

The Iowa Public Information Board

**FILED**  
**FEB 21 2019**  
Iowa Public  
Information Board

In the Matter of:

No. 17IPIB001 FC:0030  
17IPIB002 FC: 0034

Burlington Police Department,  
Department of Public Safety  
Division of Criminal Investigation

**Final Decision and Order  
Dismissing Petition**

Respondents.

**Statement of the Case**

An in-person contested case hearing pursuant to Iowa Code section 17A and Iowa Administrative Code section 497 was held on this matter on July 20, 2018 in front of Administrative Law Judge Karen Doland (presiding officer). The hearing was open to the public and was recorded. Mark McCormick (prosecutor) appeared on behalf of the Iowa Public Information Board (the board). Patrick O'Connell and Holly Corkery appeared on behalf of the Burlington Police Department (Burlington). Jeffrey Peterzalek appeared on behalf of the Department of Public Safety, Division of Criminal Investigation (DCI).

Prior to the hearing, the prosecutor filed a Brief in Support of Order Requiring Disclosure of the DCI File. Attached to the brief was a June 18, 2018 press release from attorney Dave O'Brien announcing that a civil lawsuit in Autumn Steele v. City of Burlington and Jesse Hill had been settled. During the hearing, Burlington filed a Motion to Strike the press release on the basis that it was not timely, not sworn, and contained hearsay. Burlington's Motion to Strike also stated that the press release failed to reflect that the settlement had not been finalized. DCI joined in the motion to strike filed by Burlington.

The DCI submitted Exhibit A into the record. At the hearing the prosecutor objected to Exhibit A because it was unsworn and contained hearsay. Burlington submitted documents marked as Exhibits 2, 3, 7 into the record. The prosecutor submitted a document marked as Petitioner's Exhibit 1 into the record.

The motion to strike and the objection to Exhibit A were taken under advisement and later denied by the presiding officer. The presiding officer said she considered the press release for the limited purpose of showing that a press release announced that a settlement in the Autumn Steele civil case had been reached. The presiding officer also overruled the prosecutor's objection to Exhibit A.<sup>1</sup>

The record was held open until September 4, 2018 to allow the parties to submit post-hearing briefs. The presiding officer issued a proposed decision on October 8, 2018. She found "Burlington and DCI failed to comply with Iowa Code chapter 22 when they determined that all records gathered as part of a criminal investigation, including the 911 call, the body camera video, and the dash camera video, were confidential 'peace officers' investigative reports' under Iowa Code section 22.7(5)." (Proposed Decision, 10-5-18, page 23). The presiding officer concluded "[t]he prosecutor's request for an order requiring the production of the documents is granted." *Id.* The presiding officer denied the prosecutor's request for damages on the ground the respondents reasonably relied on "previous interpretations by the board, attorney general opinions, proposed legislative amendments, and case law." *Id.* at 22.

Burlington and DCI appealed the presiding officer's proposed decision pursuant to Iowa Code section 17A.15 and Iowa Administrative Code r. 497—4.26. The board heard oral arguments on January 28, 2019.

Iowa Code section 17A.15, subsection 3, states in part:

On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties or by rule. The agency may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law that the agency finds to be in error.

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<sup>1</sup> The standard for admissibility in administrative hearings is that the evidence be "the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs ... even if it would be inadmissible in a jury trial." Iowa Code 17A.14 (1) (2017). The general rule is that administrative agencies are not bound by technical rules of evidence. *McConnell v. Iowa Dep't of Job Serv.*, 327 N.W.2d 234,237 (Iowa 1982).

The board hereby adopts the presiding officer's procedural history, statement of facts, ruling on prehearing motions, and statement of applicable statutory provisions (recited below). Because the board finds the presiding officer's legal analysis and conclusions of law in error, it provides its own analysis and legal conclusions below.

### *Procedural History*

This case was initiated under Iowa Code section 23.10(3)(a). Mark McCormick, the attorney selected by the executive director, filed a Petition on November 4, 2016 alleging Burlington and DCI violated chapter 22 by refusing to release public records including the recording and transcript of 911 calls, bodycam videos taken by the officers, videos taken by dashcam cameras, and records showing the "date, time, specific location and immediate circumstances surrounding the incident." The Petition also alleged that emails regarding the Autumn Steele homicide and correspondence with family members were public records. Petition (11-4-16).

Burlington and DCI filed motions to dismiss the Petition. The motions to dismiss were denied on January 18, 2017 (Ruling on Motion to Dismiss 1-18-2017). On June 12, 2017 the prosecutor's motion to compel the Respondents to answer interrogatories was granted (Order 6-12-17). On August 17, 2017 the board granted Respondents' request for Interlocutory Relief and reversed the Order granting the prosecutor's motion to compel. (Board Order 8-17-17). Burlington and DCI filed motions for summary judgment. The motions for summary judgment were denied on December 4, 2017 (Ruling on Motion for Summary Judgment 12-4-17). Burlington and DCI each filed an Application for Interlocutory Appeal of the denial of the motion for summary judgment to the board. The board denied Respondents' Application for Interlocutory Appeal on March 15, 2018 (Board Order 3-15-18).

On July 16, 2018 the Respondents filed a Joint Motion to Continue (Joint Motion 7-16-18). The prosecutor filed a resistance. The request for continuance was denied on July 19, 2018 (Order 7-19-18). This contested case hearing followed on July 20, 2018.

### **Statement of Facts**

On February 27, 2015 Des Moines County Attorney Amy Beavers wrote a letter to DCI Agent Matthew George. She stated that she was writing to let him know that she had completed her review of the DCI investigation involving the fatal shooting of Autumn Steele by Burlington Police Officer Jesse Hill. Beavers

then summarized her findings. In the letter she stated that on January 6, 2015 Gabriel Steele called 911 to report a domestic assault involving Autumn Steele. Officer Jesse Hill responded to the call. When he arrived at the residence, Officer Hill observed Gabriel walking out of the house with a child in his arms. He observed Autumn running behind Gabriel, grabbing the back of his shirt, pulling him down and hitting Gabriel in the back of the head. Officer Hill reported to dispatch that two individuals were fighting. He activated his body camera video and ran over to Autumn and Gabriel. Officer Hill attempted to pull Autumn away from Gabriel as she was punching and slapping him. A German shepherd owned by the Steeles started growling and bit Officer Hill in the thigh. According to Beavers' letter, Officer Hill told the Steeles to get the dog but the dog continued toward him, and Officer Hill fired his weapon as he fell backwards. Officer Hill fired his weapon a second time as he fell into the snow.

According to Beavers, Officer Hill was not aware that he had shot Autumn; Gabriel advised him that she had been shot. An ambulance was requested through dispatch. Another officer arrived at the scene to provide assistance. Officers could not locate a gunshot wound on Autumn. They performed chest compressions on Autumn while waiting for the ambulance. An autopsy revealed that Autumn sustained a gunshot wound to her right arm and a gunshot wound to her chest. Autumn died as a result of a gunshot wound to the chest. In the letter Beavers concluded that no criminal charges would be filed against Officer Hill (Exhibit A attached).

On February 27, 2015 Adam Klein, an attorney for Autumn's family requested public records from the incident. On March 19, 2015, attorney Holly Corkery responded to Klein's request. The letter stated that Officer Hill's personnel file was confidential under Iowa Code section 2.7(11). She set out personnel information that she stated was non-confidential under section 22.7(11)(a)(1-5). In response to a number of open records request Corkery stated:

"All other items you request in your Requests Nos. 6, 7, 8, 10, 11 and 12 are peace officers' investigative reports and therefore are confidential records pursuant to Iowa Code Section 22.7(5), except for the date, time, specific location, an immediate facts and circumstances surrounding the incident. Iowa Code 22.7(5) (2014); *see also Neer v. State*, 7898 N.W.2d 349 (Iowa Ct. App 2011)." (Exhibit 2).

On March 2, 2015 Andy Hoffman of Hawk Eye sent an email to Burlington Police Chief Doug Beard stating:

“Under Iowa Open Records Law Section 22.1 et seq., I am requesting an opportunity to obtain copies of all public records, including but not limited to, investigative reports by the Iowa Division of Criminal Investigation, the Burlington Police Department, any police audio, body camera videos and 911 calls, involving the Jan. 6, 2015, fatal shooting of Autumn Steele by Burlington Police Officer Jesse Hill.”

Chief Beaird replied in an email:

“We have received several of these requests. I have forwarded them to our legal counsel. I will let you know [their] response to this request when I know, also I do not have the authority to release anything created by the DCI. What we do have in our possession is initial reports, body cam videos of Officer Hill and Officer Merryman, and the 911 calls.

If you have any questions please feel free to give me a call.”

(Petitioner Exhibit 1).

On March 19, 2015 Corkery sent a letter to Hoffman acknowledging his request. The letter stated:

“While the goal of Chapter 22 is to provide public access to governmental bodies’ records, Chapter 22 also provides several exceptions for confidential records. Please be advised that the records you have requested are confidential records pursuant to Iowa Code Section 22.7 (5). Iowa Code Section 22.7(5) provides that peace officers’ investigative reports which include video recordings and photographs, are confidential records. Iowa Code 22.7(5) (2014); *see also Neer v. State*, 798 N.W.2d 349 (Iowa Ct. App. 2011). At this time the City cannot produce these confidential records pursuant to your open records request.”

Corkery attached the Des Moines County attorney’s letter and stated that it contained the “date, time, specific location, and immediate facts and circumstances surrounding” Ms. Steele’s death.” (Exhibit 4).

Special Agent Richard Rahn of the Division of Criminal Investigation (DCI) testified on behalf of DCI at the hearing. He works with the major crime unit and is responsible for assisting local agencies with the investigation of crimes – primarily felonies—that occur in their area. He oversees twenty counties that are considered in his “zone”. He dispatches agents as needed to that zone. The DCI assists the investigation of officer-involved shooting cases. The DCI does not have the ability to investigate “anything anywhere.” It provides expertise

only when the local law enforcement agency asks for it. In January 2015 Agent Rahn became aware of an officer-involved-shooting in Burlington. The Burlington Police Department called the DCI for assistance in investigating the shooting. In response he dispatched staff to Burlington to investigate. Agent Rahn also went to Burlington. He generally sends two agents but in this case he sent three or four because officer-involved shooting cases are complex and involve multiple interviews.

The DCI agents made contact with the police department to let them know they were responding. He assigned Agent Matt George as the "case agent." The agent in charge decides whether search warrants are necessary and tries to determine whether a crime scene team is needed at the scene. Generally the investigation would involve interviews of the officers involved in the shooting. A neighborhood canvass would be conducted to locate other possible witnesses. Agents investigate the background of the victim and the officer involved in the shooting. They collect any evidence obtained at the scene. They collect the weapon used in the shooting. They also collect officers' body cameras, in-car cameras, and any other supporting evidence. Agents then put this information in the investigative report.

According to Agent Rahn, the DCI compiles a very "thorough" investigative report. The investigative report is used to assist the agent to help him through the investigation. It is also used to document officer findings. It documents interviews. It basically supports the investigation. The investigative report is then submitted to the county attorney and to the attorney general's office if the attorney general is involved in the case. The compiled information is entitled "Iowa Division of Criminal Investigation Investigative Report." The general types of things that would be in an investigative report would be a "crime scene section," an "officer" section when it involves an officer shooting, an "autopsy" section, a section concerning the background of the person who was shot, and a "neighborhood canvass section." The individual sections also have supporting documents. There is a crime scene report drafted by the crime scene team. It includes all the evidence collected or seized. It would include photographs. If there is a body, the photographs would include the area where the body was found. The report lists the names of people interviewed and includes their addresses, telephone numbers, dates of birth, and social security numbers. The report also includes the information the individuals provided to agents in interviews.

According to Agent Rahn, the interviews conducted by DCI agents are very thorough. They "get into the weeds" as much as possible. There is an autopsy

report submitted by a pathologist as well as photographs of the autopsy. In terms of "victimology" the DCI gets as much background on the individual as possible including date of birth, social security number, telephone number, and criminal history. The search warrants are put in the investigative file. Special Agent Rahn stated: "Anything and everything we do, we try to put it in the investigative report." He stated that this would include the reports of the local police officers. Additionally, if a report is drafted by the law enforcement agency the agent will put that into the investigative report. There may be criminal history information in the file. Some documents in the investigative report, such as criminal history information, may be confidential under other laws. He stated that it is a criminal offense to release criminal history information. He agreed that social security numbers, driver's license information, and vehicle information in the file may be confidential. Special Agent Rahn stated that the DCI tries to "get as much data as we can to aid the county attorney and the attorney general to make a determination." This includes body camera footage, patrol vehicle footage, and 911 calls to dispatchers. Agent Rahn stated that all of this information is included in the investigative report as the "norm."

According to Rahn an investigative report is rarely completed because there is always a flow of information that is continually added in order to supplement the report. He stated that even when a case is closed the investigative report may be supplemented. The investigative report is submitted to the county attorney or the attorney general. The agent does not submit an opinion as to whether a crime occurred. Instead, agents provide facts and circumstances to the prosecutor and the prosecutor makes the charging decision.

The investigative report is given only to the county attorney or attorney general. The police department does not get the investigative report. Members of the public do not get the report. If information is provided to the public, it is provided through a press release or a press conference. The DCI does not provide the information, particularly when the investigation is ongoing and disclosure would be detrimental to the investigation. Agent Rahn stated that if there is a public safety concern the DCI will release information for the safety but "most all we do is release immediate facts and circumstances."

Agent Rahn stated that in this case the investigative report was submitted to the county attorney. The county attorney made a determination as to whether the officer would be charged with a crime. She reviewed the material and then drafted a document to let everyone know what her findings were. He stated that Exhibit A is the document drafted by the Des Moines County Attorney and

provided to the DCI concerning the Autumn Steele shooting. He stated that the county attorney went into great detail about the information submitted for her review. She stated that the date of the occurrence was January 6, 2015, the location was 104 South Garfield Street. According to Agent Rahn, the county attorney recited the facts and circumstances in substantial detail. He stated that she “provided more detail than I would submit in a press release.”

Agent Rahn testified that he reviewed a video of the incident in this case. It shows Officer Hill responding to a “domestic.” His body camera shows him exit the squad car and confront two individuals on the sidewalk. There is snow and it appears to be cold. Agent Rahn stated that two people can be heard arguing on the video. He stated that you “can see or hear a dog that sounds like it is approaching in aggressive manner.” He stated that an order from the officer to contain or control the dog can be heard and then a couple of gunshots being fired are heard. Agent Rahn stated that “everything in that clip provided immediate facts and circumstances as to whether there was a criminal element” to the incident.

Agent Rahn testified that the DCI is involved only in the investigation of the local police officer. In this case it only investigated the shooting. If there was an underlying burglary that the officer was responding to, the local police department would investigate the burglary. The DCI are not “internal affairs” officers. They do not decide whether a crime was committed. The agency collects facts and circumstances and provides it to the charging agency. He stated the DCI did not play a role in the county attorney’s drafting of the letter that is Exhibit A. This letter is put in the investigative report as well. The letter was also posted to the agency’s website.

Agent Rahn stated DCI received documents from the Burlington Police Department. The police department documented why they were called to that location. That document then became part of the investigative file. The investigative file includes body camera footage. Agent Rahn stated: “We try to collect anything and everything that is part of the criminal investigation.” The dashcam video was turned over to the DCI. Any and all video taken by police was part of the investigative file. Any reports by the officers were included in the file. The reports generated by the local police were included as part of the file.

Under cross-examination Special Agent Rahn stated the incident began with a report of a domestic dispute. He stated that it would be in the “norm” to include the 911 call as part of the investigative report. If there was a transcript



of the 911 call it would have been included in the report provided to the county attorney. It is "standard" and not "uncommon" for the 911 call to be part of the investigative file. He agreed that the 911 call could be part of the immediate facts and circumstances but stated that the immediate fact and circumstances includes a "multitude of things." He stated that the entire bodycam video was placed into the investigative file. He is not sure how long the video was. The decision to release 12 seconds of the bodycam video was a decision made by people "higher" than him. He believes the decision was probably made by people representing DCI, the Attorney General, and the Burlington Police Department, but he does not know for sure.

Agent Rahn stated that he would define the "immediate facts and circumstances" as the "who, what, when, and where." The DCI tries to answer that as best as it can. If there is an issue involving public safety that is provided as well. Agent Rahn stated that he was not aware of what was used to determine the immediate facts and circumstances of the investigation. He stated that he was not aware of what the county attorney used to draft the letter that is Exhibit A. The county attorney had access to the entire investigative file and then returned the entire investigative file. The last line of the letter states the county attorney concluded no charges would be filed against Officer Hill. Agent Rahn testified the county attorney included more information than would be included in a press release. On page 6 of the letter she described the facts and stated that the officer's actions were reasonable.

Agent Rahn agreed the 911 call preceded the DCI investigation. He agreed the 911 call was not something that was produced by the DCI. He stated the bodycam video was generated by a device the officer typically wears on the torso. The bodycam video preceded the investigation and was not something produced by the DCI. He agreed some of the material gathered by the DCI came from different sources and were created before the shooting. Agent Rahn testified he was not involved in the production of documents turned over in response to the public records request for information. During the hearing the following exchange occurred between the attorney for the DCI and Agent Rahn:

Peterzalek: As part of the DCI investigation into this officer-involved shooting was a 911 tape or tapes obtained by the DCI?

Agent Rahn: I'm sure they would have been, yes.

Peterzalek: And put into the investigative report?

Agent Rahn: Yes, sir.

Peterzalek: Was body camera footage gathered by the DCI as part of this investigation?

Agent Rahn: Yes sir.

Paterzalek: Was that put into the investigative report?

Agent Rahn: Yes.

Peterzalek: Was patrol car video obtained by the DCI?

Agent Rahn: Yes.

Peterzalek: Was that placed into the investigative report?

Agent Rahn: Yes.

Agent Rahn testified that it would be extremely difficult to go through an investigative file line-by-line because of how large the report generally is. He stated that he has had reports that encompass twelve binders; an investigative report can be quite large. Exhibit A indicates the “who, what, where, and when of the investigation.” Page 2 of Exhibit A summarizes information gathered from two independent witnesses gathered as part of the investigation. He stated he does not specifically know how large the investigative file was in this case. He stated, however, that officer-involved shootings are generally “particularly” long. Agent Rahn testified the county attorney or attorney generally use the investigative file to decide what the charging decision in the case will be (Special Agent Rahn Testimony).

Police Chief Dennis Kramer of the Burlington Police Department testified at the hearing on behalf of Burlington. He stated he was a major of operations at the time of the shooting. He reported to the Chief of Police Doug Beard. He oversaw criminal investigations and the patrol operations. Chief Beard was the person who responded to the open records requests made by Adam Klein and the Burlington Hawkeye newspaper. He was briefed by the Chief regarding the requests. Chief Kramer testified the general practice when an open records request is made in an officer-shooting case is to seek legal counsel before fulfilling the request. According to Chief Kramer, the Burlington Police Department made reports of the “initial incident” and then the investigation was turned over to the Iowa Division of Criminal Investigation. He stated that when there is an officer-shooting investigation, someone in command calls the special agent in charge at the DCI and asks for assistance in the investigation. He testified that any material the police department gathers is “most definitely”

given to DCI. He stated that “all” investigative information was provided to the DCI. The department did not retain anything as part of the investigation.

Chief Kramer stated that Exhibit 2 is a letter to Adam Klein from the department’s attorneys. Exhibit 2 outlines the written request. The letter references Chapter 22 and states that there may be reasonable fees charged to produce the records. The letter then goes into detail about the information. Chief Kramer stated that he had no say in the drafting of this letter. At this point on March 19, 2015 the department had turned over everything to its attorneys. The department allowed its attorneys to review the information and make any decision. The letter contains the non-privileged portion of Officer Hill’s personnel file. Neither he nor Chief Beard had anything to do with the letter. They were relying in good faith on the judgment of their attorneys. Chief Kramer testified that the entire investigative file was turned over to the attorneys. The file included bodycam footage, dashcam video, and initial reports from the officers. He stated the 911 tapes were not part of the file at this point. Later, a lawsuit was filed. The 911 tapes were obtained. Chief Kramer stated the 911 tapes may have been obtained directly from the department or from “Descom” – the Des Moines County Communication Center. The DCI eventually obtained the 911 tapes.

Chief Kramer testified he is not aware of any department emails regarding the Autumn Steele family. He stated the department provided the immediate facts and circumstances to Klein. Attached to the letter in Exhibit 2 is the letter to Agent George from County Attorney Amy Beavers. Chief Kramer stated that the letter contains the immediate facts and circumstances –the “who, what, when, where.” It was produced through the department’s attorneys. He stated the county attorney’s letter included things above and beyond the immediate facts and circumstances because it also “included facts that she thought necessary to make her decision.”

Chief Kramer stated the department received another public records request from Hawk Eye reporter Andy Hoffman. Exhibit 4 is the request from the Hawk Eye. It was his understanding the attorneys would reply on behalf of the department. He consulted with attorneys. That letter was the result of that consultation. The department believed it was following Iowa law in providing the letter. The department attorneys had all of the information that the department had.

On November 14, 2016, Autumn Steele’s family filed a federal lawsuit against Burlington and Officer Hill. During the discovery process, the plaintiffs

obtained the DCI investigative report, which includes all of the records that are the subject of this public records request. The parties in the federal lawsuit entered into a joint stipulated protective order. Exhibit 7 is the order requiring the parties not to disclose records that are part of the federal case. Chief Kramer stated he is limited by that protective order. He stated if the administrative agency ordered him to disclose information he would be precluded from doing so until the federal court determined the issue. He stated the protective order prevented him from talking about the evidence. According to Chief Kramer, the parties reached a settlement that is “in process.” Chief Kramer testified that the Burlington Police Department did not retain anything in the investigation. It turned everything over to the DCI (Chief Kramer Testimony).

On August 14, 2018, after the contested case hearing in this matter, a United States district court judge granted the plaintiffs’ motion to unseal most of the court records in the federal case. *Steele v. City of Burlington*, No. 3:16-cv-00105-JEG, slip op. at 17 (S. Dist. Iowa Aug 7, 2018). In his ruling, Judge Gritzner stated:

Although the Court’s decision regarding the common-law right of access may effectively moot the question before the IPIB regarding the release of certain materials that are contained in both the summary judgment records in this case and the records at issue in the IPIB proceeding, the Court renders no judgment as to the scope of confidentiality under, or the City’s compliance with, Iowa Code § 22.

*Id.* at 12.

Because the federal court provided access to records at issue in this contested case under a different legal theory, we proceed to address the merits of the alleged violation of Iowa Code chapter 22.

## **Conclusions of Law**

### *Prehearing Motions*

At the beginning of the contested case hearing, the prosecutor requested to amend the petition to require Burlington and DCI to release the entire peace officer investigative report in light of the fact that the civil litigation between the Autumn Steele family and the Burlington Police Department had been settled. Burlington and DCI objected to the amendment. The prosecutor’s motion to amend the petition is denied. Iowa Code section 23.10(3)(a) requires the board,

in a written order, to find that a complaint is within its jurisdiction and that a violation of chapter 22 has occurred. The probable cause finding by the board alleged that Burlington and DCI violated chapter 22 by withholding public records such as the 911 call, the dashcam videos and the bodycam videos. Burlington and DCI have responded that the documents within a peace officers investigative report are not public records because they are confidential under the exemption in section 22.7(5). This contested case has been limited to that issue throughout these proceedings and it would be unfair to expand the issues at the time of hearing. Iowa Administrative Code r. 497—4.20(3) (“Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues”).

During the hearing the Respondents moved for a dismissal and a motion for judgment as a matter of law because the prosecutor failed to present any witnesses or exhibits in support of his petition. The motions were taken under advisement and are now denied. In denying the Respondents’ interlocutory appeal of the denial of the motion for summary judgment the board found that issues remained as to whether the documents at issue were part of a peace officer’s investigative report and whether a balancing test applies. The board chose to review the merits of this case with the benefit of a hearing record. *Purethane, Inc. v. Iowa State Bd. of Tax Review*, 498 N.W.2d 706, 708 (Iowa 1993) (A “contested case” is defined as a proceeding in which the “legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.”). Moreover, this case involves a legal interpretation of chapter 22 and the board has been vested with authority to interpret chapter 22. See Iowa Code § 23.6; *Simon Seed & Sod Inc. v. Dubuque Human Rights Comm’n*, 895 N.W.2d 446, 455 (Iowa 2017). Iowa Code section 17A.12(16) provides that the record in a contested case includes all pleadings, motions, and intermediate rulings” as well as all “evidence received or considered and all other submissions.” The record in this case is voluminous and includes the exhibits filed in support of the motions to dismiss, the motions to compel, and the motions for summary judgment. For these reasons, the motion for dismissal and for judgment as a matter of law is denied.

#### *Applicable Statutory Provisions*

The “Public Access to Government Information” or “Iowa Public Information Board Act” is in Iowa Code Chapter 23 (2017). The purpose of the chapter is to

“provide an alternative means by which to secure compliance with and enforcement of the requirements of chapters 21 and 22 through the provision by the Iowa public information board to all interested parties of an efficient, informal, and cost-effective process for resolving disputes.” Iowa Code § 23.1. The public information board (the board) has 13 delineated “powers and duties” with regard to chapter 21 (open meetings) and chapter 22 (open records). *Id.* § 23.6. The board may issue declaratory orders, receive complaints, issue subpoenas, and issue orders with the “force of law” that determine whether there has been a violation of the open meetings law or the open records law. *Id.* The board may examine records, including records that are “confidential by law,” that are the subject matter of a complaint. *Id.* § 23.6(6).

Iowa Code section 23.10 sets out the board’s enforcement powers. Section 23.10(1) states:

If any party declines informal assistance or if informal assistance fails to resolve the matter to the satisfaction of all parties, the board shall initiate a formal investigation concerning the facts and circumstances set forth in the complaint. The board, shall, after an appropriate investigation, make a determination as to whether the complaint is within the board’s jurisdiction and whether there is probable cause to believe that the facts and circumstances alleged in the complaint constitute a violation of chapter 21 or 22.

Under Iowa Code section 23.10(2), the board may issue a written order dismissing a complaint, when it is outside the board’s jurisdiction or when “there is no probable cause to believe there has been a violation of chapter 21 or 22.” When the board does have jurisdiction and it finds “there is probable cause to believe there has been a violation of chapter 21 or 22” the board “shall issue a written order to that effect and shall commence a contested case proceeding under chapter 17A against the respondent.” The executive director of the board or an attorney selected by the executive director “shall prosecute the respondent in the contested case proceeding.” *Id.* § 23.10(3)(a).

Iowa Code section 23.11 states that a respondent may defend against a proceeding before the board charging a violation of chapter 21 or 22 on the ground that if such a violation occurred it was only harmless error or that clear and convincing evidence demonstrated that grounds existed to justify a court to issue an injunction against disclosure pursuant to section 22.8.

### *Analysis*

1. *Under Iowa Code § 22.7(5), peace officers' investigative reports are confidential, regardless of whether the investigation is ongoing.*

The crux of this case is whether DCI and Burlington violated chapter 22 by refusing to release the recording and transcript of 911 calls, bodycam videos taken by officers, videos taken by dash cameras, and records showing the “date, time, specific location and immediate circumstances surrounding the incident.” Throughout this case, DCI and Burlington have argued they acted lawfully and pursuant to Iowa Code section 22.7(5). Section 22.7 provides certain types of public records “shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information.” There are currently seventy-three categories of confidential records under section 22.7. The relevant category in this case is found in subsection 5, which states in full:

Peace officers' investigative reports, privileged records or information specified in section 80G.2, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual. Specific portions of electronic mail and telephone billing records may only be kept confidential under this subsection if the length of time prescribed for commencement of prosecution or the finding of an indictment or information under the statute of limitations applicable to the crime that is under investigation has not expired.

According to DCI and Burlington, the information requested is all part of the DCI’s “peace officers’ investigative report” into the shooting death of Autumn Steele. As a threshold matter, the board must determine whether this public records exception applies to peace officers’ investigative reports indefinitely or just while “that information is part of an ongoing investigation.”

To make that determination, the Board relies on “an established canon of statutory construction:”

Under the “doctrine of the last preceding antecedent,” referential, relative or qualifying words and phrases refer only to the immediately preceding antecedent, unless a contrary legislative intent

appears. Evidence that a qualifying phrase is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a comma.

*State v. Gen. Elec. Credit Corp. of Delaware*, 448 N.W.2d 335, 345 (Iowa 1989) (internal citations and quotations omitted). In Iowa Code section 22.7(5), the qualifying words “if that information is part of an ongoing investigation” are not separated from the antecedents by a comma. Under the doctrine of the last preceding antecedent, only “specific portions of electronic mail and telephone billing records of law enforcement agencies” are confidential “if that information is part of an ongoing investigation.” Iowa Code § 22.7(5). Thus, peace officers’ investigative reports remain confidential under section 22.7(5) even after an investigation is closed. *See Allen v. Dept. of Public Safety*, No. EQCE074161, slip op. (Polk Co. 5<sup>th</sup> Dist. Mar. 7, 2014) (“[p]eace officers’ investigative reports,” for purposes of confidentiality “is unqualified; thus investigative reports are confidential without condition.”).

2. *Peace officers’ investigative reports include the information gathered as part of the investigation and incorporated into the reports.*

The Board must next determine what is included in “peace officers’ investigative reports.” Under section 22.1(3)(a), the term “public records” includes “all records, documents, tape, or other information, stored or preserved in any medium . . . .” The prosecutor argues that “peace officers’ investigative reports” does not include items produced before the DCI investigation started. A similar argument was made in *Neer v. State*, 2011 WL 662725 (Iowa Ct. App. Feb. 23, 2011).<sup>2</sup> In that case, Neer requested video recordings, use of force reports and pursuit reports from the Iowa Department of Public Safety related to his arrest for operating while intoxicated and eluding. *Id.* at \*1-2. The state claimed the records were confidential under Iowa Code section 22.7(5) as “peace officer’s investigative reports.” *Id.* at \*2. Neer claimed the requested records were not confidential because a video recording “is not a ‘report’” and “none of the requested records were ‘investigative’ in nature.” *Id.* at \*3. The court of appeals stated:

While this argument is appealing at first blush, the term “investigative reports” has been interpreted to encompass not only reports but also other material and evidence incorporated into reports. *See, e.g., AFSCME/Iowa Council 61 v. Iowa Dep’t of Pub. Safety*, 434 N.W.2d 401,

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<sup>2</sup> Although an unpublished court of appeals decision is not binding, it nevertheless offers persuasive authority. *See State v. Murray*, 796 N.W.2d 907, 910 (Iowa 2011).



403 (Iowa 1988) (finding lab reports analyzing a suspect's blood were “investigative reports” within the meaning of section 22.7(5)); *State ex. rel. Shanahan v. Iowa Dist. Ct.*, 356 N.W.2d 523, 531 (Iowa 1984) (“[T]he district court abused its discretion in ordering the DCI to give the civil litigants and their attorneys access to the *entire* criminal investigation file.” (emphasis added)). Based on this interpretation, we conclude video recordings are encompassed within the phrase “peace officers’ investigative reports.”

*Id.*

In *AFSCME* (cited by *Neer*), the Supreme Court of Iowa determined a lab report was part of an investigative report for purposes of Iowa Code section 22.7(5). 434 N.W.2d at 403. The Court stated “[t]here is no dispute the *analysis* of Gott’s blood was made as part of the investigation of Cline’s allegation of sexual abuse. We believe this fact is sufficient to qualify the lab reports as ‘investigative reports.’” *Id.* (emphasis added).

In this case, Burlington requested the DCI to investigate Officer Hill’s shooting of Autumn Steele. As part of that investigation, the DCI gathered and analyzed various pieces of information, including the 911 calls and videos recorded on officers’ body cameras and the cameras on their dash boards. According to Agent Rahn, these types of records are typically included in an investigative report provided to the prosecutor to make the charging decision. Based on *Neer* and *AFSCME*, the board finds the term “peace officers’ investigative reports” includes not just the report summarizing the facts and circumstances of the crime or incident but also the information gathered and analyzed as part of the investigation. *See also In the Matter of Cali Smith and City of Nevada Police Department*, IPiB complaint No. 14FC:0096 (Jan. 15, 2015) (unanimously voting to dismiss complaint because police body camera video was part of “peace officers’ investigative reports” and therefore confidential under Iowa Code section 22.7(5)).

3. *It is inappropriate to apply a balancing test for purposes of Iowa Code § 22.7(5).*

The prosecutor and respondents disagree on whether the board should apply the three-part balancing test articulated in *Shanahan* and relied upon in *Hawkeye v. Jackson*, 521 N.W.2d 750 (Iowa 1994) and *Shannon v. Hansen*, 469 N.W.2d 412 (Iowa 1991). The *Shanahan* case arose “from a wrongful death action which followed in the aftermath of a double homicide in a motel room.” 356 N.W.2d at 525. The parties litigating the wrongful death action sought

discovery of the state's files concerning the homicide investigation. *Id.* at 526. The state contended its DCI file regarding the homicides was confidential and privileged based on Iowa Code section 622.11 and section 68A.7 (now 22.7(5)). Iowa Code section 622.11 (1983) provides: "A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure." The court in *Shannon* nicely summarized the *Shanahan* decision:

In *Shanahan*, we concluded . . . subsection 22.7(5), providing for the confidentiality of peace officers' reports, and section 622.11, creating a public officer privilege for communications, are two expressions of essentially the same legislative purpose with regard to DCI files. In *Shanahan* we identified three tests which the State must satisfy to establish the privilege. They require that (1) a public officer is being examined, (2) the communications made to the officer were in official confidence, and (3) the public interests would suffer by disclosure.

*Shannon*, 469 N.W.2d at 414 (citing *Shanahan*, 356 N.W.2d at 527-28). Similarly in *Hawkeye*, the Court analyzed a request for a DCI report regarding alleged excessive force under both sections 22.7 and 622.11. 521 N.W.2d at 752. The Court applied the three-part test from *Shanahan* and determined "[u]nder the unique facts of this case, any public harm created by the disclosure of the DCI investigatory report is far outweighed by the public harm accruing from its nondisclosure."

The board finds the three-part test outlined in *Shanahan* is not applicable here. First, the board only has jurisdiction to enforce chapters 21 and 22. It does not have jurisdiction to interpret and apply section 622.11. Secondly, this three-part test is essentially a restatement of section 622.11. It offers a qualified privilege "when the public interests would suffer by the disclosure." Iowa Code section 22.7(5) includes no such qualification or limitation.

More recently, the Supreme Court of Iowa held it will not apply a balancing test "when [it] find[s] that a requested piece of information fits into a category of an exemption" in Iowa Code section 22.7. *Am. Civil Liberties Union Found. v. Atlantic Cmty Sch. Dist.*, 818 N.W.2d 231, 234 (Iowa 2012). The *Atlantic* Court said "[w]e have reiterated this rule in response to arguments that we must nonetheless determine whether the public's 'right to know' outweighs the government entity's interest in privacy even where we find section 22.7 exempts information from disclosure." *Id.* Similarly in *Gabrilson v. Flynn*, the Supreme Court said "it is not our responsibility to balance competing policy

interests. This balancing is a legislative function and our role is simply to determine the legislature's intent about those policy issues.'” 554 N.W.2d 267, 273 (Iowa 1996) (quoting *Ne. Council on Substance Abuse, Inc. v. Iowa Dep't of Pub. Health*, 513 N.W.2d 757, 761 (Iowa 1994)).

In this case, the board has already found the 911 calls, and the videos recorded on the officers' body camera and dash board cameras fit into the “peace officers' investigative reports” exception. Based on the *Atlantic* case and the absence of section 622.11, the board finds it would be inappropriate and beyond the board's authority to employ a balancing test to determine whether the requested information should nevertheless be disclosed.

4. *DCI and Burlington satisfied the requirements of § 22.7(5) when they provided the Des Moines County Attorney's letter detailing the facts and circumstances of the shooting.*

Iowa Code section 22.7(5) provides that “peace officers' investigative reports” are confidential. Subsection 5, however, does provide a limited exception. It states “the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.”

The prosecutor alleged Burlington and DCI violated chapter 22 because the letter written by the county attorney on February 27, 2015 and provided to Adam Klein and Andy Hoffman did not satisfy this limited exception for the facts and circumstances of the incident. In *Neer*, the Court of Appeals found that a letter written by the county attorney that disclosed these specifics without disclosing parts of the investigative file complied with this requirement, *Neer* at \*4. The Des Moines County attorney's letter was over 6 pages long. It included 2 pages of detailed facts and a lengthy legal analysis explaining why she chose not to charge Officer Hill with a crime. Additionally, a portion of the video footage was released. The prosecutor has not cited any authority for the proposition that additional disclosure is required nor has he alleged the letter and video failed to include “the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident.” We find the county attorney's letter in this case sufficient to meet the facts and circumstances exception in subsection 5.

The board does not have the authority to substitute its decision making for that of the lawful custodians merely because it would have provided a different

response to a public records request if it stood in the lawful custodians' shoes. The board's authority in this contested case is limited to determining whether the respondents have violated chapter 22. See Iowa Code § 23.10(3); see also *id.* § 23.6(8) (allowing IPIB to "examine" confidential records, but qualifies that such records "shall continue to maintain their confidential status"). Although the board finds the DCI and Burlington did not violate chapter 22, the board shares the complainants' frustration with the lack of publicly available information after a police-involved shooting.

In order to assure more public information is provided under these circumstances in the future the board has proposed legislation to expand public access to the dashcam and body cam videos and the 911 calls when a police officer is involved in a violent altercation with a citizen.<sup>3</sup>

### Order

Burlington and DCI complied with Iowa Code chapter 22 when they released the Des Moines County Attorney's letter detailing the facts and circumstances of the shooting. Under Iowa Code section 22.7(5), the 911 call, the body camera video, and the dash camera video were part of the confidential "peace officers' investigative reports" and not required to be disclosed in response to a public records request.<sup>4</sup> **The petition is hereby dismissed.**

Dated this 21<sup>st</sup> day of Feb., 2019



Chair,

Iowa Public Information Board

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<sup>3</sup> House Study Bill 138 and House Study Bill 141 are two of the board's proposed bills currently under consideration.

<sup>4</sup> There is a pending interlocutory appeal before the Supreme Court of Iowa that will likely address many of the issues presented in this case. See *Mitchell v. City of Cedar Rapids*, (Supreme Court No. 18-0124). The board will review the Court's decision in that case once it is published.

cc:

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February 27, 2015

TO: DCI - AGENT MATTHEW GEORGE

RE: OFFICER INVOLVED SHOOTING OF MRS. AUTUMN STEELE  
OFFICER INVOLVED – OFFICER JESSE HILL

Dear Agent George,

I am writing to you to advise that I have completed my review of the DCI investigation involving the fatal shooting of Mrs. Autumn Steele by City of Burlington, Iowa Police Officer Jesse Hill that occurred on January 6, 2015. My findings are as follows:

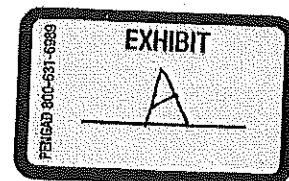
Code Of Iowa Section 331.756(1) provides that a county attorney shall diligently enforce or cause to be enforced in the county, state laws and county ordinances, violations of which may be commenced or prosecuted in the name of the state, county, or as county attorney, except as otherwise provided.

The Iowa DCI investigated the shooting incident, and forwarded the details of the investigation to me, pursuant to my statutory duties as Des Moines County Attorney, to determine whether criminal charges are warranted against Officer Hill. In the course of my review, I, along with one of my Victim/Witness Coordinators and the DCI, met with Mr. Gabriel Steele and his attorney, Mr. Trent Henkelvig. Mr. Steele was a witness to the incident, as well as the spouse of Mrs. Steele.

In summary, the facts are as follows:

On or about January 5, 2015, Autumn Steele was arrested and charged with Serious Domestic Abuse Assault in Des Moines County Cause No. SRIN022279 for an assault on Gabriel Steele. Autumn Steele appeared before the Court on the morning of January 6, 2015, at which time a No Contact Order was entered prohibiting her from making/ having contact with Mr. Steele, preliminary hearing was scheduled, and she was released by the Court from custody.

At some time in the morning after being released from custody on January 6, 2015, Autumn Steele went to the residence she and Gabriel Steele share at 104 South Garfield Street,



Burlington, Des Moines County, Iowa. There was snow on the ground on this date. Gabriel Steele called 911 to report a domestic assault occurring involving Autumn Steele and further advised Dispatch that she had been arrested the previous day.

Officer Jesse Hill responded from the Indian Terrace area to the Steele residence. As Officer Hill was arriving, he observed a man (Gabriel Steele) coming out of the house walking fast with a child in his hands. He observed Autumn Steele outside running behind Gabriel Steele, grabbing the back of Gabriel Steele's shirt, pulling him down, and hitting Gabriel Steele in the back of the head. Officer Hill advised Police Dispatch that the two individuals were outside fighting. He opened the door of his police vehicle, activated his body camera video, and ran over to where Autumn and Gabriel Steele were.

Upon approaching, Officer Hill made contact with Autumn Steele to try to pull her away from Gabriel Steele and split them up, as she was then punching and slapping Gabriel Steele. Officer Hill moved a couple steps with Autumn Steele, and a dog owned by the Steeles started growling and ultimately bit Officer Hill on the thigh. Photographs were taken of Officer Hill's injury. The dog is an adult, male German Shepherd named Sammy.

Officer Hill had advised the Steeles to get the dog, but the dog continued toward Officer Hill. Officer Hill drew his duty weapon, the dog continued toward Officer Hill, and Officer Hill fired his weapon as he fell backwards. Officer Hill fired his weapon a second time as he fell backwards into the snow.

Officer Hill was unaware he had shot Autumn Steele, and was advised by Gabriel Steele that she had been shot. An ambulance was requested through Dispatch for Autumn Steele. Officer Merryman arrived at the scene and began to provide assistance. Officers could not locate a gunshot wound on Autumn Steele. Officers performed chest compressions on Autumn Steele while awaiting an ambulance. Gabriel Steele was asked to put the dog away, and he remained on scene. Autumn Steele and the Steele's dog sustained gunshot wounds. The wound to the dog appeared to the veterinarian to be a grazing injury – no projectile was recovered from the dog.

There are two independent witnesses who reported the following:

1. A neighbor reported that he saw the dog running and jumping up and down at the Steeles as they came outside of their residence in an argument. He observed Autumn Steele swinging and "wailing" on Gabriel Steele. He reported that he "saw the dog and thought it was going to be a mess." He reported that the dog saw the officer running, the dog came running toward the officer, and the dog jumped on the officer's back. He stated that the officer probably did not see the dog until then. The officer spun around and tried to back peddle away, and started falling backward. In a matter of seconds, he believed one shot was fired before the officer fell and was 100% certain that one shot was fired while the officer was falling. The neighbor did not personally know the Steeles. This statement was audio recorded.



2. A second witness was driving by the residence going south at the time of the incident. She observed two people come out of the residence, one was punching the other on the back and in the face. She observed a dog that was "riled up" and following the two individuals. She observed the officer run up to the individuals. At this time, she passed by and then heard gunshots. She saw the dog and a person on the ground. This statement was audio recorded.

Autumn Steele was subsequently pronounced deceased, and an autopsy was conducted by Dr. Dennis Firchau, M.D. at the University of Iowa Hospitals and Clinics. Autopsy revealed a gunshot wound to her right arm and a gunshot wound to her chest. The gunshot wound to her chest was determined to be the cause of death. The manner of death was homicide. Homicide in the medical sense is a death at the hands of another, and not the legal criminal definition of homicide. The legal criminal elements are discussed below.

Alcohol and drug tests were negative for both Autumn Steele and Officer Hill. It was determined that Officer Hill fired two gunshots.

The above-described facts are corroborated in the body camera video evidence, witness statements, reports and documentation provided in the DCI investigation.

Additionally, in a separate incident on October 11, 2014, Officer Hill responded to 110 North Garfield Street, Burlington, Iowa on a call of a pit bull running loose. Dispatch advised Officer Hill that the dog had been vicious in the past. Upon arrival, Officer Hill observed a red and white pit bull in between the houses at 110 N. Garfield and 114 N. Garfield. The complainant at 110 N. Garfield reported to Officer Hill that the pit bull had attacked her dog a couple of weeks prior. Officer Hill proceeded to 114 N. Garfield to speak with the dog's owner. A female exited that residence with a black and white pit bull mix named Ram. She was advised to put that dog back inside the residence. Ram barked a couple times as she was doing so, and the red and white pit bull that was loose (named Raw) ran to Ram and began to attack Ram. Raw was biting Ram on the neck and back areas. Efforts to separate the dogs were unsuccessful. Officer Hill asked the female to get herself and her child out of the way, and he then deployed a cartridge from his taser, striking Raw. After the charge, Raw ran to the back yard of 114 N. Garfield.

#### ANALYSIS:

Code of Iowa Chapter 707 (2015) sets out Homicide and Related Crimes.

Section 707.1 defines Murder as follows:

A person who kills another person with malice aforethought either express or implied commits murder.

The Iowa Jury Instruction defining "Malice Aforethought" states the following:

"Malice is a state of mind which leads one to intentionally do a wrongful act [to the

injury of another] [in disregard of the rights of another] out of actual hatred, or with an evil or unlawful purpose. It may be established by evidence of actual hatred, or by proof of a deliberate or fixed intent to do injury. It may be found from the acts and conduct of the defendant, and the means used in doing the wrongful and injurious act. Malice requires only such deliberation that would make a person appreciate and understand the nature of the act and its consequences, as distinguished from an act done in the heat of passion.

"Malice aforethought" is a fixed purpose or design to do some physical harm to another which exists before the act is committed. It does not have to exist for any particular length of time."

Section 707.2 sets out the crime of Murder in the First Degree:

1. A person commits murder in the first degree when the person commits murder under the following circumstance:
  - a. The person willfully, deliberately, and with premeditation kills another person.

There is no evidence that would show that Officer Hill willfully, deliberately, and with premeditation killed Autumn Steele. Officer Hill did not know Autumn Steele, he made no threats towards her, and was unaware that he had shot her.

Section 707.3 sets out the crime of Murder in the 2<sup>nd</sup> Degree:

1. A person commits murder in the second degree when the person commits murder which is not murder in the first degree.

A charge of Murder in the 2<sup>nd</sup> Degree must also be supported by evidence of malice aforethought consistent with Section 707.1. The facts do not show that Officer Hill acted with an evil or unlawful purpose directed at Autumn Steele. There is no proof of a deliberate act by Officer Hill to do injury to Autumn Steele. There is nothing in the investigation that would suggest or show that Officer Hill had a design to kill Autumn Steele before he fired his weapon.

There is no evidence that supports a finding that Officer Hill intended to use deadly force against Autumn Steele. The evidence shows that Officer Hill drew and fired his duty weapon in response to the unconfined dog to protect himself from injury. One of the two shots fired appears to have been fired as a result of Officer Hill falling down into the snow.

Therefore, a Murder charge is not warranted against Officer Hill.

Iowa Code Section 707.4 provides for Voluntary Manslaughter:

A person commits voluntary manslaughter when that person causes the death of another person, under circumstances which would otherwise be murder, if the person causing the death acts solely as the result of a sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a person and there is not an interval between the provocation and the killing in which a person of ordinary reason and temperament would regain control and suppress the impulse to kill.

In analyzing the matter to determine if a charge of Voluntary Manslaughter is warranted, Officer Hill did cause the death of another person, but for the reasons stated above, the circumstances would not otherwise be murder. Autumn Steele was engaged in a physical domestic assault against her husband at the time of Officer Hill's response. Officer Hill did not cause her death as a result of a sudden, violent, and irresistible passion resulting from serious provocation by Autumn Steele.

Officer Hill fired his weapon in response to the unconfined dog to protect himself from injury. The facts do not show that he fired his weapon at Autumn Steele in response to provocation from her or that he had a violent, irresistible passion as a result.

Iowa Code Section 707.5 provides for Involuntary Manslaughter:

A person commits voluntary manslaughter when the person unintentionally causes the death of another person by the commission of a public offense other than a forcible felony or escape.

The facts do show that Officer Hill unintentionally caused the death of Autumn Steele. For a charge of Involuntary Manslaughter to be warranted, Officer Hill must have been committing a public offense at the time he caused her death.

Officer Hill was responding to the 911 call from Gabriel Steele for assistance in a domestic assault. Officer Hill was not committing a public offense, he was there to investigate a public offense. In the course of that response, Officer Hill essentially engaged in two acts: (1) Officer Hill acted to separate Autumn and Gabriel Steele as Autumn Steele was physically assaulting Gabriel Steele, and (2) Officer Hill fired two shots from his duty weapon to protect himself from injury from the dog.

The first act is not a public offense.

The second act resulted in the death of Autumn Steele, but also injury to the dog.

In considering whether the act of injuring the dog constitutes a public offense, Iowa Code Section 717B.2, Animal Abuse, provides:

A person is guilty of animal abuse if the person intentionally injures, maims, disfigures or destroys an animal owned by another person, in any manner, including intentionally poisoning the animal. This section shall not apply to:

(9) A person reasonably acting to protect a person from injury or death caused by an unconfined animal.

By firing the first shot, it can be inferred that Officer Hill likely intended to injure the dog. The second shot appears to have been fired as a result of Officer Hill falling into the snow, and not done intentionally. The question becomes whether Officer Hill reasonably acted to protect a person from injury or death caused by an unconfined animal when he fired the first shot.

Clearly, the dog was unconfined. This is corroborated by the independent witnesses, Mr. Steele, and Officer Hill.

Iowa Criminal Jury Instructions set forth "Reasonable Belief" as follows:

The defendant was not required to act with perfect judgment. However, [he] [she] was required to act with the care and caution a reasonable person would have used under the circumstances which existed at that time. If in the defendant's mind the [danger] [danger of loss of property] [need to use force to prevent (name of forcible felony)] was actual, real, imminent or unavoidable, even though it did not exist, that is sufficient if a reasonable person would have seen it in the same light.

Therefore, was Officer Hill's act of firing the first shot reasonable?

The facts are:

1. The dog attacked Officer Hill.
2. The neighbor reported that the dog jumped on Officer Hill's back.
3. Officer Hill advised the Steeles to get the dog.
4. Neither Gabriel nor Autumn Steele restrained the dog.
5. The dog again attacked Officer Hill and bit Officer Hill on his thigh.
6. The dog caused Officer Hill to fall backwards, and Officer Hill ultimately fell into the snow. This caused Officer Hill to fire a second shot.
7. This was a physical domestic assault situation in which witnesses observed Autumn Steele punching, hitting, and slapping Gabriel Steele.
8. Officer Hill was alone responding to a volatile situation.
9. This was the second call of a domestic assault involving the Steeles in a 2-day period.
10. Autumn Steele was at the residence in violation of a No Contact Order that was issued that morning before she was released from custody.
11. The neighbor made a statement to DCI that once he saw the dog, he thought it was going to be a mess.
12. Officer Hill had responded to a vicious animal complaint in October, 2014 in which even though he had deployed his taser, the pit bull in that matter was able to run off.

Based upon all of the factors described in this review, Officer Hill's actions could be determined to be reasonable under the circumstances to protect himself from injury.

Therefore, based upon my review of the case with the Iowa Division of Criminal Investigation and a full review of the facts and circumstances provided to me concerning the death of Mrs. Autumn Steele, it is determined that no criminal charges against Officer Jesse Hill are supported by the evidence. Officer Hill was faced with the decision to shoot in an instant. He had to process the situation alone, and made the decision at the time the threat was occurring.

Finally, although this was not a deciding factor in my determination, it is unknown which gunshot struck Autumn Steele, but it was the gunshot to the chest that resulted in her

death. It is possible that it was the second gunshot that went to Autumn Steele's chest. It is without saying that her death was tragic.

No criminal charges will be filed against Officer Jesse Hill. If you need further assistance or have any questions, please do not hesitate to contact me. I will return the case file to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'AKB', written over a light blue horizontal line.

Amy K. Beavers  
Des Moines County Attorney

