

ROCHESTER CITY COUNCIL

*IN RE INDEPENDENT INVESTIGATION INTO
THE CITY OF ROCHESTER'S RESPONSE TO AND
HANDLING OF THE RPD'S MARCH 23, 2020 USE
OF FORCE AGAINST DANIEL PRUDE*

SUBPOENA TO PRODUCE BOOKS, PAPERS OR OTHER EVIDENCE

To:

Steven D. Swetman
c/o Carrie Cohen
Morrison & Foerster
250 West 55th Street
New York, NY 10019-9601
ccohen@mofo.com

YOU ARE COMMANDED, pursuant to Rochester City Charter § 5-21(G), and pursuant to Resolution No. 2020-29 of the Council of the City Rochester, to produce at the time, date, and place set forth below the documents, electronically stored information, objects, or other evidence described in the attachment to this subpoena.

Place:

Andrew G. Celli, Jr.
Emery Celli Brinckerhoff Abady Ward & Maazel LLP
600 Fifth Ave., 10th Fl.
New York, NY 10020
acelli@ecbawm.com

Date and Time:

October 19, 2020, 5:00 PM

Dated: Rochester, New York
October 5, 2020

By:


LORETTA C. SCOTT
President, Rochester City Council

DEFINITIONS

1. You and Your: The terms “You” and “Your” mean Steven D. Swetman and, where appropriate, all officers, employees, or agents.
2. Rochester Police Department, RPD, Department: The terms “Rochester Police Department,” “RPD,” or “Department” mean the Rochester Police Department and its officers, employees, and agents.
3. Mayor’s Office: The term “Mayor’s Office” means Mayor Lovely A. Warren, and all offices, bureaus, officers, and employees within the office of Mayor, as that term is used in the Rochester City Charter.
4. Law Department: The term “Law Department” means the Law Department of the City of Rochester, the Rochester Corporation Counsel, and all Law Department employees, officers, and agents.
5. Locust Club: The term “Locust Club” means the Rochester Police Locust Club and all its officers, employees, or agents.
6. Incident: The term “Incident” means the events that commenced on March 23, 2020 with the RPD's contact with Daniel Prude, and that followed March 23, 2020, including Mr. Prude’s death, the analysis of the cause(s) or possible cause(s) of Mr. Prude’s death, the investigations into the circumstances of the RPD’s contact with Mr. Prude by any City, State or Federal entity (including but not limited to the Rochester City Law Department, the Monroe County Office of the Medical Examiner, the Monroe County District Attorney’s Office, and the Office of the New York Attorney General), the public disclosures of the RPD’s contact with Daniel Prude, the review and release of the Body-Worn Camera footage, the contemplated litigation arising from the RPD’s contact with Mr. Prude, and all actions by the City of

Rochester, its agents, officers, and employees, that relate in any manner to the RPD's contact with Mr. Prude and his subsequent death, or the investigation and the public disclosure thereof.

7. Prude: The term "Prude" means Daniel Prude.

8. FOIL Request: The term "FOIL Request" means any Freedom of Information Law Request submitted by Elliot Shields concerning the Incident, including but not limited to the requests submitted on April 6, 2020 (RR20-1479) and June 18, 2020 (RR20-02514), and any appeals thereof.

9. Communication: The term "Communication" means any correspondence, discussion, or transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

10. Concerning: The term "Concerning" means, in addition to its customary and usual meaning, relating to, pertaining to, regarding, referring to, alluding to, discussing, describing, evidencing, identifying, in connection with, involving, setting forth, stating, showing, touching upon, dealing with, bearing upon, in respect of, about, and having anything to do with.

11. Document: The term "Document" means, without limitation, the following items which are in Your possession, custody, or control, including located on any cell phone, computer, or other device and whether printed or recorded or reproduced by any other mechanical or electronic process, or written or produced by hand: agreements; communications; reports; correspondence; telegrams; electronic mail; electronic/cellular messages/texts; memoranda, summaries or records of telephone conversations; summaries or records of in-person conversations or interviews; drawings; sketches; maps; summaries or records of meetings or conferences; summaries of or records of interviews conducted by investigators; electronic or physical calendar entries concerning meetings, conferences, or interviews; summaries or reports of investigations or negotiations; opinions or reports of consultants; photographs; motion picture

films; body worn camera footage; digital or physical audio tape recordings; all material contained in any internal affairs file; brochures; pamphlets; advertisements; circulars; press releases; drafts; letters; recordings; any marginal comments appearing on any Document; Mobile Data Terminal communications; and all other writings.

INSTRUCTIONS

1. If any Document responsive to the requests has been lost, destroyed or is otherwise unavailable, describe and identify each such Document by stating in writing: (i) the name(s) of the authors(s), the name(s) of the person(s) who received or viewed the original and all copies, and the date and subject matter, (ii) the last known custodian of the Document, (iii) the incident, event, or occurrence during which such Document was lost, destroyed, or otherwise became unavailable, (iv) each person having knowledge of the circumstances of it being lost, discarded or destroyed and (v) your efforts to locate each such Document.

2. If, in answering these requests, you claim any vagueness, confusion, or ambiguity in either the request or a definition or instruction applicable thereto, such claim shall not be utilized by you as a basis for refusing to respond, rather you shall set forth in a part of your response to such a request the language deemed to be vague or confusing or ambiguous, select a reasonable interpretation that you believe resolves the ambiguity, respond to the request using that interpretation, and explain with particularity the construction or interpretation selected by you in responding to the request.

3. Questions regarding the interpretation of these requests should be resolved in favor of the broadest possible construction.

4. These requests seek production of all Documents, in their entirety, along with any attachments, drafts, and non-identical copies. A Document with handwritten, typewritten, or

other recorded notes, editing marks, etc., is not and shall not be deemed identical to one without such modifications, additions, or deletions.

5. Responsive Documents should be produced as they are kept in the usual course of business or organized and labeled to correspond with the categories in the requests, and identifying the name of the person from whose files the Documents were produced.

6. Wherever possible, all electronic Documents should be produced in their native format and/or as TIFs or PDFs and include all metadata. Do not convert the data to a form that is more burdensome and/or less searchable. If You convert data to TIFs or PDFs from native format, You must retain all metadata—including but not limited to the OCR database, Document demarcations, the date of the Documents, file name, the author of the Documents, the recipients of the Documents, the type of Documents, etc.—in a usable load file (Relativity or Concordance preferred with an option for images), together with links to text and native formats.

7. Wherever possible, the following fields of metadata should be produced, if available:

<i>Field</i>	<i>Data Type</i>	<i>Paper</i>	<i>Loose Native Files & Attachments</i>	<i>Email</i>
BegDoc	TEXT	Start Bates	Start Bates	Start Bates
EndDoc	TEXT	End Bates	End Bates	End Bates
BegAttach	TEXT	Starting bates number of document family	Starting bates number of document family	Starting bates number of document family
EndAttach	TEXT	Ending bates number of document family	Ending bates number of document family	Ending bates number of document family
Custodian	TEXT – single entry	Custodian of the document	Custodian of the document	Custodian of the document
Folder	Text		File path where original file was collected from	Folder where email was collected from. Includes folder locations within email container files such as PST and NSF

<i>Field</i>	<i>Data Type</i>	<i>Paper</i>	<i>Loose Native Files & Attachments</i>	<i>Email</i>
From	Text			Sender of message
To	TEXT – separate entries with “,”			Recipients of message
CC	TEXT – separate entries with “,”			Copied recipients
BCC	TEXT – separate entries with “,”			Blind copied recipients
Subject	TEXT or MEMO if over 255 characters			Subject of message
DateSent	Date (dd-mmm-yyyy) – eg 03-Mar-2012			Date message sent
TimeSent	Text (hh:mm:ss)			Time message sent
DateReceived	Date (dd-mmm-yyyy) – eg 03-Mar-2012			Date message received
TimeRecv	TEXT (hh:mm:ss)			Time message received
FileName	Text (hh:mm:ss)		Name of original file	Name of original file
FileExtension	Text		Extension of original file	Extension of original file
DateCreated	Date (dd-mmm-yyyy) – eg 03-Mar-2012		Date file was created	
DateModified	Date (dd-mmm-yyyy) – eg 03-Mar-2012		Date file was last modified	
Title	TEXT or MEMO if over 255		Title from document metadata	

<i>Field</i>	<i>Data Type</i>	<i>Paper</i>	<i>Loose Native Files & Attachments</i>	<i>Email</i>
	characters			
Author	Text		Document author from metadata	
Company	Text		Document company or organization from metadata	
Hash	Text		MD5 Hash Value	MD5 Hash Value
Text Files	Txt files should be named the same as the beg doc and delivered in the same folder as the images (eg, ABC0000001.txt)	Txt files should be named the same as the beg doc and delivered in the same folder as the images (eg, ABC0000001.txt)		
Native Files	Native files should be named the same as the beg doc and delivered in the same folder as the images (eg, ABC0000001.xls)			

8. Reference to any natural person shall be deemed to include that natural person's agents, servants, representatives, current and former employees, and successors.

9. The singular includes the plural and vice versa, except as the context may otherwise require; any request propounded in the present tense shall also be read as if propounded in the past tense and vice versa; whenever a term is used herein in the present, past, future, subjunctive, or other tense, voice, or mood, it shall also be construed to include all other tenses, voices, or moods; reference to any gender includes the other gender; the words "any" and

“or” shall be construed as either conjunctive or disjunctive in such manner as will broaden as widely as possibly the scope of any request for production; the word “all” means “any and all”; the word “any” means “any and all”; the word “including” means “including but not limited to.” Any ambiguity in a discovery request shall be construed to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

10. If you object to the production of a Document in relation to a specific request, state with particularity the basis for all objections with respect to such request. You should respond to all portions of that request that do not fall within the scope of your objection.

11. This request is a continuing one. If, after producing the requested Documents, you obtain or become aware of any further Documents responsive to this request or if additional information you or any persons acting on your behalf obtain would augment, clarify, or otherwise modify your responses, you are required to supplement your responses and produce such additional Documents.

12. Unless otherwise specified, the period of time covered by this subpoena is from March 23, 2020 to the date the requested Documents are returned.

DOCUMENTS TO BE PRODUCED

1. All documents concerning the Incident.
2. All documents concerning Daniel Prude.
3. All communications concerning the Incident, including but not limited to electronic mail, instant messages, text messages, social media, or other forms of communication, and including but not limited to:
 - a. All communications made on or around March 23, 2020;

- b. All communications concerning any preservation letter concerning the Incident, including those made on or around April 3, 2020; and
 - c. All communications concerning the Professional Standards Section's review of the Incident, including all drafts thereof.
4. All documents, including but not limited to word documents, pdfs, electronic mail, instant messages, text messages, social media, or any other forms of communication, which contain one or more of the following search terms:

- a. Prude
- b. Overdose
- c. OD
- d. PCP
- e. phencyclidine
- f. BWC
- g. "Body worn camera"
- h. Restraint
- i. Asphyxia
- j. Homicide
- k. "Jefferson Avenue"
- l. "Jefferson Ave"
- m. DP
- n. EDP
- o. "Excited delirium"
- p. "Resisting arrest"

- q. MHA
- r. "Mental Hygiene Arrest"
- s. Elliot
- t. Shields
- u. "Elliot Dolby-Shields"
- v. 061280
- w. Vaughn
- x. Taladay
- y. Santiago
- z. spit