

ROCHESTER CITY COUNCIL

*IN RE INDEPENDENT INVESTIGATION INTO
THE CITY OF ROCHESTER'S RESPONSE TO AND
HANDLING OF THE RPD'S MARCH 23, 2020 USE
OF FORCE AGAINST DANIEL PRUDE*

SUBPOENA TO PRODUCE BOOKS, PAPERS OR OTHER EVIDENCE

To:

Rochester Police Department
c/o Acting Director Mark L. Simmons
City Public Safety Building
185 Exchange Boulevard
Rochester, NY 14614

YOU ARE COMMANDED, pursuant to Rochester City Charter § 5-21(G), to produce at the time, date, and place set forth below the documents, electronically stored information, objects, or other evidence described in the attachment to this subpoena. Rochester City Council President Scott authorizes Emery Celli Brinckerhoff Abady Ward & Maazel LLP to adjust the time, date, and place of compliance.

Place:

City Hall, Room 301A
30 Church Street
Rochester, New York 14614-1265

Date and Time:

October 2, 2020, 5:00 PM

Dated: Rochester, New York
September 21, 2020

By:



LORETTA C. SCOTT
President, Rochester City Council

DEFINITIONS

1. Rochester Police Department, RPD, Department: The terms “Rochester Police Department,” “RPD,” “Department,” or “You” mean the Rochester Police Department and its officers, employees, and agents.

2. Mayor’s Office: The term “Mayor’s Office” means Mayor Lovely A. Warren, and all offices, bureaus, officers, and employees within the office of Mayor, as that term is used in the Rochester City Charter.

3. Law Department: The term “Law Department” means the Law Department of the City of Rochester, the Rochester Corporation Counsel, and all Law Department employees, officers, and agents.

4. Locust Club: The term “Locust Club” means the Rochester Police Locust Club and all its officers, employees, or agents.

5. Incident: The term “Incident” means the events that commenced on March 23, 2020 with the RPD's contact with Daniel Prude, and that followed March 23, 2020, including Mr. Prude’s death, the analysis of the cause(s) or possible cause(s) of Mr. Prude’s death, the investigations into the circumstances of the RPD’s contact with Mr. Prude by any City, State or Federal entity (including but not limited to the Rochester City Law Department, the Monroe County Office of the Medical Examiner, the Monroe County District Attorney’s Office, and the Office of the New York Attorney General), the public disclosures of the RPD’s contact with Daniel Prude, the review and release of the Body-Worn Camera footage, the contemplated litigation arising from the RPD’s contact with Mr. Prude, and all actions by the City of Rochester, its agents, officers, and employees, that relate in any manner to the RPD’s contact with Mr. Prude and his subsequent death, or the investigation and the public disclosure thereof.

6. Prude: The term “Prude” means Daniel Prude.

7. Communication: The term “Communication” means any correspondence, discussion, or transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

8. Concerning: The term “Concerning” means, in addition to its customary and usual meaning, relating to, pertaining to, regarding, referring to, alluding to, discussing, describing, evidencing, identifying, in connection with, involving, setting forth, stating, showing, touching upon, dealing with, bearing upon, in respect of, about, and having anything to do with.

9. Document: The term “Document” means, without limitation, the following items which are in the possession, custody, or control of the RPD whether printed or recorded or reproduced by any other mechanical or electronic process, or written or produced by hand: agreements; communications; reports; correspondence; telegrams; electronic mail; electronic/cellular messages/texts; memoranda, summaries or records of telephone conversations; summaries or records of in-person conversations or interviews; drawings; sketches; maps; summaries or records of meetings or conferences; summaries of or records of interviews conducted by investigators; electronic or physical calendar entries concerning meetings, conferences, or interviews; summaries or reports of investigations or negotiations; opinions or reports of consultants; photographs; motion picture films; body worn camera footage; digital or physical audio tape recordings; all material contained in any internal affairs file; brochures; pamphlets; advertisements; circulars; press releases; drafts; letters; recordings; any marginal comments appearing on any Document; Mobile Data Terminal communications; and all other writings.

INSTRUCTIONS

1. If any Document responsive to the requests has been lost, destroyed or is otherwise unavailable, describe and identify each such Document by stating in writing: (i) the

name(s) of the authors(s), the name(s) of the person(s) who received or viewed the original and all copies, and the date and subject matter, (ii) the last known custodian of the Document, (iii) the incident, event, or occurrence during which such Document was lost, destroyed, or otherwise became unavailable, (iv) each person having knowledge of the circumstances of it being lost, discarded or destroyed and (v) your efforts to locate each such Document.

2. If, in answering these requests, you claim any vagueness, confusion, or ambiguity in either the request or a definition or instruction applicable thereto, such claim shall not be utilized by you as a basis for refusing to respond, rather you shall set forth in a part of your response to such a request the language deemed to be vague or confusing or ambiguous, select a reasonable interpretation that you believe resolves the ambiguity, respond to the request using that interpretation, and explain with particularity the construction or interpretation selected by you in responding to the request.

3. Questions regarding the interpretation of these requests should be resolved in favor of the broadest possible construction.

4. These requests seek production of all Documents, in their entirety, along with any attachments, drafts, and non-identical copies. A Document with handwritten, typewritten, or other recorded notes, editing marks, etc., is not and shall not be deemed identical to one without such modifications, additions, or deletions.

5. Responsive Documents should be produced as they are kept in the usual course of business or organized and labeled to correspond with the categories in the requests, and identifying the name of the person from whose files the Documents were produced.

6. Wherever possible, all electronic Documents should be produced in their native format and/or as TIFs or PDFs and include all metadata. Do not convert the data to a form that is

more burdensome and/or less searchable. If You convert data to TIFs or PDFs from native format, You must retain all metadata—including but not limited to the OCR database, Document demarcations, the date of the Documents, file name, the author of the Documents, the recipients of the Documents, the type of Documents, etc.—in a usable load file (Relativity or Concordance preferred with an option for images), together with links to text and native formats.

7. Reference to any natural person shall be deemed to include that natural person's agents, servants, representatives, current and former employees, and successors.

8. The singular includes the plural and vice versa, except as the context may otherwise require; any request propounded in the present tense shall also be read as if propounded in the past tense and vice versa; whenever a term is used herein in the present, past, future, subjunctive, or other tense, voice, or mood, it shall also be construed to include all other tenses, voices, or moods; reference to any gender includes the other gender; the words "any" and "or" shall be construed as either conjunctive or disjunctive in such manner as will broaden as widely as possibly the scope of any request for production; the word "all" means "any and all"; the word "any" means "any and all"; the word "including" means "including but not limited to." Any ambiguity in a discovery request shall be construed to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

9. If you object to the production of a Document in relation to a specific request, state with particularity the basis for all objections with respect to such request. You should respond to all portions of that request that do not fall within the scope of your objection.

10. This request is a continuing one. If, after producing the requested Documents, you obtain or become aware of any further Documents responsive to this request or if additional information you or any persons acting on your behalf obtain would augment, clarify, or

otherwise modify your responses, you are required to supplement your responses and produce such additional Documents.

11. Unless otherwise specified, the period of time covered by this subpoena is from March 23, 2020 to the date the requested Documents are returned.

DOCUMENTS TO BE PRODUCED

1. All documents concerning the Incident.
2. All documents concerning Daniel Prude.
3. All documents concerning the 911 call for assistance regarding Daniel Prude, the RPD's response thereto on March 23, 2020, and the ultimate restraint of Daniel Prude, including but not limited to 911 calls and dispatch recordings, radio run and other transmissions directing officers to the scene and transmitted from officers who responded to the scene; communications with fire, ambulance, and other emergency services; use-of-force reports or memos; officer memo-book entries; statements; emails; or text messages.
4. RPD policies and procedures regarding (a) use of force, (b) the use of hoods on persons in custody, (c) Mental Hygiene Arrests, (d) administering and/or arranging for medical care for persons in custody, and (e) investigation of deaths in custody.
5. All reports, interview notes, after-action reports or reviews, and other documents related to or found within the file for any investigation, inquiry, or review by the RPD of the death of Daniel Prude, including but not limited to the investigation conducted by the Major Crimes Unit.
6. All communications from, to, or between RPD officers, employees, and agents concerning the Incident where individuals communicated using RPD-issued devices, including

but not limited to electronic mail, text messages, social media, or any other forms of communication.

7. All communications from, to, or between the following RPD officers, employees, and agents concerning the Incident where these individuals communicated using private, personal, or non-RPD-issued devices, including but not limited to electronic mail, text messages, social media, or other forms of communication: La’Ron Singletary, Mark Simmons, Joseph Morabito, Steven Swetman.

8. All communications between the RPD and the Mayor’s Office concerning the Incident.

9. All communications between the RPD and the Law Department concerning the Incident.

10. All communications between the RPD and the Locust Club concerning the Incident.

11. All communications between the RPD and the Monroe County Office of the Medical Examiner concerning the Incident.

12. All documents and communications related to any Freedom of Information Law request made concerning Incident, including responses or objections prepared, drafted, and/or delivered in response to such requests.

13. All documents concerning claims, causes of action, or threatened claims or causes of action against the City of Rochester or any employee or officer thereof concerning or arising out of the Incident, including notices of claim, demand letters, preservation letters, notes or memos reflecting the contents of meetings or other communications regarding the same.

14. All public statements, including all drafts thereof, concerning the Incident.

15. All policies and procedures concerning the RPD's notification of the Mayor, City Council, or any other Government Agency regarding in-custody deaths or major incidents.

16. All policies and procedures concerning the RPD's release of Body-Worn Camera Footage to the public.

17. All policies and procedures concerning the RPD's response to FOIL requests during a pending criminal investigations by the City, State or Federal government into the conduct of RPD employees.

18. All documents concerning the RPD's notification of the Mayor, Deputy Mayor, and Corporation Counsel regarding the death of Richard Gregory, as set forth on paragraph 4 of the Managerial Review of the Death of Daniel Prude dated September 14, 2020.

19. All documents concerning the RPD's notification of the Mayor, Deputy Mayor, and Corporation Counsel regarding the use-of-force incident during the arrest of Christopher Pate, as set forth on paragraph 4 of the Managerial Review of the Death of Daniel Prude dated September 14, 2020.