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IN THE STATE OF WASHINGTON
KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES

In Re:
Inquest of the death of Isaiah Obet

No. 417IQ7199

**CITY’S RESPONSE TO PRE-
INQUEST ORDER**

I. INTRODUCTION

The Administrator’s *Pre-Inquest Order* seeks responses from all parties on (1) the scope of inquiry for the inquest in this matter, and (2) the scope of pre-inquest discovery.

The briefing below is the City’s response.

II. SCOPE OF INQUIRY

Section 3 of the *Order* proposes eight separate subjects (3a-3h) as within the scope of the inquest. The City respectfully requests the Administrator clarify and/or limit two of those subjects (f and g) as outlined below.

A. Policies Under Which Officers Were Acting

Item 3.f of the *Pre-Inquest Order* proposes the following question as within the scope: “Under what departmental policies were the officer or officers who caused the death acting at the time they took the actions that caused the death.” While applicable policies are generally within the scope of the current Executive Order on inquests, the City

1 respectfully submits the language of 3.f is much too broad and vague to be practically
2 applied in this matter.

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4 As evidenced in the documents already produced here, the Auburn Police
5 Department Manual (*Bates Number 0953-2223*) is nearly 1300 pages long, with policies
6 governing nearly every aspect of an employee's role, authority, appearance, pay, vehicle
7 use, off-duty employment, union membership, and a litany of other subjects. Strictly
8 speaking, an Auburn Police Officer on duty at the time of the incident was subject to – and
9 “acting under” – every single one of the hundreds of separate policies outlined in the
10 manual, almost none of which are remotely relevant to the purpose of the inquest;
11 determining the circumstances of the death of Isaiah Obet. For example, Officer Nelson
12 (just like every other officer on duty) was driving a police vehicle, and was therefore acting
13 under Policy 702 (Vehicle Maintenance) and 703 (Vehicle Use). As a police officer
14 generally, he was subject to Policy 1023 (Personal Appearance Standards). He was on
15 duty, so was subject to Policy 100 (Law Enforcement Authority), Policy 1015 (Body
16 Armor), Policy 1024 (Uniform Regulations), and Policy 306.3 (Authorized Firearms,
17 Ammunition and Other Weapons). The list goes on and on, throughout the hundreds of
18 separate policies outlined in the Manual. Opening the door to inquiry into any of these
19 hundreds of policies is unnecessary, and has the potential to leave the inquest process
20 woefully unfocused.
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23 Based on the facts of this incident, as well as the explicit purpose of the inquest
24 process, the only Auburn Police Department policies into which the jury should inquire,
25 and about which testimony should be allowed, are Policy 300 (Use of Force), Policy 308
26 (Officer Response to Calls), and Policy 309 (Canines). There do not appear to be any other
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1 policies or procedures outlined in the APD Manual that are relevant to the purpose of the
2 inquest, subject to any real controversy, or in need of any particular explanation. For
3 example, there may be cases in which there is a legitimate question whether the involved
4 officer had met all the certification requirements for being a commissioned officer, whether
5 he was carrying non-approved weapons or tools, or whether the officer was wearing a
6 properly-marked uniform or driving a properly-marked vehicle. In such cases, additional
7 policies of the employing agency may be relevant. If an officer mistakenly shoots and kills
8 a bystander while firing at a suspect, there may be a legitimate question whether the officer
9 had been properly trained and certified with his firearm. Here, however, none of those
10 ancillary issues are relevant, and the only APD policies within the scope of this inquest are
11 those identified above.
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14 The City of Auburn asks the Administrator to explicitly limit the scope of inquiry to
15 those policies that are found to be (1) relevant to the purpose of the inquest and (2) either
16 legitimately in doubt or requiring some actual explanation or interpretation. Such express
17 limitation will clarify the issues for the parties and the public, and allow the inquest to
18 proceed in a reasonable and timely manner.
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20 **B. Training re: Policies**

21 Section 3.g of the *Pre-Inquest Order* proposes inquiry into “what training did the
22 officer or officers receive with regard to those policies,” referring to the policies outlined in
23 Section 3.f of the *Order*. The City of Auburn asks the Administrator to clarify the scope of
24 evidence and testimony on the issue of training in two ways.

25 First, just as the APD Manual contains hundreds of individual policies, all of which
26 apply to all officers employed by the Department, so also are officers required to undergo
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1 hundreds of hours of training prior to even becoming commissioned officers, then dozens of
2 hours of additional training on all manner of subjects every single year throughout their
3 career. This fact is evidenced by the City's voluntary production of Officer Nelson's
4 complete training file, as well as the City's entire collection of internal training records,
5 each of which span hundreds of pages. The voluminous nature of these records underscores
6 the need to explicitly clarify and limit the type of trainings that are relevant here, especially
7 given the limited purpose served by the inquest. If, as requested above, the Administrator
8 limits the scope of policies relevant to this proceeding, the scope of relevant training must
9 be similarly limited.
10

11 Second, now that witnesses are allowed to testify about the "training" an officer has
12 received on a given "policy," it is important to understand the nature of the training police
13 officers receive on relevant topics like "use of force." For example, the APD use of force
14 policy, as with nearly every other agency's use of force policy, largely parrots language
15 from seminal case law on the issue (*Graham v. Connor*, etc.), and even incorporates state
16 law by reference. *See Obet_I 1007-1013*. Rather than being a clear set of cause-and-effect
17 guidelines that are easily distilled and easily trained on, the policy emphasizes the overall
18 "reasonableness" requirement of an officer's actions, identifies various factors that may or
19 may not be applicable to various situations, recognizes that "no policy can realistically
20 predict every possible situation an officer might encounter," and confirms we "must allow
21 for the fact that officers are often forced to make split-second decision about the amount of
22 force that reasonably appears necessary." *See Bates 1007*. Unlike uniform policies,
23 grooming standards, or other black-letter guidelines that can be easily trained on, use of
24 force policies are amorphous, situational, and constantly in flux.
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1 Given the ever-developing nature of modern use of force policies, the ever-changing
2 pronouncements by courts on the issue, and the central place use of force has in the day-to-
3 day work of police officers and the public consciousness, the “training” officers receive on
4 “use of force” is not easily distilled to a clear set of identifiable documents, handouts, or
5 training pointers. The policies, case law, and general social understanding about use of
6 force by police officers are a constant factor in law enforcement, and pervade nearly all
7 aspects of police training and interaction. Officers discuss scenario-based use of force
8 examples in all manner of trainings. Officers constantly read case law and are provided
9 periodic updates on important judicial developments on the issue. Use of force reports are
10 routed through the chain of command, and assessed and discussed at each level. And
11 officers discuss use of force issues in casual conversation, during their shifts, during various
12 calls to which they respond, and at all levels of departmental interaction (officer-to-officer,
13 supervisor-to-supervised, trainer-to-trainee, etc.). Asking an officer or supervisor to testify
14 about “the subject matter of training that governed” use of force (*see Pre-Inquest Order*,
15 §3.i.iii) is like asking an attorney to discuss “the subject matter of training that governed”
16 brief-writing or client relations; while it is central to, and pervades all aspects of, an
17 attorney’s career, it is not a subject that is divisible from an individual case or always
18 “learned” in a specific training session. The same is true of a police officer’s “training” on
19 use of force policies.
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23 As such, the City of Auburn seeks to ensure that witnesses allowed to testify about
24 training will not be limited to commenting on specific “training records,” or required to
25 simply identify the “subject matter of trainings” that addressed a particular topic. Rather,
26 such witnesses must be allowed to testify about the general training and overall
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1 understanding modern law enforcement officers develop throughout their career on these
2 subjects, particularly for an amorphous and difficult subject like “use of force.” Without
3 such allowance, the jury will be denied a full picture of an officer’s training on – and
4 understanding of – important issues in this matter, and the interests of the City, the officer,
5 the family, and the public will all be prejudiced.
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7 **III. DISCOVERY**

8 The *Pre-Inquest Order* also asks the City to respond to the proposed scope of
9 discovery, specifically identifying any objections or proposed exemptions. To date, the
10 City has voluntarily disclosed (1) the entirety of the VIT investigation as it was provided to
11 the City, (2) Officer Nelson’s entire training file, except his K9 training/deployment
12 records, and (3) the APD Manual both as it existed at the time of the incident at issue here
13 and as it currently exists. In addition, the City is currently preparing to voluntarily disclose
14 the following items:
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- 16 - The City’s internal training file, consisting of a variety of documents
17 outlining in-house training historically provided to APD officers;
- 18 - Officer Nelson’s K9 training/deployment records; and
- 19 - All COBAN (*i.e.*, “dashcam”) footage related to the incident still in the
20 possession of the City. Along with this disclosure, the City will
21 provide an explanation of how the footage was recorded, downloaded,
22 and retrieved, along with an explanation of why footage from other
23 vehicles or officers does not presently exist.

24 Following the upcoming production of these additional records, the City will have no
25 further records responsive to any item listed in the *Pre-Inquest Order*.

26 However, in the same way the *Order* is potentially over-inclusive on the issue of
27 police policies and training, the City respectfully submits it may also overestimate the
specificity of issues on which officers are trained. For example, the *Order* seeks “all

1 documentation describing trainings on...[u]se of force/response to individuals with edged
2 weapons including less lethal alternatives [and] factors influencing deployment of K-9
3 officers when dealing with high-risk individuals.” *Order*, §4.o.i-ii. As described above,
4 given the pervasive and amorphous nature of “use of force” training and policies, there is
5 unlikely to be any discernible document addressing such specific issues. For example, use
6 of force policies and trainings address factors involved in use-of-force decision-making,
7 and overall principles governing the use of physical force by police officers as outlined by
8 the relevant legal and judicial standards, rather than specific types of weapons a subject
9 may happen to have. As a result, there is unlikely to be any identifiable document that
10 proposes to train officers on subject with edged weapons versus clubs, or pistols versus
11 shotguns. Simply put, the standards applicable to use of force focus on a wide variety of
12 factors, and the overall dangerousness of the suspect to the officer and the public, rather
13 than the specific type of weapon he or she may be wielding at the time.

16 The City is concerned that the inability to point to any specific record directly
17 responsive to the limited subjects outlined in the *Order* may be used to argue that the City
18 has not provided relevant training. In other words, that the lack of any document directly
19 addressing “response to individuals with edged weapons” may be interpreted as evidence
20 that the Auburn Police Department does not train officers on how to deal with knife-
21 wielding subjects. Such an implication or assertion would be both misleading to the jury
22 and unfair to the City and Officer Nelson.

24 Based on the above, the City proposes the deletion of the words “pertaining to,”
25 along with items i-iv, from Section 4.o of the *Order*, leaving it to order production of “all
26 documentation describing trainings completed by Officer Nelson.” This change would
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1 allow full production of Officer Nelson's complete training records (which are voluntarily
2 produced here anyway) while avoiding any potential confusion or misinterpretation
3 regarding the nature of training offered, or the general subjects on which Officer Nelson
4 and others have been trained.
5

6 RESPECTFULLY SUBMITTED this 14th day of October 2019.

7 KEATING, BUCKLIN & McCORMACK, INC., P.S.
8

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on the below date, a true and correct copy of the foregoing document was served upon the parties listed below via E-mail only, per agreement:

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DATED this 14th day of October, 2019, at Seattle, Washington.

/s/ Teresa A. Caceres
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