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KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES
INQUEST PROGRAM

INQUEST INTO THE DEATH OF:

Inquest No.: 17IQ427069

ALBERT WAYNE FREDERICKS, JR.,

Deceased.

**INVOLVED OFFICERS’
BRIEFING RE PROPER SCOPE
OF POLICIES AND TRAINING**

Seattle Police Department Officers Timothy Oliverson, Jacob Rogers, Garret Hay, Nathan Jerome and Andrew Swartz (the “Officers”), by and through their counsel, Ted Buck and Karen L. Cobb of Frey Buck, P.S., submit this briefing regarding the scope of policy and training materials that should—and should not—be at issue in the above-captioned inquest. The parties have conferred and this submission addresses policies and training materials that remain at issue.

The Fredericks Family has requested inclusion of the following policy sections to which the Officers object as overly broad and outside of the intended scope of the inquest into Mr. Fredericks’ death:

- **5.140 (1) (2) Bias Free Policing**
- **8.200 (7) Officers Shall Automatically Request Medical Aid in Certain Situations**
- **8.400-POL-1 Use of Force – Reporting and Investigation**
- **8.400-TSK-1 Use of Force – Involved Officers’ Responsibilities During a Type 1 Investigation**
- **16.140 Traffic Direction and Control**

1 Only policies that could be in some way relevant to the cause and manner of death are relevant;
2 the above policy sections should be excluded. Similarly, the family has requested training on
3 **Race, Profiling and Bias Free Policing** to be included in the jury’s evaluation. There is no basis
4 to include this training, and to do so would impermissibly suggest a racial aspect to the incident.
5 It too must be excluded.

6 **I. INQUEST SCOPE**

7 The purpose of the inquest is to ensure a full, fair, and transparent review of any
8 such death, and to issue findings of fact regarding the facts and circumstances
9 surrounding the death. The review will result in the issuance of findings that satisfy
10 the mandatory duties imposed by Chapter 36.24 RCW, as well as other
11 determinations specified in this order, including whether the law enforcement
12 member acted pursuant to policy and training.

13 Paragraph 2.2 to Appendix 1 of PHL-7-1-5 EO (Conducting Inquests in King County 2021). The
14 stated purpose is to allow the jury panel to determine the facts and circumstances surrounding the
15 death of Mr. Fredericks. The inquiry includes the testimony of witnesses and analysis of
16 forensic evidence focused only on the cause and manner of death. As such, testimony and
17 questions on policy and training must be limited to policy and training specific to the *cause and*
18 *manner of death*; the inquiry does not include general policy and training issues that have no
19 relation to Mr. Fredericks’ death

20 **A. The scope of SPD policies introduced must be limited to those relevant to the**
21 **circumstances surrounding and relevant to the cause and manner of Mr.**
22 **Fredericks’ death.**

23 **3.2.** The administrator, after consultation with the participating parties, shall determine the
inquest scope. Consistent with the purpose as set forth in the amended Charter, Executive
Order, and Appendix 1 and 2, the inquest scope shall include an inquiry into and the panel
shall make findings regarding the cause, manner, and circumstances of the death,
including applicable law enforcement agency training and policy. The panel shall make
findings regarding whether the law enforcement officer complied with applicable law
enforcement agency training and policy as they relate to the death.

1 Paragraph 3.2 to Appendix 2 of PHL-7-1-5 EO (Procedures for Conducting Inquests 2021). The
2 chief law enforcement officer, or his designee, provides testimony regarding the “applicable law
3 enforcement agency training and policy as they relate to the death.

4 **12.3.** The employing government department shall designate an official(s) to provide a
5 comprehensive overview of the forensic investigation into the incident (e.g., statements
6 collected by investigators, investigators' review of forensic evidence, physical evidence
7 collected by investigators, etc.). Additionally, the chief law enforcement officer of the
involved agency or director of the employing government department or the designee of
such chief/director shall provide testimony concerning applicable law enforcement agency
training and policy as they relate to the death.

8 *Id.*, ¶ 12.3. The executive order makes clear that the law enforcement agency is to identify the
9 applicable training and policy. The order’s directive is sensible – it the agency that creates the
10 policy, creates the training, effects the training and determines how officers are directed to apply
11 the training under the applicable policy. Given the limited scope of inquests, the designee’s
12 identification is appropriately directed at those policies and training that actually apply to the
13 actions that led to the subject’s death. From there the inquiry is simple and limited: what was the
14 cause and manner of the death and did the officers abide by their policy and training as related to
15 the circumstances surrounding the death? The panel will not be asked to assess and opine as to
16 whether policies or training are appropriate, should be modified or whether there are violations
17 of policy that relate to matters other than the cause and manner of death. Inquiry into any other
18 policies or training would only create confusion and waste of time. ER 403. The family’s
19 suggested policies fall within this latter category.

20 1. Section 5.140 (1) (2) Bias Free Policing

21 Policy sections 5.140 (1) and (2) state, respectively, that “every employee is responsible
22 for knowing and complying with this policy” and “officers will not engage in bias-based
23 policing.” While there is no dispute that this policy is important and that SPD officers should
interact with the public accordingly, it has no place in this inquest.

1 Review of the discovery materials in this matter, including extensive body-worn video,
2 reveals that the officers were nothing but respectful to Mr. Fredericks throughout the encounter.
3 They were calm, kind, and patient, and as Mr. Fredericks was placed on the ground, the Officers
4 offered verbal and physical reassurance that he was going to be okay, by patting him on the chest
5 and telling him to breathe. *See Fredericks_A0795-0804*. The Force Review Board actually made
6 several comments illustrating the Officers' actions and demeanors during the encounter.

7 *The Board noted that BWV was important in this incident. It showed the level of concern the officers had for the*
8 *subject and that their focus was on assisting him. Their voices and actions showed the level of concern and*
9 *compassion they had for Fredericks.*

9 *Fredericks_A0797.*

10 *After the subject complied with officers' commands to get onto the sidewalk, officers remained on scene to ensure the subject*
11 *was safe and offer aid, if needed. The Board identified the officers' tone of voice was calm and compassionate, as they*
12 *communicated their concern for the subject's well-being and safety. It was noted by the Board that the involved officer's*
13 *actions and tactics exemplified true community caretaking taught by the department.*

13 *Fredericks_A0798.*

14 There is absolutely no evidence that such an interaction occurred here or that racial bias
15 played any role; to the contrary, all evidence suggests that the Officers' interaction with Mr.
16 Fredericks epitomized the attitudes and conduct required under the Bias Free Policing policy.
17 The family admits that the only fact that they can cite in support of seeking the introduction of
18 race into this inquest is that is that Mr. Fredericks is an indigenous man. Introduction of race,
19 biased policing or profiling in any form would not assist the panel in determining the cause and
20 manner of Mr. Fredricks' death, could confuse and prejudice the jury, and must be affirmatively
21 precluded from this proceeding.

22 2. Section 8.200(7): Officers Shall Automatically Request Medical Aid in Certain Situations
23

1 Policy section 8.200(7) states that officers shall automatically request medical aid in the
2 following certain situations:

3 Every Type III use-of-force, specifically including, but not limited to:

- 4 * Impact weapon strikes to the head
- 5 * Impact of the head against a hard, fixed object

6 The following less-lethal incidents:

- 7 * CEW applications
- 8 * Beanbag shotgun applications
- 9 * OC spray applications when a subject is in custody

10 After any use-of-force, greater than De Minimis force on subjects who are reasonably
11 believed or known to be:

- 12 * Pregnant
- 13 * Pre-adolescent children
- 14 * Elderly
- 15 * Physically frail

16 The Officers' interaction with Mr. Fredericks' involved no more than Type I force. *See*
17 *Fredericks_A0795-96 & Fredericks_A1664-65*. The Officers use none of the prescribed Type III
18 or less lethal uses of force described in the foregoing section during their contact with Mr.
19 Fredericks, nor did 53-year-old Mr. Fredericks fall into any of the categories identified, pregnant,
20 pre-adolescent, elderly or physically frail. Section 8.200(7) on its plain terms does not apply to
21 this circumstance.

22 3. Sections 8.400-POL-1 and 8.400-TSK-1: Use of Force Reporting and Investigation and
23 Officers' Responsibilities During a Type I Force Investigation

These policy sections deal with the "reporting and investigation" of uses of force and the
"involved officers' responsibilities during a Type 1 investigation," respectively. Each of these
policies guides officers and their chain of command in the proper reporting and documentation of
the use of force immediately following the incident. While some information associated with the
aftermath of Mr. Fredericks' death could be relevant, such facts must still be limited to those that
relate in some way to the cause and manner of death; for example, the medical examiner's

1 examination and CSI processing the scene. How the force was reported and investigated bears no
2 relevance to the cause and manner of death.

3 4. Section 16.140: Traffic Direction and Control

4 This section specifically deals with traffic direction and control, and it remains a mystery
5 as to why the family believes that it could somehow be relevant to Mr. Fredericks' death. The
6 focus is upon individual officers taking "personal charge of traffic control" and how to "direct
7 traffic depending on the needs of the incident." As to directing traffic, the section goes on to
8 provide "rules" as to how that should occur, to include shutting down lanes, using flares, giving
9 hand signals, etc. Admittedly, Mr. Fredericks was in the middle of an intersection when the
10 incident began, but he was removed from traffic the remaining involvement with the Officers
11 and medics took place in a parking lot. Traffic control policy has no conceivable role in the
12 panel's directive to determine the cause and manner of Mr. Fredericks' death or how an alleged
13 violation thereof could be relevant in any way. It should be excluded.

14 **B. The scope of training must be limited to trainings relevant to the panel's**
15 **determination of the circumstances surrounding the cause and manner of**
16 **Mr. Fredericks' death.**

17 The scope of training materials and related testimony must also be limited to training that
18 could somehow play a role in the panel ascertaining the cause and manner of Mr. Fredericks'
19 death. The panel's role does not include a general review of all training that the Officers have
20 received and/or making findings regarding whether all training was followed.

21 The family has requested multiple training materials related to the following
22 categories/subjects, to which the involved Officers object as outside the inquest scope: **Race,**
23 **Profiling and Bias Free Policing.**

1 The training sessions/modules in this category are many, but the overall topic the same:
2 ensuring that officers are trained to ensure that their interactions with the public are respectful,
3 equitable, dignified and un-biased. While there is no doubt that this training is important and
4 that SPD officers should interact with the public accordingly, it has no place in this inquest.

5 For the same reasons identified in section I (A)(1) above related to SPD Bias Free
6 Policing policy, which briefing is incorporated by reference herein, introduction of the topics of
7 race, biased policing or profiling in any form—where there is not a scintilla of evidence that race
8 played any role in the Officers’ encounter with Mr. Fredericks—would not assist the panel in
9 determining the cause and manner of Mr. Fredricks’ death, could confuse and prejudice the jury,
10 and must be affirmatively precluded from this proceeding.

11 DATED this 25th day of March, 2022, at Seattle, Washington.

12 FREY BUCK, P.S.

13 By: /s/ Karen L. Cobb
14 Ted Buck, WSBA #22029
15 Karen L. Cobb, WSBA #34958
16 Attorneys for Seattle Police Department
17 Involved Officers
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