

# STATE OF NORTH CAROLINA

File No.

16 CVS 19904

Mecklenburg County

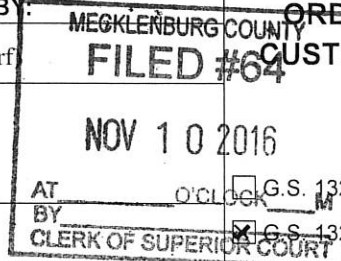
In The General Court Of Justice  
Superior Court Division

## IN THE MATTER OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING SOUGHT BY:

Name Of Petitioner  
WFAE/University Radio Foundation (Lisa Worf)

Address  
8801 J.M. Keynes Drive, Suite 91

City, State, Zip  
Charlotte, NC 28262



## ORDER ON PETITION FOR RELEASE OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING

This matter came before the undersigned Superior Court Judge to determine whether release of a law enforcement agency recording is warranted under Chapter 132 of the General Statutes. Following a hearing, the Court makes the following findings of fact and conclusions of law:

### FINDINGS OF FACT

1. On 1 November 2016 (date), the petitioner named above filed a petition for release of a custodial law enforcement agency recording to WFAE/University Radio Foundation.
2. Petitioner ☒ served ☐ did not serve a copy of the the petition on the head of the custodial law enforcement agency and the District Attorney.
3. The head of the custodial law enforcement agency ☒ did ☐ did not give notice of the petition and hearing to all law enforcement agency personnel whose image or voice is in the recording and also to the head of each such person's employing agency.
4. Each person entitled to be notified of this proceeding ☒ was ☐ was not given an opportunity to be heard, either individually or by such person's designated representative.
- ☒ 5. The Court conducted an in-camera review of the recording on 6 November 2016 (date).
6. The recording ☒ was made ☐ was made in some portion ☐ was not made in this county.
- ☐ 7. **Request made pursuant to G.S. 132-1.4A(e1)**  
The Court determined that the person to whom release of the recording is sought is the following:  
(NOTE TO JUDGE: "Personal representative" is defined as "A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased." G.S. 132-1.4A(a)(5).)  
☐ A person whose image or voice is in the recording.  
☐ A personal representative of an adult person whose image or voice is in the recording and the adult person has consented to the disclosure.  
☐ A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.  
☐ A personal representative of a deceased person whose image or voice is in the recording.  
☐ A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.  
☐ None of the above.

and

The Court considered the applicability of all of the standards in G.S. 132-1.4A(f) and determined the following:

- ☐ Release is necessary to advance a compelling public interest.
- ☐ The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.

(Over)

- ☐ The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- ☐ Release would reveal information regarding a person that is of a highly sensitive personal nature.
- ☐ Release may harm the reputation or jeopardize the safety of a person.
- ☐ Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- ☐ Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- ☐ There is good cause shown to release all portions of a recording.
- ☐ Other (if applicable): \_\_\_\_\_

☒ 8. Request made pursuant to G.S. 132-1.4A(f)

The Court considered the applicability of all of the standards in G.S. 132-1.4A(f) and determined the following:

- ☐ Release is necessary to advance a compelling public interest.
- ☐ The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- ☐ The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- ☐ Release would reveal information regarding a person that is of a highly sensitive personal nature.
- ☐ Release may harm the reputation or jeopardize the safety of a person.
- ☐ Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- ☐ Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- ☐ There is good cause shown to release all portions of a recording.
- ☐ Other (if applicable): \_\_\_\_\_

**CONCLUSIONS OF LAW**

In light of the foregoing findings of fact, (check one and write name of party authorized or not authorized to release of the recording)

- ☐ The Court concludes that \_\_\_\_\_ is authorized to the release of the recording.
- ☒ The Court concludes that Charlotte-Mecklenburg Police Department is not authorized to the release of the recording.

**ORDER**

It is therefore Ordered that (check one)

☐ **Petition Granted:**

The custodial law enforcement agency shall release to \_\_\_\_\_ the following portions of the recording: (list, and indicate if all portions are to be released) \_\_\_\_\_

- ☐ The court places the following conditions/restrictions on the release of the recording: \_\_\_\_\_

☒ **Petition Denied:**

The custodial law enforcement agency shall not release any portion of the recording to WFAE/University Radio Foundation.

**SIGNATURE OF SUPERIOR COURT JUDGE**

Date  
10 November 2016

Name Of Superior Court Judge (type or print)  
Eric L. Levinson

Signature Of Superior Court Judge

*Eric Levinson*

*Meck Clerk Court shall hold thumbdrive under seal for 12 days and then same can be retrieved by CMPO. Not to be otherwise released except by order of Court. em*

Order on Petition for Release of Recordings

16 CVS 19904 (Meck)

9 November 2016

Page Two

Preliminary Observations

Here, an individual signed a petition seeking release of recordings under GS 132-1.4A(f) -- a provision providing that "any person" can seek the release of recordings pursuant to a court order. This recent law, effective 1 October 2016, has been the subject of discussion(s) in scholarly publications but not by a court of record. None of the Respondents argued during the hearing that an individual reporter is not authorized to seek release. The undersigned accepts as true for purposes of this petition that the reporter is authorized to seek release under GS 132-1.4A(f).

Here, the petition is captioned "WFAE, University Radio Foundation" as opposed to being captioned in the name of the individual reporter. This means that the action may have been improperly "commenced" in the name of one/more corporate entit(ies). The Respondents did not argue -- and the court did not raise, *sua sponte* -- a concern that the law of North Carolina does not permit individuals not empowered to practice law to appear on behalf of corporate entities in civil matters (with several exceptions not implicated here). The Court has resolved this petition on its merits notwithstanding this concern.

Obligatory Statutory Factors

The following discussion largely tracks the factors set forth in GS 132-1.4A(f) and includes additional findings/observations by the Court:

Here, the law enforcement "recordings" consist of audio and/or audio-visual recordings of events following the reported shooting by a civilian on a municipal transit bus on 2 June 2016.

It is axiomatic that persons and entities inside our communities have an understandable interest in justice-sector processes and activities of policing agencies. There can be elevated interest in transparency when law enforcement personnel utilize deadly force. Our General Assembly, in adopting the factors enumerated in G.S. 132-1.4A(f), provided that Superior Courts must consider whether "[r]elease is necessary to advance a compelling public interest." (emphasis added). Here, the Petitioner asserts a generalized public interest in police shooting events and has not articulated -- with any particularity -- an elevated "compelling" necessity for the release of these particular recordings. In every case -- and in every police shooting matter -- there will likely be understandable public interest in the audio and/or audio-visual recordings. Here, the 'public interest' factor -- on this record and as described by Petitioner -- does not weigh heavily in favor of release when the criminal/prosecutorial investigation more fully detailed below has not been completed. *See* GS 132-1.4A(f)(1).

These recordings do contain information that is otherwise confidential or exempt from disclosure or release under State law. *See* GS 132-1.4A(f)(2).

The person requesting release is not seeking to obtain evidence to determine legal issues in a current or potential court proceeding. *See* GS 132-1.4A(f)(3).

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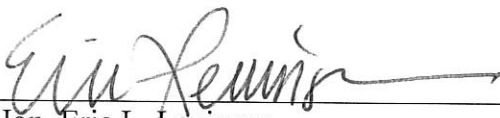
9 November 2016

Page Three

While the release of the information contained in the audio and/or audio-visual recordings are of a highly sensitive personal nature -- the death of a person -- this factor is not weighted heavily by the undersigned in evaluating this petition for release. Likewise, the Court is not particularly concerned -- on these facts -- that the release of the recordings would "harm the reputation" of persons. And neither the Petitioner nor the Respondents or those noticed for the hearing expressed concern about whether the release of the recordings would "jeopardize the safety" of persons. *See* GS 132-1.4A(f)(4), (5).

Certain respondents -- particularly those CMPD officers who allegedly used deadly force -- correctly contend that the release of these recordings would "create a serious threat to the fair, impartial, and orderly administration of justice." While it is presently unknown whether representatives of either the deceased's family or the Estate intend to investigate this matter for potential civil litigation, the criminal investigative process has not been completed. The prosecuting authority for the 26th Prosecutorial District of North Carolina has not determined whether it will/will not seek an indictment alleging criminal code violation(s). The internal CMPD investigation has been completed, but "[c]onfidentiality is necessary to protect ... an active ... criminal investigation ... ." *See* GS 132-1.4A(f)(6), (7).

There has been some "disclosure" of image(s) from the recording(s) to one/more members of the deceased's family. *See* GS 132-1.4A(e1)(discretionary "disclosure" by law enforcement agencies to "persons authorized to receive disclosure"). This record doesn't reflect whether any other persons authorized to seek full "disclosure" from CMPD ("custodial law enforcement agency") have done so. *See* GS 132-1.4A(c). The record doesn't reveal whether persons authorized to seek full disclosure from the CMPD sought an appeal of an adverse determination to the Superior Court. *See* GS 132-1.4A(e). Petitioner here is an employee-reporter for WFAE and neither additional press representatives nor members of the family of the deceased joined as party-petitioners. And, the undersigned observes, no members of the deceased's family were present for the hearing on whether the recordings should be released.

  
\_\_\_\_\_  
Hon. Eric L. Levinson  
Resident Superior Court Judge

11-10-16  
Date

End.