

Records of Police Shooting of Black Driver Must Be Made Public

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Police records related to the shooting of a black man who was killed by officers after he allegedly rammed them with an SUV must be released to the public immediately and without redaction, a New Jersey state trial judge has ruled, citing the heightened need for public access to information in the wake of the killings of African-American males by police in Ferguson, Mo., and Staten Island, N.Y.

"The defendants' refusals to disclose and utter lack of cooperation was undoubtedly intensified by the recent national debate fueled by a growing number of highly publicized incidents, including those in Ferguson and Staten Island, where police officers killed African American men, and also the apparent assassination of two New York City police officers by an African-American man," said Bergen County Assignment Judge Peter Doyne in requiring the New Jersey State Police, the Bergen County Police and three local police departments—Lyndhurst, North Arlington and Rutherford—to release the records under New Jersey's Open Public Records Act (OPRA).

"Police interaction with the public is now under national review," Doyne said in the opinion, released Jan. 13. "OPRA's unfettered access provides an important tool in the public's arsenal, conferring the ability to gain access to information prior to prosecutorial decisions concerning what, if any, actions are to follow."

Doyne said OPRA's mandate of access to public records "cannot be precluded by an all-encompassing assertion of the need for an investigation to proceed in darkness" and called public access a worthy goal, and "a requirement so as to ensure an informed citizenry," adding that failure to uphold that goal "would be an abandonment of judicial responsibility."

Doyme emphasized that he was not deciding whether the police in the New Jersey shooting acted properly, calling that a determination “left to the professionals at the New Jersey State Police and Attorney General’s Office ... at least in the first instance.”

The disputed records concern the fatal shooting last Sept. 16 of a 23-year-old Newark man, Kashad Ashford, who was driving the SUV, according to court documents. The police began chasing him in Lyndhurst based on a report of an attempted car theft in nearby North Arlington and the roughly four-minute pursuit ended in Rutherford when Ashford crashed into a guardrail and allegedly became stuck.

The police claimed Ashford, who was surrounded by police cars, revved the engine and reversed in the direction of the police cars, striking one of them and causing officers to open fire, according to court documents. Some bullets struck Ashford, who was taken to a hospital where he was pronounced dead several hours later.

That same day, the Attorney General’s Office took charge of investigating the shooting, as required by a 2005 directive, and issued a press release with details about the incident.

Within a day or two of the shooting, reporters from North Jersey Media Group (NJMG) filed OPRA requests with all five police entities seeking more information. NJMG publishes The Record, Herald News and about 40 weekly community newspapers and operates three news websites.

The NJMG asked for records such as use of force reports, arrest reports, crash reports, and various types of audio and video recordings including 911 calls, computer-aided police dispatches and recordings from mobile recording devices.

Lyndhurst, North Arlington and Bergen County refused to turn over anything on the ground of the ongoing attorney general investigation, according to court documents. Rutherford initially took the same position but later released some records, including dispatch and property reports and CDs containing phone calls from the public about its own police transmissions. It also supplied several redacted investigation reports and an index with the reasons for the redactions, which included the exemptions for the privacy interest, criminal investigations and ongoing investigations.

The state police asked for more time and on Dec. 22, released the 911 call about the attempted car theft and a redacted version of the computer-aided dispatch reports from Lyndhurst, North Arlington and Bergen, according to court documents.

The Attorney General’s Office asserted there was an active criminal investigation into the initial theft report and whether any of the officers involved in the shooting used unlawful levels of force and that it plans to present that question to a grand jury.

On Nov. 3, NJMG filed its records suit with an order to show cause, seeking release of the records under OPRA and the common law, subject to redactions if needed with an explanation of why they are necessary.

It also asked for the identity of any records withheld and the “specific basis therefor” or alternatively, in camera review.

The county and local departments informed Doyne they would rely on the papers filed by the state, which is represented by Deputy Attorney General Daniel Vannella.

In ruling for NJMG under both OPRA and the common-law balancing test, Doyne remarked that the defendants’ “hide the key” approach to the requests, which included directing NJMG to as many as six different people to obtain clarification of the denial, “discolors the court’s review.”

Their “blanket assertion that no responsive records must be disclosed under OPRA and this matter should be dismissed disregards not only published precedent and statutorily defined duties, but also the clear public policy embodied by OPRA,” Doyne said.

The state police’s repeated extensions of its own time to respond without a reasonable explanation or basis amounted to a denial under OPRA, which requires disclosure within seven business days, Doyne said.

At oral argument Jan. 9, the state conceded that NJMG had a right to the records but claimed that its Sept. 16 press release had all the information to which the public was entitled.

Doyne rejected that argument, saying even though NJMG was able to report on the shooting based on the press release, it still had the right to the responsive records so it could review them itself.

In addition, the ongoing-investigation exemption, which requires that disclosure be inimical to the public interest, did not apply because the only alleged harm—that it might corrupt the recollection of a potential witness—did not overcome the right of access, Doyne said.

“In the shadow of numerous incidents and subsequent protests surrounding killings of African-American men by police officers, the public interest is in being informed of details of such an incident,” Doyne noted.

The criminal-investigation exemption also did not apply because the state failed to show that the records sought were ones not required by law to be made, Doyne said.

Doyne ruled that the common law too required disclosure because the need for access outweighed the defendants’ interest in confidentiality. He required that the records be released without redaction because the defendants never asked for in camera review to determine if the records were rightfully withheld or should be turned over with redactions. They thus waived the right to supply redacted versions, Doyne said.

NJMG's lawyer, C.J. Griffin of Pashman Stein in Hackensack, N.J., said her client hopes the records will reveal details not yet provided, such as how many shots were fired, whether Ashford had a weapon, and how many officers fired the shots, as well as their names and departments.

Griffin said she will seek legal fees, as allowed by OPRA and expressly authorized by Doyne.

Attorney General's Office spokesman Lee Moore said in a statement, "We are reviewing our options."

Rutherford's attorney, David LaPorta of LaPorta & LaPorta in Lyndhurst, declined to comment.

None of the other lawyers for the defendant police departments responded to a request for comment.

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