

RESOLUTION NO. 18-58

RESOLUTION CONCURRING IN THE CITY MANAGER'S RELEASE OF PERSONNEL INFORMATION

WHEREAS, on February 28, 2018, the Asheville Citizen Times published body-worn camera footage, recorded in late August of 2017, which showed a former Asheville Police Department ("APD") officer, Christopher Hickman ("Hickman"), using excessive force to arrest an individual on or near Biltmore Avenue in Asheville; and

WHEREAS, that recording was removed from the APD by an unknown source and provided to the Asheville Citizen Times, presumably by the same unknown source, and the Asheville Citizen Times has made the recording available to the public; and

WHEREAS, Hickman's employment from the City ended in January of 2018, and most of the information regarding the APD's response to the complaint of excessive force against Hickman, and APD's actions in response to Hickman's actions is properly classified as confidential personnel information pursuant to N.C. Gen. Stat. § 160A-168 and other applicable law, and is, therefore, not available to the public pursuant to North Carolina law; and

WHEREAS, pursuant to N.C. Gen. Stat. § 160A-168(c)(7), the City Manager, "with concurrence" of the City Council may release certain information about employee personnel actions, under the circumstances set forth in that statute. The City Manager has determined and the Council concurs, that those circumstances exist in the current matter; specifically, that the release of the confidential personnel information included in Exhibit A attached hereto, and incorporated herein by reference, "is essential to maintaining public confidence in the administration of city services [and] to maintaining the level and quality of city services."

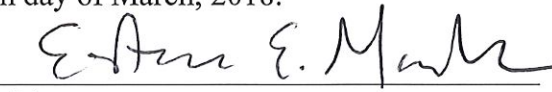
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Pursuant to N.C. Gen. Stat. § 160A-168(c)(7), the Asheville City Council hereby concurs with, agrees and encourages the City Manager's release of certain personnel information contained in Exhibit A, attached hereto.

Read, approved and adopted, this 5th day of March, 2018.



City Clerk



Mayor

Approved as to from:



City Attorney

EXHIBIT A

DATE: March 5, 2018

TO: Asheville City Council

CC: Robin Currin, City Attorney
Maggie Burleson, City Clerk

FROM: Gary Jackson, City Manager

SUBJECT: Release of Personnel Information – N.C. Gen. Stat. § 160A-168(c)(7)

On February 28, 2018, the Asheville Citizen-Times published body-worn camera footage, recorded shortly after midnight on August 25, 2017, which showed an APD officer, Christopher Hickman, using excessive and dangerous force to arrest a man named Johnnie Rush who Hickman and an officer in training, Vinero Ruggerio, had stopped near Biltmore Avenue. The use of force shown in the recordings is, understandably, a source of great anger and concern within the community.

I am concerned that the public does not presently have access to all of the information necessary for it to judge the City's response to this officer's actions, and that absent that information, this matter will continue to negatively impact the community's perception of its police department and the way which the City responds to misconduct by its employees. The City Council has also directed that all information about this matter that can lawfully be shared should be provided to the public immediately. It is, therefore, my conclusion, with City Council's agreement and support, that the following information concerning this matter, provided to me by the APD, should be made available to the public.

On August 25, 2017, the Asheville Police Department (“APD”) received a complaint by Johnnie Rush alleging that an APD Officer used excessive force during his arrest the previous evening. That same day, upon reviewing the same body-camera footage of the arrest that the public has now seen, Chief Hooper ordered that Hickman’s law enforcement authority be suspended, and that he be taken off the street and placed on administrative duty. Hickman was ordered to turn in his badge and gun, and had no further interaction as a police officer with the public. Also that same day, Ruggerio, the trainee in the recording, was reassigned to a different training officer. Chief Hooper informed John Maddux from the City Attorney’s Office about the incident on August 25, 2017, and within days informed Interim Assistant City Manager Jade Dundas as well.

On September 15, 2017, the APD took a copy of the recording to District Attorney Todd Williams for review. Upon reviewing the recording, Mr. Williams agreed with the APD that all charges then pending against Mr. Rush should be dismissed. A copy of the voluntary dismissal filed with the court is attached as Exhibit 1. At that time, Mr. Williams was informed that the APD’s Professional Standards unit was conducting an administrative investigation into the matter.

In addition to ordering an administrative investigation regarding Hickman’s use of force against Mr. Rush, Chief Hooper also ordered a review of all available footage captured by Hickman’s camera during all other encounters with the public. This was a substantially more comprehensive review than is typically required by the APD’s auditing process, whereby a supervisor reviews only a random sample of an officer’s recordings each month to ensure they are following policy. This

more comprehensive review of Hickman's recordings, which required personnel to review more than fifty-eight (58) hours of footage, revealed four other instances where Hickman displayed discourteous and rude conduct to members of the public, although no complaints had been filed related to those instances. The Professional Standards unit, in turn, initiated an additional administrative case focused solely on whether Hickman's rude and discourteous behavior in those other instances constituted a violation of the APD's policies requiring that officers treat members of the public with respect and courtesy, and avoid any action which might bring discredit on themselves or the department.

The APD's new use of force policy, which went into effect in April of 2017, requires that a supervisor respond to every use of force by an APD officer and conduct a preliminary investigation. That preliminary investigation should include, at a minimum, obtaining, or attempting to obtain, a statement from the subject of the force or injury and all witnesses at the scene; and, when applicable, photographing all areas of contact located on the subject to document the injuries or lack of injuries. During the course of its investigation into whether Hickman had used excessive force, the APD's Professional Standards unit learned that a supervisor responded to the scene that night to initiate a review of Hickman's use of force as required by APD policy. That supervisor, however, despite being told by Hickman that he struck Mr. Rush in the head with his Taser, and despite Mr. Rush saying that he was choked, did not immediately forward any information or complete notes of those interviews with Hickman and Rush, and did not review the body camera footage that evening. Because of conduct related to this incident, that

supervisor ultimately received discipline for unsatisfactory performance, and was ordered to undergo additional training.

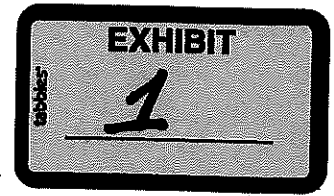
The administrative investigation into Hickman's arrest of Rush concluded that Hickman had engaged in excessive force in violation of APD policy, as well as unbecoming conduct and failing to meet the responsibilities of duty. The additional administrative investigation, which was initiated following review of all other available body-worn camera footage recorded by Hickman, also concluded that Hickman had engaged in rude and discourteous behavior on four other occasions. Both administrative cases were complete and sent to the Division Commander for review on or about December 15, 2017, followed by a Deputy Chief's review which was complete on December 17, 2017. After reviewing the administrative cases, Chief Hooper ordered that the Professional Standards unit contact Hickman to schedule a pre-disciplinary conference, which is required by City policy. Hickman received notification of that pre-disciplinary conference on December 27, 2017, and per standard procedure, was placed on investigative suspension that same day. Hickman's pre-disciplinary conference with Chief Hooper took place on January 2, 2018. Following that pre-disciplinary conference, it was Chief Hooper's decision that Hickman's employment would be terminated. On January 5, 2018, Chief Hooper met with Hickman to inform him of her decision to terminate his employment, however, at the beginning of that meeting, Hickman elected to resign before Chief Hooper provided Hickman with her written decision to terminate. A copy of the termination notice, which was drafted but not presented to Hickman, is attached as Exhibit 2.

The APD's administrative investigation of Mr. Rush's complaint complied with all required steps and procedures set forth in APD and City policies governing allegations of employee misconduct, including those policies which apply to claims of excessive force. Per APD policy, the department makes every effort to fully investigate all complaints within sixty (60) days of reception of the complaint. More complex investigations handled by the Professional Standards unit may, and often do, require additional time beyond the sixty days to complete. The investigation of this matter, due to its complexity, took approximately three and a half months to complete. Failure to follow the City's internal policies could result in substantial risk, including reinstatement by the Civil Service Board, if the officer is terminated.

Prior to Hickman's resignation, on December 19, 2017, Chief Hooper requested that District Attorney Williams review the recording a second time, together with an additional recording captured by another officer's camera, and provide an opinion about whether Hickman's conduct rose to the level of a criminal offense. After his further review, on January 10, 2018, Mr. Williams requested that the APD ask the SBI to initiate a criminal investigation as to whether Hickman had committed assault. A copy of District Attorney Williams' request to the APD is attached as Exhibit 3. On January 11, 2018, Chief Hooper sent the SBI a letter making that request. A copy of the APD's letter to the SBI is attached as Exhibit 4. On January 12, 2018, the SBI wrote the APD an email stating, in part, that, "The SBI is going to respectfully decline the request based on the completion of your four month internal investigation which has led to the resignation of Officer Hickman." A complete copy of the SBI's email is attached as Exhibit 5. Following

the SBI's refusal to investigate, Mr. Williams then requested that the APD conduct the criminal investigation instead. By law, information gained through an administrative investigation cannot be used to prosecute someone for a criminal violation. For that reason, on January 18, 2018, Chief Hooper assigned the criminal case to a detective in the APD's criminal investigations division to conduct a separate inquiry that could be used to charge Hickman with a criminal offense if the District Attorney so chose. That investigation is now nearly complete. Barring any unexpected developments, the APD expects to submit the case to the District Attorney within the next week to determine whether Hickman should be criminally prosecuted, which is the District Attorney's decision.

The community deserves to know that the City takes Hickman's misconduct seriously, and that APD employees who engage in excessive force will be held accountable. For that reason, per N.C. Gen. Stat. § 160A-168(c)(7), I have determined that the release of the information contained in this document is essential to maintaining public confidence in the administration of city services, and request that the City Council concur in this decision. This fully accords with the strong direction I have received from the City Council that in all matters, especially those involving police, the City should be as transparent as possible to its citizens. City Council's concurrence includes that if I determine, at a later date, that the release of additional information is necessary to clarify or explain the reason for any personnel action described in this document, such information may be released pursuant to this written determination without further City Council action.



STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

VOLUNTARY DISMISSAL

STATE VERSUS Johnnie RUSH

FILE NUMBER(S): 17 CR 89617; 17 CR 89618

CHARGE(S) 1st NUMBER: 2nd Degree Trespass; Impeding Traffic

CHARGE(S) 2nd NUMBER: Resisting Public Officer; AOGO

Explanation (optional): District Attorney discretion

The undersigned prosecutor enters a dismissal in the above charge(s).

Name of Prosecutor: Rodney G. Hasty

Signature of Prosecutor:

A handwritten signature in black ink, appearing to read "R. Hasty".



MEMORANDUM



TO: Officer Christopher Hickman
FROM: Tammy Hooper, Chief of Police
SUBJECT: Results of Administrative Investigations A2017-043 and C2017-017
DATE: January 5, 2018
CC: Peggy Rowe, Human Resources Director
Human Resources Personnel File

This memorandum is to officially notify you of the results of your pre-disciplinary conference held on January 2, 2018, in accordance with City of Asheville Personnel Policy Section 69.

On August 24, 2017, you, along with your trainee, Officer Verino Ruggerio, initiated a pedestrian stop on a citizen on Short Coxe Avenue in Asheville. The citizen initially fled from you, and you pursued him into a parking lot adjacent to the roadway. There, you employed force against the citizen, including the use of your Taser, strikes with your fists and the Taser, and culminating with you placing the citizen in a chokehold prior to his being restrained with handcuffs.

The incident was recorded in its entirety by your body-worn camera, and a subsequent review of the video led to the Professional Standards Section conducting an administrative investigation to determine whether your actions were within policy. I also directed the Professional Standards Section to review all available body-worn camera footage associated with arrests made by you.

The Professional Standards Section investigations found demonstrable evidence that the force used by you on August 24, 2017 was excessive and not within policy, and the review of the body-worn camera footage revealed a pattern of behavior that was unbecoming that of an officer at this agency. These findings led to the recommendation that the allegations of violations of Rule of Conduct P-4, Use of Force, P-8, Responsibilities of Duty, and P-1, Unbecoming Conduct be classified as being sustained. Your Division and Bureau Commanders reviewed the investigative files and concurred that all of the recommended allegations should be sustained, and both command recommended that your employment with the agency should be terminated.

Based upon my review of the Professional Standards Section investigative files and the information provided by you at your pre-disciplinary conference, I have determined that your conduct and performance violated the following City and Asheville Police Department policies:

- P-1, Unbecoming Conduct
- P-4, Use of Force

○ P-8, Responsibilities of Duty

As a result, you are hereby informed that your employment with the City of Asheville is terminated, effective immediately. This was not an easy decision; however, I believe this is in the best interests of the citizens we serve, the members of this department and the City.

Please return all City and APD property to Logistics Sergeant Wade Cecil by Friday, January 12, 2018 at 12:00 noon.

Pursuant to the City of Asheville Personnel Policy, Section 69, you have the right to appeal this decision to the City Manager within twelve (12) calendar days of today's date.

By order of:

Tammy Hooper

Chief of Police



*State of North Carolina
General Court of Justice
Twenty-eight Prosecutorial District*

TODD M. WILLIAMS
DISTRICT ATTORNEY

P. O. BOX 7158
ASHEVILLE, NC 28802

SIXTH FLOOR COURTHOUSE
TELEPHONE: (828) 259-3410
FAX: (828) 259-3411

January 10, 2018

Chief Tammy Hooper
Asheville Police Department

In re: APD Officer Chris Hickman

Dear Chief Hooper:

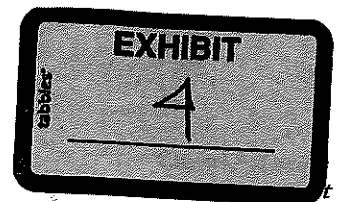
I am writing you to request that your office initiate a criminal investigation of the above-named officer. I reviewed body-worn camera footage of an arrest made by this officer of a subject named Johnnie Rush and am concerned that a violation of North Carolina law may have occurred.

If you have questions or concerns please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd M. Williams", with a long horizontal flourish extending to the right.

Todd M. Williams
District Attorney



P.O. Box 7148
Asheville, NC 28802
(828) 252-1110
www.ashevillenc.gov

January 11, 2018

James M. Schandavel
Special Agent in Charge
North Carolina State Bureau of Investigation
900 Alliance Court
Asheville, NC 28806

SAC Schandavel:

On January 10, 2018, Buncombe County District Attorney Todd Williams requested that the Asheville Police Department ("the APD") initiate an investigation as to whether former APD officer Christopher Hickman, who resigned from his position as an APD officer on January 5, 2018, violated North Carolina law when arresting Johnnie Rush on August 24, 2017. Mr. Williams' request follows his review of relevant body-camera footage.

The APD has already conducted an administrative investigation of this matter, so in order to ensure that administrative investigation remains separate from the criminal inquiry, and in interest of fairness and impartiality, by this letter, I am requesting that the SBI undertake the criminal investigation requested by Mr. Williams pursuant to N.C. Gen. Stat. § 143B-917.

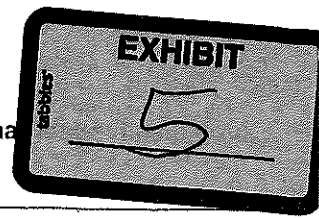
Best Regards,



Tammy Hooper
Chief of Police, Asheville Police Department



Lt. Sean Aardema <saardema@ashevillenc.gov>

**RE: Confidential**

1 message

Schandavel, James <Jschandavel@ncsbi.gov>
To: "Lt. Sean Aardema" <saardema@ashevillenc.gov>
Cc: Tammy Hooper <thooper@ashevillenc.gov>, John Maddux <JMaddux@ashevillenc.gov>

Fri, Jan 12, 2018 at 1:24 PM

Lt. Aardema,

I have received both letters of request for the SBI to conduct a criminal investigation into possibly bringing charges against Asheville Police Officer Christopher Hickman for his actions that took place on August 24, 2017.

The SBI is going to respectfully decline the request based on the completion of your four month internal investigation which has led to the resignation of Officer Hickman.

If you have further questions please do not hesitate to call.

Respectfully,

Jim Schandavel

Special Agent in Charge

North Carolina State Bureau of Investigation

Western District

900 Alliance Ct. Asheville, NC 28806

828-654-8901 (Asheville Office)

828-329-8566 (Cell)

jschandavel@ncsbi.gov

From: Lt. Sean Aardema [mailto:saardema@ashevillenc.gov]**Sent:** Thursday, January 11, 2018 1:55 PM**To:** Schandavel, James**Cc:** Tammy Hooper; John Maddux**Subject:** Confidential

1/12/2018

City of Asheville Mail - RE: Confidential

Special Agent in Charge Schandevé,

Attached you will find the formal request letter from Chief Hooper that you and I discussed in our conversation yesterday, along with a copy of a letter of concurrence from District Attorney Williams. Please let me know if there is any further assistance that our office can provide to you in this matter.

Thank you,

Lieutenant Sean Aardema

Professional Standards Section

Asheville Police Department

Phone: 828-259-5791

Fax: 828-250-8856

saardema@ashevillenc.gov

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