

Ben Fulmer

From: Sunshine Request <records@sunshinerequest.com>
Sent: Thursday, May 18, 2017 12:05 PM
To: Records Request Mailbox
Subject: Public Records Request: Memo from City Attorney to City Council regarding legalities of proposed APD policy changes

Hi City of Asheville,

We've received a new public records request via SunshineRequest.com!

Subject: Memo from City Attorney to City Council regarding legalities of proposed APD policy changes

Message:

In the Asheville City Council meeting on 5/9/17, Council members referenced a memo written by the City Attorney regarding the legalities of proposed APD policy changes that were offered as part of a presentation by Ian Mance at the previous Council meeting. City Council members asked the City Attorney to make that memo public during the 5/9 meeting. Pursuant to NC Public Records statutes, I would like to request a copy of that memo in its entirety as well as any written communications, email or other, to or from city staff and/or City Council that references the memo in question. Thank you.

Thank you for your help with this request - I hope you have a great day!

Sunshine Request

Ben Fulmer

From: Gary Jackson <Gary Jackson <GJackson@ashevillenc.gov> > on behalf of Gary Jackson
Sent: Friday, May 19, 2017 1:58 PM
To: Esther Manheimer
Cc: Dawa Hitch; Polly McDaniel
Subject: Fwd: Update to report on the WCQS interview
Attachments: WCQS ACT report.docx; ATT00001.htm; Traffic Enforcement Memo - 05-16-2017.pdf; ATT00002.htm

Per your request...and consideration.

Sent from my iPhone

Begin forwarded message:

From: Dawa Hitch <DHitch@ashevillenc.gov>
Date: May 19, 2017 at 9:02:55 AM EDT
To: Gary Jackson <GJackson@ashevillenc.gov>
Subject: **FW: Update to report on the WCQS interview**

Regarding the WCQS interview.

-----Original Message-----

From: Polly McDaniel
Sent: Thursday, May 18, 2017 2:16 PM
To: Dawa Hitch
Subject: Update to report on the WCQS interview

In terms of factual correctness, I would question this part of the audio interview on WCQS, in which Joel Burgess said:

"It sounds like the City Council has backed off of this idea of funding the (police request) completely next year. The request from Chief Tammy Hooper drew a lot of protests from activists... who said the money should go towards public transit and anti-poverty programs. Low and behold the Council actually did back down. They didn't mention the protests but Mayor Esther Manheimer said she wasn't too keen on adding half a cent to fund anything...the sense is that they may delay the request from the chief, they may delay it, they may roll it out another way."

The fact is this is conjecture, as no vote has been taken.

Also here is an update story filed by Joel Burgess following WCQS report:
<http://www.citizen-times.com/story/news/local/2017/05/17/asheville-city-attorney-anti-profiling-policies-uncommon/328074001/>

Polly McDaniel
Communication Specialist | City of Asheville
828-232-4507 - Office | 828-774-7602 - Cell pmcdaniel@ashevilleNC.gov Asheville City
Source www.ashevillenc.gov

Polly McDaniel
Communication Specialist | City of Asheville
828-232-4507 - Office | 828-774-7602 - Cell pmcdaniel@ashevilleNC.gov Asheville City
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-----Original Message-----

From: Polly McDaniel
Sent: Thursday, May 18, 2017 10:09 AM
To: Dawa Hitch <DHitch@ashevillenc.gov>
Subject: Here is my report on the WCQS interview

Hi Dawa,

Attached please find my report on the WCQS-ACT interview as well as the memo from legal referenced in this interview.

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-----Original Message-----

From: Dawa Hitch
Sent: Thursday, May 18, 2017 8:32 AM
To: Gary Jackson <GJackson@ashevillenc.gov>
Cc: Esther Manheimer <esthermanheimer@avlCouncil.com>; Polly McDaniel <PMcDaniel@ashevillenc.gov>
Subject: RE: WCQS interview

Will do. Polly will work on it today and have a written summary ready for me tomorrow morning.

-----Original Message-----

From: Gary Jackson
Sent: Wednesday, May 17, 2017 4:24 PM
To: Dawa Hitch
Cc: Esther Manheimer
Subject: WCQS interview

Dawa:

Please fact check each of Joel Bs comments in WCQS interview today. Then, let's review and discuss best response after you prepare. I am trying to meet with Mayor about this and related matters on Friday.

Gary

Sent from my iPhone

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From: PMcDaniel@ashevillenc.gov
Sent: Thursday, May 18, 2017 2:08 PM
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Subject: RE: Here is my report on the WCQS interview
Attachments: WCQS ACT report.docx; Traffic Enforcement Memo - 05-16-2017.pdf

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WCQS-ACT report

A month or so ago, WCQS started teaming up with the Citizen-Times, interviewing its reporters on stories, rather than doing its original reporting. Such was the case with the May 16 article:

[Will Asheville Police Response To Traffic Stop Report Suffice?](#)

This report contains an 8-minute audio interview between WCQS News Director Matt Bush and ACT reporter Joel Burgess.

The report also links to Southern Coalition for Social Justice [open data policing report](#) that claims disparity in the number of black drivers pulled over by APD compared to white drivers. It also links to the [APD staff report](#) presented to Council at its April 25 meeting.

The intro:

[A recent report](#) showed Asheville police were pulling over far more African-American drivers than their white counterparts – even though the white population in the city dwarfs that of the black population. Asheville Citizen-Times reporter [Joel Burgess](#) spoke with BPR's Matt Bush about the [police response to that report](#) as well as the latest on the police department's [request](#) for nearly \$1-million in additional funds to hire more officers in response to a spike in crime downtown.

[Link to the audio interview](#)

Audio highlights

In this interview, Burgess said the following:

It sounds like the City Council has backed off of this idea of funding the (police request) completely next year. The request from Chief Tammy Hooper drew a lot of protests from activists... who said the money should go towards public transit and anti-poverty programs. Low and behold the Council actually did back down. They didn't mention the protests but Mayor Esther Manheimer said she wasn't too keen on adding half a cent to fund anything...the sense is that they may delay the request from the chief, they may delay it, they may roll it out another way.

The interview goes on to recount highlights from the APD staff report to Council regarding written consent for searches and ticketing for low-level violations. Then Burgess says:

The Mayor and I believe it was Councilman Gordon Smith mentioned there was a memo circulated by City Attorney Robin Currin that may have talked about the legalities of some of these changes. I've requested a copy of it so keep checking with the Citizen-Times to find out what it says. The sense is there may have been something that Council or the police were advised not to do, not to follow, regarding certain policy changes that were recommended.

Regarding the memo referenced in the audio:

On May 11, ACT reporter Joel Burgess emailed Robin Currin the following:

On another matter...got that memo the council was talking about?

Robin Currin replied the same day:

Not yet. John Maddux will finalize and he is out of town for a few days.

On May 16, ACT reporter Joel Burgess emailed Robin Currin the following:

Any word on this?

At 4:27 p.m. May 16 Robin Currin replied:

Not yet. Soon.

Email then sent to Joel Burgess from John Maddux, 5:17 p.m. May 16:

APD traffic stop memo (**attached**)


May 17, ACT reporter Joel Burgess emailed Robin Currin and John Maddux the following:

Got it. Why did it need to be rewritten? (I'll explain this to readers.) What was the risk if the public had been able to see the original memo?

May 17 reply to Joel Burgess from Robin Currin:

Written communications from legal counsel which are within the attorney-client privilege are **not public records** and not available to the public. That is covered by the Public Records Act, which I thought you would be familiar with. We have never provided you or any other member of the press with our confidential attorney-client communications to Council, and no lawyer would, because it would be an ethical violation. The original Memo was a confidential attorney-client privileged memo which was not a public record or subject to public disclosure. The memo did, however, also contain information about other municipalities which at least one Council member thought would be helpful for the public to know. We had no problem disclosing this part of the Memo, which is information anyone could obtain and are just facts, not covered by the privilege.

MEMORANDUM

DATE: May 16, 2017
TO: Robin Currin, City Attorney
FROM: John Maddux, Assistant City Attorney 
SUBJECT: APD Traffic Stop Information – Analysis of Other Local Governments in North Carolina

Background

During the April 25, 2017 City Council meeting, Ian Mance, an attorney representing the Southern Coalition for Social Justice, presented an analysis of data collected by the Asheville Police Department (APD) concerning vehicle stops and searches conducted by the APD. Based on his analysis, Mr. Mance recommended the APD take the following actions:

- (1) Scrutinize and address the APD's data reporting practices to ensure compliance with North Carolina General Statute § 143B-903 entitled collection of law enforcement statistics;
- (2) Prohibit or de-emphasize regulatory and equipment-based stops;
- (3) Institute a mandatory written consent-to-search policy; and
- (4) Order periodic audits of individual officer stop-and-search data.

Following Mr. Mance's presentation, the City Council directed the City Manager to request City staff to analyze the data and recommendations presented, and to prepare a report for presentation to the City Council at its May 9 meeting. Our office also collected information with respect to the current policies of other law enforcement agencies cited by Mr. Mance relating to regulatory stops and

consent searches. This information is intended only as supplemental to that already prepared by the APD, and not intended as support for or against any action by the City Council.

Adoption of Policies by Other North Carolina Agencies

During his presentation, regarding regulatory stops, Mr. Mance informed the City Council that:

Police agencies, in North Carolina and nationwide, are increasingly re-evaluating the wisdom of initiating traffic stops for regulatory and equipment based violations. These types of stops generally do not impact public safety and they are known to disproportionately impact poor and minority drivers. They are a significant driver of racial stop disparities.

Both Fayetteville PD and Greensboro PD formally de-prioritized these types of stops in recent years, a decision that has helped shrink racial stop disparities. Chapel Hill's town council recently directed its police chief to follow suit and begin phasing out regulatory stops. Durham's police chief recently voiced skepticism about such stops and is currently considering a similar directive.

Regarding consent searches, Mr. Mance told the City Council that, "multiple police agencies across North Carolina, including those in Chapel Hill, Durham, and Fayetteville, currently require officers to obtain written authorization from the party to be searched for all consent-based searches."

In an effort to confirm Mr. Mance's statements regarding the adoption of these policies by other agencies, I contacted attorneys for the agencies cited by Mr. Mance, located news articles regarding those agencies' policies, examined resolutions passed by other City Councils, reviewed departmental policy manuals and memoranda (where available), and made inquiries with other attorneys

representing North Carolina police departments and sheriffs' offices through the North Carolina Police Attorneys Association. The following chart summarizes my findings:

Agency	Prohibits/Discourages Regulatory Stops	Requires Signed Form Prior to Consent Search
Brunswick County Sheriff's Office	No	No
Chapel Hill	Town Council passed a resolution authorizing City Manager to work with Police Chief to develop a plan to deemphasize regulatory stops. Resolution does not direct the adoption of a particular policy.	Yes, provided for vehicles or homes. If a person consents, but refuses to sign, officers must record. If recording not feasible, officers must document consent in incident report and on form itself.
Durham County Sheriff's Office	No	No
Durham Police Department	No	Yes, if search of vehicle, residence or business
Fayetteville	No, but not a high priority and former chief asked that these types of stops be conducted at a lower ratio than moving violations.	Yes, although the form has taken a much lower priority for the department since the introduction of body cameras.
Forsyth County Sheriff's Office	No	No
Gaston Police Department	No	No, but with body cameras will require consent be recorded
Greensboro Police Department	No	No, but a consent search report is completed by the officer.
Guilford County Sheriff's Office	No	No

Haywood County Sheriff's Office	No	No
High Point Police Department	No	No
Mecklenburg County Sheriff's Office	No	Form available, but deputies have discretion about whether to use it.
Orange County Sheriff's Office	No	Not required, but available and strongly encouraged.
Raleigh Police Department	No	Form required before searching a vehicle, residence, building or business. Form is recommended, but not required, before searching a person based on consent.
State Troopers - Troop G	No	No
Union County Sheriff's Office	No	No
Wake County Sheriff's Office	No	Will attempt to have persons sign form. If they allow consent, but refuse to sign form, an officer other than the requesting officer may sign the form as a witness that consent was orally given.
Yancey County Sheriff's Office	No	No

Summed up, it appears that very few agencies prohibit or formally de-emphasize vehicle stops based on regulatory or equipment-based violations of the law, and that none do so by ordinance. A common statement relayed to me was that these types of vehicle stops are not a priority for law enforcement, however, officers are charged with enforcing the law, including what many might consider minor violations. In addition, it appears that Mr. Mance's presentation was,

respectfully, incorrect in certain respects. As noted in Mr. Mance's presentation, the Greensboro Police Department (GPD) did in fact prohibit or de-emphasize such stops in late 2015, apparently in response to a New York Times article noting the disparate rate that African-Americans in Greensboro were stopped for these types of violations compared with other groups. However, according to more recent information reported in the media, and confirmed to me by GPD personnel, the GPD resumed enforcing these laws in February of 2017 after taking time to examine the department's practices and policies. In addition, Mr. Mance's statement that the Chapel Hill Town Council "recently directed its police chief to . . . begin phasing out regulatory stops" was also not entirely correct; the actual resolution passed by the Council states, "Council authorizes the Town Manager to work with the Police Chief and Town Attorney to . . . develop a plan to de-emphasize regulatory stops/warning tickets."

Mr. Mance's statements regarding other agencies and written consent forms were more accurate. Both Chapel Hill and Fayetteville do in fact ask that their officers obtain signed written forms prior to conducting consent searches. However, one of Fayetteville's police attorneys informed me that the forms have become less important to the agency since all officers were outfitted with body-cameras, and many jurisdictions, including Chapel Hill, allow officers to conduct searches in instances where the person provides verbal consent but refuses to sign the form. In those instances, the agencies typically require the officers take other steps to ensure the validity of the consent, such as recording the verbal consent with a body-camera, or having another officer sign the form as a witness. Of the

eighteen agencies from which I was able to obtain information, five agencies require written forms, and two others have forms available, but do not require that they be used.