

Victory Achieved in Supreme Court Police Records Case

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We have previously written about our nearly three-year battle to secure access to police records relating to the police-involved shooting of Kashad Ashford in 2014. We are happy to announce that the Supreme Court of New Jersey has issued a landmark ruling in this case and has restored transparency over the use of force by police officers.

In a decision written by Chief Justice Stuart Rabner, the Court unanimously ruled that use of force reports, the names of officers involved in the shooting, and dash camera footage of the incident should be released. The decision is legally significant and promotes transparency in several ways.

First, the Supreme Court agreed that the Attorney General's policies are "laws" that defeat the criminal investigatory records exemption. Thus, in any instance where a record is required to be "made, maintained, or kept on file" by an Attorney General guideline, policy, or directive, an agency may not claim the criminal investigatory records exemption. Some of the records that are required to be made and thus are not automatically exempt include vehicle pursuit reports, bias incident offense reports, and body-worn camera footage.

Second, the Supreme Court addressed the ongoing investigation exemption (N.J.S.A. 47:1A-3a) for the first time. This exemption permits nondisclosure of records pertaining to an ongoing investigation where release would be "inimical to the public interest." The Court said this means that the public's interest in disclosure must actually be weighed against the state's interest in nondisclosure. The Court made it clear that while officer safety and integrity of an investigation are important concerns, the public's interest in transparency when police use deadly force weighs in favor of access. In order to overcome this important right to transparency, an agency cannot present "generic reasons" for non-disclosure—it must make a "particularized showing"

of potential harm.

Third, the Court rejected the State's argument that the names of officers who use force against citizens are confidential. This is a very important component of this case, as the State argued that the public is not entitled to know the names of officers who shoot suspects unless those officers are criminally charged. Eventually, in other cases, the State took the position that the public is never entitled to know which officers use even minor levels of force, such as wrist strikes. The Supreme Court's decision restores transparency over the use of force by police, which will permit civil rights advocates to collect use of force reports and analyze trends in the use of force.

Finally, the Court granted access to dash cam footage. Although in this case the Court said access was granted under the common law only because neither party pointed to a "law" that required dash cam footage to be made, maintained, or kept on file, the Court left open the question as to whether a local directive of the chief of police constitutes a "law" that would satisfy that standard and defeat the criminal investigatory records exemption. That question will be answered later this year or in early 2018 when the Court hears Paff v. Ocean County Prosecutor's Office. Importantly, as noted above, body-worn camera footage is required to be maintained pursuant to Attorney General Directive No. 2015-1, so such videos are not automatically exempt as criminal investigatory records.

This landmark ruling has garnered national attention from the news media, including an editorial by the New York Times.