



**Date:** January 12, 2016

**From:** Cory Christensen, Chief of Police

**Re:** Public Release of information from the 2015 Nuanes Investigation

As the official custodian for the City of Steamboat Springs Police Department for criminal justice records under the Colorado Criminal Justice Records Act (the "CCJRA") I have taken the time to consider recent requests made by citizens of the City for the release of documents relating to the 2015 Nuanes investigation into the Steamboat Springs Police Department. These requests were made by e-mail comments in the period leading up to the December 15, 2015 City Council meeting and in person at that meeting. I have determined that these requests constitute a request for the release of records under the CCJRA.

The CCJRA governs the release of criminal justice records. The Nuanes reports were made for, and are maintained and kept by, the Steamboat Springs Police Department. The reports are the findings of a Police Department internal affairs investigation, which was conducted in accordance with applicable Police Department policies. For these reasons I believe the records of the Nuanes Investigation are properly classified as criminal justice records.

The CCJRA tasks the custodian of records for a criminal justice agency with the responsibility to conduct a balancing test to determine whether to release criminal justice records in response to a records request. As the Chief of Police, I am the current Steamboat Springs Police Department's custodian of records.

I have determined that information is available to me now that was not available to Interim Chief Delong when he prepared his September 10, 2015 response to a similar request made by Matt Stensland of the Steamboat Pilot and Today. Consequently, I do not consider myself to be bound by Interim Chief Delong's conclusions, although I understand his balancing test and having reviewed it believe it was appropriate at the time.

Pursuant to my responsibilities as custodian of records, I have reviewed each of the outstanding, confidential reports, Reports 3, 4, 5, and 6, and conducted the balancing test for Reports 3, 4, 5, and 6 as set out in the CCJRA and considered the following:

1. The privacy interest of the individuals who may be impacted by a decision to allow inspection;
2. SSPD's interest in keeping confidential information confidential;
3. SSPD's interest in pursuing ongoing investigations without compromising them;
4. The public purpose served by inspection;
5. Any other consideration relevant to the particular request.

After reviewing each of Reports 3, 4, 5, and 6, I find the following:

As to Report 3, there are a variety of privacy interests associated both with witnesses and the individual investigated, which would be negatively impacted by a decision to allow inspection of Report No. 3. Each of the numerous witnesses who were interviewed as part of this investigation were given *Garrity* advisements. Thus, their participation in the investigation was compelled. They were also advised by the investigator that the information they provided would be held in strict confidence. I have also been advised that the subject of this report's investigation has claimed privacy and liberty interest rights in it.

As a result, it is clear to me that factor 1 of the balancing test weighs in favor of not disclosing this report.

As to factor 2, I believe it also weighs in favor of not disclosing Report No. 3. Confidentiality for witnesses is essential to the effective conducting of fair and impartial investigations within the police department and for witnesses to provide complete and truthful information. If potential witnesses knew their information related to personnel matters would not be kept confidential, they may not be as forthcoming in investigations, which would hamper the SSPD's ability to conduct internal investigations.

As to factor 3, I do not believe it is relevant as the investigation is concluded and I do not contemplate any further personnel action based on the allegations reviewed in this report.

As to factor 5, I note that the subject of the investigation is no longer an employee of the SSPD and that public concern regarding ongoing impropriety by that individual is minimal or nonexistent.

As to factor 4, I find that there is a substantial public interest in the release of some sort of information regarding the findings of Report No. 3. At least 34 people submitted e-mails to the City Council prior to its December 15, 2015 meeting urging the release of information from the Nuanes reports. Other members of the public appeared at the December 15, 2015 Council Meeting to reiterate that point. After reviewing those requests it is clear to me that the events of 2015 had a negative impact on the operations of the SSPD and eroded the confidence and trust that the certain Steamboat Springs citizens have in their officers and the department. Rebuilding that trust and confidence is important to the positive functioning of the department. For that reason I find that there is a substantial public interest in the release of certain limited information from Report No. 3.

The public interest in the release of certain limited information from Report No. 3 is in my opinion focused on advising as to the conclusions regarding violations of department and City policies relating to the management of the department and that directly affect department staff. I find that with respect to those conclusions, that providing a brief summary of the conclusions supports the public interest and outweighs the interests stated

above and thus weigh in favor of certain, limited disclosure and that disclosing only conclusory statements mitigates the impact on those privacy interests.

The public interest in the release of information from Report No. 3 is not the same with respect to violations of department and City policies that relate to the individual conduct of the subject. I find that with respect to this information, the interests stated above favoring non-disclosure far outweigh the limited public interest in favor of disclosure.

As to Report No. 4, while the subject of the investigation is a different individual than in Report No. 3, the remainder of the facts and analysis set forth above directly apply and are part of my analysis. I am hereby incorporating them into my findings with respect to Report No. 4. As a result, I find that the public interest in the release of information regarding violations of department and City policies relating to the management of the department and that directly affect department staff outweighs the privacy interests of the witnesses and subject of the report to the extent that certain limited information can be provided. The public interest in the remainder of the report is far outweighed by those privacy interests.

As to report No. 5, there are a variety of privacy interests associated both with witnesses and the individual investigated, which would be negatively impacted by a decision to allow inspection of Report No. 3. Each of the numerous witnesses who were interviewed as part of this investigation were given *Garrity* advisements. Thus, their participation in the investigation was compelled. They were also advised by the investigator that the information they provided would be held in strict confidence.

As a result, it is clear to me that factor 1 of the balancing test weighs in favor of not disclosing this report.

As to factor 2, I believe it also weighs in favor of not disclosing Report No. 5. Confidentiality for witnesses is essential to the effective conducting of fair and impartial investigations within the police department and for witnesses to provide complete and truthful information. If potential witnesses knew their information related to personnel matters would not be kept confidential, they may not be as forthcoming in investigations, which would hamper the SSPD's ability to conduct internal investigations.

As to factor 3, I do not believe it is relevant as the investigation is concluded and I do not contemplate any further personnel action based on the allegations reviewed in this report.

As to factor 5, I do not believe that there are other considerations that have an impact for or against release.

As to factor 4, I find that there is a substantial public interest in the release of Report No. 3. At least 34 people submitted e-mails to the City Council prior to its December 15, 2015 meeting urging the release of information from the Nuanes reports. Other members of the public appeared at the December 15, 2015 Council Meeting to reiterate that point. After reviewing those requests it is clear to me that the events of 2015 had a negative impact on the operations of the SSPD and eroded the confidence and trust that the Steamboat Springs citizens have in their officers and the department. Rebuilding that trust and confidence is important to the successful functioning of the department. For that reason I find that there is a substantial public interest in the release of information from Report No. 5.

The public interest in the release of information from Report No. 5 is strongest with respect to its conclusions regarding violations of department and City policies relating to the management of the department and that directly affect department staff. I find that with respect to those conclusions, to the extent that I can provide limited information, the public interest outweighs the interests stated above that weigh in favor of disclosure and that disclosing only conclusory statements mitigates the impact on those privacy interests.

The public interest in the release of information from Report No. 5 is not as strong with respect to violations of department and City policies that relate to the individual conduct of the subject. I find that with respect to this information, the interests stated above favoring non-disclosure far outweigh the public interest in favor of disclosure.

As to report No. 6, a community summary was released on or about July 22, 2015 and a summary report shortly thereafter, both of which contain a summary of recommendations contained in this report.

The remainder of the content of this report contains information regarding some of the allegations raised in other of the Nuanes reports and provides recommendations from the investigator. The report contains specific information regarding witness statements and information regarding the subjects of the other reports. As a result, there are privacy interests implicated both as to witnesses and subjects, as described above. As a result, I find that factor 1 of the balancing test weighs in favor of not disclosing the remaining portions of this report.

As to factor 2, for many of the same reasons stated above with respect to Report No. 3, I believe this factor weighs in favor of nondisclosure.

As to factor 3, I do not believe it is relevant as the investigation is concluded and I do not contemplate further personnel action based on the allegations reviewed in this report.

As to factor 4, I find, for the reasons stated above, that there is a public interest in the release of limited information regarding violations of department and City policies relating to the management of the department and that directly affect department staff. The public interest in the release of information is not as strong with respect to violations of department and City policies that relate to the individual conduct of the subjects.

As to factor 5, some of the subjects of the investigation have chosen to leave the City and that public concern regarding ongoing impropriety by those individuals is minimal or nonexistent.

In conclusion, I find that the public interest in favor of limited disclosure of the conclusions of Report No. 6 regarding violations of department and City policies relating to the management of the department and that directly affect department staff outweighs the interest in favor of non-disclosure.

After weighing all of the factors in the balancing tests as set forth by the CCJRA for Reports 3,4,5 and 6, I find in favor of a public release of limited information and conclusory statements from each of those reports. It is extremely important in today's environment to be as open as possible in gaining, and maintaining, public trust and the released statements best protect the privacy interests of those involved while also serving the overall public interest in this issue.