

TO:

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**FORMAL COMPLAINT AGAINST HOLLY SPRINGS POLICE DEPARMENT:
OFFICER TERRELL PRICE, SERGEANT BRIAN MCLAMB, AND UNKNOWN
HOLLY SPRINGS POLICE OFFICERS**

**INTERNAL INVESTIGATION REQUESTED FOR HOLLY SPRINGS POLICE
DEPARTMENT REGARDING POLICE OFFICER MISCONDUCT, DESTRUCTION
OF EVIDENCE, CONSTITUTIONAL VIOLATIONS, RESPONDEAT SUPERIOR,
NEGLIGENCE PER SE, VIOLATIONS OF NORTH CAROLINA AND FEDERAL LAW**

RE: DAVID BLACKWELDER

EXHIBITS

1. Police Body Worn Camera Implementation Plan
2. Body Worn Camera FAQ
3. Holly Springs Police Department 2020 Annual Plan, Page 17
4. Holly Springs Police Department Written Directive
5. Email communications from Holly Springs Police Department
6. Holly Spring June 4, 2020 Budget Workshop, Pages 1-2
7. Pictures of Body Worn Camera – Holly Springs Police Department

NORTH CAROLINA STATE LAW

§ 14-221.1. Altering, destroying, or stealing evidence of criminal conduct.

Any person who breaks or enters any building, structure, compartment, vehicle, file, cabinet, drawer, or any other enclosure wherein evidence relevant to any criminal offense or court proceeding is kept or stored with the purpose of altering, destroying or stealing such evidence; or any person who alters, destroys, or steals any evidence relevant to any criminal offense or court proceeding shall be punished as a Class I felon. As used in this section, the word evidence shall mean any article or document in the possession of a law-enforcement officer or officer of the General Court of Justice being retained for the purpose of being introduced in evidence or having been introduced in evidence or being preserved as evidence.

§ 132-1.4A. Law enforcement agency recordings.

- (h) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the requirements of subsections (c), (f), and (g) of this section, a custodial law enforcement agency for review of potential criminal charges,
 - (i) in order to comply with discovery requirements in a criminal prosecution,
 - (ii) for use in criminal proceedings in district court
- (i) Retention of Recordings. – Any recording subject to the provisions of this section shall be retained for at least the period of time required by the applicable records retention and disposition schedule developed by the Department of Natural and Cultural Resources, Division of Archives and Records.

(j) Agency Policy Required. – Each law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.

§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.

(i) Right to Chemical Analysis before Arrest or Charge. A person stopped or questioned by a law enforcement officer who is investigating whether the person may have committed an implied consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law enforcement officer to the place where the chemical analysis is to be administered.

§ 15A-903. Disclosure of evidence by the State - Information subject to disclosure.

(a) Upon motion of the defendant, the court must order:

- (1) The State to make available to the defendant the complete files of all law enforcement agencies, investigatory agencies, and prosecutors' offices involved in the investigation of the crimes committed or the prosecution of the defendant.
- c) Oral statements shall be in written or recorded form, except that oral statements made by a witness to a prosecuting attorney outside the presence of a law enforcement officer or investigatorial assistant shall not be required to be in written or recorded form unless there is significantly new or different information in the oral statement from a prior statement made by the witness.
- d) The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

(c) On a timely basis, law enforcement and investigatory agencies shall make available to the prosecutor's office a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant for compliance with this section and any disclosure under G.S. 15A-902(a). Investigatory agencies that obtain information and materials listed in subdivision (1) of subsection (a) of this section shall ensure that such information and materials are fully disclosed to the prosecutor's office on a timely basis for disclosure to the defendant.

(d) Any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to subdivision (1) of subsection (a) of this section, or required to be provided to the prosecutor's office pursuant to subsection (c) of this section, shall be guilty of a Class H felony. Any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to any other provision of this section shall be guilty of a Class 1 misdemeanor.

FEDERAL LAW

34 U.S.C. § 12601

It is unlawful for State or local law enforcement officers to engage in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or laws of the United States.

42 U.S. Code § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

US CONSTITUTION AND CASE LAW

1. Suppression by the prosecution of evidence favorable to an accused who has requested it violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. *Brady v. Maryland*, 373 U.S. 83 (1963).
2. The prosecution's duty to present all material evidence to the jury was not fulfilled and constitutes a violation of due process. *Giglio v. United States*, 405 U.S. 150 (1972).
3. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. *Amendment IV, Constitution of United States of America 1789 (rev. 1992)*.
4. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. *Amendment V, Constitution of United States of America 1789 (rev. 1992)*.
5. Requires that a search incident to arrest be justified by either the interest in officer safety or the interest in preserving evidence. *Chimel v. California*, 395 U. S. 752.
6. The exception for a search incident to a lawful arrest applies only to "the area from within which [an arrestee] might gain possession of a weapon or destructible evidence. *Katz v. United States*, 389 U. S. 347, 357.
7. Police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest. *Arizona v. Gant*, 556 U.S. 332 (2009).

8. Under the Fourth Amendment of the U.S. Constitution, a police officer may stop a suspect on the street and frisk him or her without probable cause to arrest, if the police officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime and has a reasonable belief that the person "may be armed and presently dangerous. *Terry v. Ohio*, 392 U.S. 1 (1968).

HOLLY SPRINGS POLICE DEPARTMENT BODY-WORN CAMERA POLICY

430.5.3 – Definitions

- A. Body-Worn Camera (BWC) – an operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others (NCGS 132.1.4A). (Note – for the purposes of this directive, the above definition does not include covert cameras that may be used during undercover operations. The use of covert cameras is addressed in HSPD directive 430.02, Recording Devices.
- B. BWC/ICC Coordinator – the staff member assigned by the Chief of Police to manage and coordinate the Body-Worn Camera (BWC)/In-car Camera (ICC) program.
- C. BWC/ICC System – the entirety of all components of the BWC/ICC system to include the cameras, microphones or other audio recording mechanisms, uniform camera mounts, software, and/or other devices.
- D. Custodial Law Enforcement Agency - the law enforcement agency that owns or leases and whose personnel operates the equipment that created the recording at the time the recording was made (NCGS 132.1.4A).
- E. Disclose (aka Disclosure) - to make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording (NCGS 132.1.4A).
- F. Event – Any recording captured when the BWC and/or ICC is placed in the record function.
- G. First Line Officers – for the purpose of this directive, this term is inclusive of the animal control officer, patrol officers, patrol sergeants, school resource officers and sergeant (SROs), community services officers, traffic officers, and the traffic safety sergeant.
- H. In-Car Camera (ICC) (aka “Dashboard Camera”) – A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras (NCGS 132.1.4A).
- I. Investigative and Support Officers – includes officers in the Criminal Investigations Division, Community Services, and school resource officers.
- J. Personally-Owned Recording Device – any BWC or ICC not issued or trained upon by the department for official use.

K. Recording - a visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses (NCGS 132.1.4A).

430.5.4 – BWC/ICC System General Guidelines (41.3.8)

A. The BWC/ICC system is to be utilized by officers in accordance with the guidelines of this directive.

1. Officers are authorized to utilize a department-issued BWC/ICC system once the officer has successfully completed training on the proper use of the system and the guidelines set forth in this directive.
2. Failure to adhere to the guidelines in this directive may result in disciplinary action up to and including termination. B. At no time shall officers use a personally-owned BWC or ICC in the performance of their duties.

C. Patrol officers, patrol supervisors, traffic officers, and traffic supervisors are required to have a functional ICC when working in their normal assignments. The only exception to this requirement is if the ICC in the officer's assigned vehicle is not functional and a spare vehicle with a functional ICC is not available.

G. Officers will ensure that all BWC/ICC system recordings are successfully downloaded to the best of their knowledge at the end of their shift or workday, unless specifically given an exception by their supervisor. A supervisor may require immediate automated or manual downloading following any recorded event.

430.5.5 – BWC/ICC System Deployment (41.3.8)

A. Officers are normally assigned a BWC for their individual use, typically in conjunction with the ICC in their assigned vehicle. In those instances when an officer does not have an ICC in their assigned vehicle, they will follow the guidelines herein specific to the use of the BWC.

B. The care and operation of the ICC is the responsibility of the officer operating the vehicle the ICC is mounted in. When a Field Training Officer (FTO) is training a probationary officer, the FTO is responsible for the care and operation of the ICC.

1. The ICC shall be maintained and operated according to the manufacturer's recommendations, the training provided to the officer, and the guidelines in this directive.
2. Officers shall not attempt to repair or modify any components of the ICC without permission from the BWC/ICC Coordinator.
3. In the event an ICC stops functioning properly, the officer will cease operation of the vehicle as soon as practical (assuming a spare vehicle with a functioning ICC is available for use).

C. Patrol officers, patrol supervisors, traffic officers, and traffic supervisors are required to have a functional ICC when working in their normal assignments. The only exception to this requirement is if the ICC in the officer's assigned vehicle is not functional and a spare vehicle with a functional ICC is not available.

D. The care and security of the BWC is the responsibility of the officer the BWC is assigned to.

1. The BWC shall be maintained and operated according to the manufacturer's recommendations, the training provided to the officer, and the guidelines in this directive.
2. Officers shall not attempt to repair or modify any components of the BWC without permission from the BWC/ICC Coordinator.

430.5.6 – BWC/ICC System Activation

A. Officers acting in the role of a first line officer shall ensure that their BWC/ICC system is activated and recording upon being dispatched to a call for service or immediately upon initiating any self-initiated activity outlined as follows:

1. Any in-person citizen interaction requiring official action to include, but not limited to, dispatched calls for service, taking reports or complaints, traffic stops, arrests, and involuntary commitments. (Officers conducting routine "Signal 18" check-on-patrols and interactions with citizens during foot patrols or other community policing activities are not required to have their BWC activated.
2. During emergency vehicle operations and vehicle pursuits;
3. During any transportation of non-department personnel, to include but not necessarily limited to prisoners, persons subject to an IVC, or individuals not in custody; however, authorized interns, cadets, and ride-along passengers are excluded.
4. Any other time the officer deems it appropriate to record an interaction based on the circumstances at hand;
5. Whenever a citizen states, or an officer believes, a complaint may be generated, whether warranted or perceived.
6. When requested to record by a citizen, so long as no other restriction exists); and/or
7. Whenever directed by a supervisor.

430.5.9 – BWC/ICC System Documentation

A. Officers may view their own BWC/ICC system recording prior to completing any required department reports or other written documentation and in preparation for a scheduled trial or district attorney's pre-trial conference.

B. Officers are not to view the BWC/ICC recordings of other officers except for a work-related reason that is first authorized by a supervisor.

C. Officers will note at the beginning of all incident, or related reports when a BWC/ICC system recording was made of the event in question.

D. Any de-activation of a recording prior to the conclusion of the incident or event will be documented in the incident report or call for service notes by the officer with justification for why the recording was terminated prior to the conclusion of the incident or event.

E. Any non-activation of the BWC/ICC system in an incident or event that would normally require activation according to this directive will be documented in the incident report or call for service notes by the officer with justification for why the recording was not initiated.

F. Officers are highly encouraged to notify their immediate supervisor anytime that they are aware that one of their BWC/ICC system recordings contains footage that may be suitable for use in internal training.

430.5.10 – Supervisory Responsibilities (41.3.8)

A. Sworn officers who supervise subordinates utilizing BWC/ICC systems are responsible for the following:

1. Receiving training in the operation and use of the BWC/ICC system, including the file management system. This training will normally occur during new supervisor training and will be documented by the person providing the training.
2. Ensuring all officers receive training prior to deployment of a BWC/ICC system. This training will normally occur during the Field Training program and will be documented by the Field Training Officer providing the training.
3. Ensuring all officers follow established procedures for the use and maintenance of BWC/ICC system, the custody of recorded media, and the completion of required documentation.
4. Ensuring that repair and/or replacement of any damaged or nonfunctional BWC or ICC is properly performed.

430.5.11 – Recording Management and Retention (41.3.8)

A. The making and retention of any BWC/ICC system recording made by an employee is governed by the provisions of the North Carolina Public Records Act (Chapter 132 of the North Carolina General Statutes) and rules of evidentiary disclosure in criminal and civil court proceedings.

1. As such, the status of the person making the recording governs the ownership of such recordings and not the ownership of the device making the recording.
2. Therefore, any recording made by an employee of this department or otherwise conducting employment-related functions is deemed property of the Holly Springs Police Department as the custodial law enforcement agency.

C. BWC/ICC system recordings that have evidentiary value or are otherwise intended to be retained will be categorized by the officer making the recording in accordance with the categories outlined in Appendix A of this directive.

1. Officers will categorize each BWC/ICC system recording they make using the most appropriate category.

2. Any officer intentionally mis-categorizing a BWC/ICC system recording to avoid retention will be subject to disciplinary action, up to and including termination.

D. All BWC/ICC system recordings will be downloaded onto the Department's BWC/ICC system cloud server for storage prior to dissemination and/or purging.

1. Dissemination and purging of these recordings will be done in accordance with North Carolina Public Records Act (Chapter 132 of the North Carolina General Statutes) (see also 430.5.12).
2. Any recording categorized as evidentiary in nature will be retained on the cloud server until such time that there is a destruction order from the court of jurisdiction and/or the District Attorney's Office indicates, in writing, that the recording is no longer needed for prosecutorial purposes.

E. The Department's BWC/ICC Coordinator will be responsible for managing all BWC/ICC system recordings once downloaded to the cloud storage server.

Chuck Wexler, Executive Director Police Executive Research Forum: A police department that deploys body-worn cameras is making a statement that it believes the actions of its officers are a matter of public record. By facing the challenges and expense of purchasing and implementing a body-worn camera system, developing policies, and training its officers in how to use the cameras, a department creates a reasonable expectation that members of the public and the news media will want to review the actions of officers. And with certain limited exceptions that this publication will discuss, body-worn camera video footage should be made available to the public upon request—not only because the videos are public records but also because doing so enables police departments to demonstrate transparency and openness in their interactions with members of the community. Body-worn cameras can help improve the high-quality public service expected of police officers and promote the perceived legitimacy and sense of procedural justice that communities have about their police departments. Furthermore, departments that are already deploying body-worn cameras tell us that the presence of cameras often improves the performance of officers as well as the conduct of the community members who are recorded. This is an important advance in policing. And when officers or members of the public break the law or behave badly, body-worn cameras can create a public record that allows the entire community to see what really happened.

STATEMENT OF FACTS

1. David Blackwelder was arrested and cited for Driving While Impaired (DWI), failure to maintain lane control, and failure to keep vehicle on right side of roadway.
2. Officer Terrell Price did not have sight of the vehicle prior to initiating a traffic stop, which was alleged to be in the control of David Blackwelder.
3. Officer Terrell Price initiated a traffic stop under "Suspicious Vehicle" with no mention of traffic violations or DWI during the entire encounter.
4. Officer Terrell Price did not have a microphone enabled in conjunction with his In-Car Camera (ICC).

5. Officer Terrell Price, Sergeant Brian McLamb, and Two Unknown Holly Springs Police Officers did not preserve material evidence, including ICC and BWC footage as required under *Holly Spring Police Department Policy*, for the length of six years.
6. *Holly Springs Police Department 2020 Annual Report, Page 17*, reflects that a Body Worn Camera (BWC) policy was in place, BWC were provided to officers, and proper research was conducted on the BWC program during October 1, 2020.
7. Officer Terrell Price, Sergeant Brian McLamb, and an Unknown Holly Springs Police Officer had an activated BWC on their person during the duration of the encounter with David Blackwelder.
8. During the encounter, Officer Terrell Price sought council from Sergeant Brian McLamb and an Unknown Holly Springs Police Officer.
9. David Blackwelder made several requests to preserve the BWC recording to Officer Terrell Price in the presence of Sergeant Brian McLamb and an Unknown Apex Police Officer.
10. Officer Terrell Price made the statement that the duration of the encounter with David Blackwelder “was recorded” on his activated BWC and was made in the presence of Sergeant Brian McLamb and an Unknown Apex Police Officer.
11. Officer Terrell Price did not have a recording of the alleged infractions committed.
12. Officer Terrell Price did not observe any infractions allegedly committed by David Blackwelder.
13. Officer Terrell Price was parked beside of a neighborhood, without sight of David Blackwelder, where he proceeded to enter the neighborhood and seize David Blackwelder.
14. Officer Terrell Price did not have reasonable suspicion or probable cause to initiate a traffic stop.
15. Officer Terrell Price initiated his blue lights, was in a Holly Springs Police Department marked vehicle, presented himself as a law enforcement officer, requested David Blackwelder’s driver’s license and vehicle registration, and unlawfully seized David Blackwelder in violation of *Amendment IV, Constitution of United States of America 1789 (rev. 1992)*.
16. Officer Terrell Price and Sergeant Brian McLamb lacked an evidentiary basis for the search of David Blackwelder’s vehicle, as David Blackwelder was unable to access his vehicle at the time of the search, being arrested and secured in the back of Officer Terrell Price’s marked patrol vehicle. *Arizona v. Gant*, 556 U.S. 332 (2009), *Chimel v. California*, 395 U. S. 752, *Katz v. United States*, 389 U. S. 347, 357, and *Amendment IV, Constitution of United States of America 1789 (rev. 1992)*.
17. Officer Terrell Price and Sergeant Brian McLamb did not preserve their BWC video, which would be destruction of evidence under § 14-221.1 and § 15A-903.
18. Sergeant Brian McLamb and Two Unknown Holly Springs Police Officers did not initiate their ICC or BWC when they arrived on scene.
19. David Blackwelder repeatedly denied consent to search his vehicle, which was ignored by both Sergeant Brian McLamb and Officer Terrell Price, which is a violation of *Amendment IV, Constitution of United States of America 1789 (rev. 1992)*.

20. Officer Terrell Price conducted an illegal search of David Blackwelder's person by grabbing his pockets and did not have reasonable suspicion that David Blackwelder was potentially armed or dangerous, distinguishable from a frisk or pat down for weapons under *Terry v. Ohio*, 392 U.S. 1 (1968).
21. Sergeant Brian McLamb, Officer Terrell Price, and Unknown Holly Springs Police Officers failed to provide critical evidence of the BWC to the Wake County District Attorney's Office and to David Blackwelder after formally requested under § 15A-903.
22. Sergeant Brian McLamb, Officer Terrell Price, and Unknown Holly Springs Police Officers intentionally and maliciously destroyed BWC evidence that was critical to David Blackwelder and violated North Carolina Law, under § 14-221.1 and § 15A-903.
23. Sergeant Brian McLamb, Officer Terrell Price, and Unknown Holly Springs Police Officers failed to provide all evidence to the Wake County District Attorney's Office violating North Carolina Law, under § 132-1.4A and § 15A-903.
24. Sergeant Brian McLamb and Officer Terrell Price violated David Blackwelder's Constitutionally protected rights to Due Process under *Amendment V, Constitution of United States of America 1789 (rev. 1992)*.
25. Sergeant Brian McLamb and Officer Terrell Price violated David Blackwelder's Constitutionally protected rights against unreasonable searches and seizures under *Amendment IV, Constitution of United States of America 1789 (rev. 1992)*.
26. Sergeant Brian McLamb and Officer Terrell Price's failure to preserve and provide material evidence which was critical to David Blackwelder was a violation of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972).
27. Sergeant Brian McLamb and Officer Terrell Price failed to adhere to Holly Spring's Police Department's policy regarding BWC and ICC video evidence preservation.
28. Holly Springs Police Department had a BWC and ICC policy in place during the time of October 1, 2020.
29. During the June 9, 2020, budget workshop, the Council unanimously decided to immediately begin steps to equip all sworn officers with cameras.
30. The Holly Springs Police Department has already formed a staff committee to begin researching available technologies and vendors, identify best practices associated with body worn cameras, work on developing a comprehensive policy for camera usage and begin testing various options.
31. David Blackwelder invoked his right to a "pre-arrest test" under § 20-16.2.
32. Officer Terrell Price received advisement from Sergeant Brian McLamb and placed David Blackwelder under arrest after invoking his right to a "pre-arrest test" under § 20-16.2.
33. Officer Terrell Price and Sergeant Brian McLamb were required to have a functional BWC during their shift under *Holly Springs Policy 430.5.5 – BWC/ICC System Deployment (41.3.8)*.
34. The making and retention of any BWC/ICC system recording made by an employee is governed by the provisions of the *North Carolina Public Records Act (Chapter 132 of the North Carolina General Statutes)* and rules of evidentiary disclosure in criminal and civil

court proceedings. *Holly Springs Policy 430.5.11 – Recording Management and Retention (41.3.8).*

35. Any officer intentionally mis-categorizing a BWC/ICC system recording to avoid retention will be subject to disciplinary action, up to and including termination. *Holly Springs Policy 430.5.11 – Recording Management and Retention (41.3.8).*
36. Sergeant Brian McLamb did not properly supervise Officer Terrell Price under *Holly Springs Policy 430.5.10 – Supervisory Responsibilities (41.3.8).*
37. Sworn officers who supervise subordinates utilizing BWC/ICC systems are responsible for the following:
 - a. Receiving training in the operation and use of the BWC/ICC system, including the file management system. This training will normally occur during new supervisor training and will be documented by the person providing the training.
 - b. Ensuring all officers receive training prior to deployment of a BWC/ICC system. This training will normally occur during the Field Training program and will be documented by the Field Training Officer providing the training.
 - c. Ensuring all officers follow established procedures for the use and maintenance of BWC/ICC system, the custody of recorded media, and the completion of required documentation.
 - d. Ensuring that repair and/or replacement of any damaged or nonfunctional BWC or ICC is properly performed. *Holly Springs Policy 430.5.10 – Supervisory Responsibilities (41.3.8).*
38. Sergeant Brian McLamb did not comply with *Holly Springs Policy 430.5.10 – Supervisory Responsibilities (41.3.8)*, by failing to ensure Officer Terrell Price and Unknown Holly Springs Police Officer properly preserved BWC evidence.
39. Officer Terrell Price and Brian McLamb were negligent per se, by violating North Carolina state statutes and Holly Springs policy, which breached the duty of care and is therefore negligent as a matter of law.
40. BWC and ICC footage is considered evidence and is subject to discovery.
41. Officer Terrell Price and Sergeant Brian McLamb violated *Holly Springs Policy 430.5.11 – Recording Management and Retention (41.3.8)*, All BWC/ICC system recordings will be downloaded onto the Department's BWC/ICC system cloud server for storage prior to dissemination and/or purging.
42. Dissemination and purging of these recordings will be done in accordance with *North Carolina Public Records Act (Chapter 132 of the North Carolina General Statutes)* (see also 430.5.12). *Holly Springs Policy 430.5.11 – Recording Management and Retention (41.3.8).*
43. Any recording categorized as evidentiary in nature will be retained on the cloud server until such time that there is a destruction order from the court of jurisdiction and/or the District Attorney's Office indicates, in writing, that the recording is no longer needed for prosecutorial purposes. *Holly Springs Policy 430.5.11 – Recording Management and Retention (41.3.8).*

44. Officer Terrell Price, Sergeant Brian McLamb, and Two Unknown Holly Springs Police Officers failed to document the BWC evidence or provide a copy in evidence under *Holly Springs Policy 430.5.9 – BWC/ICC System Documentation*.
45. Sergeant Brian McLamb and Officer Terrell Price falsely imprisoned David Blackwelder by unlawfully detaining, arresting, and seizing him against his will on October 1, 2020.
46. Sergeant Brian McLamb and Officer Terrell Price abused their authority by unlawfully arresting David Blackwelder.
47. Sergeant Brian McLamb and Officer Terrell Price intentionally and maliciously prosecuted David Blackwelder by unlawful arrest, failure to provide evidence to the Wake County District Attorney's Office or David Blackwelder, and destruction of material evidence.
48. On December 30, 2020, Officer Locklear's photo was taken and posted to the official Holly Springs Police Department Twitter Page, displaying a BWC.
49. On November 2, 2020, Two Unknown Holly Springs Police Officers photo was taken and posted to the official Holly Springs Police Department Facebook Page, displaying a BWC.
50. ICC from the encounter shows Officer Terrell Price wearing a BWC.
51. Unknown Holly Springs Police Officer who is the coordinator over the BWC program altered, removed, or negligently preserved material evidence that was critical to David Blackwelder.
52. Unknown Holly Springs Police Officer who is the coordinator over the BWC program was negligent in the oversight of evidence preservation, by breaching their duty to preserve evidence as required by North Carolina law.
53. Officer Terrell Price, Sergeant Brian McLamb, and Unknown Holly Springs Police Officers, deprived David Blackwelder of his inalienable rights under 42 U.S. Code § 1983.
54. Officer Terrell Price, Sergeant Brian McLamb, and Unknown Holly Springs Police Officers violated 34 U.S.C. § 12601 by depriving David Blackwelder's inalienable rights by engaging in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or laws of the United States.
55. The duly elected council for the Town of Holly Springs allocated \$20,000 towards the purchase and implementation of BWC. *Holly Spring June 4, 2020 Budget Workshop, Pages 1-2*.
56. Holly Springs Police Captain Patterson informed the duly elected council for the Town of Holly Springs that vendors of BWC would provide the equipment at no charge for testing and consideration for purchase. *Holly Spring June 4, 2020 Budget Workshop, Pages 1-2*.
57. Holly Springs Police Chief Paul Liquorrie was negligent in the oversight of the BWC and ICC program and breached his duty within the scope of his employment with the Town of Holly Springs Police Department.
58. Holly Springs Police Chief Paul Liquorrie was negligent in his oversight of Sergeant McLamb, Officer Terrell Price, and other relevant Unknown Holly Springs Police Officers while in the performance of their duties as a law enforcement officer for the Town of Holly Springs Police Department.

DEMAND FOR PRESERVATION OF EVIDENCE

The Town of Holly Springs, Holly Springs Police Department, Agents, Predecessors, Successors, Divisions, Affiliates, Partners, and Subsidiaries to preserve all electronically stored information, copies and backup, as defined by Rule 34 of the Federal Rules of Civil Procedure, along with any paper files, recordings, purchase orders, contracts, third-party agreements, telephonic records, emergency management logs (911), text messages, internal memorandum, personnel files, which the Town of Holly Springs and Holly Springs Police Department maintain, relevant to this incident. David Blackwelder will be seeking in discovery electronic data in the Town of Holly Springs and Holly Springs Police Department's custody and control that is relevant to this incident, including without limitation, emails and other information contained on the relevant Town of Holly Springs and Holly Springs Police Department computer systems and any electronic storage systems. David Blackwelder considers this electronic data and paper files to be valuable and irreplaceable sources of discoverable information in this matter. David Blackwelder places the Town of Holly Springs and Holly Springs Police Department on notice to preserve all documents regarding David Blackwelder and/or any of the policies previously in effect between the Town of Holly Springs and Holly Springs Police Department. In addition, David Blackwelder places the Town of Holly Springs and Holly Springs Police Department on notice not to allow the deletion of any electronic communications, such as emails, phone communications, and any other evidence relating to David Blackwelder. David Blackwelder is confident that the Town of Holly Springs and Holly Springs Police Department has already taken steps to preserve this data since it had an obligation to preserve relevant evidence. Thus, no procedures should have been implemented to alter any active, deleted or fragmented data. Moreover, no electronic data should have been disposed of or destroyed. The Town of Holly Springs and Holly Springs Police Department will continue to preserve such electronic data and paper files throughout this investigation and for any future litigation.

Respectfully,

David Blackwelder

(Served by certified mail)

EXHIBIT # 1

Police Body Worn Camera Implementation Plan

Police Body Worn Camera Implementation Plan

The Holly Springs Town Council is moving forward with a plan to equip all members of the Police Department with body-worn cameras. During the June 9, 2020 budget workshop, the Council unanimously decided to immediately begin steps to equip all sworn officers with cameras. The initiative is estimated to cost between \$100,000 to \$200,000 per year, depending on the types of camera technology used. The council will review funding availability in January 2021 and may be able to equip some officers with cameras at that time, with full implementation anticipated by summer/early fall of 2021.

The Holly Springs Police Department has already formed a staff committee to begin researching available technologies and vendors, identify best practices associated with body worn cameras, work on developing a comprehensive policy for camera usage and begin testing various options. Once the body-worn cameras are available for demonstration, the Police Department will hold a community outreach event for residents to learn about the cameras, how they can be used, ask questions, and be involved in the process.

HOLLY SPRINGS POLICE DEPARTMENT BODY WORN CAMERAS IMPLEMENTATION PLAN

PHASE	ACTION	ESTIMATED DURATION	DESCRIPTION
1	Research & Evaluation	July thru October 2020	Research body worn camera usage across U.S., identify best practices, and begin developing recommendations
2	Policy Development	October thru December 2020	Develop HSPD policies to govern training, expectations, and usage
3	Testing & Evaluation	January thru March 2021	Test and evaluate optional body worn camera systems from vendors Conduct mid-year budget review with Council to assess if revenues are available to advance funding for cameras
4	Implementation	March thru June 2021	Finalize policy and body worn camera training and roll-out plan for all sworn officers. Begin outfitting officers with body worn cameras (subsequent to funding availability).
5	Full Implementation	Summer 2021 thru Fall 2021	Complete funding for body worn cameras in Fiscal Year 2021-22 budget and complete full implementation.

EXHIBIT # 2
Body Worn Camera FAQ



HOLLY SPRINGS POLICE DEPARTMENT

P.O. Box 8, 750 Holly Springs Road
Holly Springs, NC 27540
919.557.9111 (main) / 919.552.3175 (fax)

The Holly Springs Police Department (HSPD) will be equipping its uniformed patrol officers with new body-worn cameras (BWC) and updating and expanding its in-car cameras ("dashcams"). The use of BWCs will benefit members of the community and HSPD by increasing accountability, transparency, and strengthening the trust of those HSPD serves.

FREQUENTLY ASKED QUESTIONS

What is a body-worn camera?

A BWC is a forward-facing audio and video capturing system that is attached to the outside, upper body of an officer's uniform to make video and audio recordings.

Why are HSPD Officers wearing cameras?

BWC technology has developed to the point where it is becoming an industry standard. Police departments nationwide are adopting the BWCs for their departments. Some of the proven benefits of wearing BWCs are:

- Greater transparency
- Promoting accountability
- Evidence collection
- Deterring criminal activity and uncooperative behavior
- Assisting officers with accurately completing reports and providing testimony in court

Do other local police departments use BWCs?

Yes, most surrounding jurisdictions have implemented the use of body-worn camera systems including Apex, Cary, Fuquay-Varina, Garner and Morrisville police departments.

When will the BWC system be fully implemented?

- Preliminary Implementation April – June 2021
- Public Roll-out June 2021
- Full Implementation July 2021

What body-worn camera system will HSPD be using?

The department will be using a Motorola subsidiary, Watchguard, as their body-worn camera system provider and their cloud-based video management system (VMS) to manage the videos that have been captured. To learn more about the camera, VMS, or their other products, please visit their website at https://www.motorolasolutions.com/en_us/video-security-analytics/body-worn-cameras/v300-story.html .

Who will be wearing body-worn cameras?

All on-duty uniformed police officers.

When will officers be recording with their body-worn cameras?

Police officers will activate their BWC whenever they respond to calls for service or have public contacts initiated pursuant to the investigation of possible criminal activity or other law enforcement purposes. The use of BWC is guided by department policy and the North Carolina General Statutes (NCGS § 132-1.4A).

How do I know if I am being captured on video?

The camera worn by officers will be clearly visible. Officers will inform members of the public that they are being recorded, unless exigent or emergency situations prevent them from doing so. If the officer is taking law enforcement action and is wearing a video camera, you can assume he/she has activated the video. You may also ask the officer if his/her video is activated.

Are there places where officers cannot use their body cameras?

Typically, officers will not record in places where there is an expectation of privacy, such as restrooms, locker rooms, and medical patient care areas — unless there is reasonable suspicion a crime is being committed or the recording of the location is material to an investigation.

There may be times when officers should be sensitive to a situation and use discretion on their decision to record contacts while handling certain calls for service. Some examples include, but are not limited to: interviewing of sexual assault victims, recording in hospitals when other patients who not related to a police incident could be recorded, or at the request of hospital staff member.

What about my privacy?

The courts have long held that an individual has no expectation of privacy in a public place. It is also true that if an officer has a legal right to be somewhere, he/she can also capture video. This includes private property. Concern for an individual's privacy also is why North Carolina general statutes carefully restrict the release of the captured video.

What happens to a video once it is recorded?

At the end of each shift, officers will upload the data to an encrypted and secure cloud-based service to store the files. Depending on the type of video captured, data will be saved as required by law.

What is the process for viewing or obtaining a copy of a body-worn camera video?

Law enforcement videos are not considered public records under state law and these types of requests are governed by NCGS § 132-1.4A. Generally, an adult, a juvenile's parent or guardian, or a designated representative who requests to disclose (view) or obtain a copy (release) of a video recording by an officer's body-worn or in-car video must be either verbally or visually captured in the recording. There are several delineated reasons, including an ongoing criminal or internal investigation that may result in the denial of a request for disclosure or release. Denied requests of involved parties, may then appeal their request to the Superior Court. For more complete details and information click on the following link
https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_132/GS_132-1.4A.pdf.

EXHIBIT # 3

Holly Springs Police Department 2020 Annual Plan, Page 17

V. Body Worn Camera Implementation Update

The Holly Springs Town Council is moving forward with a plan to equip all members of the police department with body-worn cameras. During the June 9, 2020 budget workshop, the Council unanimously decided to immediately begin steps to provide all sworn officers with cameras. Since then, the police department has formed a committee, along with members of the Town's Information Technology Department. The committee has been testing and evaluating various models and vendors, identifying best practices associated with body worn cameras, and developing a comprehensive policy based on best practices and recognized professional standards. Once the model and vendor that best meets the department's needs have been selected, the police department will engage the community to educate them about the cameras and the department's policies and State law governing their use. The council will conduct its mid-year fiscal review to ascertain potential funding for this initiative in January 2021. Once the Council has established financing for the project, officers will begin to be outfitted with the cameras shortly thereafter, with full implementation anticipated by the end of the summer or early fall of 2021.

Phase	Action	Estimated Duration	Description	Status
1	Research	July thru October 2020	Research body worn camera usage across U.S., identify best practices, and begin developing recommendations	✓
2	Policy Development	October thru December 2020	Develop HSPD policies governing training, expectations, and usage	✓
3	Testing & Evaluation	August thru December 2020	a. Test and evaluate body worn camera system models and options from vendors b. Conduct mid-year budget review with Council to asses if revenues are available to advance funding for camera and data storage	✓
4	Preliminary Implementation	March thru June 2021	Finalize policy and body worn camera training and roll-out plan for all sworn officers. Begin outfitting officers with cameras (with funding approval)	
5	Public Roll-out	June 2021	Inform and educate the public about camera program, the department's policy, and what the public can expect.	
6	Full Implementation	July 2021	Complete distribution and outfitting of body worn cameras to all officers and complete implementation	



EXHIBIT # 4

Holly Springs Police Department Written Directive



Holly Springs Police Department Written Directive

Chapter: 400 – Uniforms / Equipment

Directive: 430.05 – Body-Worn & In-Car Camera System

Authorized by: Chief Paul Liquorie

Effective Date: July 1, 2021

CALEA Standards: 41.3.8

Last Revision: June 25, 2021

430.5.1 – Policy (41.3.8)

It is the policy of the Holly Springs Police Department to utilize body-worn and in-car (“dashboard”) cameras for the purpose of documenting evidence. Cameras also will be used to record interactions with citizens in the interest of ensuring quality customer service and proper performance of police officers’ duties. In addition, cameras will assist in addressing citizen concerns, identifying training opportunities, and promoting greater transparency with the community. All body-worn and in-car camera recordings will be made in a manner consistent with department policy and compliant with state, federal, and constitutional law.

430.5.2 – Purpose (41.3.8)

To establish guidelines and procedures for the utilization of body-worn and in-car cameras by officers to reliably record evidence, citizen interactions and other police activities and to ensure proper retention, as well as lawful disclosure and/or release of camera recordings.

Body-worn and in-car camera recordings are intended to enhance, not replace, the perspective of officers during the course of their duties. Although body-worn and in-car camera recordings may provide a limited view, they also can provide an unbiased account of events and are expected to produce valuable evidence for criminal and administrative investigations.

430.5.3 – Definitions

- A. **Body-Worn Camera (BWC)** – an operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others (NCGS 132.1.4A).

(Note – for the purposes of this directive, the above definition does not include covert cameras that may be used during undercover operations. The use of covert cameras is addressed in HSPD directive 430.02, Recording Devices.

- B. **BWC/ICC Coordinator** – the staff member assigned by the Chief of Police to manage and coordinate the Body-Worn Camera (BWC)/In-car Camera (ICC) program.

- C. BWC/ICC System – the entirety of all components of the BWC/ICC system to include the cameras, microphones or other audio recording mechanisms, uniform camera mounts, software, and/or other devices.
- D. Custodial Law Enforcement Agency - the law enforcement agency that owns or leases and whose personnel operates the equipment that created the recording at the time the recording was made (NCGS 132.1.4A).
- E. Disclose (aka Disclosure) - to make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording (NCGS 132.1.4A).
- F. Event – Any recording captured when the BWC and/or ICC is placed in the record function.
- G. First Line Officers – for the purpose of this directive, this term is inclusive of the animal control officer, patrol officers, patrol sergeants, school resource officers and sergeant (SROs), community services officers, traffic officers, and the traffic safety sergeant.
- H. In-Car Camera (ICC) (aka "Dashboard Camera") – A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras (NCGS 132.1.4A).
- I. Investigative and Support Officers – includes officers in the Criminal Investigations Division, Community Services, and school resource officers.
- J. Personally-Owned Recording Device – any BWC or ICC not issued or trained upon by the department for official use.
- K. Recording - a visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses (NCGS 132.1.4A).
- L. Release – to provide a copy of a recording (NCGS 132.1.4A).
- M. Surreptitious Recording – a covert, clandestine, or secret recording of another person or persons without the knowledge and consent of the person(s) being recorded.

430.5.4 – BWC/ICC System General Guidelines (41.3.8)

- A. The BWC/ICC system is to be utilized by officers in accordance with the guidelines of this directive.
 - 1. Officers are authorized to utilize a department-issued BWC/ICC system once the officer has successfully completed training on the proper use of the system and the guidelines set forth in this directive.
 - 2. Failure to adhere to the guidelines in this directive may result in disciplinary action up to and including termination.
- B. At no time shall officers use a personally-owned BWC or ICC in the performance of their duties.

- C. The Department BWC/ICC system shall be used by officers for the following purposes:
 - 1. To accurately document the circumstances and/or statements made during responses to incidents, police-public contacts, arrests, involuntary commitments and other situations;
 - 2. To enhance the documentation of crime or crash scenes or other events, including the confiscation and documentation of evidence or contraband;
 - 3. To enhance the accuracy of reports; and/or
 - 4. To enhance the department's ability to review employee work performance and training needs.
 - 5. To act as a training aid to enhance and review training scenarios.
- D. Officers shall only use the BWC/ICC system for legitimate law enforcement purposes. They are not intended for use to record administrative, regulatory or civil workplace violations. Therefore, the BWC/ICC will not be used to record any other department, town employee or official, unless fulfilling an official duty, without the permission of the Chief of Police or his designee.

430.5.5 – BWC/ICC System Deployment (41.3.8)

- A. Officers are normally assigned a BWC for their individual use, typically in conjunction with the ICC in their assigned vehicle. In those instances when an officer does not have an ICC in their assigned vehicle, they will follow the guidelines herein specific to the use of the BWC.
- B. The care and operation of the ICC is the responsibility of the officer operating the vehicle the ICC is mounted in. When a Field Training Officer (FTO) is training a probationary officer, the FTO is responsible for the care and operation of the ICC.
 - 1. The ICC shall be maintained and operated according to the manufacturer's recommendations, the training provided to the officer, and the guidelines in this directive.
 - 2. Officers shall not attempt to repair or modify any components of the ICC without permission from the BWC/ICC Coordinator.
 - 3. In the event an ICC stops functioning properly, the officer will cease operation of the vehicle as soon as practical (assuming a spare vehicle with a functioning ICC is available for use).
- C. Patrol officers, patrol supervisors, traffic officers, and traffic supervisors are required to have a functional ICC when working in their normal assignments. The only exception to this requirement is if the ICC in the officer's assigned vehicle is not functional and a spare vehicle with a functional ICC is not available.
- D. The care and security of the BWC is the responsibility of the officer the BWC is assigned to.
 - 1. The BWC shall be maintained and operated according to the manufacturer's recommendations, the training provided to the officer, and the guidelines in this directive.
 - 2. Officers shall not attempt to repair or modify any components of the BWC without permission from the BWC/ICC Coordinator.

3. Spare BWCs and/or batteries are maintained for use by officers in the event their battery is expended prior to the end of their workday.
4. The BWC/ICC Coordinator and patrol supervisors maintain reserve BWCs and/or batteries for use by officers in the event their assigned camera is inoperable.
5. When deploying with a BWC, uniformed officers are required to wear the BWC attached to the front of the uniform on, or near the button line
6. Non-uniformed officers are required to wear the BWC in one of the aforementioned positions or to place the BWC in a position to record the person(s) they are interacting with.
7. Regardless of placement of the BWC, the officer is responsible for positioning the camera lens to maximize the likelihood of recording an interaction with someone standing in front of the officer.

E. Officers are required to deploy with a functional BWC in the following circumstances:

1. First line officers and their supervisors are required to deploy wearing a functional BWC anytime they are working to include their assigned shift or other special assignment.
2. SRT officers when deploying on any SRT operation.
3. All sworn personnel working in a uniformed capacity are required to deploy wearing a functional BWC, to include extra and part time assignments.
4. Investigative and support officers are required to have their assigned BWC immediately accessible to them for deployment in accordance with the guidelines of this directive.
 - a. Investigative and support officers acting in the role of a first line officer or working in a uniformed capacity, regardless of assignment, are required to deploy wearing a functional BWC.

F. Officers will verify the BWC/ICC system is functioning correctly at the beginning of their workday and anytime that they switch BWC units due to battery exhaustion or malfunction and ICC units anytime they switch vehicles for any reason.

1. Officers will periodically check the functionality and battery life of their BWC throughout their shift.
2. Officers will immediately report any BWC/ICC system equipment loss or malfunction to their supervisor or, if their supervisor is not available, another department supervisor or the BWC/ICC Coordinator.

G. Officers will ensure that all BWC/ICC system recordings are successfully downloaded to the best of their knowledge at the end of their shift or workday, unless specifically given an exception by their supervisor. A supervisor may require immediate automated or manual downloading following any recorded event.

H. Officers who otherwise meet the requirements of this directive based on the positioning of the BWC and/or ICC, will not be subject to disciplinary action if the cameras were properly affixed to the uniform or correctly positioned within the vehicle and did not accurately or adequately providing video of an event because it was out of the angle and/or view of the camera.

430.5.6 – BWC/ICC System Activation

A. Officers acting in the role of a first line officer shall ensure that their BWC/ICC system is activated and recording *upon being dispatched* to a call for service or *immediately upon initiating* any self-initiated activity outlined as follows:

1. Any in-person citizen interaction requiring official action to include, but not limited to, dispatched calls for service, taking reports or complaints, traffic stops, arrests, and involuntary commitments. (Officers conducting routine "Signal 18" check-on-patrols and interactions with citizens during foot patrols or other community policing activities are not required to have their BWC activated.)
2. During emergency vehicle operations and vehicle pursuits;
3. During any transportation of non-department personnel, to include but not necessarily limited to prisoners, persons subject to an IVC, or individuals not in custody; however, authorized interns, cadets, and ride-along passengers are excluded.
4. Any other time the officer deems it appropriate to record an interaction based on the circumstances at hand;
5. Whenever a citizen states, or an officer believes, a complaint may be generated, whether warranted or perceived.
6. When requested to record by a citizen, so long as no other restriction exists); and/or
7. Whenever directed by a supervisor.

B. Investigative and support officers shall ensure that their BWC/ICC system is activated and recording in accordance with the following guidelines:

1. Interviews by Criminal Investigations Division (CID) personnel:
 - a. CID personnel may use their BWC/ICC in lieu of another approved recording device to comply with the requirements of HSPD directive 840.01, *Criminal Investigations*.
 - b. In the event that an interview is not required to be recorded by policy or NCGS, CID personnel are encouraged but not required to utilize their BWC/ICC.
 - 1) CID personnel may use another department-approved recording device in lieu of their BWC/ICC.
 - 2) CID personnel may elect not to record an interview if they believe that recording the interview will have a negative impact on their interview and/or investigation.
2. Any time the officer deems it appropriate to record an interaction based on the circumstances at hand;

3. When requested to record by a citizen, so long as no other restriction exists; and/or
4. Whenever directed by a supervisor.

C. **All officers shall notify citizens that they are being recorded.** When interviewing known suspects in a current and/or ongoing investigation, officers and investigators are not required but are encouraged to communicate that the suspect is being recorded. Officers should consider the totality of the circumstances and whether announcing the recording would have a positive impact in resolving the event or furthering a resulting investigation.

D. There may be instances in which officers are unable to activate their BWC/ICC due to circumstances making it unsafe, or physically impossible to do so. In these exigent circumstances, officers shall begin recording with the BWC/ICC as soon as practicable and will document the reason for the delayed start in recording in the incident report and/or as part of the recording.

430.5.7 – BWC/ICC System Activation Exemptions and Restrictions

A. Officers shall not activate their BWC/ICC system in any of the following circumstances:

1. In a patient care area of a healthcare facility unless conducting a suspect, victim, or witness interview, making an arrest, or in the event an encounter becomes adversarial with any person. Officers will attempt to exclude other patients and limit the recording to only those directly involved in their official duties when in a healthcare setting. Officers must be cognizant of the Health Insurance Portability and Accountability Act (HIPAA) protected information and ensure that such data is not recorded.
2. In the presence of a confidential informant or an undercover officer.
3. Prior to interviewing victims of any type of sexual assault, officers will request and gain consent from the victim, or their legal guardian if they are a juvenile, before recording. A subsequent, request and verbal consent will be recorded on camera after the initial consent is granted.
4. While in a courthouse or courtroom or to record any court proceeding (including an appearance before a magistrate) unless the recording is being made pursuant to an investigation, search, or arrest.
5. While in the Wake County Jail (per WCSO's policy), unless a subject becomes resistive or combative and the officer is involved in de-escalating, physically controlling, or subduing any suspect/defendant or inmate.
6. To record any non-law enforcement related activity or anything outside an officer's official duties.

B. Officers shall not record video when conducting a strip search:

1. Two officers are required to conduct a strip search after authorization by a sworn supervisor. Prior to conducting a strip search, the officer not physically conducting the search of the suspect shall position the BWC so that it will record audio but not video of the strip search. The officer physically conducting the search will not have their BWC recording, but will have the power on and in the position ready to record in the event the suspect becomes assaultive or attempts to discard or destroy evidence.

- C. Officers are not required to activate their BWC/ICC system in any of the following circumstances:
 - 1. DWI / Traffic checkpoints unless reasonable suspicion or probable cause to detain the driver or a passenger is developed or a driver or other vehicle occupant is questioning the officer's actions;
 - 2. Traffic control, or school traffic direction;
 - 3. If conducting an interview at a law enforcement facility where there is already an audio and video recording being conducted; or
 - 4. When conducting a telephone interview or conversation. Officers can, however, record a phone conversation if the officer believes it would be beneficial or if the conversation is expected to be or becomes antagonistic.
- D. This policy is not intended to address every possible circumstance where, in the opinion of the officer, it is prudent to not activate their BWC/ICC system. Officers who elect not to activate their BWC/ICC system in a circumstance that would normally require activation will articulate the justification for their decision as outlined in 430.5.9.
- E. In the event the BWC/ICC system is unintentionally activated by the officer or malfunctions and activates without being triggered to do so, the officer shall not face disciplinary actions for a recording that would otherwise be in violation of this policy. Should such a recording occur, the officer will:
 - 1. Categorize the recording as "Test/False Activation"; and
 - 2. Notify their supervisor who will determine if the recording will be left to self-purge or if the recording should be immediately purged by the BWC/ICC Coordinator or command staff officer.

430.5.8 – BWC/ICC System De-Activation

- A. An officer may de-activate the BWC/ICC system to discontinue an in-progress recording in the following circumstances:
 - 1. If a suspect, victim, or witness refuses to talk with the officer unless the recording is stopped and, in the opinion of the officer, the value of the statement is greater than the value of having it recorded;
 - a. This does not apply if the officer is conducting a custodial interrogation of an adult at any place of detention when the investigation is related to any Class A, B1, or B2 felony, and any Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting serious injury (NCGS 15A-211(d)).
 - b. This does not apply if the officer is conducting a custodial interrogation of a juvenile at any place of detention (NCGS 15A-211(d)).
 - 2. When a criminal investigation, warrant service, or another similar incident has transitioned into an investigative scene with no anticipated citizen or suspect interaction;
 - 3. At the end of the incident or encounter; or

4. If one of the aforementioned restrictions or exemptions comes to light during the recording.
- B. Officers will de-activate their BWC/ICC upon request of a citizen in a non-adversarial setting or call for service (i.e. – talk with an officer [T.W.O.] or solely to take a report). However, if the nature of the encounter becomes adversarial or the officer believes a complaint may be generated, whether warranted or perceived, they may continue or start to record. An officer is not required to de-activate the BWC/ICC system based on a citizen request; so long as the officer has a legal right to be where they are and have the right to record their activity. However, the officer should give consideration to the totality of the circumstances and the guidelines in this directive when making this decision.
- C. This policy is not intended to address every possible circumstance where, in the opinion of the officer, it is prudent to de-activate an in-progress recording.
- D. Any officer who elects to de-activate an in-progress recording should announce their justification on the recording prior to de-activating the recording assuming it is practical to do so given the totality of the circumstances. If the de-activation is because of the request of a citizen, that request shall be recorded prior to de-activating the recording.
- E. In the event that the nature of the incident changes to where a recording would be required or would be advantageous, the officer will immediately re-activate the BWC/ICC system.
- F. As directed by a department supervisor.

430.5.9 – BWC/ICC System Documentation

- A. Officers may view their own BWC/ICC system recording prior to completing any required department reports or other written documentation and in preparation for a scheduled trial or district attorney's pre-trial conference.
- B. Officers are not to view the BWC/ICC recordings of other officers except for a work-related reason that is first authorized by a supervisor.
- C. Officers will note at the beginning of all incident, or related reports when a BWC/ICC system recording was made of the event in question.
- D. Any de-activation of a recording prior to the conclusion of the incident or event will be documented in the incident report or call for service notes by the officer with justification for why the recording was terminated prior to the conclusion of the incident or event.
- E. Any non-activation of the BWC/ICC system in an incident or event that would normally require activation according to this directive will be documented in the incident report or call for service notes by the officer with justification for why the recording was not initiated.
- F. Officers are highly encouraged to notify their immediate supervisor anytime that they are aware that one of their BWC/ICC system recordings contains footage that may be suitable for use in internal training.

430.5.10 – Supervisory Responsibilities (41.3.8)

- A. Sworn officers who supervise subordinates utilizing BWC/ICC systems are responsible for the following:
 - 1. Receiving training in the operation and use of the BWC/ICC system, including the file management system. This training will normally occur during new supervisor training and will be documented by the person providing the training.
 - 2. Ensuring all officers receive training prior to deployment of a BWC/ICC system. This training will normally occur during the Field Training program and will be documented by the Field Training Officer providing the training.
 - 3. Ensuring all officers follow established procedures for the use and maintenance of BWC/ICC system, the custody of recorded media, and the completion of required documentation.
 - 4. Ensuring that repair and/or replacement of any damaged or nonfunctional BWC or ICC is properly performed.
- B. Supervisors will conduct reviews of random samples of BWC/ICC recordings of every officer assigned under their command, at least on a monthly basis, to assess officer performance, identify training needs, determine whether recording devices are being used in accordance with policy, and identify material that may be of value for training purposes.
- C. Supervisors, up to and including the Chief of Police, will review all BWC/ICC video footage whenever a Use of Force Report is required. Supervisors, up to, and including the respective division captain, will also review BWC/ICC video whenever a complaint is generated.
 - 1. Minor policy violations committed by an officer and discovered during a random supervisory review should be viewed first and foremost as training opportunities. However, depending on the severity of the policy violation the supervisor shall initiate the appropriate action for review for performance counseling and/or formal discipline.
 - 2. These reviews will be documented within the video marking them as reviewed.

430.5.11 – Recording Management and Retention (41.3.8)

- A. The making and retention of any BWC/ICC system recording made by an employee is governed by the provisions of the North Carolina Public Records Act (Chapter 132 of the North Carolina General Statutes) and rules of evidentiary disclosure in criminal and civil court proceedings.
 - 1. As such, the status of the person making the recording governs the ownership of such recordings and not the ownership of the device making the recording.
 - 2. Therefore, any recording made by an employee of this department or otherwise conducting employment-related functions is deemed property of the Holly Springs Police Department as the custodial law enforcement agency.

3. BWC/ICC system recordings are not public records as defined by G.S. 132-1 and are not personnel records as defined in Article 7 of Chapter 126 of the General Statutes, G.S. 160A-168, or G.S. 153A-98, as described in N.C.G.S. 132-1.4.

B. Officers shall not erase, alter, tamper with, or record any BWC/ICC system recording.

C. BWC/ICC system recordings that have evidentiary value or are otherwise intended to be retained will be categorized by the officer making the recording in accordance with the categories outlined in Appendix A of this directive.

1. Officers will categorize each BWC/ICC system recording they make using the most appropriate category.
2. Any officer intentionally mis-categorizing a BWC/ICC system recording to avoid retention will be subject to disciplinary action, up to and including termination.

D. All BWC/ICC system recordings will be downloaded onto the Department's BWC/ICC system cloud server for storage prior to dissemination and/or purging.

1. Dissemination and purging of these recordings will be done in accordance with North Carolina Public Records Act (Chapter 132 of the North Carolina General Statutes) (see also 430.5.12).
2. Any recording categorized as evidentiary in nature will be retained on the cloud server until such time that there is a destruction order from the court of jurisdiction and/or the District Attorney's Office indicates, in writing, that the recording is no longer needed for prosecutorial purposes.

E. The Department's BWC/ICC Coordinator will be responsible for managing all BWC/ICC system recordings once downloaded to the cloud storage server.

430.5.12 – Recording Dissemination (41.3.8)

A. Authority for disclosure and/or release of BWC/ICC system recordings outside the Department rests with the Chief of Police in accordance with the General Statutes. No employee shall disclose or release any BWC/ICC system recording to any outside individual or agency other than the District Attorney's Office for the purposes of a criminal investigation without the consent of the Chief of Police.

1. Disclosure and/or release of BWC/ICC system recordings are governed by the North Carolina Public Records Act (Chapter 132 of the North Carolina General Statutes).
2. The Chief of Police will address any request for disclosure or release of a BWC/ICC system recording on a case-by-case basis.
 - a. The Department provides a *Request for Disclosure of Police Recording* form (HSPD form 430.5-A) for making a disclosure request; this form is maintained on the Department's website for public access. However, it is not required that the form be used in order for the request to be processed.
 - b. The Chief of Police will respond to any request for disclosure by completing a Response to Request for Disclosure of Police Recording form (HSPD form 430.5-B) and providing the completed form to the requesting party.

- c. Copies of all requests for disclosure and responses to those requests will be maintained in the Department's records management system.
- 3. Upon the Chief's approval and prior to release, video will be reviewed, and parts of the video can be redacted to protect witnesses, victims, and by-standers.

B. Supervisors will have access to BWC/ICC system recordings for the following purposes:

- 1. Conducting internal investigations in accordance with the Department's *Internal Affairs Policy*
- 2. Random reviews (as outlined in 430.5.10.B); and
- 3. Providing internal training to officers.

C. Supervisors will not review BWC/ICC system recordings for purposes other than those authorized above.

D. Non-supervisory officers may only review BWC/ICC system recordings for legitimate law enforcement purposes. Any copies must be made in accordance with the North Carolina Public Records Act (Chapter 132 of the North Carolina General Statutes) and must first be approved by the Chief of Police, who will then authorize the BWC/ICC coordinator to make copies as needed.

430.5.13 – BWC Directive and Program Review

It is the responsibility of the Chief of Police to ensure that a review of this directive and the BWC/ICC system is conducted annually.

APPENDIX "A" – BWC/ICC SYSTEM RECORDING CATEGORIES & RETENTION SCHEDULE

<u>MVR Category</u>	<u>Retention Period</u>
DWI	6 Years
Felony	Indefinite
Interview Room Recording	Indefinite
Other Needed as Evidence	Indefinite
No Category Assigned	30 days
Test / False Activation	3 days
SRT Operations	2 years
Traffic Stop	90 Days
Misdemeanor	2 years

EXHIBIT # 5

Email communications from Holly Springs Police Department

From: Jay Bruner
Sent: Friday, December 4, 2020 5:47 PM
To: David Blackwelder
Subject: RE: --[EXTERNAL]--Re: Body Camera Footage of your Arrest

I have not been aware of these requests. I will look into it promptly on Monday upon my return to work. If you will forward me the name of the ADA handling your case I will be certain to make contact with them and forward them whatever they request.

Sent from Mail for Windows 10

From: David Blackwelder
Sent: Friday, December 4, 2020 5:45 PM
To: Jay Bruner
Subject: Re: --[EXTERNAL]--Re: Body Camera Footage of your Arrest

The Wake County DA had informed me that they have requested the video twice, but it hasn't been given to them. Can you please advise?

David Blackwelder

On Dec 3, 2020, at 3:02 PM, Jay Bruner <jay.bruner@hollyspringsnc.us> wrote:

Yes sir, it has been.

From: David Blackwelder <blackwelder@outlook.com>
Sent: Thursday, December 3, 2020 3:01 PM
To: Jay Bruner <jay.bruner@hollyspringsnc.us>
Subject: Re: --[EXTERNAL]--Re: Body Camera Footage of your Arrest

Captain Bruner,

I just wanted to follow up with you and confirm our agreement about all evidence (video) being preserved. Thank you for your help.

-David Blackwelder

From: Jay Bruner <jay.bruner@hollyspringsnc.us>
Sent: Friday, November 13, 2020 3:52 PM
To: David Blackwelder <blackwelder@outlook.com>
Subject: RE: --[EXTERNAL]--Re: Body Camera Footage of your Arrest

Yes we checked all of the dates surrounding the 1st.

Sent from Mail for Windows 10

From: David Blackwelder
Sent: Friday, November 13, 2020 3:22 PM
To: Jay Bruner
Subject: --[EXTERNAL]--Re: Body Camera Footage of your Arrest

Thank you for checking

David Blackwelder

On Nov 13, 2020, at 3:19 PM, David Blackwelder
<blackwelder@outlook.com> wrote:

Did you check the date on 10/02/2020?

David Blackwelder

On Nov 13, 2020, at 3:13 PM, Jay Bruner
<jay.bruner@hollyspringsnc.us> wrote:

Mr. Blackwelder,

Per our conversation this afternoon, I followed up with the program leader for our body camera testing and evaluation processes. I asked him to look for any and all body camera footage that surrounded the date of your arrest and the event in question. No body camera footage exists of the incident from any officer or supervisor present at your scene. Be well.

Respectfully yours in service,

JPB

*Captain Jay Bruner
Field Operations Division Commander
Holly Springs Police Department
750 Holly Springs Rd.
Holly Springs, NC 27540
919-567-4719
Jay.bruner@hollyspringsnc.us*

Warning: This email is subject to disclosure under the North Carolina Public Records Law (NCGS 132-1).

This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Warning: This email is subject to disclosure under the North Carolina Public Records Law (NCGS 132-1).

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EXHIBIT # 6

Holly Spring June 4, 2020 Budget Workshop, Pages 1-2

Mayor and Council Budget Workshop
6 p.m. June 4, 2020
Holly Springs Law Enforcement Center and virtually via Zoom



MINUTES

The Holly Springs Town Council held a budget workshop meeting on Thursday, June 4, 2020 in the Holly Springs Law Enforcement Center, 175 Holly Springs Road, Holly Springs, NC. Mayor Pro Tem Berry presided, calling the meeting to order at 6:00 p.m. A quorum was established as five council members attended.

Council Members Present: Councilmen Dan Berry, Peter Villadsen, Aaron Wolff, and Shaun McGrath and Councilwoman Christine Kelly.

Council Members Absent: Mayor Sears

Staff Members Present in the room: Randy Harrington, Town Manager; Linda McKinney, Town Clerk (recording the minutes); Daniel Weeks, Assistant Town Manager; Scott Chase, Assistant Town Manager; Patty Dressen, Interim Finance Director; Corey Petersohn, Finance; Clay Fleming, Finance; Jeff Wilson, IT director; John Schifano, Town Attorney

Staff Members Present by Zoom: Gina Clapp, Planning and Zoning Director; Cassie Hack, Communications and Marketing Director; Irena Krstanovic, Economic Development Director; LeeAnn Plumer, Parks and Recreation director; Leroy Smith, Fire Chief; Erika Phillips, Human Resources Director; Jessica McMillan, Interim Chief of Police; Seann Byrd, Water Quality Director; Luncie McNeil, Public Works director; Daniel Pope, Code Enforcement director; Kendra Parrish, Engineering Director.

MPT Berry reminded the audience that the Public Hearing was held last Tuesday. He repeated the public comments which had been received in writing prior to the meeting, in support of the Stormwater Fee increase, supporting providing the Police Department with body cameras, requesting a greenway connection from Muses Mill Court to Ting Park, and proposing selling the naming rights to various parks and recreation facilities.

1. Overview: Randy Harrington gave an overview of the meeting agenda. He said that once the recommended budget has been presented to Council, it becomes theirs to make sure it meets their expectations and priorities. He said that staff was available through Zoom to answer questions, and that members of the Finance team were in the room to answer questions. He outlined the next steps after tonight, reminded everyone that state law requires a balanced budget, and made suggestions of procedures to be followed.

2. Review and Discussion of Recommended Budget and other Financial Considerations:

Randy Harrington, Town Manager, said there was no presentation tonight, but he would be happy to take questions or explore from here.

Councilman Villadsen said there has been public input on body cameras for police officers, which is a recent request and therefore not in the recommended budget yet, so he wanted to open up the discussion.

Council discussed the pros and cons of outfitting the Holly Springs PD with body cameras, including privacy issues for the public, accountability for the officers, the buy-in of the

officers, the need for record retention policies and IT support, and how the cameras would affect residents during sensitive calls. They heard from Captain Patterson and Interim Chief McMillan that the HSPD had been investigating the use of body-worn cameras and knew that they were moving in that direction, but had not asked for them in the budget because they were trying to be good stewards of taxpayer funds. The estimated cost per year to outfit the department was from \$100,000 to \$200,000 depending on the equipment and service they went with. Consensus was that if the HSPD started the program that all officers should wear the cameras. There was discussion about how to ensure that this was a priority, and that the community is made aware that it is a priority. Council emphasized that there is not a known problem with the HSPD, the use-of-force numbers were very low and the department has in general a good relationship with the community. But the body cameras are one part of a program to ensure that the department is accountable to the community.

Randy Harrington, Town Manager, said that if Council wanted to move forward there are perhaps 3 approaches they could take:

1. Identify some cuts in the budget and replace that with funding for this
2. Increase property tax by .25 cents to fund \$100k
3. No funding this budget year, but give a policy direction to staff to move forward with planning, policy, etc. If that is the approach, there is \$20,000 of unallocated funds in the budget that could be tagged for preliminary research to get started.

Captain Patterson said that the Department would not need \$20,000 to get started because vendors who know a department is seriously considering them will give equipment for testing and training at no charge.

Council set a twelve-month timeline for the police department to research and draft policies for best-practice use of body cameras, research the technology, and begin training. They set a six month check-in with the department for the December 2020 or January 2021 workshop meeting. The plan includes budgeting for the implementation in the FY2021-22 budget.

Mayor Pro Tem Berry asked if there were any other budget concerns Council wanted to address.

Councilwoman Kelly asked about the goals for the investment that the Chamber is getting and how it helps them move forward. Randy Harrington, Town Manager said the Town's total investment is \$30,000; \$10,000 for Chamber Champions sponsorship level, and \$20,000 for government support type programs such as legislative breakfasts, economic forecasts, candidate forums, and those type of programs.

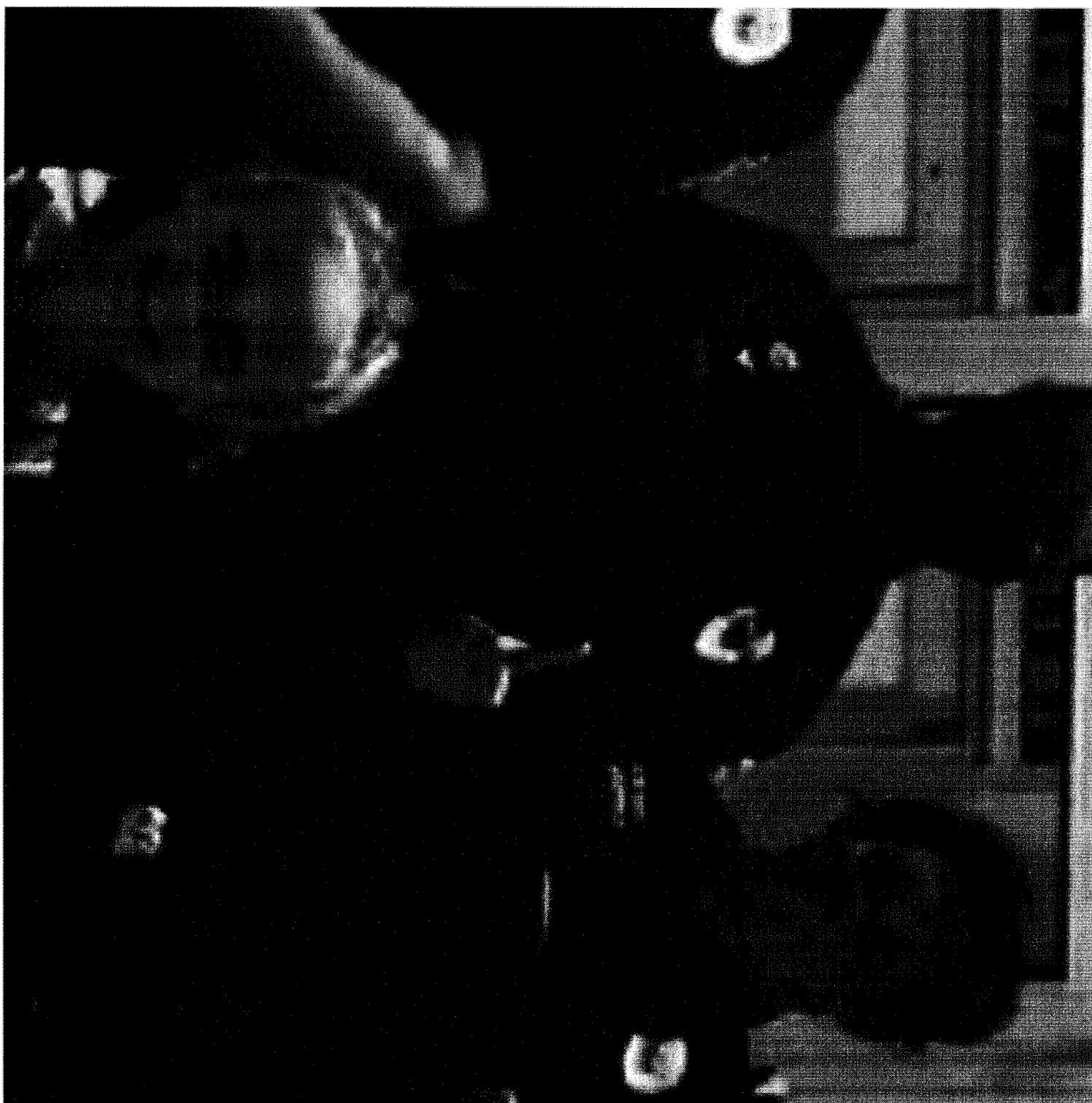
Councilman Wolff said that during the grants committee meeting the potential of increasing the amount available for grants was discussed. Did that happen? Mr. Harrington said that line item was kept at \$15,000. But \$20,000 of unallocated funds was set aside that the Council could use for other projects. Councilman Wolff said funding has kept steady for many years, but operating expenses are going up for everyone. If there is an appetite, he would like to see it increased, perhaps an additional \$10,000. MPT Berry said he would support that. When Council looked at the grant policies a year ago, that was one of the things that was discussed. The Town is on the lower end of what neighboring jurisdictions budget for this. He said he thought increasing it by \$10,000 would be a good idea. Councilwoman Kelly and Councilman McGrath were both in agreement with that.

Councilman Wolff asked if, due to the revenue neutral tax rate, if the Town was not funding things that need to be funded. He said that there was an opportunity with the motor vehicle fee which is \$10, and is below all the neighboring jurisdictions. The average in Wake County is \$30.

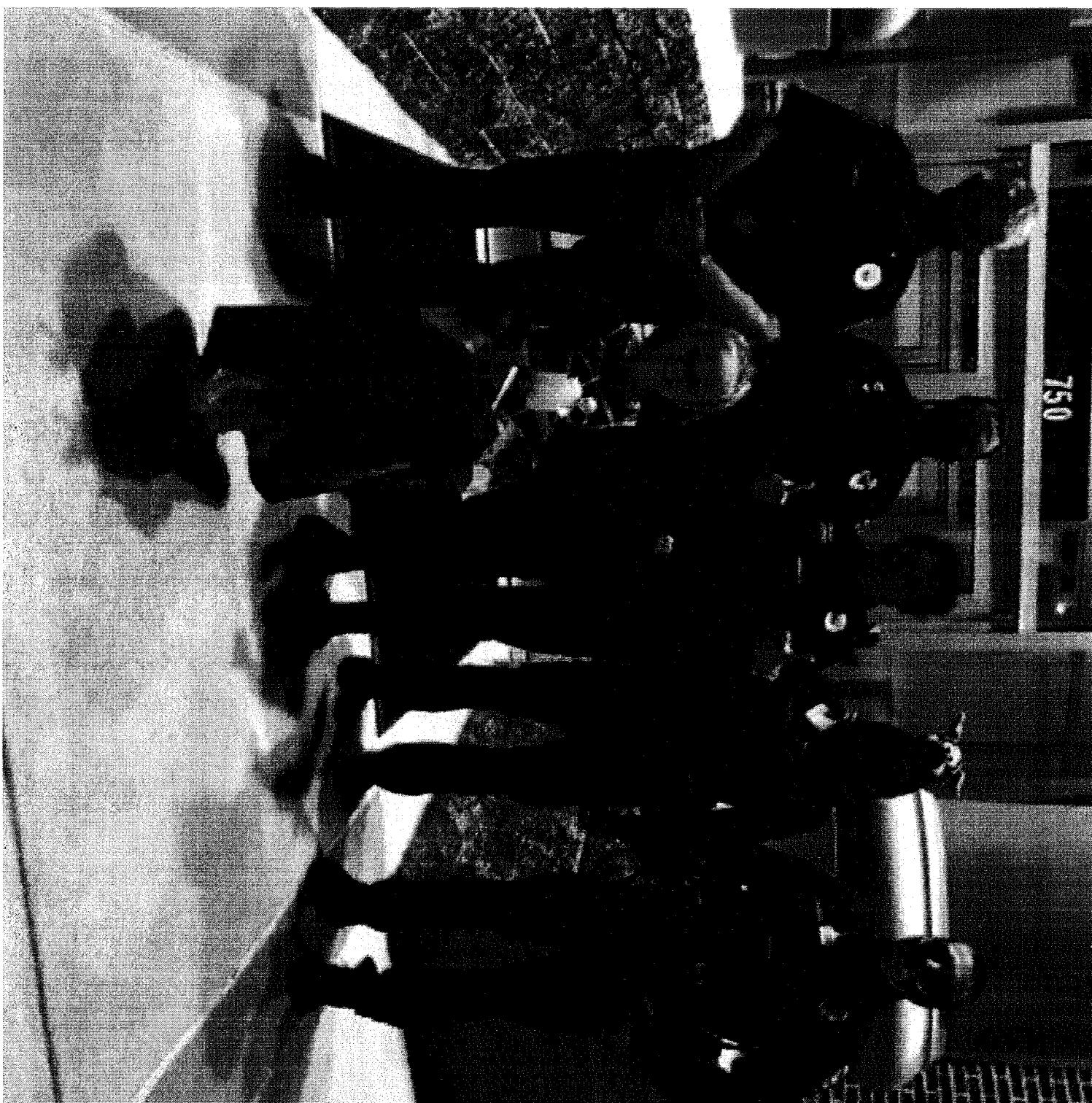
EXHIBIT #7

Pictures of Body Worn Camera – Holly Springs Police Department











Holly Springs Police Department @HSpoliceNC . Dec 30, 2020

...

We just want to thank Joe and Owen for stopping by the Law Enforcement Center to thank the officers and see our police cars. While visiting they were lucky enough to meet Officer Locklear, Sergeant Denton and his K9 partner Blaze. #HSPD #K9 #communitysupport



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stopped by and helped spread the festive spirit!

1 69

3 Comments

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