjects of a criminal investigation. None of this was disclosed to the public before the Prude family's September 2 news conference.

The circumstances of the Prude Arrest and the reasons for Mr. Prude's death did not become public until September for many reasons; the Investigation explored, and this Report discusses, those reasons in detail. In the final analysis, the decision not to publicly disclose these facts rested with Mayor Warren, as the elected Mayor of the City of Rochester. But Mayor Warren alone is not responsible for the suppression of the circumstances of the Prude Arrest and Mr. Prude's death. In his internal communications with the Mayor, the Law Department, and the Communications Bureau in April 2020, Chief Singletary disclosed but consistently deemphasized the role of police restraints in the death of Daniel Prude, and his statements did not capture the disturbing tenor of the entire encounter. Chief Singletary's characterization of the Prude Arrest likely impacted how the City officials he informed of the matter viewed what had occurred. In early August, Corporation Counsel Curtin actively discouraged Mayor Warren from publicly disclosing the Arrest after she viewed the BWC footage for the first time, citing reasons that were factually incorrect, legally without basis, or both. And Councilmember Mary Lupien, who learned of the Prude Arrest in July from an attorney for the Prude family, elected not to speak publicly or alert City officials about the matter.

The City's response to the Prude family's counsel's FOIL request for the BWC footage was substantially delayed by several factors, not all of which are attributable to the City. These

factors included: delays on the part of the RPD in forwarding responsive records to the Law Department for review under FOIL; a request by the Law Department to the Prude family counsel for a HIPAA release form that was unnecessary; a delay on the part of that counsel in returning the HIPAA form to the Law Department; and delays occasioned by internal discussions. At least some of the delay in the disclosure of the BWC footage of the Prude Arrest is attributable to the Law Department's effort to accommodate a request by senior officials at the RPD, including Chief Singletary, to withhold the BWC footage for fear that its release might cause civil unrest and violence in the wake of the May 25, 2020 killing of George Floyd in Minneapolis.

Finally, on and after September 2, 2020, Mayor Warren, Corporation Counsel Curtin, and Chief Singletary made public statements concerning their knowledge of the Prude Arrest and Mr. Prude's death and the reasons that these events were not disclosed sooner. As detailed below, some of those statements were untrue.

The Report is divided into four sections. Section I sets forth the Findings of the Special Council Investigator. Section II is a discussion of the key Findings. Section III sets out the methodology employed by the Independent Investigator during the Investigation. At the end of the Report, there are two Appendices: Appendix 1, Source for Findings; and Appendix 2: Selected Public Statements Referenced in Findings 65-73.

I. THE FINDINGS OF THE SPECIAL COUNCIL INVESTIGATOR

A. March 23: Mayor Warren Learns of the Prude Arrest

1. On March 23, 2020, at approximately 8:30 a.m., Mayor Lovely Warren and Chief La'Ron Singletary spoke by telephone about the Prude Arrest. In that call, Mayor Warren learned that members of the RPD had physically restrained Daniel Prude during an arrest; that Mr. Prude became unconscious during the restraint; that Mr. Prude had been taken by ambulance to the hospital; and that Mr. Prude's condition was serious and life-threatening. In describing the Prude Arrest to Mayor Warren in that call, Chief Singletary referenced his understanding that Mr. Prude may have been under the influence of the drug PCP at the time of the arrest. After this initial call with Mayor Warren, Chief Singletary reviewed the BWC footage of the Prude Arrest.

2. In a telephone conversation at 1:30 p.m. on March 23, Chief Singletary updated Mayor Warren with additional information about the Prude Arrest. He informed Mayor Warren that he had viewed the BWC footage of the Arrest, and he described and characterized the physical restraints applied by RPD officers to Mr. Prude. Chief Singletary stated that officers had held Mr. Prude's head to the ground, applied pressure to his back, and "stabilized" Mr. Prude on the ground. Chief Singletary did not describe the officers on scene as joking or ridiculing Mr. Prude. In characterizing these physical restraints, Chief Singletary stated that he saw "nothing

egregious" in the officers' conduct, and that the conduct of the officers was not similar to that of RPD officers in the Christopher Pate case, which involved excessive use of force and with which both Mayor Warren and Chief Singletary were familiar. Mayor Warren did not ask to view the BWC footage of the Prude Arrest, and Chief Singletary did not offer or suggest that she do so.

3. During her two telephone conversations with Chief Singletary, Mayor Warren learned that RPD officers had physically restrained Mr. Prude in a manner that went beyond the handcuffing and pat-down search that is normally incident to arrest.

4. Chief Singletary did not, on March 23, characterize the cause of Mr. Prude losing consciousness, or Mr. Prude's medical condition during the Arrest, as an "overdose."

Findings 1-4 are discussed in more detail at Section II.A, *infra*.

B. March 23: RPD Launches Criminal and Internal Investigations into the Prude Arrest; Mayor Warren Is Informed

5. On March 23, Chief Singletary and other RPD officials determined that the Prude Arrest would be treated, for departmental purposes, akin to an officer-involved shooting or a death in custody. As a result, both a criminal investigation and an internal disciplinary investigation of the conduct of the RPD officers involved would be immediately triggered. The criminal investigation would be conducted by the RPD's Major Crimes Unit ("MCU") working in conjunction with the Monroe County District Attorney's Office ("MCDA"); the internal investigation would be handled by the RPD's Professional Standards Section ("PSS"). In her two phone calls with Chief Singletary on March 23, Mayor Warren learned that the officers involved in the Prude Arrest would be the subjects of a criminal investigation by the MCDA and an internal departmental review by the PSS.

6. On the evening of March 23, Chief Singletary received a memo summarizing the results of the PSS's preliminary review of the Prude Arrest; the memo concluded that there was no evidence of excessive force or misconduct on the part of the officers involved.

C. March 30 - March 31: Mr. Prude Dies at Strong Memorial Hospital and Chief Singletary Notifies Mayor Warren the Next Day

7. Between March 23 and March 30, Chief Singletary and other members of the RPD command staff repeatedly checked on Daniel Prude's medical condition. On March 30, 2020, Chief Singletary learned that Mr. Prude had died at a local hospital. The following morning, he notified Mayor Warren by text message that Mr. Prude had died, and that the Monroe County Medical Examiner ("ME") would conduct a review and determine the cause and manner of death.

D. March 23 - March 31: Chief Singletary Decides Not to Reassign the Officers to Administrative Duty

8. The collective bargaining agreement between the City of Rochester and the Rochester Police Locust Club ("Locust Club"), the patrol officers' union, provides: "In the event a member becomes the subject of a criminal and/or PSS investigation involving an allegation of conduct that could constitute a criminal offense, the Chief of Police may elect to temporarily place the member in an administrative assignment that does not include police enforcement duties" for up to 60 days. Collective Bargaining Agreement ("CBA") art. 19, § 7(A). On March 23, having reviewed the BWC footage and in consultation with RPD command staff, Chief Singletary decided not to reassign the officers involved in the Prude Arrest to administrative duty, but rather to permit them to continue to work in public-facing roles during the pendency of the criminal investigation and the PSS review. Chief Singletary revisited and reaffirmed that decision on March 31 in the wake of Mr. Prude's death.

E. April 3: The Prude Family's Preservation Letter and FOIL Request

9. On April 3, the Law Department learned of the Prude Arrest when Deputy Corporation Counsel Patrick Beath received a preservation request from Elliott Shields, an attorney representing members of the Prude family. Mr. Beath was informed by a member of the RPD of the underlying circumstances. The preservation request, which asked that all documents concerning the Prude Arrest, including BWC footage of the incident, be preserved, alerted the Law Department and the RPD, including Chief Singletary, to the possibility that the Prude Arrest could result in litigation against the City of Rochester and its officers.

10. On April 3, the Communications Bureau received a Freedom of Information Law request ("the FOIL Request") from Prude family attorney Elliott Shields. The FOIL Request sought the production of all records concerning the Prude Arrest, including BWC footage of the incident. The FOIL Request was promptly forwarded to the Law Department and the RPD.

F. April 2: The Locust Club Receives the BWC Footage

11. On April 2, the RPD provided the BWC footage of the Prude Arrest to the Locust Club in response to a Locust Club representative's request. Provision of such footage is required by a memorandum of agreement between the City of Rochester and the Locust Club whenever a Locust Club member is investigated by the PSS.

G. April 10: The Medical Examiner Issues a Preliminary Report; Chief Singletary Deemphasizes the Role of the Police Restraints in Reporting the ME's Finding to Other City Officials

12. On April 10, Good Friday and a government holiday in Rochester, the Monroe County Medical Examiner forwarded its Preliminary Report of the death of Daniel Prude ("the

ME Preliminary Report") to the Rochester Police Department. The ME Preliminary Report stated that the "immediate cause" of Daniel Prude's death was "complications from asphyxia in the setting of physical restraint." In layperson's terms, Mr. Prude had died as the result of a police restraint. "Excited delirium" and PCP intoxication were listed as contributing factors, and the manner of death was listed as homicide. On April 10, the contents of the ME Preliminary Report—including, critically, the finding of the "immediate cause" —were communicated through the ranks of the RPD up to Chief Singletary.

13. On April 10, at 2:14 p.m., Chief Singletary sent a text message to Mayor Warren asking whether they could speak. Chief Singletary intended to report the substance of the ME Preliminary Report to Mayor Warren by telephone. Mayor Warren, who was observing the holiday, did not respond to this text and the two did not speak.

14. On April 10, at 2:26 p.m., Chief Singletary communicated the substance of the ME Preliminary Report to Corporation Counsel Timothy Curtin and Deputy Corporation Counsel Patrick Beath via text message ("the April 10 Text"). In the April 10 Text, Chief Singletary disclosed that the ME's finding was that Mr. Prude had died by "homicide." Chief Singletary also disclosed—but intentionally deemphasized—the fact that Mr. Prude's death had been caused by a physical restraint by RPD officers. He did so by listing the ME's findings of contributing factors ("excited delirium" and PCP intoxication) first, then recasting the "complications from asphyxia in the setting of physical restraint" (which the Preliminary ME Report listed as the "immediate" cause of death) as "resisting arrest," and listing "resisting arrest" as the third "attributing [sic] cause." Finally, in the April 10 Text, Chief Singletary notes that he is "waiting on the Mayor to call [him] back to give her the latest info." Chief Singletary's misdescription of the ME's "immediate cause" finding notwithstanding, Corporation Counsel Curtin and Deputy Corporation Counsel Beath both understood the April 10 Text to mean that the ME had determined that Daniel Prude died, in part, as the result of restraint by RPD officers.[3]

15. On April 10, at 5:34pm, Chief Singletary communicated the substance of the ME Preliminary Report to Communications Bureau Director Justin Roj in email message ("the April 10 Email"). In the April 10 Email, Chief Singletary disclosed that the ME's finding was that Mr. Prude had died by "homicide." Chief Singletary again disclosed but intentionally deemphasized the fact that Mr. Prude's death had been caused by a physical restraint by RPD officers. He did so by listing the ME's findings of contributing factors ("excited delirium" and PCP intoxication) first, recasting the "immediate cause" of "complications from asphyxia in the setting of physical restraint" as "resisting arrest," and listing it as the third "attributing [sic] cause." In the email, Chief Singletary stated that "The Mayor has been in the loop on such since 3/23. Law is in the loop. I am just waiting for the Mayor to call me back to give her the update on the M.E.'s ruling."

Findings 12-15 are discussed in more detail at Section II.B, *infra*.

H. April 13: Chief Singletary Informs the Mayor of the ME's Findings, But Deemphasizes the Role of the Police Restraints in Mr. Prude's Death

16. On April 13, in a one-on-one discussion in a public hallway in the basement of City Hall, Mayor Warren learned from Chief Singletary that the ME had declared the death of Daniel Prude to be a homicide. Chief Singletary described the ME's findings to the Mayor in terms consistent with what he had written in the April 10 Text and the April 10 Email, disclosing but deemphasizing the fact that the ME found that Mr. Prude's death had been caused by a physical restraint by RPD officers. This Finding is discussed in more detail at Section II.C, *infra*.

I. April 16: The OAG Assumes Control of the Criminal Investigation and Mayor Warren is Informed of the OAG's Involvement

17. On April 16, the RPD was informed that the Office of the Attorney General ("OAG") had assumed control of the criminal investigation of the death of Daniel Prude pursuant to Executive Order 147. E.O. 147 appoints the OAG "special prosecutor" in cases involving the death of an unarmed civilian at the hands of law enforcement.

18. On April 27, in a regularly scheduled one-on-one meeting, Mayor Warren learned from Chief Singletary that the OAG had assumed control of the criminal investigation of the death of Daniel Prude pursuant to E.O. 147. Although Mayor Warren testified that she did not recall the contents of that meeting specifically, Chief Singletary testified that he did, and he produced a contemporaneous written checklist of items discussed at the meeting.

J. April 27: The MCU Investigation Concludes, Finding No Misconduct by the Officers

19. On April 27, the RPD's Major Crimes Unit closed its investigation of the Prude Arrest, concluding that the officers' actions were "appropriate and consistent with their training."

20. By April 27, at least four key City officials—the Mayor, the Chief of Police, the Corporation Counsel, and the Director of Communications—and others within City government knew: (i) that Daniel Prude had died as a result of a physical restraint by members of the RPD; and (ii) that the RPD officers involved were the subject of an open criminal investigation by the OAG. No City official suggested that the City disclose any of this information to the City Council or to the public at large at this point.

K. April 3 – May 28: The FOIL Request Is Constructively Denied and then Appealed by the Prude Family's Lawyer

21. On April 3, the Communications Bureau had received the FOIL Request from Mr. Shields, the attorney representing members of the Prude family, seeking the production of all records concerning the Prude Arrest, including BWC footage of the incident. The FOIL Request

was forwarded to the Law Department and RPD without delay. An attorney at the Law Department, Stephanie Prince, was assigned to process the FOIL Request.

22. In early April, RPD officials communicated to Ms. Prince their belief that, because there was an open criminal investigation of the Prude Arrest, the City should not release any records in response to the FOIL Request. On April 6, Ms. Prince was informed that the criminal investigation by the RPD's Major Crimes Unit ("MCU") would be concluded within a couple of weeks—before the May 2 deadline for the City's response to the FOIL Request. Ms. Prince accepted the RPD's suggestion that it forward responsive records for her review *after* the MCU investigation concluded. The MCU investigation was closed on April 27. The RPD did not provide Ms. Prince with any records prior to the City's May 2 deadline for responding to the FOIL Request.

23. On May 2, the City of Rochester's time to respond to the FOIL Request expired and, no records having been produced to Mr. Shields nor any objections having been lodged, the FOIL Request was constructively denied. As of that date, Mr. Shields was permitted to appeal such denial.

24. The City of Rochester never formally asserted that the records of the Prude Arrest were exempt from disclosure under FOIL on *any* basis, including on the basis that the release of such records would interfere with an ongoing law enforcement investigation. Corporation Counsel Curtin, Deputy Corporation Counsel Beath, and Ms. Prince, the lawyers responsible for the City's response to the FOIL Request, agree that the "ongoing investigation" exemption to FOIL, codified at Public Officers Law § 87(2)(e)(i), was not a lawful basis for the City to withhold records in response to the FOIL Request, absent (a) an active RPD investigation or (b) a request from the OAG and a specific factual basis to conclude that release would in fact interfere with the OAG's investigation.

25. On May 28, Mr. Shields, counsel for the Prude family, appealed the constructive denial of the FOIL Request. This appeal set June 11 as a deadline for the City to respond to the appeal.

Findings 21-25 are discussed in more detail at Section II.D, *infra*.

L. June 4-5: RPD Pressures the Law Department to Withhold the BWC Footage

26. In response to Ms. Prince's request to the RPD that it forward responsive records for release under FOIL, officials at the RPD, including Chief Singletary, raised concerns in early June with Corporation Counsel Curtin and others at the Law Department about release of the BWC footage of the Prude Arrest. These RPD officials, including Chief Singletary, advocated against release of the BWC footage under FOIL. Their concerns centered on the belief that

release of the BWC footage might spark civil unrest or violence in the City of Rochester, amidst demonstrations then occurring over the death of George Floyd, which had occurred on May 25, 2020.

27. On June 4, at the urging of RPD officials, Ms. Prince of the Law Department contacted Assistant Attorney General Jennifer Sommers, an attorney at the OAG assigned to the Special Investigations and Prosecutions Unit ("SIPU"), to inform her of the FOIL Request and determine if the OAG objected to disclosure of the BWC footage about the Prude Arrest. The OAG had assumed jurisdiction over the Prude investigation in mid-April.

28. On June 4, Ms. Sommers told Ms. Prince that, while the SIPU itself did not typically release video in the midst of an investigation, it would not dictate to the City of Rochester how it should fulfill its legal obligations in response to the FOIL Request. Ms. Sommers explained that the SIPU's practice was to permit civil attorneys and family members to review video footage of incidents at the OAG's office while investigations were pending as a way of remaining transparent while maintaining the integrity of the SIPU's investigations.

29. The existence of the OAG investigation was not a lawful basis to delay or deny release of the BWC footage of the Prude Arrest in response to the FOIL Request. The OAG never asserted that disclosure of the BWC footage would interfere with its ongoing investigation. *See* N.Y. Pub. Off. Law § 87(2)(e)(i). The OAG also did not directly ask the City to delay or deny release of the BWC footage. Ms. Sommers did tell Ms. Prince that such disclosure "could" interfere with OAG's investigation, and Ms. Prince understood Ms. Sommers to be expressing a preference against the City's disclosure of the BWC footage. The OAG did not provide the City with a factual basis to conclude that such disclosure would interfere an ongoing investigation. On June 4, Ms. Prince, the lawyer who had directly spoken to Ms. Sommers of the SIPU, emailed Corporation Counsel Curtin and informed him about the SIPU's practices regarding the disclosure of video of incidents under investigation.

30. Mr. Curtin understood that the existence of the OAG's criminal investigation and the position that SIPU attorney Jennifer Sommers took in her June 4 call with Ms. Prince were not lawful bases to delay or deny release of the BWC footage of the Prude Arrest.

31. In a June 5 meeting, senior RPD officials, including Chief Singletary, advocated with Mr. Curtin and his deputy to delay release of the BWC of the Prude Arrest, based on concerns that disclosure could spark civil unrest or violence amidst demonstrations then occurring over the death of George Floyd. Concerns about the public reaction to the BWC footage were not a lawful basis to deny release of the BWC footage under FOIL.

32. Nonetheless, at the conclusion of the June 5 meeting, Chief Singletary understood from his discussions with Mr. Curtin that the Law Department would not release the BWC

footage of the Prude Arrest to the family under FOIL until after the OAG completed its investigation.

Findings 26-32 are discussed in more detail at Section II.D, *infra*.

M. June 11: The Law Department Produces Paper Records to Mr. Shields But Demands a HIPAA Authorization to Provide the BWC Footage

33. As of June 11, the City did not have a legal basis under FOIL to withhold records of the Prude Arrest, including the BWC footage. On June 11, the Law Department produced paper records (but not the BWC footage) to attorney Elliott Shields in response to the FOIL Request. The email from Ms. Prince accompanying the paper records stated the City would produce the un-redacted BWC footage of the Prude Arrest once Mr. Shields provided an executed authorization under the Health Insurance Portability and Accountability Act from the Estate of Daniel Prude (the "HIPAA Authorization"). Although Ms. Prince's email did not explicitly cite FOIL's personal privacy exemption (Public Officer's Law § 87(2)(b)) as a basis for the redactions to the BWC footage, the email explained that the HIPAA Authorization was necessary because the footage contained "video of medical treatment by EMTs and later in a hospital." As an alternative, Ms. Prince also offered to arrange for Mr. Shields to receive redacted BWC footage without a HIPAA authorization. Mr. Shields had already consented to redaction of Mr. Prude's "genitals" in the BWC footage, via email.

34. The Rochester Police Department is not a covered entity under HIPAA. Therefore, there was no legal requirement that a HIPAA authorization be provided to release the BWC footage in response to a FOIL request. Ms. Prince testified that she knew that the HIPAA Authorization was not required but that she asked for it as "shorthand" to verify that Mr. Shields was authorized to receive un-redacted BWC footage revealing "medical privacy" issues. The Law Department's request for an authorization from the Prude family to disclose the un-redacted BWC footage showing "medical treatment by EMTs" at the scene of Mr. Prude's arrest was not legally supported. No "medical privacy" issues existed in the BWC footage that would have required the Prude Family to provide a release to obtain the BWC footage from the scene of Mr. Prude's arrest. Thus, the request for such a release was unnecessary and it delayed the release of the records to the Prude family.

35. Mr. Shields responded to the June 11 email on June 12 agreeing to provide the requested HIPAA Authorization. On July 23, Mr. Shields submitted to the Law Department an executed HIPPA release. At this point, the Law Department asked the RPD's Body-Worn Camera Unit to prepare the BWC footage of the Prude Arrest. The BWC footage was ready for release to Mr. Shields by August 4.

Findings 33-35 are discussed in more detail at Section II.E, *infra*.

N. July 30: The Prude Family Files a Notice of Claim Against the City of Rochester

36. On July 30, the Estate of Daniel Prude submitted a Notice of Claim to the City of Rochester. The Notice of Claim asserted that members of the RPD had caused the death of Daniel Prude and that the City was legally responsible to compensate the Estate for that loss. The Notice of Claim fixed the amount of claimed damages at $75 million.

37. Mayor Warren was not made aware of the Prude family and Estate's preservation request, the FOIL Request, or the Notice of Claim until August 4.

O. August 4: Mayor Warren, Corporation Counsel Curtin, and other Senior Officials View the BWC Footage for the First Time

38. Although Mayor Warren, Communications Director Justin Roj, Corporation Counsel Timothy Curtin, and other Law Department attorneys were aware as early as late March and early April of the circumstances of the Prude Arrest, none of these individuals viewed the BWC footage until the first week of August.

39. Deputy Corporation Counsel Beath was the first City official outside the RPD to view the BWC footage. Mr. Beath first viewed the BMC footage of the Prude Arrest on August 3 or 4, as part of his review of the Estate's Notice of Claim. Mr. Curtin first viewed the BWC footage on the morning of August 4 at the suggestion of Mr. Beath. Mr. Roj viewed the BWC footage for the first time on August 5, in Mr. Beath's office.

40. On August 4, after viewing the BWC footage, Mr. Curtin texted Chief Singletary to inform him about the Notice of Claim and to ask if Mayor Warren had seen the BWC footage of the Prude Arrest. Chief Singletary responded that the Mayor had not viewed the BWC footage. At that point, Mr. Curtin forwarded the link containing the BWC footage to Mayor Warren and went to her office to discuss it with her.

41. Mayor Warren first viewed the BWC footage of the Prude Arrest on August 4. Mr. Curtin and Deputy Mayor James Smith were present. Chief Singletary later joined this meeting and the BWC footage was again reviewed. Mayor Warren expressed deep shock, anger, and dismay at the conduct of the RPD officers, as shown on the BWC videotape—especially at the conduct of Officer Vaughn in pressing Mr. Prude's head into the pavement, and at the laughing and cavalier attitude displayed by officers at the scene. Mayor Warren also made statements to the effect that Chief Singletary had not fully described the precise nature of the Prude Arrest in their previous discussions.

P. August 4: Top City Officials Discuss Officer Discipline, Public Disclosure, and the FOIL Request

42. In meetings on August 4, Mayor Warren, Chief Singletary, Corporation Counsel Curtin, and Deputy Mayor Smith discussed whether the officers involved in the Prude Arrest should be disciplined and whether the public should be informed.

43. Mayor Warren expressed her desire to see the officers involved in the Prude Arrest disciplined immediately. Chief Singletary stated that he was opposed to disciplining the officers because he believed their conduct was consistent with training. Chief Singletary also pointed to the pendency of the OAG's investigation and the PSS investigation (which had been opened on March 23 but not completed pending the criminal investigation) as a basis not to take disciplinary action against the officers at that time.

44. Corporation Counsel Curtin: (i) advised the Mayor and Chief Singletary not to commence disciplinary action against any officer involved in the Prude Arrest; (ii) stated that the City was prohibited from taking any action on the Prude Arrest during the pendency of the investigation being conducted by the OAG pursuant to E.O. 147; and (iii) conveyed that the OAG had requested that the City take no action with respect to disciplining the officers.

45. There was no legal basis for Mr. Curtin to have asserted that the existence of the OAG's E.O. 147 investigation precluded the City of Rochester from commencing disciplinary proceedings against the officers involved in the Prude Arrest.

46. There was no factual basis for Mr. Curtin to have asserted that the OAG requested that the City of Rochester refrain from commencing disciplinary proceedings against the officers involved in the Prude Arrest.

Findings 43-46 are discussed in more detail at Section II.G, *infra*.

47. During the August 4 meetings, Mayor Warren stated that she wanted to notify the public about the Prude Arrest "immediately," but the conversation about public notification "didn't go very far," according to Deputy Mayor Smith, because of Mr. Curtin's immediate assertion that the OAG had instructed the City to "stand down" and not make any public statements about the Prude Matter. In fact, the OAG had *not* instructed the City to "stand down" and not make any public statements about the Prude Matter, and there was no factual basis for Mr. Curtin to have asserted that it had. Finding 47 is discussed in more detail at Section II.F, *infra*.

48. Mayor Warren accepted Mr. Curtin's assertion and did not question it. She did not ask Mr. Curtin if he had personally spoken to anyone at the OAG about the issue of public disclosure of the Prude Arrest by the City (he had not). She did not ask Mr. Curtin to (re)visit the issue of public disclosure with the OAG, to take the matter to a higher authority within the

OAG, or to conduct legal research on the question. And, prior to September 2, when the BWC footage was released by the Prude family, Mayor Warren herself made no effort to discuss the matter with the Attorney General or to instruct anyone else to do so on her behalf.

49. On August 4, Corporation Counsel Curtin informed Mayor Warren of the FOIL Request, which sought, among other things, the BWC footage of the Prude Arrest. Mr. Curtin informed Mayor Warren that the City of Rochester did not have a legal basis to withhold the BWC footage.

Q. August 7: The Law Department Attempts to Settle the Prude Claim

50. On August 4, in meetings around the viewing of the BWC footage, Corporation Counsel Curtin informed Mayor Warren of the Notice of Claim that had been filed by Mr. Prude's Estate.

51. Beginning on August 7**,** the Law Department, with Mayor Warren's knowledge, conducted negotiations with counsel for the Prude family with a goal of settling the Prude Estate's claims against the City of Rochester. Mr. Curtin and Mr. Beath kept Deputy Mayor Smith apprised of these settlement negotiations.

52. During this period, Mr. Curtin and Mr. Beath discussed the possibility that an early settlement of the Prude Estate's claims might obviate the City's need to release the BWC footage pursuant to FOIL, or at least might permit the City to better manage that release.

53. These settlement negotiations between the City of Rochester and the Prude Estate did not result in a settlement.

R. August 6- 7: Mayor Warren's Letter to Chief Singletary Documenting Her Concerns About the Prude Arrest, and the Chief's Response

54. Over the course of August 5 and August 6, Mayor Warren revised and finalized a lengthy email to Chief Singletary ("the August 6 Letter"). The initial draft of the August 6 Letter had been done by Deputy Mayor Smith and reviewed by Mr. Curtin.

55. The August 6 Letter reflected Mayor Warren's focus on: (i) the conduct of one officer shown in the BWC footage—Officer Mark Vaughn, who held Mr. Prude's head to the pavement during the restraint—and specifically his "demeanor," referring to Officer Vaughn's "laughing and joking" during the encounter, which the Mayor described as "outrageous"; and (ii) the Mayor's frustration at not being able to impose discipline on the officers involved in the Prude Arrest.

56. The August 6 Letter also stated that, had the Mayor "been given a clearer picture of the precise nature of the arrest" earlier, she would have acted differently—an indirect and

implicit criticism of Chief Singletary, who was the only official to brief the Mayor on the Prude Arrest prior to August 4. Relative to the initial draft submitted by Deputy Mayor Smith, the August 6 Letter reflects a softening of criticism of Chief Singletary for his prior description(s) of the Prude Arrest to Mayor Warren.

57. On August 7, Chief Singletary responded to the August 6 letter with his own lengthy email (the "August 7 Response"). The August 7 Response describes Chief Singletary's actions in response to the Pride Arrest; it does not respond directly to the Mayor's assertion that she had not been given "a clearer picture" of the Prude Arrest prior to August 4.

S. August 6: Mayor Warren's Conversation with President Scott About the Prude Arrest

58. On August 6, Mayor Warren called City Council President Loretta Scott to discuss the Prude Arrest and Mr. Prude's death. This was the first President Scott had heard of the matter. In describing the Prude Matter in that call, Mayor Warren emphasized the role of PCP in Mr. Prude's death and deemphasized the use of force by police. Mayor Warren asked President Scott to keep the Prude Matter confidential, citing the OAG's ongoing investigation. President Scott did not disclose this information to anyone else. Finding 58 is discussed in more detail at Section II.H, *infra*.

T. August 12: The Law Department Sends the BWC Footage to the Prude Family

59. On August 12, following additional internal discussions within City government, the Law Department mailed the unredacted BWC footage of the Prude Arrest to attorney Elliott Shields pursuant to its obligations under FOIL. Ms. Prince, under the supervision of Deputy Corporation Counsel Beath, mailed the footage in the mistaken belief that Mr. Curtin had authorized the release. In fact, Corporation Counsel Curtin did not intend for the BWC footage to be released to Mr. Shields on August 12. When Mr. Curtin learned a few days later that Ms. Prince had mailed the BWC footage to Mr. Shields, he expressed upset, questioning Ms. Prince's judgment, and stating that the "City will burn" and "we will all lose our jobs" once the footage became public. Thereafter, Mr. Curtin informed Mayor Warren that the BWC footage had been released.

60. Based on the outcome of his June 5 meeting with Mr. Curtin and Mr. Beath, Chief Singletary still believed in August that the Law Department would not release the BWC footage until after the OAG's SIPU completed its investigation of the Prude Arrest. As late as August 26, senior RPD officials were unaware that the BWC footage had been mailed to the Prude family's counsel two weeks earlier, and still believed that the BWC footage would not be released until after the SIPU completed its investigation, a circumstance that they estimated could be a year away.

U. July-August: Councilmember Lupien's Knowledge of the Prude Arrest

61. In mid-July, City Councilmember Mary Lupien learned from Prude family attorney Elliott Shields that Mr. Prude had died as the result of a police restraint. Ms. Lupien did not raise the issue with the Mayor, the Police Chief, or anyone else in the Mayoral Administration, and she made no public statements about the matter at that time.

62. Councilmember Lupien did not inform other City officials or the public of the Prude Arrest and Mr. Prude's death because: (i) Mr. Shields had informed her that he and certain activists in the community were "trying to keep [the Prude matter] very quiet"; (ii) she believed that others on the City Council "already knew" about the incident; and (iii) she was concerned that, if she alerted other City officials, the Mayoral Administration might seek to preempt the family and the activists' release of the BWC footage in order to, in her words, "control the narrative" around the incident.

63. In August, Councilmember Lupien learned that the Prude family and their counsel intended to release the BWC footage at a news conference to be held on September 2. On August 27, she received the BWC footage of the Prude Arrest and, on August 31, she viewed that footage. Also in August, and on a strictly confidential basis, she mentioned a "death in custody" to Councilmember Ortiz and Council Chief of Staff Scanlon, but she provided no details. Ms. Lupien did not inform any member of City government (other than her staff) about the Prude Arrest or the family's plans because she continued to believe that, if she did so, the Mayoral Administration might preempt the family's plans for release.

V. September 2: The Prude Family Holds a News Conference to Release the BWC Footage

64. On September 2, the Prude family and their counsel held a news conference in Rochester at which the BWC footage of the Prude Matter was made publicly available for the first time. In the days and weeks that followed, Mayor Warren, Chief Singletary, Corporation Counsel Curtin, President Scott, Councilmember Lupien, and other City officials all made public statements about their knowledge the Prude Matter during the preceding months.

W. September 3 -16: City Officials Make Public Statements About the Prude Matter That Are Untrue

65. Mayor Warren stated at a news conference on September 3 that, prior to August 4, she was not aware that RPD officers had physically restrained Mr. Prude on March 23. That statement was untrue. Mayor Warren knew as of March 23 that RPD officers had physically restrained Mr. Prude in a manner that went beyond the normal physical contact incident to arrest.

66. Mayor Warren stated at a press conference on September 3 and in a September 16 press interview that Chief Singletary had informed her prior to August 4 that Mr. Prude had

become unconscious during a mental health arrest as the result of an "overdose." On September 3, Mayor Warren stated that Chief Singletary had told her that Mr. Prude "[e]xperienc[ed] and ultimately d[ied] from a drug overdose in police custody." Those statements were untrue. Chief Singletary did not tell Mayor Warren that Mr. Prude's death was caused by an overdose.

67. Mayor Warren stated at press conferences on September 3 and September 6 and in a September 16 press interview that, prior to August 4, she was not aware that the ME had ruled the death of Daniel Prude a homicide. Those statements were untrue. Chief Singletary informed Mayor Warren on April 13 that the ME had determined that Mr. Prude's death was a homicide.

68. Mayor Warren stated at press conferences on September 2 and 3 that the OAG investigation had "precluded" the City from making public statements about the Prude Matter. These statements were untrue, although made in good faith. As discussed *supra,* the OAG's E.O. 147 jurisdiction over the Prude Matter had not legally "precluded" the City from releasing information to the public about the Prude Matter, nor had the OAG instructed or requested that the City withhold information about the Prude Matter from the public. Mayor Warren's statements about the impact of the OAG investigation were made in reliance upon Corporation Counsel Curtin's assertions to her in early August that the OAG had asked the City not to disclose any information about the Prude Matter to the public and on his advice that the City not do so. On September 2, Mayor Warren informed Attorney General James that she intended to make a public statement about the Prude Matter that day, in response to the Prude family's news conference; Attorney General James did not object.

69. Corporation Counsel Curtin stated at a press conference on September 4 that the City of Rochester was "not allowed" (or not "authorized" by the OAG) to release the BWC footage of the Prude Arrest footage to the public, and that there was an "agreement" or "deal" between the City and the OAG that City officials would refrain from making any public statements about the Prude Arrest until the OAG investigation was completed. Those statements were untrue. The City was not barred from publicly disclosing the Prude Arrest and death. The OAG never instructed or requested that the City refrain from making public statements about the Prude Arrest to the public, nor was there any agreement that the City would do so.

70. Chief Singletary, at a news conference on September 6, declined to respond directly to several questions about the extent to which he had informed Mayor Warren of the Prude Matter. When a reporter asked Chief Singletary whether Mayor Warren was "informed of the autopsy report that showed it was a homicide," he responded: "the Mayor just said she was not." This statement constitutes untrue statements by omission. Chief Singletary had discussed the Prude Arrest with Mayor Warren on April 13. During this conversation he informed her that the ME had determined that Mr. Prude's death was a homicide.

71. Between March 23, 2020, when the arrest occurred, and September 2, 2020, when the Prude family released the BWC footage of the incident, City officials suppressed information about the circumstances of the arrest and death of Daniel Prude.

II. DISCUSSION OF SELECTED FINDINGS

The Findings set forth above are derived from two sources: (i) documentary and testimonial evidence collected in the Investigation, such as reports and memoranda, emails and text messages, and sworn testimony taken live and/or in writing from the twelve witnesses who gave such testimony; and (ii) the Independent Investigator's evaluation of legal issues.

As is customary for any factfinder, the Independent Investigator was at times confronted with pieces of evidence that did not align with one another: documents contained inconsistent information, or information that was inconsistent with other evidence; witnesses remembered events differently; and, on some occasions, witnesses contradicted one another or contested the contents or implications of a document. In cases where this occurred, and where the disputed fact or facts were material to making a Finding, the Independent Investigator was required to weigh the competing evidence, including by assessing the quality of evidence on all sides of a disputed issue and the credibility of witnesses. The Independent Investigator also conducted research and rendered legal judgments—including judgments that may differ from those reached or alleged to have been rendered in real time by attorneys involved in the underlying events.

In this section, the Report discusses and explains in greater detail how it reached conclusions on key issues where conflicting evidence was presented, or where legal judgments were necessary to the result. Where there is no discussion of such disputes or the need to make such judgment, the reader can assume that any factual conflicts or differing legal judgments were not material to the Findings—that is, that it was not necessary to resolve a specific factual dispute or render a specific legal judgment to make the Findings necessary to the Report.

A. Chief Singletary Informed Mayor Warren on March 23 that the RPD Physically Restrained Mr. Prude (Findings 1-4)

The Independent Investigator found that, on March 23, over the course of two telephone conversations with Chief Singletary, Mayor Warren learned: that RPD officers had physically restrained Mr. Prude in a manner that went beyond the handcuffing and pat-down search that is normally incident to arrest; that Mr. Prude was injured to the point where he was hospitalized in critical condition; and that the officers involved were the subject of a criminal investigation. The Independent Investigator further found that, in the same conversations, Chief Singletary did not tell Mayor Warren that Mr. Prude had suffered a "drug overdose."

The basis for these Findings is as follows: (i) Prior to fully briefing Mayor Warren on March 23, Chief Singletary gathered and reviewed information about the Prude Arrest from a number of sources and in a number of forms, including both written reports and the BWC footage of the incident; (ii) in the first of two phone calls on March 23, Chief Singletary told Mayor Warren that he would review the BWC footage of the Prude Arrest and report back to her on its contents; (iii) the physical restraints applied to Mr. Prude by RPD officers at the point that

he lost consciousness were readily visible in the BWC footage and extensively described in other reports that Chief Singletary reviewed before the second phone call; (iv) based on the information he had gathered, Chief Singletary determined that the Prude Arrest would result in both a criminal investigation and an internal RPD investigation of the officers' conduct, and he so informed Mayor Warren; (v) this determination would be inconsistent with a definitive statement, made in the same calls and time frame, that Mr. Prude's injuries were simply the result of "overdose"; (vi) Chief Singletary had no history of failing to timely report to the Mayor on RPD matters, much less entirely leaving out important elements of relevant events, as the use of physical force here clearly was; and (vii) Chief Singletary's testimony as to what he told Mayor Warren was credible, supported by contemporaneous or nearly contemporaneous documentation.

The Independent Investigator concludes that it is not plausible that Chief Singletary would have contacted Mayor Warren early in the morning of March 23 about an incident just hours old, told her that he was going to personally view BWC footage of the incident, report back to Mayor Warren the same day that he had viewed the BWC footage of the incident—a fact that might well have elicited a request by the Mayor to see the same footage—yet fail to advise her that the footage depicted RPD officers subjecting a person to physical restraints that went beyond the handcuffing and pat-down search that is normally incident to arrest. Chief Singletary's later statements—specifically, his March 31 and April 10 texts to Mayor Warren (referencing the ME's need to determine the cause of Mr. Prude's death) and his April 13 email to Communications Director (which described police restraints as features of the Prude Arrest, and stated that the Mayor was "in the loop") —also support the inference that Chief Singletary had described the Prude Arrest as involving physical restraint in his initial discussions with Mayor Warren.

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Chief Singletary called Mayor Warren at approximately 8:30 a.m. on March 23 to inform her of the Prude Arrest.[4] It was a brief call, and they spoke for a few minutes. According to Mayor Warren, Chief Singletary "stated that we had a gentleman that was visiting from Chicago whose brother had called stating that he was on PCP, having some mental health challenges and was in distress, and that [Chief Singletary's] understanding was that [the man] was taken into -- while taking him into custody, he had, you know, lost consciousness. They had taken him to the hospital. However, because he was, you know, high off of PCP, he lost consciousness and was probably not going to make it, and that he would let me know what -- you know, what came of it, of this situation."[5] Mayor Warren testified that Chief Singletary told her that he would view the BWC footage of the incident and then report back to her.[6]

Chief Singletary testified that, although he only had preliminary information about the incident at the time of the first call to Mayor Warren, "I knew that the officers had restrained Mr. Prude, so I advised the mayor that the officers had physical contact with Mr. Prude at that

point."[7] Chief Singletary testified that his description of events included that Mr. Prude may have been under the influence of the drug PCP.[8] He testified that Mayor Warren asked questions about Mr. Prude's conduct, to which he responded that "[I]nitially . . . Mr. Prude was compliant when the officers had taken him into the custody, as well as at some point the officers went hands-on a [sic] with Mr. Prude and at some point he went unconscious."[9] Chief Singletary testified that he told the Mayor that he would view the BWC footage of the incident that morning, and that the Mayor asked to be updated after he had watched the BWC footage.[10]

At approximately 10:00 a.m., Chief Singletary viewed the footage from the Prude Arrest that had been captured on RPD Officer Santiago's and Officer Vaughn's body-worn cameras.[11] Both Santiago and Vaugh had participated in the physical restraint of Mr. Prude.

That morning and early afternoon, Chief Singletary also reviewed written accounts of the Prude Arrest generated by his command staff, including an email written by Captain Frank Umbrino and forwarded by Deputy Chief Joseph Morabito entitled the "Jefferson Ave Incident." Among other points, this email stated: "[Officer] Vaughn applied the Segment technique to the victims [sic] head, [Officer] Talliday had his knee on the victims [sic] lower back and [Officer] Santiago held his feet."[12] Chief Singletary also received an email from Deputy Chief Mark Simmons at noontime, forwarding an email written by Lieutenant Laszlo Tordai. This email summarized the Prude Arrest, stating that "Officers performed ground stabilization techniques and segmenting" and that Mr. Prude was "in critical condition" and "[h]is long term prognosis is not good."[13] Chief Singletary testified that he relied on these two documents to brief Mayor Warren that afternoon.

Mayor Warren and Chief Singletary spoke by telephone a second time on March 23 for 23 minutes at around 1:30 p.m., as part of their regularly scheduled weekly meeting.[14] Mayor Warren testified that, in the second call, Chief Singletary told her "that he had reviewed the video and that officers had acted in accordance with policy and that this gentleman was in the hospital and most likely would die from his PCP overdose. . . . But that he [Chief Singletary] was not concerned about anything because, based on his review of everything, this was, the officers acted in accordance with our policies and procedures."[15] Mayor Warren testified that she asked Chief Singletary if "we did everything by the book," to which he replied "yes."[16]

Mayor Warren testified that, in this second call, Chief Singletary did not tell her that Mr. Prude had been naked and in distress when he encountered police, or that officers had placed Mr. Prude in handcuffs or placed a spit sock over his head.[17] According to Mayor Warren, Chief Singletary also did not describe the BWC footage.[18] Mayor Warren testified that Chief Singletary did not mention or describe any physical contact of any kind between the RPD officers and Mr. Prude.[19] By the end of the second phone call, Mayor Warren's understanding was that the RPD officers did not make "any [physical contact with Mr. Prude], outside of the

normal physical contact when taking someone into custody," which would include patting a person down, putting them in handcuffs, and placing them in a car or on a stretcher.[20]

Finally, Mayor Warren testified that Chief Singletary told her that, because the man involved "likely would die from his PCP overdose," and therefore it would be an "in-custody death," the RPD's PSS would investigate, and the MCDA and perhaps the OAG would "do a review."[21] Mayor Warren testified that, by the end of the day on March 23, it was *not* her understanding that the officers involved in the Prude Arrest "would be under criminal investigation" by the MCDA or the OAG. She testified that she understood that these prosecutorial offices would conduct a "routine review" of "documents," but not a "criminal investigation" "because, by the end of that call, I believe[d] that our officers were acting in accordance to [sic] their policies and procedures."[22]

Chief Singletary testified that when he briefed Mayor Warren, he had two documents in front of him which he had specifically highlighted as a reference in advance of the call.[23] One was the email from Deputy Chief Morabito forwarding Captain Umbrino's summary of the "Jefferson Ave incident."[24] The second was the email that Lieutenant Tordai had written about the Prude Arrest.[25] Chief Singletary testified that he used these documents to brief Mayor Warren, but he did not provide copies of either document to the Mayor.

Chief Singletary testified that, during the 1:30 p.m. call, he clearly described to the Mayor that the officers had physically restrained Mr. Prude. He testified that he told the Mayor that the officers went "hands-on" when Mr. Prude, seated and cuffed, tried to get up from the ground; and that the officers held Mr. Prude's head to the ground, put pressure on his back, and held his legs.[26] Chief Singletary testified: that he expressly described the specific actions of each of the main officers involved in the Prude Arrest; that he "explained to the Mayor that there was no punches, there was no strikes, it was just stabilization techniques that the officers had performed on Mr. Prude";[27] and that Mr. Prude was wearing a "spit sock" during the restraint. He testified that he told the Mayor that there was "nothing egregious" in the physical restraint of Mr. Prude,[28] and that the incident was "nothing like" the Christopher Pate case.[29] He also testified that he informed the Mayor that Mr. Prude's medical prognosis was "not good."[30]

Chief Singletary denied telling Mayor Warren that the officers did everything "by the book."[31] He also denied describing the cause of Mr. Prude's injuries as an "overdose."[32]

When asked directly in their depositions, Mayor Warren, Deputy Mayor Smith, and Corporation Counsel Curtin all testified that Chief Singletary had no history of failing to timely inform the Mayor of important RPD matters.[33]

By the accounts of both Mayor Warren and Chief Singletary, the discussions between them on March 23 concerning the Prude Arrest included significant detail, at the very least, about next steps in the investigations. The Prude Arrest was given significant attention by

both—and their accounts overlap to a significant degree. Both witnesses testified that: (i) the communication began with an early morning telephone call to the Mayor about the incident that had happened just hours before; (ii) at the conclusion of that first call, the Chief stated that he would review the BWC footage and report back to the Mayor after he had done so; (iii) the Chief indeed spoke to the Mayor a second time that day after he had viewed the BWC footage; and (iv) the Chief informed the Mayor that there would be two investigations (or "reviews")—a criminal one and an internal disciplinary one—of the involved RPD officers.

These facts, taken together with Chief Singletary's testimony and other evidence, including the paper record of morning discussions, emails, and memos about the incident among the top staff at the RPD, and the Chief of Police personally reviewing the BWC footage (as discussed with the Mayor) reflect an extraordinary level of activity around the Prude Arrest. Such activity is consistent with the extraordinary nature of the issue, namely, the prospect of the death of an unarmed man in police custody, one of the most significant circumstances a police agency can face, and an extreme rarity in Rochester.

The conduct of Chief Singletary in the weeks that followed the Prude Arrest is also relevant. Chief Singletary twice texted Mayor Warren about Mr. Prude, once on March 31, to inform her that Mr. Prude had died and that the ME would determine the cause of death, and a second time on April 10 to inform her that he had received the ME's Preliminary Report. Chief Singletary's focus in late March and early April on the ME's anticipated and actual finding as to the cause of Mr. Prude's death is inconsistent with the suggestion that, weeks earlier, he had summarily declared the cause of Mr. Prude's injuries to be "an overdose." In addition, Chief Singletary's April 10 Text to Communications Director Justin Roj—which informs the Communications Director that "The Mayor has been in the loop since 3/23" on the Prude Arrest—disclosed in its text and attachments the use of restraints on Mr. Prude by police, and that such restraints caused the death. It would be inconsistent with Chief Singletary's history of timely reporting of significant events to have informed the Communications Director of these facts, but not Mayor Warren.

Based on the foregoing, the Independent Investigator found that it is more likely that not that, on March 23, over the course of two conversations with Chief Singletary, Mayor Warren was informed that RPD officers had physically restrained Mr. Prude in a manner that went beyond the handcuffing and pat-down search that is normally incident to arrest. This does not constitute a finding that Chief Singletary expressly described to Mayor Warren each specific action of each officer involved in the Prude Arrest. Rather, the Independent Investigator finds that Mayor Warren was informed of a substantial physical restraint, and that Chief Singletary did not assert, in these calls, that Mr. Prude's injuries were the result of an overdose.[34]

B. In Reporting the ME's Preliminary Findings to Other City Officials, Chief Singletary Disclosed But Intentionally Deemphasized the Role of the Police Restraint as the Immediate Cause of Mr. Prude's Death (Findings 12-15)

The Independent Investigator found that, in reporting the ME's findings to other City officials on April 10, Chief Singletary disclosed but intentionally deemphasized the fact that Mr. Prude's death had been caused by a physical restraint by RPD officers. The basis for this Finding is as follows.

On April 10, Chief Singletary was informed that the "IMMEDIATE CAUSE" of Daniel Prude's death as determined by the ME was "complications of asphyxia in the setting of physical restraint." Despite having received this information, Chief Singletary substituted the term "Resisting Arrest" for "asphyxia" on two subsequent descriptions of the ME's finding (the April 10 Text to Corporation Counsel Timothy Curtin and Deputy Corporation Counsel Patrick Beath and the April 10 Email to Mr. Roj). Chief Singletary testified that he used the term "resisting arrest" because he recalled from the BWC footage that "it appeared that the officers were physically involved with Mr. Prude, the restraining while [he] was on the ground, while he was somewhat resisting them a little bit."[35]

It is more likely than not that Chief Singletary was informed of the finding of asphyxia, but that he wished to shift the focus of responsibility for Mr. Prude's death from the conduct of RPD officers who restrained him to Mr. Prude himself. For this reason, in his April 10 communications with Mr. Curtin, Mr. Beath, and Mr. Roj, Chief Singletary highlighted the findings that Mr. Prude was under the influence of PCP and was found to have been suffering from "excited delirium" at the time of his death, and minimized the role of police restraint.

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April 10, 2020 was Good Friday and a Rochester City public holiday. Early that morning, the ME emailed the RPD a "Death Confirmation and Summary Report" finding that "MANNER OF DEATH" of Daniel Prude was "Homicide."[36] The ME Preliminary Report stated that the "IMMEDIATE CAUSE" of Mr. Prude's death was "complications from asphyxia in the setting of physical restraint"—i.e., that the restraint of Mr. Prude by RPD officers was the principal cause of his death.[37] The report listed "excited delirium" and PCP intoxication as contributing factors, in that order.

CAUSE OF DEATH

IMMEDIATE CAUSE: **Complications of asphyxia in the setting of physical restraint**

DUE TO: **Excited delirium**

DUE TO: **Acute phencyclidine intoxication**

OTHER SIGNIFICANT CONDITIONS:

MANNER OF DEATH: **Homicide**

38

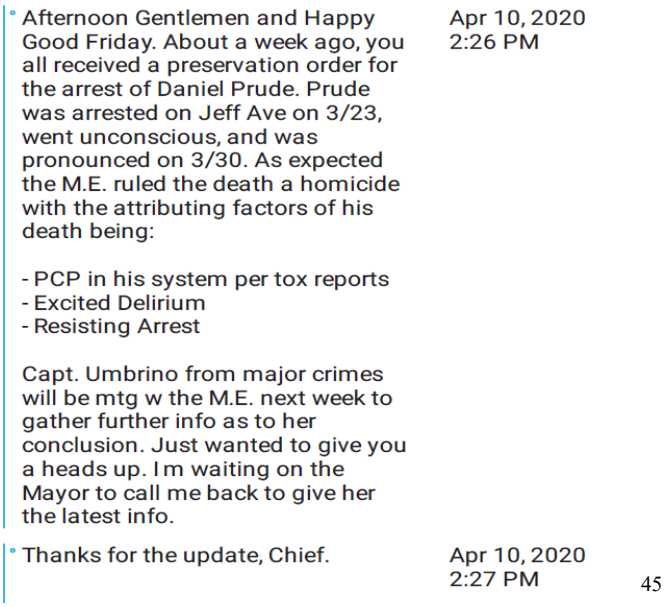
Early that afternoon, RPD staff officers circulated the ME Preliminary Report with the following comment, eventually to Deputy Chief Morabito: "No surprises, ruled homicide, but the immediate cause was complications of asphyxia in the setting of physical restraint due to excited delirium and PCP intoxication. PCP was in his system (and that's from the sample of the hospital blood when he was admitted that the ME tested)."[39]

Deputy Chief Morabito notified Chief Singletary about the ME Preliminary Report that afternoon.[40] Chief Singletary testified that Deputy Chief Morabito informed him that the report listed PCP intoxication and excited delirium as the factors that caused Mr. Prude's death, but that Deputy Chief Morabito never used the term "asphyxia" in describing the ME's findings on April 10. However, Chief Singletary acknowledged his clear understanding from Deputy Chief Morabito was that the ME had found that the cause of Mr. Prude's death was the restraint by police.[41]

At 2:14 p.m. on April 10, Chief Singletary sent Mayor Warren the following text message: "Mayor, when you have a moment can you give me a call. Want to feel [sic] you in on the ME'a [sic] ruling for Daniel Prude, the gentleman from Jefferson Ave who was on PCP."[42] In this brief text to Mayor Warren, as on other occasions, Chief Singletary identified Mr. Prude by referring to his PCP use. Mayor Warren never responded to this text message and did not call Chief Singletary to discuss the ME Preliminary Report.

Notably, Chief Singletary did not send Mayor Warren a substantive text on the ME's Preliminary Report (i.e., mentioning the "homicide" finding or the specific cause and additional factors contributing to the death), even though he wrote to the Mayor in greater detail on other topics that same day,[43] and even though he later that day provided greater detail to other officials, like Corporation Counsel Curtin and Communications Director Roj.

At 2:26 p.m., Chief Singletary next sent a text message to Corporation Counsel Curtin and Deputy Corporation Counsel Beath regarding the ME Report.[44]



Afternoon Gentlemen and Happy Good Friday. About a week ago, you all received a preservation order for the arrest of Daniel Prude. Prude was arrested on Jeff Ave on 3/23, went unconscious, and was pronounced on 3/30. As expected the M.E. ruled the death a homicide with the attributing factors of his death being:

- PCP in his system per tox reports
- Excited Delirium
- Resisting Arrest

Capt. Umbrino from major crimes will be mtg w the M.E. next week to gather further info as to her conclusion. Just wanted to give you a heads up. I m waiting on the Mayor to call me back to give her the latest info.

Apr 10, 2020 2:26 PM

Thanks for the update, Chief.

Apr 10, 2020 2:27 PM

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Chief Singletary did not inform Mr. Curtin and Mr. Beath that the ME had found that the "IMMEDIATE CAUSE" of death was "complications of asphyxia in the setting of physical restraint." Instead, he replaced that finding with the term "Resisting Arrest" and made "Resisting Arrest" the third listed "attributing [sic] factor"—whereas the "asphyxia" finding had been listed as the first and "IMMEDIATE" cause of death. When asked why he used the term "resisting arrest" in describing the findings of the ME Preliminary Report, Chief Singletary testified that he used this term based on his memory of the BWC footage and his conversation with Deputy Chief Morabito.[46] Specifically, Chief Singletary stated that he "recalled" in the BWC footage that Mr. Prude was "somewhat resisting a little bit" when he was restrained by police.[47] In his deposition, Chief Singletary agreed that the term "resisting arrest" appears nowhere in the ME's Preliminary Report, is not a medical term, and instead is the name of a criminal offense—one with which Mr. Prude was never charged.[48]

At 5:34 p.m. on April 10, Chief Singletary next emailed Communications Director Justin Roj, who was a member of the City's leadership team.[49]

From: "Singletary, La'Ron D." <LaRon.Singletary@CityofRochester.Gov>
Sent: Fri, 10 Apr 2020 17:34:02 -0400 (EDT)
To: "Roj, Justin C." <Justin.Roj@CityofRochester.Gov>
Subject: FYI
Attachments: IAR-Inv. Houlihan.pdf;Investigative Summary 435 Jefferson Ave.pdf

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Hi Justin:

Just wanted to loop you in on an in custody incident that occurred. Attached is an investigative summary.

Quick Summary: On 3/23, officers arrested 42 year old Daniel Prude for mental hygiene arrest and criminal mischief as he was walking around naked, acting irrational . After Prude was taken into custody, he attempted to thrash around on the ground attempting to get up, saying he was going to take an officer's gun. Officers did stabilize the individual on the ground. While doing so, he did stop breathing. AMR began CPR. Prude was transported to Strong where he remained in ICU for a week. He passed away from his injuries on 3/30.

Today, the M.E.'s office ruled on Prude's death and determined such to be a "homicide" with the below attributing factors:

- PCP in his system per toxicology reports
- Excited Delirium
- Resisting Arrest

The incident is on body worn camera. The family about a week ago reached out to Law Department for a preservation request on all documentation and video.

The night it occurred we treated such as an in-custody death and, conducting a criminal investigation (by major crimes) and once the criminal is complete, an internal will be conducted as is protocol.

The Mayor has been in the loop on such since 3/23. Law is in the loop. I am just waiting for the Mayor to call me back to give her the update on the M.E.'s ruling.

Also attached is an investigative action report from the major crimes investigator to give you a little more in-depth background if needed.

Any questions, let me know.

La'Ron D. Singletary, Chief of Police

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Chief Singletary's April 10 Email listed the same three "attributing [sic] factors" as the April 10 Text—in the same order, with "Resisting Arrest" listed last.

Based on his April 10 conversation with Deputy Chief Morabito, Chief Singletary clearly understood that police restraint was the cause of Mr. Prude's death. Nonetheless, he elected intentionally to downgrade and mischaracterize the finding relating to the restraint and to elevate the other, non-police-related findings ("excited delirium" and PCP intoxication). Whether or not Deputy Chief Morabito used the word "asphyxia" in describing the ME's finding to Chief Singletary, the thrust of his update to the Chief was that Daniel Prude died as the result of a police restraint. It was this finding that Chief Singletary sought to deemphasize in the April 10 Text and the April 10 Email.

C. On April 13, Chief Singletary Disclosed the ME's Preliminary Findings to Mayor Warren But Again Intentionally Deemphasized the Role of the Police Restraint as the Immediate Cause of Mr. Prude's Death (Finding 16)

The Independent Investigator found that, on April 13, Mayor Warren learned from Chief Singletary that the ME had declared the Daniel Prude's death to be a homicide. The Independent Investigator also found that, on that occasion, Chief Singletary described the ME's findings to

the Mayor in terms consistent with what his April 10 Text and the April 10 Email—disclosing, but deemphasizing, that RPD officers had caused Mr. Prude's death by a physical restraint. The basis for these Findings, in sum, is as follows:

Chief Singletary's testimony that he informed Mayor Warren of the ME's finding on April 13 is unrebutted and supported by other evidence. Chief Singletary testified with clarity that the conversation occurred in April 13, in the basement of City Hall, after a news conference. Mayor Warren testified that she recalls attending the news conference with Chief Singletary, but she does not recall the discussion in the hallway afterward. Mayor Warren further testified that she does not deny that the conversation occurred. Accordingly, Chief Singletary's recollection of the discussion is unrebutted. In addition, surrounding circumstances support the conclusion that the conversation *did* take place as Chief Singletary testified, and that Chief Singletary described the ME's finding to the Mayor on that occasion in terms consistent with his April 10 communications with Corporation Counsel Curtin and Communications Director Roj.

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On April 13, Chief Singletary and Mayor Warren participated in a news conference about homicide deaths in Rochester, which was broadcast from the basement of City Hall.[51] Chief Singletary testified that, after the news conference, he and Mayor Warren spoke in the basement hallway, near the elevators.[52] Mayor Warren does not recall the conversation but allows that it may have occurred. Chief Singletary recalls the discussion in detail. There were no other witnesses within earshot.[53]

Chief Singletary testified that, in the basement of City Hall on April 13, as a follow-up to his unanswered April 10 text to the Mayor, he told Mayor Warren that the ME had ruled Mr. Prude's death a homicide.[54] Chief Singletary also testified that he reported to Mayor Warren that the ME had determined that Mr. Prude was suffering from PCP intoxication and "excited delirium," and that the ME had also attributed the death to "complications of resisting arrest knowing that the officers had physically held Mr. Prude down and he had went unconscious."[55] In his testimony of the conversation, Chief Singletary laid out the three factors in the same order, and in substantially the same language, as he did in his April 10 Text and his April 10 Email.

According to Chief Singletary, Mayor Warren reacted to the finding of "homicide" with surprise.[56] One inference to be drawn from this reaction is that the Mayor's understanding of the extent of the police restraint that caused Mr. Prude's death was incomplete as of April 13.

Mayor Warren testified that she does not remember Chief Singletary mentioning the ME Report or the homicide finding, or even discussing the Prude Arrest at all, on this occasion.[57] Mayor Warren did not deny the conversation occurred or that she was told it was a homicide on that date; she only stated that she did not recall the discussion.[58] Mayor Warren testified that she

did not recall being notified that the ME had ruled Daniel Prude's death a homicide until August 4, four months later, when she received a copy of the ME Report.[59]

Chief Singletary's testimony about the April 13 conversation is credible and unrebutted. In addition, surrounding circumstances support the conclusion that the conversation on April 13 occurred much as Chief Singletary described. First, the evidence shows that Chief Singletary texted Mayor Warren on April 10, Good Friday, and stated that he wished to "fill her in" on the ME's findings.[60] Mayor Warren was observing a holiday that day and did not respond. It is logical that, having received no reply to his text message at the start of a holiday weekend, Chief Singletary approached his superior on the next business day, at the next occasion where it was possible for the two to speak, in order to follow up. The next day was Monday, April 13, and the occasion was the news conference at City Hall.

The evidence also shows that, by April 13, Chief Singletary had already informed three other high-ranking City officials—Corporation Counsel Curtin, his deputy, Mr. Beath, and Communications Director Roj—of the ME's findings (at least the Chief's rendition of the findings), and that he had provided them with similar descriptions of the relevant information. While both text messages disclose the fact of police physical involvement with Mr. Prude ("Resisting Arrest") as a factor in the death, they were also consistent in misstating the findings of the ME's Preliminary Report. In both messages, Chief Singletary also tells his peer-officials that he is trying to reach Mayor Warren to convey the same information to her as he has to them. Telling peers that one is attempting to discuss an important and sensitive matter with one's supervisor creates the risk that one or more of those peers might preemptively raise the issue with the supervisor. Accordingly, once one has mentioned to peers a plan to discuss something with one's supervisor, one needs to follow through. Here all of the above factors point to the conclusion that it is more likely than not that Chief Singletary did inform Mayor Warren of his rendition of the ME's finding at the time and place and in the manner he described in his testimony.

D. The OAG Investigation Was Not a Basis to Deny the FOIL Request, and the OAG Did Not Request that the City Deny the FOIL Request (Finding 21-32)

The Independent Investigator found that the existence of the Office of the Attorney General's E.O. 147 investigation into the death of Daniel Prude was not a lawful basis to delay or deny release of the BWC footage of the Prude Arrest, and that the OAG did not ask the City to delay or deny the release of records in response to the FOIL Request. The basis for these Findings is described in detail below.

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The Prude family's lawyer, Elliott Shields, submitted a FOIL request to the City of Rochester on April 3. The FOIL Request sought all records relating to Mr. Prude's death,

including the BWC footage of the Prude Arrest. In the ensuing weeks and months, two law enforcement investigations into the Prude Arrest—one by the RPD's MCU, acting in conjunction with the Monroe County District Attorney's Office; and a second by the OAG—potentially intersected with the City's obligations under FOIL, which is codified in New York's Public Officers Law.

Under FOIL, agencies from whom records are sought may refuse to disclose requested records pursuant to what is sometimes known as the "ongoing investigation" exemption from FOIL. Specifically, Public Officers Law § 87(2)(e)(i) provides that agencies who receive a FOIL request may, in their discretion, withhold from disclosure records that are "compiled for law enforcement purposes and which, if disclosed, would interfere with law enforcement investigations." For the "ongoing investigation" exemption to apply, two conditions must be satisfied: (1) the law enforcement investigation must be open and ongoing; and (2) the agency from whom the records have been requested must have a specific factual basis for concluding that disclosure would "interfere" with the investigation.[61]

The RPD's criminal investigation of the Prude Arrest, which was conducted by the MCU, was open and ongoing between March 23 and April 27. On April 27, the MCU investigation was closed, and thus MCU's investigation no longer qualified as an "ongoing investigation" for purposes of this exemption. As a result, after April 27, the MCU investigation could not serve as a basis for withholding records under Section 87(2)(e)(i).

The OAG opened its criminal investigation of the Prude Arrest on or about April 16. Although that investigation was "ongoing" throughout the relevant period, it could not serve as a basis for withholding records under Section 87(2)(e)(i) because the OAG had neither asked the City of Rochester to withhold records (including the BWC footage) under the statute, nor provided a specific factual basis for the City to conclude that the disclosure of the requested records would "interfere" with the OAG investigation.

The push for the City of Rochester to withhold records by invoking the "ongoing investigation" exemption under FOIL came from the RPD. In June, the RPD consistently pressed the position that either the closed MCU investigation or the ongoing OAG investigation could serve as a basis under FOIL to withhold records of the Prude Arrest. Members of the RPD interacting with the Law Department about the FOIL Request were aware that, once the MCU investigation concluded on April 27, that investigation could no longer serve as a basis to withhold records requested by Mr. Shields.[62] Nonetheless, they continued to lobby the Law Department to withhold the records based the "ongoing investigation" exemption.[63]

In early June, senior officials at RPD discussed an effort to deny or delay release of the requested records based on a "reinterpretation" of the status of the MCU investigation, which had closed five weeks earlier. In a June 4 email to Commander Henry Favor, RPD Captain Frank Umbrino referred to multiple discussions of the FOIL Request within the RPD ("I told you

before. . . "; and "after further discussion") and suggested that the RPD might be able to assert that the MCU investigation could be deemed "technically . . . 'open'"—all for the purpose of manufacturing a basis to withhold records under the "ongoing investigation" exemption. These officials also referenced the open OAG investigation as a potential basis to withhold records. [64]

In addition to referring to the existence of both past and current investigations, the discussion within the RPD of whether and how to delay disclosure of Prude-related records, especially the BWC footage of the Prude Arrest, was framed in terms of concern that releasing the records might stimulate civil unrest and possibly violence in light of the protests in Rochester and nationwide following the killing of George Floyd by police in Minneapolis in late May.[65]

On June 4, at the suggestion of an RPD lieutenant involved in discussions of the FOIL Request, Ms. Prince called Jennifer Sommers at the OAG's SIPU to discuss the FOIL Request. The OAG did not—during that call, or ever—ask the City of Rochester to invoke Section 87(2)(e)(i) and deny access to records on its behalf under the "ongoing investigation" exemption. Ms. Sommers informed Ms. Prince that, while the practice of the SIPU was not to release incident video during a pending investigation, the OAG could not dictate to the City of Rochester how it should handle the FOIL Request for BWC footage of the Prude Arrest.[66] In written testimony provided to the Independent Investigator, Ms. Sommers stated: "I did tell [Ms. Prince] that releasing the video 'could' affect the investigation, but that I could not and would not direct the [C]ity not to do so."[67] Ms. Sommers denies requesting that the City withhold the BWC footage, and Ms. Prince's contemporary emails regarding her discussion with Ms. Sommers reflect no such request.[68]

The other information that Ms. Sommers conveyed in the June 4 call was that, as a matter of transparency, the SIPU's practice was to allow civil attorneys and family members involved in a matter to come to the SIPU's office and review video footage of incidents there, and that she intended to offer this to the Prude family counsel in this case.[69] Ms. Prince reported that information to Corporation Counsel Curtin in an email immediately after the call.[70]

Following her call with Ms. Sommers, Ms. Prince suggested to her supervisors that the Law Department ask Mr. Shields to agree to review the Prude case file (including the BWC footage) at the SIPU's office and "adjourn the appeal deadline until after the [O]AG's investigation is complete."[71] As Ms. Prince explained to Mr. Curtin, "[t]his way, the City is not releasing anything pertaining to the case for at least a month (more like 2), and it will not be publicly available." In the same communication, Ms. Prince conveyed to Mr. Curtin her "legal determination that we needed to release the materials sought in the FOIL request." Ms. Prince testified that the proposal she outlined would allow the City to comply with FOIL while delaying broad public release of the records—subject to agreement by the FOIL requestor, in this case, Mr. Shields.[72]

Also, on June 4, RPD officials' concerns about the release of the BWC footage reached Chief Singletary and Deputy Chief Simmons. The two agreed that, in light of the "current climate in this City and nation"—referring to the Floyd protests—RPD officials should convene a meeting with Corporation Counsel Curtin to discuss the release of the BWC footage.[73] In planning for this meeting, Deputy Chief Simmons suggested to Chief Singletary that RPD ask the Law Department to "deny the request based on the fact that the case is still active, as it is currently being investigated for possible criminal charges to be brought forth by the AG's office." Chief Singletary's response was: "Totally agree."

At a June 5 meeting attended by Corporation Counsel Curtin, Chief Singletary, Mr. Beath and Deputy Chief Simmons, the Chiefs expressed concern about the release of the BWC footage in light of the Floyd protests.[74] Also discussed was the idea, raised by Ms. Prince, that the Law Department would propose to Mr. Shields that he agree to review the records at the office of the OAG's SIPU and adjourn his appeal of the FOIL Request, thereby obviating the need for the City to release the BWC footage and other materials.[75] Chief Singletary's clear understanding leaving the meeting was that the Corporation Counsel Curtin had decided that the Law Department would not release the BWC footage until the OAG investigation was closed.[76]

On June 9, Ms. Prince proposed to Mr. Shields that he agree to defer his FOIL appeal (and thus the City's release of records, including the BWC footage) and instead view the BWC footage at the SIPU.[77] Mr. Shields responded the next day, June 10, that he would not agree to that arrangement.[78] On June 11, the Law Department released paper records to Mr. Shields in response to the FOIL Request; it did not release the BWC footage until August 12, a delay which is discussed below.[79]

Ms. Prince, the attorney handling the Law Department's response to the FOIL Request, testified that, after April 27, no legal basis existed to withhold any responsive records requested under FOIL, including the BWC footage of the Prude Arrest. By that date, the MCU investigation was closed, and the OAG had neither asked the City to withhold records nor provided a factual basis for the City to conclude that release would interfere with its investigation. Consequently, Ms. Prince never attempted to assert the "ongoing investigation" exemption—and the City of Rochester never formally asserted it at all.

Ms. Prince testified that, on several occasions beginning in June, she specifically advised Mr. Curtin and Mr. Beath that there was no basis under FOIL to withhold Prude-related records, that the OAG's investigation did not provide such a basis, and that the records requested by Mr. Shields needed to be released.[80] She further testified that both Mr. Curtin and Mr. Beath agreed that the OAG investigation was "irrelevant" to the Prude family's request for records under FOIL.[81] Finally, Ms. Prince testified that, on August 4, Mr. Curtin again asked her whether the OAG investigation could justify withholding the BWC footage. Her answer was "the same as it was in June"—"that we didn't have a legal justification to withhold it."[82]

The RPD's efforts to deny or delay the release of the BWC footage were driven by a concern that, in the wake of protests in the City of the May 25 killing of George Floyd in Minneapolis, public release of information about Mr. Prude's death would spark unrest and possibly violence in the City. This concern is reflected in multiple communications. For example, on June 3, Lieutenant Michael Perkowski wrote in an email to Ms. Prince, "I'm wondering if we shouldn't hold back on this for a little while considering what is going on around the country." In another email to Ms. Prince on June 4, Lieutenant Perkowski reiterated that he was "very concerned about releasing this prematurely in light of what is going on in Rochester and around the Country. If the decision is to release this based on the FOIL, I will have to make several notifies [sic] to my Command staff before that happens. I may be overthinking this, but I would think the Chief's Office and Mayor's Office would want a heads up before this goes out."[83] In a June 4 email to Commander Favor, Captain Umbrino argued that "[i]n light of the recent events throughout the country, any release of information . . . very well [may] have some intense ramifications."[84] In his June 4 email to Chief Singletary, Deputy Chief Simmons invoked the "current climate" in advocating for a meeting with Corporation Counsel to ask them to deny the FOIL Request.[85] Deputy Chief Simmons stated:

> We certainly do not want people to misinterpret the officers' actions and conflate this incident with any recent killings of unarmed black men by law enforcement nationally. That would simply be a false narrative, and it could create animosity and potentially violent blow back in this community as a result.

Id.

In deciding how to handle the FOIL Request, the Law Department considered the possibility of violence and property damage arising from civil unrest in the wake of release of the BWC footage.[86] Mr. Beath testified that, on more than one occasion, Mr. Curtin stated that, if the Prude Arrest "becomes publicly known, the city is going to burn."[87]

RPD and Corporation Counsel Curtin's stated concerns about public reaction to the BWC footage of the Prude Arrest were not a lawful reason under FOIL to delay or deny the release of the records. The Public Officers Law does not provide an exemption from disclosure for records that might incite public protests. As Municipal Attorney Prince testified: "[F]or FOIL-related purposes, public outcry isn't a reason to withhold records."[88] The concern that the BWC footage would spark or enflame protests only underscores the significance of the interest in full and timely disclosure of these records, provided no statutory exemptions applied—which none did.

E. The Law Department's Request for the HIPAA Authorization Unnecessarily Delayed Release of the BWC Footage to the FOIL Requestor (Findings 33-35)

The Independent Investigator found that the Law Department's request for the HIPAA Authorization from the Prude Estate unnecessarily delayed release of the BWC footage to the Prude family. The basis for these Findings is described below.

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The City of Rochester released paper records responsive to the FOIL Request on June 11, but it did not release the BWC footage until August 12. This almost two-month delay is attributable in large part to the Law Department's request that the requester, attorney Elliott Shields, provide a HIPAA release from Mr. Prude's family to receive un-redacted BWC footage ("the HIPAA Authorization"). In fact, the HIPAA Authorization was not legally required for the City to disclose the BWC footage from the scene of Mr. Prude's arrest. As a result, the request for the HIPAA Authorization unnecessarily delayed the release of the BWC footage in response to the FOIL Request.

The Heath Insurance Portability and Accountability Act of 1996 ("HIPAA") protects from unauthorized disclosure information "created or received by health care provider[s] . . . and relates to the past, present, or future physical or mental health or condition of an individual, [or] the provision of health care to an individual." 42 U.S.C. § 1320d(4); *see also* 42 U.S.C. § 1320d(6) (regarding individually identifiable health information). HIPAA, by its terms, applies to "a health plan," "a healthcare clearinghouse," or "a healthcare provider" who transmits certain health information in electronic form. 42 U.S.C. § 1320d–1(a)(3); 45 C.F.R. § 160.103. Covered entities are barred by law from releasing HIPAA-protected health information.

The BWC footage of the Prude Arrest is not HIPAA-protected health information because it was not "created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse." 45 C.F.R. § 160.103. And, because the RPD is not a healthcare provider or plan, it is not a covered entity under HIPAA.[89]

Unrelated to HIPAA, under FOIL, an agency may deny access to records or portions of records that "if disclosed would constitute an unwarranted invasion of personal privacy." N.Y. Pub. Off. Law § 87(2)(b).[90] For example, under FOIL, nudity may be redacted from body-worn camera video to protect the personal privacy of the person in the video.[91] The Public Officers Law enumerates "disclosure of... medical... histories" or medical "records" of "a patient in a medical facility" among the specific types of personal information subject to exemption as an "unwarranted invasion of personal privacy."[92]

At her deposition, Ms. Prince acknowledged that HIPAA itself did not apply to requests to the RPD for BWC footage, or to the Prude FOIL Request in particular.[93] She explained that, in the case of the FOIL Request, the City sought the HIPAA Authorization as "shorthand for" consent to disclose "medical privacy issues under the Public Officers Law."[94] The Prude case was the first one in which Ms. Prince had required a FOIL requester to provide a HIPAA release in order to access BWC footage.[95] She was not aware of the Law Department having requested a HIPAA release in any other case.

Ms. Prince and Mr. Shields spoke on June 9 about the FOIL Request. In a follow-up email on June 10, Mr. Shields agreed to limited redactions from the BWC footage of images of Mr. Prude's "genitals."[96]

Ms. Prince initially identified medical privacy as a concern affecting disclosure of the BWC footage in an email to the RPD on June 3. There, she stated: "The footage [of Mr. Prude] at the hospital is probably almost all unreleasable (HIPAA), but I still need a redaction log and the footage for the appeal due June 11."[97]

On June 11, the Law Department released paper records to Mr. Shields in response to the FOIL Request; it did not release the BWC footage of the Prude Arrest.[98] In Ms. Prince's accompanying email to Mr. Shields, she stated that the BWC footage "contains video of medical treatment by EMTs and later in a hospital." She requested that Mr. Shields "provide an appropriate HIPAA release form so that we can release that footage without HIPAA-related redactions[;] please provide a signed, notarized form. If not, please advise so that we can instruct our digital media specialist to properly prepare the video." In other words, if Mr. Shields provided the HIPAA Authorization from a representative of the Prude Estate, he would receive the un-redacted BWC footage. If he did not, he would only receive the BWC footage in a redacted form excluding the "video of medical treatment by EMTs and later in a hospital."[99]

Ms. Prince testified that she "asked for a HIPAA authorization out of an abundance of caution to ensure that privacy concerns were met."[100] Ms. Prince emphasized that the HIPAA release was presented to Mr. Shields as an opportunity for him to receive the BWC footage that the Law Department otherwise would have redacted pursuant to Section 87(2)(b) of the Public Officers Law—the footage showing nudity and medical treatment.[101]

However, the BWC footage showing Mr. Prude's treatment by EMTs at the scene was not a "medical history" or medical record under FOIL, because that footage did not reveal "intimate, private information" of a "personal medical condition." *Hanig v. State Dep't of Motor Vehicles,* 79 N.Y.2d 106 (1992). Video footage of Mr. Prude receiving medical care from an EMT on the street was not a medical "record" or "medical history": it was a law enforcement record of the events that transpired that day. Accordingly, the HIPAA release form – or any waiver from the Estate with respect to medical information – was legally unnecessary.

On June 12, Mr. Shield agreed to provide a HIPAA release.[102] After having viewed the BWC footage at the SIPU, he sent an email to Ms. Prince on July 23, declining to agree to other redactions, and stating "Please send me all the body worn camera videos at the scene. None of these have anything that can be redacted. They only show the officers, the paramedics, and the decedent."[103]

Also on July 23, Mr. Shields provided the Law Department with an executed HIPAA Authorization from Mr. Prude's family.[104] On July 29, the RPD provided Ms. Prince with a link to the BWC footage for release and the accompanying redaction log.[105] On August 4, Ms. Prince emailed Mr. Shields that the video was too large to transfer by email and informed him that she would physically mail it to him the next day.[106] Also on August 4, however, as discussed in further detail below, the Mayor viewed the BWC footage of the Prude Arrest for the first time. Ms. Prince testified that the release of the BWC footage to Mr. Shields was then delayed by the internal discussions that followed the Mayor's viewing.[107] Around August 7, the Law Department scrutinized the HIPAA Authorization provided by Mr. Shields and deemed it sufficient.[108] Finally, on August 12, the Law Department mailed the BWC footage to Mr. Shields, 131 days after the FOIL Request was originally made.

F. Corporation Counsel Curtin's Statements that the OAG Had Instructed or Requested the City of Rochester to Refrain from Making Public Statements About the Prude Matter Were Untrue (Finding 47)

Corporation Counsel Curtin's statements on August 4 and later to the effect that the OAG had instructed or requested the City to refrain from making public statements about the Prude Matter were untrue. That said, Mayor Warren accepted and followed the Corporation Counsel's advice in this regard after August 4, and she did so in good faith.

The Independent Investigator found that Mr. Curtin lacked a factual or legal basis for his repeated claim to Mayor Warren that the OAG had instructed or requested that the City "stand down" or refrain from disclosing information to the public about the Prude Matter. Although the OAG never instructed the City to refrain from making public statements about the Prude Matter, and no City attorney ever advised Mr. Curtin that the OAG had made such requests, Mr. Curtin repeatedly asserted that his advice to the Mayor not to speak publicly about the Prude Matter was based on the OAG's requests.[109]

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Representatives of the OAG and the Law Department communicated by telephone on just one occasion—the June 4 call between Ms. Prince and Ms. Sommers. Neither participant in that conversation has ever stated that, in that call, the OAG requested that the City refrain from making public statements about the Prude Arrest. To the contrary, both participants agree that

the only issue discussed during that call was the release of the BWC footage pursuant to the FOIL Request; the question of public statements by City officials did not come up.

Mr. Curtin testified that Ms. Prince had told him that the OAG had asked the City of Rochester not to disclose "non-public information including body worn camera" footage.[110] He further testified that he interpreted this to mean that the City could not disclose anything about the Prude Arrest and death, not even the fact of the criminal investigation into the Prude Arrest.[111] Mr. Curtin also testified that Mr. Beath confirmed this understanding. Mr. Curtin never made any effort to determine on his own what the OAG's position was.[112]

There is no evidence in the record that Ms. Prince ever reported to Mr. Curtin that the OAG had instructed or requested that the City refrain from making public statements about the Prude Arrest. Ms. Sommers testified that she never conveyed a request or suggestion to Ms. Prince that the City refrain from public commentary on the Prude Matter.[113]

The OAG was informed in late July that the City would be releasing the Prude BWC footage to the Prude family's counsel under FOIL.[114] This disclosure was likely to result, and ultimately did result, in the public dissemination of the BWC footage. Yet, no one from the OAG ever contacted the City of Rochester to object to such disclosure or to suggest or direct that the City not comment on the matter publicly.[115] And, on September 2, when contacted by Mayor Warren and informed that the City would be commenting publicly on the Prude Matter, Attorney General Letitia James lodged no objection.[116] Days later, a spokesperson for the OAG would expressly state that the OAG had never instructed or requested that the City refrain from making public statements about the Prude Matter.[117]

During the August 4 meetings, Mayor Warren stated that she wanted to immediately release information about the Prude Matter to the public. Mr. Curtin advised that she could not do so because of the OAG investigation.[118] Mayor Warren testified that Mr. Curtin was "definitive that there was nothing that we could do, that the AG's office had told us that we were to basically stand down."[119] According to Mayor Warren, Mr. Curtin explicitly told her that "the City could not release anything that pertained" to the Prude Matter, "could not discuss it, could not do anything that would impede the Attorney General's investigation."[120]

Deputy Smith described Mr. Curtin as "pretty adamant" in delivering the advice that the City should refrain from discussing or releasing information about the Prude Matter.[121] He testified that the discussion on August 4 about a potential public announcement of the Prude Arrest "didn't go very far" because of Mr. Curtin's advice that such an announcement would be "improper" in light of the OAG investigation.[122]

Mr. Curtin testified that, after the August 4 meetings, he advised Mayor Warren not to disclose *any* information about the Prude Matter because this would be "contrary to the request of the Attorney General."[123] Mr. Curtin testified that he "advised [Mayor Warren] that the

Attorney General had asked us not to make any announcements respecting Mr. Prude's death."[124] On Friday, August 7, during a discussion between Mr. Curtin, Deputy Mayor Smith, and Mayor Warren about the release of the FOIL materials to Mr. Shields, Deputy Mayor Smith again asked Mr. Curtin about the possibility of a public statement about the Prude Matter; Mr. Curtin again responded that his advice was not to make any public statements or to release any non-public information.[125]

Nothing about E.O. 147, the gubernatorial executive order that directs the Office of the Attorney General to act as a special prosecutor to investigate and prosecute cases involving the death of unarmed civilians caused by a law enforcement officers, barred the City from publicly disclosing the existence of an OAG investigation or discussing the events underlying it.[126] E.O. 147 is principally concerned with the question of which office—the Office of the Attorney General, or a local District Attorney—should handle a specific category of criminal matters: the investigation and prosecution of deaths of unarmed civilians caused by law enforcement. By its terms, E.O. 147 does not address, much less restrict or forbid, municipalities from publicly discussing the facts underlying such an investigation, or that such an investigation is under way.[127]

Months after the events in question, at his deposition in this Investigation, Mr. Curtin testified that he viewed Mr. Prude's death as solely a private tragedy for Mr. Prude's family. In Mr. Curtin's view, the Prude BWC footage depicted "an incredibly sad situation where you have a naked man flailing on a street in March and everybody wants to make a circus out of it."[128] Mr. Curtin testified that "to this day," he would not have voluntarily released the BWC footage to the media, because the "only people who have . . . a real interest are his children," and "we knew as a practical matter that once we released this to the family, Elliot [Shields, then the Prude family's lawyer], knowing Elliot, would immediately seek to monetize[] this tragedy, and by monetizing this tragedy, he would get it out to the public."[129] Mr. Curtin also testified that he viewed the Law Department's role in the Prude Matter narrowly, as having nothing to do with the public dissemination of information.[130] Mr. Curtin's view that the Prude Matter was only of concern to Mr. Prude's immediate family failed to account for the legitimate public interest in Mr. Prude's arrest and death.

G. Corporation Counsel Curtin's Statements that the OAG Investigation Precluded the City from Disciplining the Officers Were Untrue (Findings 43-46)

The Independent Investigator found that there was no legal or factual basis for Mr. Curtin to have asserted that the existence of the OAG's E.O. 147 investigation precluded the City of Rochester from taking disciplinary action against the officers involved in the Prude Arrest, or that the OAG had instructed the City not to discipline the officers. The basis for this Finding is as follows.

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Some of Mayor Warren's testimony and public statements concerning the Prude Matter suggested that the mere fact that a criminal investigation was being conducted pursuant to Executive Order 147 had the effect of barring municipalities from disciplining officers then under investigation. E.O. 147 creates no such bar.

E.O. 147 is, in essence, a jurisdictional order; it has no impact on, and does not undermine, the power of municipalities to discipline police officers, pursuant to the New York State Civil Service Law or other state statutes, local charters or ordinances, and/or collective bargaining agreements. In fact, there is a well-developed body of law and practice, following the United States Supreme Court's decision in *Garrity v. New Jersey*, 385 U.S. 493 (1967), that protects the rights of law enforcement officers subject to criminal investigation even as the same officers are simultaneously the subject of disciplinary investigations and actions within their departments or localities. While this area of the law and practice is not without complexity, it is clear that a criminal investigation of a law enforcement officer—whether undertaken by a local prosecutor or the OAG under E.O. 147—does not preclude simultaneous disciplinary action against that officer, including an investigation by the OAG.

When Mayor Warren viewed the BWC footage of the Prude Arrest for the first time on August 4, she reacted with deep shock, anger, and dismay—and she advocated for immediate discipline of the officers involved. She stated that she wanted the officers "off the streets," she "didn't think that they deserved to be police officers, that she believed they should be suspended, and Officer Vaughn should be fired for "murder[ing]" Mr. Prude."[131]

Corporation Counsel Curtin's response was to assert that Mayor Warren could not discipline the officers because of the pending OAG investigation.[132] Mayor Warren testified that she recalled that this advice "was definitive that there was nothing that I as the mayor could do."[133] Mr. Curtin testified that he did not specifically recall telling Mayor Warren that the OAG investigation precluded her from disciplining the officers.[134]

Mr. Curtin admitted in his testimony that the OAG never "specifically" asked City to refrain from taking disciplinary action against the officers involved in the Prude Arrest. He testified, however, that he advised Mayor Warren, on August 4 and after, not to take such action because doing so would result in the release of non-public information about the event, which, he claimed, the OAG had asked the City not to do.[135] As set forth above, the OAG did not request or instruct the City to refrain from making public statements. Thus, the position that the City needed to refrain from disciplining the officers involved in the Prude Arrest is as lacking in a factual or legal basis as is the assertion that the City was instructed or requested not to disclose information about the matter publicly.

The Independent Investigator finds that it is more likely than not that Mayor Warren decided not to initiate disciplinary proceedings against the officers involved in the Prude Arrest in August because she accepted Mr. Curtin's (flawed) advice on this point, and that in so doing, she acted in good faith.

H. President Scott Learned of Mr. Prude's Death from Mayor Warren, Who Minimized the Role of the RPD's Restraint in Causing Mr. Prude's Death (Finding 58)

The Independent Investigator found that on August 6, 2020, Mayor Warren and Council President Loretta Scott spoke about the Prude Matter, and that in describing the matter in that call, Mayor Warren emphasized the role of PCP and "excited delirium" in causing Mr. Prude's death and deemphasized the role of the police restraint. The basis for this Finding is as follows.

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On August 6, two days after she first viewed the BWC footage from the Prude Arrest, Mayor Warren called Council President Loretta Scott to inform her of the Prude Matter (the "August 6 Phone Call").[136] The August 6 Phone Call lasted just over five minutes, and it also encompassed topics other than the Prude Arrest and death.[137] This was the first time that President Scott learned of the Prude Matter.

President Scott and Mayor Warren disagree about what was said during the August 6 Phone Call.[138] The core matter in dispute is whether Mayor Warren did or did not inform President Scott: (i) that RPD officers had restrained Mr. Prude during the arrest; (ii) that a police restraint had caused Mr. Prude's death; and (iii) that troubling BWC footage of the incident existed.

President Scott testified that, in the August 6 Phone Call, Mayor Warren informed her that the City had been served with a Notice of Claim concerning the death of an individual while in RPD custody.[139] President Scott recalls Mayor Warren stating that the individual died of a PCP overdose, and that the incident was being investigated by the OAG. President Scott further testified that Mayor Warren asked her to keep this information confidential due to the OAG's investigation. President Scott testified that she did *not* recall Mayor Warren telling her that police had restrained the individual or used force against him, or that BWC footage of the incident existed.[140]

Mayor Warren testified that, in the August 6 Phone Call, she informed President Scott that: (i) there had been a mental health arrest during which a man had died; (ii) the BWC footage of the arrest was "disturbing," as it showed RPD officers antagonizing the man; (iii) the ME had determined the man's death to be "a homicide by asphyxiation, excited delirium, as well as PCP"; (iv) Chief Singletary had informed the Mayor that the techniques used by the officers to restrain the man were "aligned with policy and procedure"; (v) the family of the man had filed a

Notice of Claim and FOIL Request for the BWC footage of the incident; and (vi) the OAG was investigating and therefore Mr. Curtin had advised that the City not publicly discuss the matter or release the BWC video until the OAG's investigation was complete.[141]

President Scott did not share what she learned in the August 6 Phone Call with anyone, including other members of City Council.[142] President Scott and Mayor Warren did not speak about the Prude Arrest again until September 2, when the family released the BWC footage.[143]

On September 2, at 9:26 a.m., Mayor Warren's Chief of Staff, Alex Yudelson, sent Mayor Warren a text message advising her that President Scott's Chief of Staff, B.J. Scanlon, wanted to know if he could share any information with City Council about the 11 a.m. press conference that the Prude family had announced for that day.[144] Mayor Warren responded in a 9:34 a.m. text message; there, she described the Prude Arrest and death and the ME's findings, and tied her account to what she had told President Scott in the August 6 Phone Call:

> Tell them that this is a case that I spoke to Loretta about. Guy high off PCP naked in the middle of Jefferson Avenue-in March Complied with police and while waiting for ambulance was spitting. They put spit sock on him. He tried to get up one officer restrained from getting up. He ended up throwing up and losing consciousness and they took to hospital he later died. All things were contributing factors.[145]

At 10:11 a.m. that morning, President Scott sent a text message to Mayor Warren after learning about the press conference that the Prude family had scheduled for that day.[146] It read: "I thought you asked me not to share the news about the person who died in custody. Did I understand?"[147] Mayor Warren replied, "I don't remember but I may have. We talked about so much that day." This exchange, including Mayor Warren's highlighting PCP, deemphasizing of the physical restraints used on Mr. Prude ("one officer restrained"), and omitting mention of the ME's homicide determination, aligns with President Scott's recollection of the August 6 Phone Call.

On September 9, President Scott appeared on WXXI's radio program Connections to discuss the Prude case. In response to questions from WXXI journalist Evan Dawson, President Scott described the August 6 Phone Call. President Scott stated that prior to September 2, when the Prude family released the BWC footage, the Mayor had informed President Scott that there had been a "death in custody" where a "gentleman died in the hospital" of a "PCP overdose." During the interview, President Scott stated that she believed the call took place on August 20.

During the WXXI broadcast, Mayor Warren texted President Scott. This exchange is shown below.[148] The exchange reflects a strong disagreement between Mayor Scott and President Scott about what the Mayor told the Council President during the August 6 Phone Call.

Lovely Warren	Loretta	I'm sorry this is what's being quoted and that was not the discussion that you and I had. And, it definitely wasn't August 20th. I remember calling you right after viewing the video and talking to corporation counsel to update you. I'm sorry but if you can please correct this	September 9, 2020 1:49:18 PM	Unread	No
Loretta	[redacted]	I'm guessing at the date What you told me was what I said	September 9, 2020 1:58:11 PM	Read	No
Loretta	[redacted]	You said that we had received no notice that we were going to be sued over the death of someone who was in custody who died of a PCP overdose. you stated the person was died in the hospital. You asked me to keep it confidential for now. No mention of a video.	September 9, 2020 2:05:10 PM	Read	No
Lovely Warren	Loretta	Loretta I told you the video was really bad	September 9, 2020 2:05:34 PM	Unread	No
Lovely Warren	Loretta	That the video was really really bad	September 9, 2020 2:05:47 PM	Unread	No
Loretta	[redacted]	no mention of a video	September 9, 2020 2:05:54 PM	Read	No
Lovely Warren	Loretta	That's not true	September 9, 2020 2:06:02 PM	Unread	No
Lovely Warren	Loretta	I told you that I was disgusted by the way they treated this man	September 9, 2020 2:06:39 PM	Unread	No
Loretta	[redacted]	No!	September 9, 2020 2:06:52 PM	Read	No

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The Independent Investigator found that it more likely than not that, in the August 6 Phone Call, Mayor Warren emphasized the role of PCP and "excited delirium" in causing Mr. Prude's death and deemphasized the role of the police restraint. While both participants to the call were clear and credible in their testimony about its contents, Mayor Warren's September 2 description of the Prude Arrest in her text message to her Chief of Staff, Mr. Yudelson, closely aligns with President Scott's recollection of Mayor Warren's description of the Prude Arrest in the August 6 Call. The judgment call here is a close one, given the credible testimony from both witnesses to the call. But the characterizations of the Prude Arrest in Mayor Warren's September 2 text message tip the balance in favor of a finding that President Scott's recollection of the August 6 Call is more likely than not the accurate one.

As a matter of full disclosure, since 2019, the law firm of Emery Celli Brinckerhoff Abady Ward & Maazel LLP, which here serves as Special Council Investigator, has served as litigation counsel to the Rochester City Council in *Rochester Police Locust Club et al. v. City of Rochester et al.,* Index No. E2019-008543. In that role, the firm has regularly interacted with Council President Loretta Scott.

I. City Officials Suppressed Information About the Circumstances of the Arrest and Death of Daniel Prude

The Independent Investigator found that officials within Rochester's City government suppressed information about the circumstances of the arrest and death of Daniel Prude between March 23, 2020 and September 2, 2020. The basis for this Finding is as follows.

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The chronology of events, and the state of City officials' knowledge in particular time frames within the sequence of events, is central to this Finding. The Independent Investigator analyzed events during three contiguous time periods: March 23 through June 4; June 5 through August 4; and August 5 through September 2.

The evidence gathered in the Investigation showed that, beginning in late March and certainly by mid-April, Mayor Lovely Warren, Police Chief La'Ron Singletary, Corporation Counsel Timothy Curtin, and Communications Director Justin Roj—four key officials in City government—were aware of all of the material facts concerning the arrest and death of Daniel Prude. Each official knew that RPD officers had physically restrained Mr. Prude in a manner that went beyond handcuffing and pat-down incident to arrest; that the restraint had caused Mr. Prude's death; and that the officers involved were the subject of a criminal investigation.

From the beginning, it was obvious that the death of a man in police custody—a man who was unarmed, naked, handcuffed, and hooded—was a significant event of public concern. The public reaction to the release of the BWC footage on September 2 is evidence of this—but so too was the conduct of City officials in the weeks following the incident. Chief Singletary and the RPD command staff understood immediately that the Prude Arrest was a significant event, one likely to garner attention if it became widely known. As soon as he heard about the incident, Chief Singletary alerted the Mayor and triggered two separate investigations, one criminal and one internal to the RPD. In the days that followed, he closely tracked Mr. Prude's medical condition, the Prude family's requests for information (which indicated the likelihood of litigation), and the ME's findings about the cause and manner of Mr. Prude's death. When the ME issued its Preliminary Report on April 10 declaring the death a homicide, Chief Singletary alerted, among others, Communications Director Roj—the very official responsible for communicating with the public through the media. This was the first such in-custody death in Rochester in years, and the only one during Mayor Warren's tenure.[149] Chief Singletary's instinct that this matter would draw media and public attention was well-founded.

It is against this backdrop, and in the context of the three relevant time periods, that the rationales for non-disclosure that have been proffered by Mayor Warren must be evaluated.

The first proffered rationale for non-disclosure—that the Mayor did not disclose the Prude Arrest and death because she lacked knowledge or information about the nature of the

incident, or because she had been told that Mr. Prude's injuries and death were simply a "drug overdose"—is not supported by the evidence. The evidence shows that, in by mid-April 2020, Mayor Warren was aware that Mr. Prude had died as the result of a physical restraint by police. The evidence also demonstrates that Mayor Warren was not told in late March that Mr. Prude had simply suffered an overdose. The information conveyed to Mayor Warren was (or would have been, had it been disclosed) of genuine interest to the public. It merited public disclosure. Nothing prevented the Mayor from disclosing the Prude Arrest and death to the public at that time.

The second proffered rationale for non-disclosure—that public notification of the Prude Arrest was withheld based on "instructions" from, or a request by, the OAG—also is not supported by the evidence, including the timeline of events. The sole representative of the OAG to communicate with City government concerning disclosure issues in the Prude case was SIPU's Jennifer Sommers; Ms. Sommers' sole point of contact with the City was the Law Department's Stephanie Prince. Ms. Sommers did not speak with Ms. Prince until June 4. Hence, there is no possibility that the OAG conveyed any "instructions" or a "request" to the City to refrain from publicly disclosing the facts and circumstance of the Prude Arrest and Mr. Prude's death earlier than June 4, or even that City officials could have believed that it had.

As for the period from June 4 forward: as Ms. Prince testified and as contemporaneous communications demonstrate, the OAG never instructed or suggested to the City that it refrain from notifying the public about the Prude Arrest and death—and Ms. Prince never told Corporation Counsel Curtin that it had.

The third proffered rationale for disclosure—that the existence of an OAG investigation of the Prude Arrest and death pursuant to Executive Order 147 precluded the City from notifying the public about what had occurred—is without legal basis. Nothing about E.O. 147 precludes a municipality whose officers are subject to investigation by the SIPU from publicly disclosing the fact of the investigation or the events that prompted it. Notably, when Mayor Warren contacted Attorney General Letitia James after the Prude BWC footage was released on September 2 to inform her that the Mayor would be making a statement about the Prude Matter and the OAG's investigation, Attorney General James lodged no objection.[150]

In any event, Mr. Curtin did not communicate his version of the facts (that the OAG had instructed or requested the City to refrain from public statements) or of the law (that E.O. 147 precluded a public notification) to Mayor Warren until August 4 at the earliest. Thus, the earliest that Mayor Warren could have relied upon Mr. Curtin's statements to justify not making the public aware of the case was August 4.

To be sure, a mayor is entitled to rely in good faith upon the legal advice provided to her by her city's corporation counsel. Here, it appears that Mayor Warren did just that. But Mr. Curtin did not convey to Mayor Warren the incorrect information that the OAG had instructed or

requested that the City refrain from making public statements until August 4. Mayor Warren's acceptance of that information in early August and later does not explain the failure of the Mayor to make or authorize a public statement between March 23 and August 4.

Mayor Warren testified that, while she wanted to disclose the Prude Arrest and death publicly during the period August 4 to September 2, she affirmatively decided not to do so based on Mr. Curtin's advice.[151] The other attendees at the August 4 meetings—including Chief Singletary—all testified that Mayor Warren clearly expressed her desire to issue a public statement on that occasion, and that she appeared sincere in stating that she wanted to provide this information to the public at that time. Mayor Warren testified that, despite her desire to speak out on the matter, she accepted Mr. Curtin's representations and legal advice in good faith and decided not to disclose the Prude Arrest and death after August 4 primarily on that basis.

There is no compelling evidence to the contrary, and Mayor Warren's record in public life supports the inference that her decision not to publicly announce the Prude Matter immediately after August 4 was based on the advice of Corporation Counsel Curtin. Mayor Warren's history of support for transparency in policing, including her initiative to equip RPD officers with body-worn cameras and her outspoken opposition to police misconduct, all support the inference that she acted in good faith reliance on Mr. Curtin's assertions during this period.[152] Moreover, the Prude Arrest and death was the first and only time that the OAG had conducted an investigation of members of the RPD pursuant to Executive Order 147. Prior to this case, neither Mayor Warren nor any of the key officials in City government—the Police Chief, the Deputy Mayor, the Corporation Counsel, or the Communications Director—had any experience with an OAG investigation of this kind. Under these circumstances, it is understandable that the Mayor and other officials would defer to the Corporation Counsel's stated view of how the City should react (or not) in such circumstances, even though, in this case, Mr. Curtin's view lacked a factual or legal basis.

Mayor Warren could have questioned Mr. Curtin's assertions about non-disclosure in ways that she did not. She did not ask Mr. Curtin if he had personally spoken to anyone at the OAG to confirm his understanding of the OAG's alleged instructions or to request that the City not notify the public of the Prude Matter (he had not). She did not ask Mr. Curtin to revisit the issue of the OAG's (alleged) position on public disclosure with a person of higher authority within the OAG. She did not ask Mr. Curtin to conduct legal research on the question. And, prior to September 2, when the BWC footage was released by the Prude family, she did not discuss the matter with the Attorney General herself or instruct anyone else to do so on her behalf. Taking any of these steps might well have revealed that Mr. Curtin's assertions were incorrect.[153]

These are the facts supportive of this Finding. It is plausible that other factors also played a role in the suppression of information by City officials, including: (i) Chief Singletary's

position, stated in August, that the conduct of the officers during the Prude Arrest was consistent with RPD training; (ii) the highly unusual circumstance of a significant police incident that did not otherwise come to public attention through viral video or public knowledge contemporaneous with the event; (iii) deference to the Prude family and its wishes as to whether and how to make this matter public; (iv) concerns about ongoing demonstrations, civil unrest, and the potential for violence in Rochester in the wake of the killing of George Floyd; and (v) the horrific reality that a human being in need of assistance died at the hands of officers of the law.

Lastly, it is important to note that the decision whether to inform the public of a significant event by way of an announcement or other form of notification is a policy judgment, and a political one, not a legal one. There are no written rules or standards in Rochester that govern the conduct of the Mayor, members of the City Council, or high appointed officials like the Chief of Police or the Corporation Counsel in these matters. Accordingly, it is not for the Special Council Investigator to pass judgment on whether the decisions by Rochester officials not to disclose the arrest and death of Daniel Prude were right or wrong. The judges of that question are the citizens of the City of Rochester and the public at large.

III. METHODOLOGY

This Report is based on the Independent Investigator's examination of documentary and testimonial evidence collected between October 2020 and February 2021. This section describes the process for gathering this evidence, the scope of evidence collected, and public release of the evidence.

A. Legislative Basis for the Investigation

On September 16, 2020, by local ordinance, the City Council appointed Emery Celli Brinckerhoff Abady Ward & Maazel LLP to investigate to investigate and produce a report (i) establishing a comprehensive timeline of events, (ii) assessing non-public internal intra-governmental communications and processes relating to the death of Daniel Prude, and (iii) evaluating the public statements of City officials and employees regarding the incident (the "Investigation").[154] On September 18, 2020, the City Council adopted Resolution No. 2020-29, which authorized the City Council President and Vice President to sign subpoenas for records and attendance of witnesses, pursuant to Rochester City Charter § 5-21(G) and Ordinance No. 2020-283, "without need of further action by the Council, and upon the request of legal counsel retained by the City Council to conduct the investigation."[155] Section 5-21(G) of the Charter of the City of Rochester ("the Charter") grants the City Council President the authority to issue subpoenas in support of the Council's authority to investigate.[156]

On September 17, 2020, City Council President Loretta Scott appointed the Rochester City Council Prude Independent Investigation Committee (the "Special Committee") to oversee the work of the Independent Investigator. President Scott appointed Councilmembers Malik Evans and Michael Patterson to serve as the Special Committee. On September 29, 2020, the Special Committee sent a letter to the Independent Investigator informing it that they did "not wish to be present at any of the depositions taken by virtue of subpoenas already issued or to be issued by the Council President" and authorizing it to conduct the depositions outside the public view "to ensure the integrity of the investigation."

B. Subpoenas for Documents and Witness Testimony

Pursuant to the legislation described above and at the request of the Independent Investigator, the City Council issued 22 subpoenas for documents and witness testimony between September 21 and December 4, 2020 (the "Subpoenas").[157]

The document subpoenas issued by the City Council sought all documents and communications in the recipients' possession concerning the Prude Matter, including documents and communications concerning investigations of the Prude Matter by City and State entities, the review and release of body-worn camera footage and other records, contemplated litigation arising out of the Prude Matter, FOIL requests made by the Prude family or their attorneys, and disclosure of information about the Prude Matter. The subpoenas also requested all documents

in the recipients' possession, including emails and text messages, which contain one or more of 26 enumerated search terms.

In response to these subpoenas, the Independent Investigator received documents from the following City departments: Law Department, Rochester Police Department, City Council, Mayor's Office, and Information Technology Department.

The Independent Investigator took testimony from the following individuals: (1) Lovely Warren, Mayor; (2) James Smith, Deputy Mayor; (3) Justin Roj, Communications Director; (4) Alex Yudelson, Chief of Staff to Mayor Warren; (5) Timothy Curtin, Corporation Counsel; (6) Patrick Beath, Deputy Corporation Counsel; (7) Stephanie Prince, Municipal Attorney; (8) Loretta Scott, City Council President; (9) Mary Lupien, City Councilmember; (10) La'Ron Singletary, Chief, RPD; (11) Mark Simmons, Deputy Chief, RPD; (12) Steven Swetman, Lieutenant, RPD; and (13) Jennifer Sommers, Deputy Chief, Special Investigations and Prosecutions Unit, Office of the Attorney General. [158] The Independent Investigator also received documents from these individuals.[159]

1. Documents Reviewed by the Independent Investigator

In response to the Subpoenas, the Independent Investigator received over 300,000 records, including over 65,000 emails. In addition to emails, the records received included word documents, PDFs, video and audio files, text messages, and photos. These records were gathered from City servers and cell phones, as well as individuals' personal computers and cell phones.

a. City-Owned Cell Phones

In response to the Subpoenas issued to City departments, the City collected 14 City-owned cell phones to have them professionally imaged and searched by an outside vendor. The Independent Investigator received records from the City-owned cell phones used by the following individuals: then-Deputy Chief Mark Mura, Lieutenant Perkowski, Commander Favor, Mayor Warren, Mr. Smith, Mr. Yudelson, Mr. Roj, and Communications Bureau employee Ted Capuano. The City-owned cell phones of then-Deputy Chief Morabito and RPD Investigator Frank Camp were imaged and searched but contained no responsive records. The City-owned cell phones of Chief Singletary, Commander Fabian Rivera, and Commander Elena Correia were "factory reset" at the time they were collected from these individuals and so contained no records. The City-owned cell phone of Deputy Chief Simmons was unable to be searched because it was password protected. Deputy Chief Simmons explained, through an attorney, that he had never used his City-owned cell phone except to set up call forwarding to his personal cell phone and that he had forgotten the password.

b. Personal Cell Phones

The Subpoenas issued to individuals also sought records from personal cell phones that were used to conduct City business. In most cases, the Independent Investigator accepted a "self-audit" of personal cell phones, which involved the subpoenaed individual searching their own cell phone for communications responsive to the Subpoenas and providing these records to the Independent Investigator, most often in the form of screenshots. At the Independent Investigators' request, on October 23, Mayor Warren, Mr. Curtin, Mr. Roj, and Mr. Yudelson agreed, through counsel, to have their personal cell phones professionally imaged and searched by an outside vendor.[160] The Independent Investigator also received records extracted through imaging software from the personal cell phones of Councilmember Lupien and Council President Scott. Chief Singletary chose to provide personal cell phone records extracted by a professional vendor.

Although Mr. Curtin agreed on October 23 to submit his personal cell phone to a professional vendor for imaging, he later declined to do so. Mr. Curtin eventually agreed to provide screenshots of text messages responsive to the subpoena issued to him and to provide his counsel with the entirety of his text message conversations during the relevant period with the following individuals: Mayor Warren, Chief Singletary, Mr. Beath, Mr. Roj, Mr. Yudelson, Ms. Prince, Deputy Chief Simmons, Lieutenant Swetman, and Deputy Chief Morabito. Mr. Curtin agreed that his counsel would then conduct a search of these text message conversations and provide responsive records to the Independent Investigator. On November 17, Mr. Curtin provided a production of his cell phone records and a signed affidavit attesting to his compliance with the above-described agreed upon process (the "November 17 Records"). The November 17 Records did not contain the full set of requested text message conversations. On November 24, Mr. Curtin provided a supplemental production containing responsive records from the agreed-upon text message conversations.

c. Written Questions

The Independent Investigator requested and received sworn responses to written questions from Jennifer Sommers, Deputy Chief of the OAG Special Investigations and Prosecution Unit, and City Council President Scott.

2. Witness Testimony

The Independent Investigator took witness testimony in non-public depositions from the following individuals: Mayor Warren, Mr. Smith, Mr. Roj, Mr. Yudelson, Mr. Curtin, Mr. Beath, Ms. Prince, President Scott, Councilmember Lupien, Deputy Chief Simmons, and Lieutenant Swetman. These depositions were conducted remotely over videoconference due to the ongoing COVID-19 pandemic. These depositions were conducted outside the presence of any City Councilmembers (except where Councilmembers themselves were being deposed) pursuant to

the September 29 letter from the Special Committee expressing the desire that these depositions be conducted on a non-public basis and without the presence of the Special Committee to preserve the independence and integrity of the Investigation.

The Independent Investigator took witness testimony from Chief Singletary during a public hearing convened by the Special Committee on February 5, 2021. This deposition was also conducted remotely via videoconference but was simultaneously broadcast to the public over the internet. Councilmembers Evans and Patterson, who make up the Special Committee, convened the public meeting and were present for the duration of the deposition, but did not participate in the questioning of Chief Singletary.

Chief Singletary's public deposition was the result of litigation brought by the Independent Investigator on behalf of the City Council to enforce the subpoena issued to Chief Singletary. Although Chief Singletary was served with a City Council subpoena seeking documents and testimony on October 5, 2020, he refused to cooperate with the subpoena. Through his counsel, Chief Singletary communicated to the Independent Investigator that he would only comply with the subpoena subject to numerous preconditions, including that he would appear to testify only as part of a "global deposition" that also involved Chief Singletary simultaneously giving testimony to the City of Rochester's Office of Public Integrity and the City of Rochester in connection with a Notice of Claim that he filed. To obtain Chief Singletary's testimony in an efficient and timely manner, the Independent Investigator agreed to accommodate Chief Singletary's request for a "global deposition," however the other entities ignored or rejected his request. Faced with Chief Singletary's non-compliance, on December 18, 2020, the Independent Investigator moved for compliance with the subpoena in Monroe County Supreme Court.[161]

On January 19, 2021, Chief Singletary and City Council entered an agreement to resolve this litigation. Pursuant to this court-ordered agreement, Chief Singletary agreed to provide personal records responsive to the subpoena and to sit for a deposition, so long as the deposition was conducted during a public meeting of the Special Committee and provided that Chief Singletary could sit for the remote deposition while physically in City Council chambers.

C. Public Release of Evidence

At the same time as the release of this Report, the Independent Investigator provided the City Council Special Committee with all evidence relied upon and cited in this Report in the form of exhibits (the "Evidence"). The Independent Investigator has not made the Evidence available to the public at this time with six exceptions: the transcripts of the depositions of Mayor Warren, Corporation Counsel Curtin, Chief Singletary, Director Roj, City Council President Scott, and Councilmember Lupien, together with the exhibits marked and examined upon in each of those depositions.

The Evidence will be made public at the discretion of the City Council. Counsel for the Mayoral administration has asserted that portions of a significant number of documents considered are subject to the attorney-client privilege. The Independent Investigator does not believe that most of the Evidence that counsel for the Mayoral administration has marked as privileged is, in fact, protected by the attorney-client privilege. To the extent the Evidence contain legal advice that would otherwise be subject to the attorney-client privilege, the Independent Investigator believes that this privilege was waived by the City or its attorneys in numerous public statements made about the Prude Matter and in the documents released as part of Deputy Mayor Smith's September 14, 2020 Managerial Report.[162] In an effort to avoid delay in the release of this Report, the Independent Investigator has determined that the Report should be released before City Council determines whether all Evidence should be released to the public.

The transcripts from the depositions of Mayor Warren, Corporation Counsel Curtin, Chief Singletary, Communications Director Justin Roj, City Council President Scott, and Councilmember Lupien have been made available, in full, with the issuance of this report to the public in the interests of transparency and fairness. As discussed above, Chief Singletary's deposition was the only deposition open to the public. The Independent Investigator has determined that the deposition testimony of the other five City officials examined in the Investigation should be equally available to the public.

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[1] *See* Steven Orr, *How Daniel Prude suffocated as Rochester police restrained him,* Democrat & Chronicle, (Sept. 9, 2020), https://www.democratandchronicle.com/story/news/2020/09/02/daniel-prude-rochester-ny-police-died-march-2020-after-officers-restrained-him/5682948002/; Michael Hill, *Video in Black man's suffocation shows cops put hood on him,* AP News, (Sept. 2, 2020), https://apnews.com/article/virus-outbreak-ap-top-news-ny-state-wire-racial-injustice-il-state-wire-5c2f0cf366e560b7f41ebb3c964b099c; Dennis Romero and David K. Li, *7 officers in Rochester, New York, suspended in death of Daniel Prude,* ABC News, (Sept. 3, 2020), https://www.nbcnews.com/news/us-news/7-officers-rochester-new-york-suspended-case-death-daniel-prude-n1239257; *Governor Cuomo Calls for Answers and Expeditious Investigation into Death of Daniel Prude,* N.Y.S. News, (Sept. 3, 2020), https://www.governor.ny.gov/news/governor-cuomo-calls-answers-and-expeditious-investigation-death-daniel-prude; Liz Baker, *Rochester, N.Y., Police Officers Involved in Daniel Prude's Death Are Suspended,* NPR, (Sept. 3, 2020), https://www.npr.org/2020/09/03/909371520/rochester-n-y-police-officers-involved-in-daniel-prudes-death-are-suspended.

[2] Federal Civil Jury Instructions.

[3] This Finding is discussed in more detail in Section II.B.

[4] Singletary Deposition at 19-20.

[5] Warren Deposition at 8-9.

[6] Warren Deposition at 15 ("He said that he was going to go and view the video, and if something was wrong, he would let me know.").

[7] Singletary Deposition at 22.

[8] Singletary Deposition at 22-23.

[9] Singletary Deposition at 22.

[10] Singletary Deposition at 21-22.

[11] Singletary Deposition at 36-39.

[12] Simmons Dep. Ex. 6.

[13] Singletary Dep. Ex. 7.

[14] Warren Deposition at 18-20.

[15] Warren Deposition at 20.

[16] Warren Deposition at 21.

[17] Warren Deposition at 21-22.

[18] Warren Deposition at 24-25.

[19] Warren Deposition at 24-26.

[20] Warren Deposition at 26.

[21] Warren Deposition at 20, 26-28.

[22] Warren Deposition at 34-35.

[23]Singletary Deposition at 30-31, 47; Singletary Dep. Ex. 6; Singletary Dep. Ex. 50 at Ex. D.

[24] Singletary Deposition at 31-32.

[25] Singletary Deposition at 47-48.

[26] Singletary Deposition at 22, 26, 35, 40, 42-44.

[27] Singletary Deposition at 51-55.

[28] Singletary Deposition at 41.

[29] On May 5, 2018, in a case of mistaken identity, a Rochester man named Christopher Pate was wrestled to the ground, beaten, and tased by two RPD officers during an arrest captured by BWC footage. On August 28, 2018, Mayor Warren and then-Chief Ciminelli held a press conference to announce that they had suspended the officers involved in the Pate incident, citing the BWC footage. The two officers were suspended without pay while the RPD conducted an internal investigation into the incident. *See* Sean Lahman and Justin Murphy, *RPD Officers Suspended, May Face Charges for Excessive Force*, Democrat & Chronicle, (Aug. 28. 2018) https://www.democratandchronicle.com/story/news/2018/08/28/christopher-pate-rochester-police-excessive-force-spenser-mcavoy-lewis-stewart/1119448002/. One of the officers who arrested Mr. Pate, Michael Sippel, was subsequently found guilty of misdemeanor assault and later fired from the RPD. In the Pate case, the City released the BWC footage to the public one year after the incident. Greg Craig, *Warren 'Still Troubled' by Pate Video, Draws Parallels with Racial History of the South*, Democrat & Chronicle, (Jul. 9, 2019)

https://www.democratandchronicle.com/story/news/2019/07/09/christopher-pate-video-mayor-warren-troubled-michael-sippel-rochester-ny-police-rpd/1683877001/.

[30] Singletary Deposition at 56.

[31] Singletary Deposition at 54-55.

[32] Singletary Deposition at 348, 364-65.

[33] Warren Deposition at 50; Scott Deposition at 45-46.

[34] The Investigation uncovered conflicting testimony between Mayor Warren and Chief Singletary about their discussion on September 7. The Report does not address that factual dispute because its resolution is unnecessary to the Findings and arguably beyond the scope of the Independent Investigator's authority under Ordinance 2020-283.

[35] Singletary Deposition at 209.

[36] Singletary Dep. Ex. 2.

[37] Singletary Dep. Ex. 2.

[38] Singletary Dep. Ex. 2.

[39] April 10, 2020 Email from Frank Umbrino to Henry Favor.

[40] Singletary Deposition at 190-92.

[41] Singletary Deposition at 192-93.

[42] Warren Dep. Ex. 23 at 1.

[43] Warren Dep. Ex. 23 at 1.

[44] Singletary Dep. Ex. 17A.

[45] Singletary Dep. Ex. 17A.

[46] Singletary Deposition at 208-09.

[47] April 10, 2020 Text from Singletary to Law Department.

[48] Singletary Deposition at 205-210.

[49] Singletary Dep. Ex. 18 at 1.

[50] Singletary Dep. Ex. 18 at 1.

[51] Roj Deposition at 56-57; Warren Deposition at 68.

[52] Warren Deposition at 68-69; Singletary Deposition at 222, 226-28, 334-36.

[53] Singletary Deposition at 232-35.

[54] Singletary Deposition at 226-28.

[55] Singletary Deposition at 231.

[56] Singletary Deposition at 228.

[57] Warren Deposition at 69.

[58] Warren Deposition at 70.

[59] Warren Deposition at 70-71.

[60] Warren Dep. Ex. 23 at 1.

[61] *Lesher v. Hynes*, 19 N.Y.3d 57, 67 (2012) (it is agency's burden to "articulate a factual basis for the exemption" by identifying "generic kinds of documents for which the exemption is claimed, and the generic risks posed by disclosure of the categories of documents.").

[62] June 3, 2020 Email from Frank Umbrino to Henry Favor (On June 3, in response to a request from Lieutenant Perkowski for permission to provide the requested records to Ms. Prince, an RPD official emailed: "Pretty sure we have to…its closed correct?", to which the response was: " Yup…we will send it to our lawyers and they turn over what they we [*sic*] feel we have to, which is likely everything."); Prince Dep. Ex. 13 at 3 ("I told you before this is closed and after further discussion we think that is up for interpretation on the RPD's end…although that does not change the fact we pretty much have to give it corporation council [*sic*].").

[63] Captain Umbrino, for example, stated that the Law Department should "keep in mind" that the RPD's "investigation can be interpreted technically as remaining 'open' until [the OAG] investigation is complete in the highly unlikely event they uncover any additional information that could impact our investigative findings." Curtin Dep. Ex. 2 at 3.

[64] As late as June 10, RPD officials continued to argue to Ms. Prince that the ongoing investigation exemption precluded release of records in response to the FOIL Request, emphasizing that the OAG's review of the long-concluded MCU investigation might result in re-interviews of the RPD officers involved in the Prude Arrest. Prince Dep. Ex. 9 at 1.

[65] In Rochester, the Black Lives Matter movement drew large crowds in peaceful demonstrations for several weeks following the death of George Floyd. On May 30, 2020, hundreds of protestors gathered at a rally to demonstrate against police misconduct, and as the number of protestors grew to over 1,000 people, the rally began to mobilize, marching through the city. When the procession arrived at the Public Safety Building, events escalated as a faction of the protest remained at the building past the scheduled end of the demonstration. City-owned cars were flipped and set afire outside of the Rochester Public Safety Building. In response, the RPD fired tear gas and pepper balls into the crowd. Gary Craig, *5 days after Memorial Day: How the Protests and Aftermath on May 30 in Rochester Unfolded*, Democrat & Chronicle, (Jun. 19, 2020), https://www.democratandchronicle.com/in-depth/news/2020/06/19/rochester-ny-protests-black-lives-matter-how-rally-and-aftermath-unfolded/3142771001/. That evening, looting, vandalism, and public destruction were reported. *Id.* Mayor Warren declared a Local State of Emergency and issued a curfew for the City of Rochester, emphasizing that the violence and illegal activity was conducted by outsiders to the Black Lives Matter community. Jeremy Moule, *Protest Organizers: Outsiders Didn't Loot Our City*, Rochester City Newspaper, (Jun. 2, 2020), https://www.rochestercitynewspaper.com/rochester/protest-organizers-outsiders-didnt-loot-our-city/Content?oid=11854547. Local activist group Free the People Roc attributed the unrest to the RPD's violent response and their indiscriminate firing of rubber bullets into the crowd. Craig, *supra.* The RPD publicly defended its actions as appropriate to the circumstances. Fifteen people were arrested after the May 30 protests, thirteen of whom were residents of Rochester. Moule, *supra.* Following the May 30 protest, thousands of community volunteers came together to clean up the debris and repair damages from the demonstrations.

[66] Prince Deposition at 97-98; Sommers Response at 2.

[67] Sommers Response at 1.

[68] In email to Mr. Curtin sent shortly after the call, Ms. Prince described the call with Ms. Sommers by referencing the OAG's practice of inviting counsel to view the case file in person at its office. Prince Ex. 13 at 1. Ms. Prince's

email does not recount that Ms. Sommers expressed a preference that the City withhold release of the BWC footage. As part of this Investigation, Ms. Prince testified that Ms. Sommers stated to her on June 4 that the OAG could not tell the City of Rochester what to do but that "[t]o the extent that we could hold off on release, that would be great." Prince Deposition at 98. That comment is not reflected in Ms. Prince's email sent on June 4 documenting the discussion with Ms. Sommers. In any event, Ms. Prince's testimony is that, at most, the OAG expressed a preference for non-disclosure, not a directive, much less a specific factual basis upon which the City of Rochester could conclude that release would interfere with an ongoing investigation. Ms. Prince did not testify or ever state that the OAG had directed the City to withhold the footage; at most, her recollection is that the OAG expressed a preference along those lines, together with a statement that it could not direct the City's actions.

[69] Sommers Response at 2 ("I told Ms. Prince that OAG SIPU practice was to allow civil attorneys and family members to review video footage of incidents in our office while investigations were pending as a way of remaining transparent while maintaining the integrity of our investigations. I informed her that I would reach out to attorney Donald Thompson, one of the attorneys for the Prude family, later that day to schedule a time for him to review the video with any members of Mr. Prude's family who wished to view it. This was in no way unique to the Prude case and I told Ms. Prince that it was our standard practice.").

[70] Prince Dep. Ex. 13.

[71] Prince Dep. Ex. 13 at 1.

[72] Prince Deposition at 97.

[73] Singletary Dep. Ex. 27 at 1.

[74] Singletary Deposition at 145-46, 148-49, 156-57.

[75] Simmons Deposition at 140-42.

[76] Beath Deposition at 80-83; Singletary Deposition at 165-166, 290-91; Simmons Deposition at 142.

[77] Prince Deposition at 126-28; Prince Dep. Ex. 14.

[78] Prince Dep. Ex. 14 at 6-7; Prince Deposition at 137-38.

[79] Prince Dep. Ex. 14 at 4-5.

[80] Prince Deposition at 102.

[81] Prince Deposition at 68, 71-75. Mr. Beath testified that, if the Law Department concluded, based on information from the OAG, that release of records would impede the OAG investigation, the City could have withheld records as a matter of discretion under Section 87(2)(e)(i). But Mr. Beath agreed that Section 87(2)(e)(i) could not properly be invoked in the case of the Prude FOIL Request because the OAG never communicated to the City that release of the records would impede the OAG's investigation. Beath Deposition at 48-51.

[82] Prince Deposition at 102-04, 182.

[83] Prince Dep. Ex. 9 at 2.

[84] Prince Dep. Ex. 13 at 3.

[85] Prince Dep. Ex. 13 at 2.

[86] Beath Deposition at 73.

[87] Beath Deposition at 74.

[88] Prince Deposition at 90.

[89] The courts to have addressed the issue find that HIPAA does not apply to law enforcement agencies, such as the RPD. *See Beard v. City of Chicago*, No. 03 Civ. 3527, 2005 WL 66074 at *2 (N.D. Ill. Jan. 10, 2005) (holding city fire department is not a "covered entity" under HIPAA); *United States v. Mathis*, 377 F. Supp. 2d 640, 645 (M.D. Tenn. 2005) (finding that the FBI is not a "covered entity" under HIPAA); *New York Lawyers for Pub. Interest v. New York City Police Dep't.*, 64 Misc. 3d 671 (Sup. Ct. N.Y. Cnty. 2019) (NYPD is not subject to HIPAA, as it is not a covered entity or a non-qualified person as defined by the statute).

[90] FOIL expressly grants agencies with discretion to disclose records that fall within one of its exemptions. *See* Public Officers Law § 87(2) ("such agency may deny access to records or portions thereof [that fall within an enumerated exemption]").

[91] *See Buffalo Broad. Co. Inc. v. New York State Dep't of Corr. Servs*., 174 A.D.2d 212, 215 (3d Dep't 1992) (permitting prison to redact video showing nudity of inmates).

[92] Pub. Off. Law § 89(2)(b)(i) & (ii).

[93] Prince Deposition at 79- 82.

[94] Deputy Corporation Counsel Beath also testified the Law Department used the HIPAA Authorization as a placeholder to make sure it did not improperly disclose private health information. Beath Deposition at 115.

[95] Prince Deposition at 133-134.

[96] Roj Dep. Ex. 7.

[97] Prince Dep. Ex. 8 at 1.

[98] Prince Dep. Ex. 14 at 1-2.

[99] Prince Dep. Ex. 14 at 4-5. In Ms. Prince's June 11 email response to Mr. Shields' FOIL appeal, she invokes Section 87(2)(b) throughout to justify redactions of personal information that appears in written records, but she mentions only HIPAA, not Section 87(2)(b), with respect to the BWC footage.

[100] Prince Deposition at 151.

[101] Prince Deposition at 114.

[102] June 12, 2020 Email to Shields from Prince at 1.

[103] Roj Dep. Ex. 7.

[104] Warren Dep. Ex. 10 at 1.

[105] Prince Dep. Ex. 19.

[106] Prince Deposition at 184-85.

[107] Prince Deposition at 179.

[108] Prince Dep. Ex. 22; Prince Deposition at 186-87.

[109] Prince Deposition at 211-12, Sommers Response at 6-7.

[110] Curtin Deposition at 169, 229.

[111] Curtin Deposition at 168-169.

[112] Curtin Deposition at 226. Relatedly, Mr. Curtin testified that he believed that there was a "deal" between Ms. Sommers and the Law Department under which the OAG would privately show the BWC footage to the Prude family's lawyers and, in return, the City would withhold the BWC footage until the OAG investigation was complete. Curtin Deposition at 228.

[113] Sommers Response at 6-7.

[114] Sommers Response at 5-6.

[115] Sommers Response at 6.

[116] Warren Deposition at 180-81.

[117] Curtin Dep. Ex. 28 at 3.

[118] Singletary Deposition at 260-261; Curtin Deposition at 168-170; Warren Deposition at 125.

[119] Warren Deposition at 125.

[120] Warren Deposition at 136.

[121] Smith Deposition at 121.

[122] Smith Deposition at 117-18, 124.

[123] Curtin Deposition at 198, 200-01.

[124] Curtin Deposition at 168.

[125] Curtin Deposition at 170-171.

[126] The New York State legislature voted in 2020 to codify Executive Order 147 as part of the Safer New York Act.

[127] In fact, it is not uncommon that local officials comment upon the fact of an ongoing OAG investigation under E.O. 147. *See e.g.*, Kathleen Cullton, *Attorney General to Investigate NYPD Shooting of Saheed Vassell*, Patch (Apr. 5, 2018, 12:18PM) https://patch.com/new-york/brownsville/attorney-general-investigate-nypd-shooting-saheed-vassell (New York Mayor Bill de Blasio commenting on and announcing that his administration will be "as transparent as we can" concerning the death of Saheed Vassell, then under OAG investigation); Steve Hughes, *State AG mum on Cobleskill Man's death one year later*, Times Union (Nov. 27, 2019) https://www.timesunion.com/news/article/State-AG-mum-on-Cobleskill-man-s-death-one-year-14866495.php (Local police chief comments on delay in OAG investigation of the death of Gerard Roldan); Christina Carrega and Thomas Tracy, *Bronx man's death in NYPD custody rulled* (sic) *a homicide, medical examiner says*, Daily News (May 8, 2018, 8:34PM) https://www.nydailynews.com/new-york/bronx/bronx-man-nypd-custody-death-homicide-medical-examiner-article-1.3979003 (NYC Medical Examiner's Office announces cause of death in case of Dwayne Pritchet while OAG investigation is underway).

[128] Curtin Deposition at 74.

[129] Curtin Deposition at 74-75.

[130] Curtin Deposition at 75.

[131] Curtin Deposition at 122-123, 160; Singletary Deposition at 255.

[132] Warren Deposition at 121-122; Smith Deposition at 111.

[133] Warren Deposition at 125.

[134] Curtin Deposition at 156. Mr. Curtin recalled that he and Deputy Mayor Smith advised Mayor Warren that, under the Civil Service Law, she could not fire the officers without first providing notice and a hearing. Curtin Deposition at 158.

[135] Curtin Deposition at 248 ("They asked us to control the release of non-public information.").

[136] Scott Deposition at 11; Warren Deposition at 184; Scott Dep. Ex. 1.

[137] Warren Deposition at 188-189; Scott Dep. Ex. 1.

[138] *See* Scott Deposition at 46 (recounting disagreeing about this during early September meeting with other Council members); Scott Dep. Ex. 1; Scott Dep. Ex. 4 (Roj statement disagreeing with Scott's statements).

[139] Scott Deposition at 12.

[140] Scott Deposition at 18, 27-28.

[141] Warren Deposition at 182-183.

[142] Scott Deposition at 28.

[143] Scott Deposition at 28.

[144] Warren Dep. Ex. 32 at 3; Warren Deposition at 182.

[145] Warren Dep. Ex. 32 at 3.

[146] Scott Written Answers at Ex. A.

[147] Scott Written Answers at Ex. A.

[148] Warren Dep. Ex. 23 at 6.

[149] Warren Deposition at 44-45.

[150] Warren Deposition at 180.

[151] Warren Deposition at 179-180.

[152] Mayor Warren has made police reform and accountability priority issues throughout her time in office. During her first term, Mayor Warren worked with the RPD to reorganize the City's patrol areas from two large sections into smaller sections. Brian Sharp, *New Police Plan Divides City into 5 Sections*, Democrat and Chronicle (Apr. 10, 2014, 8:19PM), https://www.democratandchronicle.com/story/news/2014/04/10/new-police-plan-divides-city-sections/7572201/. In 2016, Mayor Warren proposed legislation that required all RPD officers to wear BWCs to create greater transparency and accountability. City of Rochester, *Body Worn Camera Program - Rochester Police Department*, City of Rochester, https://www.cityofrochester.gov/RPDBodyWornCamera/(last visited Mar 3, 2021). Subsequently, Mayor Warren ended the Red Light Traffic Camera Program in Rochester, a traffic policing program that she identified as disproportionately affecting the most impoverished neighborhoods with high-cost traffic tickets WHAM, *Red Light Traffic Camera Program Ending in Rochester*, WHAM (2016), https://13wham.com/news/top-stories/city-to-announce-changes-to-red-light-cameras. Mayor Warren also advocated for the repeal of Section 50-a of the New York state law. In compliance with the law's eventual repeal in June of 2020, Mayor Warren's administration created a public database of the disciplinary files for 118 RPD officers.

[153] Chief Singletary indicated that he did not disclose the death of Mr. Prude and the pendency of a criminal investigation of RPD officers, or advocate the City's doing so, at this point because "the media had not picked up on it," "Mr. Prude was still alive during [the] entire first week," "investigations were underway," and "there were never [any] conversations about it." Singletary Deposition at 68-69. Chief Singletary also testified that "it didn't strike"

him to make a public announcement when he learned of Mr. Prude's death and that he "never had the conversation" with the Mayor or anyone else about doing so." Singletary Deposition at 89. Chief Singletary testified that the OAG investigation did not have any bearing on his decision not to disclose information about the Prude Arrest. Singletary Deposition at 178. Mr. Roj testified that he did not disclose the death of Mr. Prude and the pendency of a criminal investigation of RPD officers, or advocate the City's doing so, at this point because he understood from Chief Singletary's email that there had been no wrongdoing and that the Communications Bureau had no responsibility to take further action. Roj Deposition at 51-53.

[154] City of Rochester Ordinance No. 2020-283.

[155] City of Rochester Resolution No. 2020-29 § 2.

[156] *See* Rochester City Charter § 5-21(G) (conferring upon the City Council "the power to . . . compel the attendance of witnesses and the production of books, papers or other evidence at any meeting of the Council or of any committee thereof and, for that purpose, to issue subpoenas signed by the President of the Council").

[157] In addition, pursuant to a court-ordered stipulation discussed *infra*, City Council also issued a twenty-third subpoena on January 27, 2021 to Chief Singletary. This subpoena was substantively identical to a subpoena served on Chief Singletary in October 2020.

[158] As in other sections of this Report, the titles used here refer to the individuals' position at the relevant time period (i.e., March 2020 to September 2020).

[159] The Independent Investigator did not take testimony from two individuals to whom Subpoenas were issued: Joseph Morabito, Deputy Chief, RPD, and Michael Perkowski, Lieutenant, RPD. The Independent Investigator determined, based on its review of documents and testimony from other witnesses, that witness testimony from these two individuals was not necessary to complete the Investigation.

[160] The Independent Investigator requested that the personal cell phones of these four individuals be professionally imaged based on a desire to apply best practices for obtaining cell phone data rather than based on any suspicion or belief that any of those individuals have or would tamper with any potential responsive documents contained on their individual personal cell phones. The Independent Investigator did not request that other personal cell phones be professionally audited to limit costs to the City.

[161] *See Council of the City of Rochester v. La'Ron Singletary*, Index No. E2020009990 (Monroe Cty. Supreme Court, filed Dec.18, 2020).

[162] *See, e.g.*, WHAM, *City Counsel Pushes Back Against Attorney General Statement in Daniel Prude Case*, WHAM (Sept. 4, 2020), available at https://13wham.com/news/local/city-counsel-describes-timeline-in-daniel-prude-case-says-settlement-talks-took-place.

Appendix I: Support for Findings of the Special Council Investigator

Findings 1-4

- Deposition of La'Ron Singletary (Feb. 5, 2021) ("Singletary Dep.") at 16-30, 32-41, 43-60, 72-73, 98-99, 347-48, 364-65.
- Deposition of Lovely Warren (Dec. 21, 2020) ("Warren Dep.") at 7-36.
- Deposition of Mark Simmons (Jan. 8, 2021) ("Simmons Dep.") at 9-14, 18-20, 22-24.
- Simmons Dep. Ex. 37.
- Singletary Dep. Ex. 6.
- Singletary Dep. Ex. 7.
- Singletary Dep. Ex. 50 at Ex. D.

Finding 5

- Simmons Dep. at 18.
- Singletary Dep. at 57-58.
- Deposition of Steven Swetman (Dec. 8, 2020) at 25-33.

Finding 6

- Singletary Dep. Ex. 3.
- Singletary Dep. at 60-64.

Finding 7

- Morabito Text Messages at 6.
- Simmons Dep. Ex. 27.
- Simmons Dep. Ex. 28.
- Singletary Dep. Ex. 1 at 3, 5.
- Singletary Dep. Ex. 10.
- Singletary Dep. at 90-91.

Finding 8

- Singletary Dep. at 70-71, 83-87.
- Locust Club Collective Bargaining Agreement, Art. 19, §7(A).

Finding 9

- Deposition of Patrick Beath (Dec. 11, 2020) ("Beath Dep.") at 12-13, 17, 20.
- Beath Dep. Ex. 1.
- Beath Dep. Ex. 2.
- Simmons Dep. at 63-67.

- Simmons Dep. Ex. 32.
- Swetman Dep. at 61-70.

Finding 10

- Deposition of Stephanie Prince (Dec. 4, 2020) ("Prince Dep.") at 36-39.
- Prince Dep. Ex. 4.
- April 6, 2020 Email Chain Between Michael Perkowski, Adam Correia and Aaron Colletti.

Finding 11

- Simmons Dep. at 58-61.
- Simmons Dep. Ex. 8.
- Memorandum of Agreement between the Locust Club and the City of Rochester.

Finding 12

- Singletary Dep. at 103, 181-93, 204-06, 218-19.
- Singletary Dep. Ex. 2.
- Singletary Dep. Ex. 20
- April 10, 2020 Email from Julie Luedke to Flamur Zenelovic.

Finding 13

- Warren Dep. Ex. 23 at 1.
- Warren Dep. at 67-68, 277-78, 301-303.
- Singletary Dep. at 194, 221-22.

Finding 14

- Singletary Dep. at 205-12, 215-17, 223-24.
- Singletary Dep. Ex. 17A.
- Curtin Dep. at 13-25, 39-41.
- Beath Dep. at 35-40.
- April 10, 2020 Text from Singletary to Law Department.

Finding 15

- Singletary Dep. Ex. 18.
- Singletary Dep. at 196-214.
- Deposition of Justin Roj (Dec. 10, 2020) ("Roj Dep.") at 36-54, 58-59.
- Roj Dep. Ex. 9.
- Warren Dep. at 61-67.

Finding 16

- Warren Dep. at 65-71.
- Singletary Dep. at 222-235.
- Roj Dep. at 56-57.

Finding 17

- April 16, 2020 Email from Jennifer Sommers to Sandra Doorley, Perry Duckles and Flamur Zenelovic.
- Swetman Dep. Ex. 23.
- Executive Order ("E.O.") 147.35.

Finding 18

- Warren Dep. at 77-79.
- Singletary Dep. at 161-63, 175; 238-39.
- Singletary Dep. Ex. 51.

Finding 19

- Simmons Dep. Ex. 5.

Finding 20

- April 10, 2020 Email from Julie Luedke to Flamur Zenelovic.
- Singletary Dep. at 68-69, 89, 103, 132-33, 181-214, 215-19, 221-24.
- Singletary Dep. Ex. 20.
- Singletary Dep. Ex. 17A.
- Singletary Dep. Ex. 18.
- Warren Dep. Ex. 23.
- Warren Dep. at 39-40, 43-44, 61-68, 277-78, 301-303.
- Curtin Dep. 13-25, 39-41.
- Beath Dep. at 35-40.
- April 10, 2020 Text from Singletary to Law Department.

Findings 21-23

- Prince Dep. at 17, 32-34, 36-58.
- Prince Dep. Ex. 4.
- Prince Dep. Ex. 5.
- April 6, 2020 Email Chain Between Michael Perkowski, Adam Correia and Aaron Colletti.

- Public Officers Law § 89(3)(a).
- Curtin Dep. Ex. 37.

Finding 24

- Prince Dep. Ex. 5.
- Prince Dep. at 66-75.
- Beath Dep. at 47-53.
- Jennifer Sommers Responses to Written Questions (Feb. 12, 2021) ("Sommers Response") at 1-3.
- June 3, 2020 Email from Frank Umbrino to Henry Favor.

Finding 25

- Prince Dep. Ex. 6.
- Public Officers Law § 89(4)(b).
- Prince Dep. at 61-63.

Finding 26

- Prince Dep. at 65, 88-94.
- Prince Dep. Ex. 8.
- Prince Dep. Ex. 9.
- Prince Dep. Ex. 13.
- Simmons Dep. Ex. 20.
- Simmons Dep. Ex. 22.
- Simmons Dep. at 118-41.
- Beath Dep. at 66-76.
- Singletary Dep. 141-53.

Findings 27-28

- Prince Dep. Ex. 9.
- Prince Dep. at 82, 94-122, 126-29
- Sommers Response at 2.
- Prince Dep. Ex. 13.

Findings 29-30

- Prince Dep. at 66-75, 94-122, 126-29, 212-13.
- Sommers Response.
- Beath Dep. at 46-53, 103-108.
- Curtin Dep. at 52-60, 71-75, 79-80, 161-64, 229-32.
- Public Officers Law § 87(2)(e)(i) or (iii).

- June 3, 2020 Email from Frank Umbrino to Henry Favor.

Findings 31-32

- Prince Dep. Ex. 13.
- Beath Dep. at 18-22, 71-85.
- Simmons Dep. at 141-47.
- Singletary Dep. at 145-46, 148-49, 156-58, 165-66.
- Curtin Dep. at 63-72.
- Prince Dep. at 89-90.

Findings 33-35

- Prince Dep. at 77-85, 111-13, 132-43, 154-67, 173-77.
- Beath Dep. at 116-22, 181-84.
- Curtin Dep. at 162-66
- Prince Dep. Ex. 14.
- May 28, 2020-June 12, 2020 Email Thread Between Elliot Shields, Stephanie Prince, Donald Thompson, David Roth, Justin Rog, Kristin O'Neill, and Shani Mitchell.
- 42 U.S.C. § 1320d–1(a)(3).
- 42 U.S.C. § 1320d(4), (6).
- 45 C.F.R. § 160.103.
- 45 C.F.R. § 164.508.
- *Beard v. City of Chicago*, No. 03 Civ. 3527, 2005 WL 66074 at *2 (N.D.Ill. Jan. 10, 2005)
- *United States v. Mathis*, 377 F. Supp. 2d 640, 645 (M.D. Tenn. 2005)
- Prince Dep. at 81-82.
- N.Y. Pub. Off. Law § 87(2)(b), (c)(ii).
- Prince Dep. Ex. 19.

Findings 36-37

- Beath Dep. at 121.
- Curtin Dep. at 105-06, 108-113.
- Warren Dep. at 106-08, 125; 139-41, 209-211.

Findings 38-41

- Beath Dep. at 123-32.
- Curtin Dep. at 109-33, 141-49, 152-161.
- Smith Dep. at 66-70, 108-120.
- Singletary Dep. at 171-74, 245-64.
- Roj Dep. at 71-76.
- Warren Dep. 109-127.
- Warren Dep. Ex. 4.

- Curtin Dep. Ex. 36 at 46.

Findings 42-46

- Warren Dep. at 119-27.
- Singletary Dep. at 249-52, 254-61.
- Curtin Dep. at 120, 156-61 245-50.
- Smith Dep. at 109-12.
- Prince Dep. 94-113
- Sommers Responses at 1-3.
- Prince Dep. Ex. 13.

Findings 47-49

- Warren Dep. at 127-46, 174-76.
- Smith Dep. at 117-30.
- Singletary Dep. at 260-263.
- Curtin Dep. at 161-76, 197-202, 225-32.
- Prince Dep. 94-113.
- Sommers Response at 1-3.

Finding 50

- Warren Dep. at 135.
- Curtin Dep. at 112-14, 128-29.

Findings 51-53

- Beath Dep. at 149-65.
- August 7, 2020 Email Between Elliot Shields, Patrick Beath, Donald Thompson, and David Roth.
- Curtin Dep. at 176-79.
- Warren Dep. at 209-213.

Findings 54-57

- Warren Dep. at 142-59.
- Smith Dep. at 130-33, 252-79.
- Singletary Dep. at 276-84.
- Warren Dep. Ex. 6.
- Warren Dep. Ex. 7.

Finding 58

- Scott Dep. at 11-14, 20, 28, 46.

- Warren Dep. at. 176-181.
- Scott Dep. Ex. 1.
- Scott Dep. Ex. 2.
- Scott Dep. Ex. 4.
- Warren Dep. Ex. 23 at LW274-R2. (at 3)
- President Loretta Scott Written Responses (Feb. 16, 2021) ("Scott Written Response") at 1-2.

Findings 59 -60

- Prince Dep. at 181-90.
- Beath Dep. at 178-84.
- Beath Dep. Ex. 30 at 120.
- Curtin Dep. at 179-88.
- Warren Dep. at 174-78.
- Singletary Dep. at 286-9.
- Curtin Dep. Ex. 14.
- Curtin Dep. Ex. 15.
- Singletary Dep. Ex. 35.

Findings 61-63

- Lupien Dep. at 43-47, 55-74, 76-90, 95-97, 107-08, 120-21.
- Lupien Dep. Ex. 6.
- Lupien Dep. Ex. 7.
- Lupien Dep. Ex. 14.
- Lupien Dep. Ex. 21.

Finding 64

- Steve Orr, *How Daniel Prude suffocated as Rochester Police Restrained Him,* Democrat & Chronicle, (Sept. 2, 2020), https://www.democratandchronicle.com/story/news/2020/09/02/daniel-prude-rochester-ny-police-died-march-2020-after-officers-restrained-him/5682948002/.

Finding 65

- Warren Dep. Ex. 11A at 13.
- Warren Dep. at 233-34.

Finding 66

- Warren Dep. Ex. 11A at 5, 23.
- Warren Dep. Ex. 20 at 2.

Finding 67

- Warren Dep. Ex. 11A at 23.
- Warren Dep. Ex. 13 at 11-12.
- Warren Dep. Ex. 20 at 3.

Finding 68

- Warren Dep. Ex. 8 at 17, 4.
- Warren Dep. Ex. 11A at 14.

Finding 69

- Curtin Dep. Ex. 26 at 3, 4, 5.
- Curtin Dep. at 252-55.

Finding 70

- Warren Dep. Ex. 13 at 23, 34.
- Singletary Dep. at 319

Finding 71

- Warren Dep. at 103-105, 168-180.
- Singletary Dep. at 261-62.
- Roj Dep. at 46-47, 108-111.
- Beath Dep. at 144-49.

Appendix II: Public Statements Referenced in Findings 65-73

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Finding 65: Mayor Warren stated at a news conference on September 3 that, prior to August 4, she was not aware that RPD officers had physically restrained Mr. Prude on March 23.

Supporting Public Statements:

Warren Exhibit 11A, September 3, 2020: p. 4:18-5:8.

I also want to be very clear today about what I knew about Mr. Prude's death and when I knew it. After our police department responded to the 911 call on March 23rd, I was informed later that day by Chief Singletary that Mr. Prude had an apparent drug overdose while in custody. Chief Singletary never informed me of the actions of his officers to forcibly restrain Mr. Prude. I only learned of those officers' actions on August 4th when corporation counsel, Tim Curtin, reviewed the video while fulfilling the FOIA from Mr. Prude's attorney.

At no time prior to August 4th did Chief Singletary or anyone make me aware or show me a video of the actions of the RPD officers involved in Mr. Prude's death.

Warren Exhibit 11A, September 3, 2020: p. 13:5 – 14:4.

UNIDENTIFIED FEMALE: Did the chief -- I was a little confused about the chief. So the chief knew more than what he actually told you?

MAYOR WARREN: The understanding of what the chief knew, you would have to talk to him. But what I know is what the chief explained to me on March 23rd when Mr. Prude encountered our police officers. What I was told was that he had overdosed, and that they were taking him to the hospital for possible overdose; and that he may die, and that this would be investigated.

On March 30th, the police chief informed me that he had passed away, and that they were doing an investigation.

At no time did I ever know the extent or that there was any hands-on incidents with these officers until August 4th, well after the attorney general was involved, well after the DA's office did their -- turned it over to the AG's office. It wasn't until we had received a FOIA request -- our attorneys were responding to the FOIA request -- that our corporation counsel came to me on August 4th and outlined what he saw and asked me to watch the video. When I watched that video, I was enraged. I wanted to come forward that day.

Finding 66: Mayor Warren stated at a press conference on September 3 and in a September 16 press interview that Chief Singletary had informed her prior to August 4 that Mr. Prude had become unconscious during a mental health arrest as the result of an "overdose."

Supporting Public Statements:

Warren Exhibit 11A, September 3, 2020: p. 4:18 -5:8.

I understand that the union may sue the City for this. They shall feel free to do so. Actually, I've been sued four times for actions that I have taken against racist acts that I believe. In addition, I have addressed with the police chief how deeply and personally and professionally disappointed I am for him failing to fully and accurately inform me about what occurred with Mr. Prude. He knows he needs to do better to truly protect and serve our community, and I believe that he will.

Experiencing and ultimately dying from a drug overdose in police custody, as I was told by the chief, is entirely different than what I ultimately witnessed on the video provided to me by the lawsuit department on August 4th.

Warren Exhibit 20, September 16, 2020, p. 3.

Adam Chodak: You said, "At no time prior to August 4th did Chief Singletary or anyone make me aware, or show me a video of the actions of the RPD officers involved in Mr. Prude's death." But Chief Singletary said in an April 10th email to [communications director] Justin Roj that you were "in the loop" and he was waiting for a call back from you regarding the medical examiner's report. You said yesterday that you saw a text from Singletary on that same day — what did it say?

Lovely Warren: It talked about PCP, and to be honest, Adam, this was not about what was said, this is about what wasn't said. This was characterized from the very beginning as a person that was in mental health distress, on PCP, and an overdose and in-custody death. Up until I saw the video, that was the way it was characterized and if you look at all of the information, it clearly shows that from the beginning of this, this was to be characterized and downplayed as a PCP overdose.

Finding 67: Mayor Warren stated at press conferences on September 3 and September 6 and in a September 16 press interview that, prior to August 4, she was not aware that the ME had ruled the death of Daniel Prude a homicide.

Supporting Public Statements:

Warren Exhibit 11A, September 3, 2020: p. 23:6 -21.

UNIDENTIFIED MALE: Were you aware of this case being presented for -- referred to the State AG back in April, and were you aware of the ME's finding that it was a homicide?

MAYOR WARREN: No. I was aware on May -- on March 23rd that -- I was told that Mr. Prude had overdosed, and he was being taken to the hospital. And that he may die and that it may be investigated because he was in police custody.

On March 30th when he passed away, I was notified that he had passed away, and that it was being investigated. I was not informed of anything as to Mr. Prude, the attorney general, the DA, or anything until August 4th when corporation counsel notified me and asked me to watch the video.

Singletary Exhibit 45, September 6, 2020: p. 11:21:25.

There was an autopsy in April showing that Mr. Prude died by homicide. Were you aware of that autopsy in April?

MAYOR WARREN: No. I was not aware of that autopsy in April. What I was aware of, as I

Warren Exhibit 20, September 16, 2020, p. 3-4.

. . . . And I can assure you had I known what I know now with all, with all of the documentation that's been provided, this situation, tragic situation, would have been handled very differently.

AC: Were you able to talk with him afterwards? And I ask because I want to know if he alerted you to the autopsy report that called this a homicide.

LW: Supposedly, somebody told me that he allegedly told me in an elevator. This is not something you tell the mayor, the leader of the city, in the elevator. I've met with him 50 times since then. The ME's report hasn't been provided. It was never emailed to me.

. . . . I could have been Cc'd, I could have been contacted, I could have been included.

The ME's report, even in that note to the communications department was not included, the body worn cam video was not included. I can only assume that that was to support a narrative that had already been given — that it was a PCP overdose with someone that had a mental health hygiene arrest and an in-custody death. And

Warren Exhibit 20, September 16, 2020, p. 7.

. . . . And knowing what I knew, and what I was told, that this was a PCP overdose, I just couldn't let it stand, because it was clear deception along the way, and information that could've been shared, but was not shared.

Finding 68: Mayor Warren stated at press conferences on September 2 and 3 that the OAG investigation had "precluded" the City from making public statements about the Prude Matter.

Supporting Public Statements:

Warren Exhibit 8, September 2, 2020: p. 4: 8 – 5:8

I want everyone to understand and be very clear that at no point in time did we feel that this was something that we wanted not to disclose. It is always something that we want to be forthright, up front about, with our citizens.

Whether we're talking about what happened with Mr. Pate, or what happened with Trevyan Rowe, or what happened with any other citizen in our city, I have been the first to come forward, to stand before our citizens and to let them know and understand what the process is going forward.

In this particular case, this is handled by another agency. And we are precluded from getting involved in it until that agency has completed their investigation. Unfortunately, it is now September 2nd, and we still do not have a report from the AG's office. I know that they're working on it and I know that our law department and our police department have been working with them to move this along. And as soon as -- as soon as we are allowed to get involved or to move this forward, we will do our investigation.

But the law, at this point in time, precludes us from doing so. So I want everyone to understand, and be very, very clear about where we are right now. I want the Prude family -- I know

Warren Exhibit 8, September 2, 2020: p. 17:1–18.

This is the first case in -- since I've been Mayor, and the police chief, that has been handled by another agency, the attorney general's office. Because of that, our law department has indicated to me that -- that I have to make sure that I adhere to the executive order, to the attorney general's instructions, of them concluding their investigation. And so I just want people to be very clear, this is not something that's in our wheelhouse, in our control, at this moment in time. And had it been, then for me, this would be something that we would have talked about months ago.

Unfortunately, I can't because of what my law department is telling me that I have to adhere to, and that's the executive order. That's the attorney general's office, you know, investigation.

Finding 69: Corporation Counsel Curtin stated at a press conference on September 4 that the City of Rochester was "not allowed" (or not "authorized" by the OAG) to release the BWC footage of the Prude Arrest footage to the public, and that there was an "agreement" or "deal" between the City and the OAG that City officials would refrain from making any public statements about the Prude Arrest until the OAG investigation was completed.

Supporting Public Statements:

Curtin Exhibit 26, September 4, 2020: p. 4:1:16.

TIM CURTIN: One point that I want to make, when we had the conversation with Jen over at the attorney general's office, she offered that she would invite the plaintiff's attorneys into her office to inspect the tape that we had declined to release. She subsequently confirmed that she did invite them in, and they in fact came into the office to inspect that tape. So if you think about it, they're not going to come in and inspect a tape if the attorney general had authorized us to release the tape.

So the fact that they had to go into the attorney general's office to review the tape is a pretty good indication that we were not allowed to release the tape. And that's confirmed in an email that I can provide to you.

Curtin Exhibit 26, September 4, 2020: p. 4:21 –6:22.

UNIDENTIFIED MALE: What -- what is the -- what's the legal reasoning that -- that -- Mayor Warren has said that she'd been precluded by this investigation, (indiscernible) from addressing this in any way. I just heard you spoke about the actual release of the tape. But what about just simply addressing this matter publicly prior to that?

TIM CURTIN: Well --

UNIDENTIFIED MALE: Could she have done that in your legal opinion?

TIM CURTIN: The Mayor pretty much can do whatever she wants to do. My role as her attorney is to give her advice. And my very strong advice to her was not to make public comments. We weren't going to release the tape. We were going to defer to the family.

We ultimately released the tape to the family and we left it within the -- the family's discretion whether or not to release the tape to the public.

My advice to the Mayor at that point in time, after we reviewed the tape, was not to make any statements, not to involve the media, as requested by the attorney general, until the

UNIDENTIFIED MALE: (Indiscernible) there's no legal reason why the Mayor couldn't have gone public with all the details?

Order 147 which indicates the attorney general shall have sole and exclusive discretion -- sole and exclusive control -- over any and all proceedings. So, "any and all" in my opinion, means any and all. And I don't think it would be appropriate.

Anybody can make a comment about anything that they choose. But it was my advice to the Mayor that she not make public comments until after the attorney general's report had been completed.

UNIDENTIFIED MALE: (Indiscernible) attorney general's office said that they never said you had to withhold any of the (indiscernible).

TIM CURTIN: The only thing I can say to that, we only spoke with the local office of the attorney general. We did not speak with the attorney general herself. And we have emails from the assistant attorney general which confirms that she lived up to the deal that they offered us.

September 4, 2020: p. 8:10 – 24.

UNIDENTIFIED MALE: Are there any other questions (indiscernible)?

UNIDENTIFIED MALE: When the medical examiner sent the findings to the attorney general's office, which included the finding of homicide, was that not a call for action by the City, or by the police department, or by the city investigator (indiscernible)?

TIM CURTIN: Well, it was sent to the major crimes unit and they did -- that was part of their investigation.

UNIDENTIFIED MALE: But there was no evidence at that point between your perspective to make (indiscernible)?

TIM CURTIN: No. Not -- at that point we had an agreement with the deputy attorney general that we would not make any public comments.

Finding 70: Chief Singletary, at a news conference on September 6, declined to respond directly to several questions about the extent to which he had informed Mayor Warren of the Prude Matter.

Supporting Public Statements:

Singletary Exhibit 45, Sept. 6, 2020: p. 22:10 – 23:16.

CHIEF SINGLETARY: I provided the Mayor factual information the morning of the 23rd, and March 30th was the follow-up when Mr. Prude passed away.

UNIDENTIFIED FEMALE: But if you -- you told her that -- that a person OD'd while being arrested. Did you know that he was being held down and all the other stuff?

CHIEF SINGLETARY: Yes.

UNIDENTIFIED FEMALE: Would it be protocol to tell the Mayor When someone's death is ruled a homicide in police custody?

CHIEF SINGLETARY: I'm sorry?

UNIDENTIFIED FEMALE: Would it be protocol to tell the Mayor when someone died in police custody?

CHIEF SINGLETARY: As -- as -- yes. And I did. I did.

UNIDENTIFIED FEMALE: And so the Mayor knew? I mean --

CHIEF SINGLETARY: As -- as --

UNIDENTIFIED FEMALE: -- after the autopsy came out, did the Mayor know?

CHIEF SINGLETARY: On the morning of the 23rd, I made factual information provided to the Mayor. On the morning of March 30th, when Mr. Prude passed away as well.

UNIDENTIFIED FEMALE: But what about the autopsy. Was she informed of the autopsy report that showed it was a homicide?

CHIEF SINGLETARY: The Mayor -- the Mayor just said she was not.