

FILED
U.S. DISTRICT COURT
DISTRICT OF COLORADO
2019 JUL -2 PM 4:53

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 1:18-cv-03112-RBJ-STV

JEFFREY P. COLWELL
CLERK

SEAN SLATTON,

BY _____ DEP. CLK

Plaintiff,

v.

TODD HOPKINS, BRANDON BARNES, CITY OF FORT COLLINS, et al,

Defendants.

7/2/2019

PRO SE PLAINTIFF'S RESPONSE TO DEFENDANTS MOTIONS DOCKET NUMBERS #28 & #39 TO "STAY DISCOVERY", AND RESPONSE TO "RESPONSE REPLY" DOCKET #42, AND RESPONSE TO DOCKET NUMBER 43(40) MOTION TO STAY DISCOVERY PENDING DETERMINATION OF QUALIFIED IMMUNITY. SEEKING TIME TO AMEND COMPLAINT.

Pro Se Plaintiff Sean Slatton submits the following as his response to the Defendants' joint Motions to Stay Discovery.

Reasons why Defendants' Motions should be stricken, and discovery should continue:

—On 6/24/2019, attorney Mark Ratner offered to provide copies of the police reports and videos in order to streamline this process.

—On 6/27/2019, Fort Collins Police Records Services responded to the request I submitted to them on 5/23/2019. They would give me the requested items for \$119.00.

As of 7/2/2019, Slatton still has not received the requested items of discovery from Ratner.

On 7/2/2019, Plaintiff Slatton met with an attorney who will represent Slatton once he receives copies of the requested items of discovery.

The body camera footage from Brandon Barnes, the surveillance camera footage from the Lincoln Events Center, and the written incident reports are essential items for Slatton to support his case and disprove qualified immunity.

Since the requested items have already been offered from both Ratner and the FCPD, it appears they should be readily available. This request should not be burdensome. In the pursuit of justice, it only seems fair that the issue of qualified immunity should wait until after Plaintiff Slatton receives the requested items of discovery.

The stricken 3rd amended complaint solved the issues addressed by the Defendants regarding complaint #2. Plaintiff Slatton requests a time extension in order to amend the

complaint. Also, Plaintiff Slatton is unsure if he should submit a redlined version of the 3rd stricken complaint, because Slatton would submit a 4th amended complaint after receiving the requested items of discovery. Slatton has received conflicting answers regarding how many amended complaints a Plaintiff is allowed to submit.

BACKGROUND:

SLATTON was wrongfully arrested on December 3rd, 2016, wrongfully imprisoned, and excessive amounts of force was used. The asserted charges were Third Degree Criminal Trespass, Obstructing a Peace Officer, and Resisting Arrest, C.R.S. §§ 18-4-504(1), 18-8-104(1)(a) and 18-8-103(1)(b), respectively. All of the charges were dismissed before SLATTON's defense trial began.

I interpret the motion the Attorneys are seeking as a challenge to my subpoena. In April, Plaintiff SLATTON submitted a records request to the Fort Collins Police Department. Receipt of the request was given yet a response with materials or any potential release was never given. Since the City Attorney is the one who could now produce the requested materials but is now actively trying to keep the Plaintiff from accessing them, the Plaintiff hereby motions the court to order that the records subpoenaed by Plaintiff SLATTON be released.

1.) Mr. Slatton moves this court to deny the Motion to “*Stay Pending*” and order that the records subpoenaed by his counsel be produced to the court as required by the subpoena *duces tecum* (*hereinafter* SDT) for *in camera* review and disclosure to the Plaintiff as appropriate under the law.

2.) Regarding Officer Hopkins, SLATTON has requested any and all material and information in FCPD possession concerning the Defendants—including, but not limited to that contained in personnel, Internal Affairs and Performance Standards Unit files—related to (1) use of force and other acts of aggression or violence; (2) noncompliance with FCPD rules, regulations and policies or the law and (3); untruthfulness or other acts indicative of dishonesty. (ESSENTIAL: body camera footage, incident reports, and surveillance camera footage from Lincoln Event Center from the night of the incident.)

- 1) Use of Force and Other Acts of Aggression or Violence: The Fort Collins Police Services Policy Manual effective as of July 2014 (*hereinafter* FCPD Manual) and available at <http://www.fcgov.com/police/pdf/policy-manual-7-14.pdf>, provides that both the use of a police baton and the use of OC spray are “Type 1” uses of force. FCPD Manual § 301.2.2. The manual also requires that whenever Type 1 force is used, the involved employees are to complete an Early Intervention System (*hereinafter* EIS) incident report. FCPD Manual §1021.5.1. Officer Hopkins used both a police baton and OC spray against [SLATTON] during the events preceding the charging of [SLATTON] in the matter at bar.
- 2) Noncompliance with FCPD Rules, Regulations and Policies or the Law: FCPD Manual § 308.2 authorizes officers to use control devices such as police batons and OC spray “to control subjects who are violent or who demonstrate the intent to be violent.” Section 308.7 explicitly states that OC Spray “should not [] be used against individuals . .

. who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.” FCPD Manual § 388.2 provides that off-duty officers may take reasonable action to minimize “an imminent threat of serious bodily injury or death or significant property damage.” *See also* FCPD Manual § 420.2.1. Section 388.5 provides that, when reasonably possible, an officer “shall notify and receive approval of an agency supervisor” before taking any off-duty enforcement action. *See also* FCPD Manual § 420.2.1. C.R.S. §§ 18-1-707 and 18-8-804 provide for the use of reasonable force by peace officers according to adopted departmental policies. C.R.S. § 18-8-804 and FCPD Manual § 106.1 require all FCPD employees to comply with the departmental policies in the manual. The force used against SLATTON in this matter violated all of the foregoing provisions of the FCPD Policy Manual and Colorado law (not to mention the SLATTON’s rights under the U.S. and Colorado constitutions). Further, FCPD Manual § 106.2.1 provides that violations of the manual form the basis for administrative action and § 1020.8 shows that administrative action records are kept on file by the FCPD. Accordingly, it is reasonably likely that there exists material and information related to Officer Hopkins’ noncompliance with FCPD rules, regulations and policies or the law.

3) Untruthfulness or Other Acts Indicative of Dishonesty: Officer Hopkins made several statements in his report that were both malicious in nature were clearly contradicted by the footage from his own and Officer Barnes’ point of view (body worn) cameras.

Regarding Officer Barnes, SLATTON has requested any and all material and information in FCPD possession concerning the officer—including, but not limited to that contained in personnel, Internal Affairs and Performance Standards Unit files—related to use of force and other acts of aggression or violence. SLATTON incorporates by reference the FCPD Manual provisions detailed in ¶ 10.a.1), *supra*. Officer Hopkins used both a police baton and OC spray against SLATTON during the events preceding the charging of SLATTON in this matter; Officer Barnes was present and working together with Officer Hopkins at that time and was witness to Officer Hopkins’ use of force against SLATTON. Officer Barnes was therefore an employee involved in Type I use of force required to complete an EIS incident report per FCPD Manual § 1021.5.1. Officer Barnes was also involved with the shooting of a suspect by the FCPD in January of this year. *See* <http://kdvr.com/2017/01/21/police-shoot-burglary-suspect-in-ft-collins/>. Thus, there is a reasonable likelihood that material and information related to the use of force and other acts of aggression or violence by or otherwise involving Officer Barnes, exists.

SLATTON will limit his requested to material that goes to the issues of officer propensity for violence, officer propensity for misconduct and officer credibility. Given the assertions of excessive force, self-defense, failure to intervene, and untruthfulness, these issues are central to the SLATTON’s complaint evidence. SLATTON has laid out in the paragraphs above why the materials exist. They would assist his accountability and he has no other way to secure them. *See* ¶¶ 10.-13., *supra*. SLATTON is not asking for unfettered access to the FCPD’s files in the mere hope he might find something he could use for his defense. *See Neal* at *3 (“without having seen the personnel files, the Court cannot imagine how Defendant could be more specific”). Further, compliance with his request would not unnecessarily impose on the FCPD, or Officers Hopkins,

or Barnes, nor affect the ability of either the FCPD or the officers to perform their functions and duties, or otherwise be unreasonable or oppressive. *See Spykstra* at 664, 667; Crim. P. 17(c).

CERTIFICATE OF SERVICE

On 7/2/2019 a copy of the foregoing document was sent via electronic service/email to all opposing counsel at:

ratnerm@HallEvans.com (Mark Ratner)

Attorney for Brandon Barnes, the City of Fort Collins, Hutto

MKloster@ndm-law.com (Marni Kloster)

NPoppe@ndm-law.com (Nicholas Poppe)

Marni Nathan Kloster

Nicholas C. Poppe

Attorneys for Officer Todd Hopkins

NATHAN DUMM & MAYER P.C.

7900 E. Union Avenue, Suite 600 Denver, CO 80237-2776

Phone Number: (303) 691-3737

Facsimile: (303) 757-5106 MNathan@ndm-law.com

APPLICABLE LAW

(1.)

An SDT may be issued by counsel for the plaintiff commanding the person(s) to whom it is directed to “produce at that time and place such books, papers, documents, photographs or other objects as detailed therein. “

(2.)

- *People v. Spykstra* — When such a challenge is made, the plaintiff must demonstrate to the court that:
 - 1. there is a reasonable likelihood that the subpoenaed materials exist, by setting forth a specific factual basis;
 - 2. the materials are evidentiary and relevant;¹

- 3. the materials are not otherwise procurable reasonably in advance of trial by the exercise of due diligence;
- 4. the [plaintiff] cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and
- 5.. the application is made in good faith and is not intended as a general fishing expedition. *Spykstra* at 669.

FCPD Policy Manual

https://www.fcgov.com/police/pdf/policy_manual.pdf

From: Ratner, Mark S. ratnerm@HallEvans.com @
Subject: Slatton v. Hopkins et al.
Date: June 24, 2019 at 2:07 PM
To: Sean Slatton shslatton@gmail.com
Cc: Marni Kloster MKloster@ndm-law.com, Tamborello, Amber tamborelloa@hallevans.com

MR

Good Afternoon, Mr. Slatton.

I am in receipt of your request for records from the City of Fort Collins Police Department. First, as I believe we have discussed before, there is a procedure to the production of information, subsequent to the filing of a lawsuit. It is the City's position that submission of a request for records is an attempt to circumvent these Rules, and normally such a request would be met with a motion to quash. Second, the Rules also generally prohibit an attorney from contacting a represented party, about the subject matter which is at issue in a pending lawsuit. Here, this means you are prevented from contacting the City of Fort Collins (and the other Defendants), even though you are appearing pro se. This would include submission of a document request.

Nonetheless, in an effort to streamline the process a bit, we will provide to you a copy of the police report and the videos. They will be bates stamped and considered disclosures pursuant to Rule 26. Please be advised that any such disclosure is not intended to waive our position with respect to the stay of discovery.

Please let me know if there are any questions.

Best Regards,

- Mark

Mark S. Ratner | Special Counsel
ratnerm@HallEvans.com
Tel: 303-628-3337

Hall & Evans, LLC
1001 Seventeenth Street, Suite 300
Denver, CO 80202

H&E HALL & EVANS LLC
ATTORNEYS AT LAW

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Confidentiality Notice: This e-mail and any files transmitted with it are confidential and intended solely for the named addressee(s) of this message and may be subject to attorney-client privilege or work-product protection. If you are not the named addressee, unauthorized use, disclosure or distribution is prohibited; please notify the sender by reply email and destroy all copies of the original message. Our spam protection may prevent any reply e-mail from being delivered. If I have not responded to your email within 48 hours, please contact our office at 303/628-3300. This e-mail and any attachments are believed to be free of viruses and defects, but it is the responsibility of the recipient to ensure that it is virus-free. The sender is not responsible for any loss or damage arising from its use.



From: Sean Slatton shslatton@gmail.com
Subject: Re: Slatton v. Hopkins et al.
Date: June 25, 2019 at 3:33 PM
To: Mark(CopsLawyer) Ratner ratnerm@HallEvans.com
Cc: Marni(HOPKINSLAWYER) Kloster MKloster@ndm-law.com, Tamborello, Amber tamborelloa@hallevans.com

Hello Mark,

Thank you for for this, will you be sending these files digitally via email, or to my physical address?

As I said before, my mailing address is:

951 20TH ST #1227
DENVER, CO 80201

Thanks again, and hope you have a great day.

Sean Slatton
shslatton@gmail.com

On Jun 24, 2019, at 2:07 PM, Ratner, Mark S. <ratnerm@HallEvans.com> wrote

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- Mark

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ratnerm@HallEvans.com
Tel: 303-628-3337

Hall & Evans, LLC
1001 Seventeenth Street, Suite 300

From: Ratner, Mark S. ratnerm@HallEvans.com 
Subject: RE: Slatton v. Hopkins et al.
Date: June 25, 2019 at 4:26 PM
To: Sean Slatton shslatton@gmail.com
Cc: Marni(HOPKINSLAWYER) Kloster MKloster@ndm-law.com, Tamborello, Amber tamborelloa@hallevans.com

MR

Due to the size of the video files, I suspect my paralegal will send a Sharefile link.

- Mark

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ratnerm@HallEvans.com
Tel: 303-628-3337

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Denver, CO 80202

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[website](#) | [bio](#) | [LinkedIn](#) | [map](#)

From: Sean Slatton <shslatton@gmail.com>
Sent: Tuesday, June 25, 2019 3:34 PM
To: Ratner, Mark S. <ratnerm@HallEvans.com>
Cc: Marni(HOPKINSLAWYER) Kloster <MKloster@ndm-law.com>; Tamborello, Amber <tamborelloa@hallevans.com>
Subject: Re: Slatton v. Hopkins et al.

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DENVER, CO 80201

Thanks again, and hope you have a great day.

Sean Slatton
shslatton@gmail.com

On Jun 24, 2019, at 2:07 PM, Ratner, Mark S. <ratnerm@HallEvans.com> wrote:

From: Ratner, Mark S. ratnerm@HallEvans.com
Subject: RE: Slatton v. Hopkins et al.
Date: June 28, 2019 at 8:48 AM
To: Sean Slatton shslatton@gmail.com
Cc: Marni(HOPKINSLAWYER) Kloster MKloster@ndm-law.com, Tamborello, Amber tamborelloa@hallevans.com

MR

Good Morning, Sean.

With respect to your request for records, we can go about this one of two ways.

1. You can withdraw your request with the FCPD, and I will produce the records as indicated below.
2. You can maintain your request with the FCPD. Pursuant to their policy, you will be charged for the records.

Please let me know how you would like to proceed.

Best Regards,

- Mark

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DENVER, CO 80201

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From: Sean Slatton shslatton@gmail.com
Subject: Re: Slatton v. Hopkins et al.
Date: June 28, 2019 at 11:43 AM
To: Mark(CopsLawyer) Ratner ratnerm@HallEvans.com
Cc: Marni(HOPKINSLAWYER) Kloster MKloster@ndm-law.com, Tamborello, Amber tamborelloa@hallevans.com



Hello Mark,

How do you suppose I "withdraw my request"? The request was submitted by sending an email to FCPD, months ago. I can't unsend an email. I figured it was just being ignored. I am waiting for you to send me the records.

Thanks and hope you have a great weekend,

Sean Slatton
shslatton@gmail.com

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ratnerm@HallEvans.com
 Tel: 303-628-3337

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 1001 Seventeenth Street, Suite 300
 Denver, CO 80202

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Cc: Marni(HOPKINSLAWYER) Kloster <MKloster@ndm-law.com>; Tamborello, Amber <tamborelloa@hallevans.com>

From: Ratner, Mark S. ratnerm@HallEvans.com

Subject: RE: Slatton v. Hopkins et al.

Date: June 28, 2019 at 12:09 PM

To: Sean Slatton shslatton@gmail.com

Cc: Marni(HOPKINSLAWYER) Kloster MKloster@ndm-law.com, Tamborello, Amber tamborelloa@hallevans.com

MR

You can expressly indicate to me you are withdrawing your request, and I will make sure it gets to the FCPD.

If you do not withdraw, then I see no reason for me to provide the records. I was only doing this to streamline the issue a bit. Your call.

- Mark

Mark S. Ratner | Special Counsel
ratnerm@HallEvans.com
Tel: 303-628-3337

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Denver, CO 80202

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website | bio | LinkedIn | map

From: Sean Slatton <shslatton@gmail.com>

Sent: Friday, June 28, 2019 11:44 AM

To: Ratner, Mark S. <ratnerm@HallEvans.com>

Cc: Marni(HOPKINSLAWYER) Kloster <MKloster@ndm-law.com>; Tamborello, Amber <tamborelloa@hallevans.com>

Subject: Re: Slatton v. Hopkins et al.

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shslatton@gmail.com

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2. You can maintain your request with the FCPD. Pursuant to their policy, you will be charged for the records.

Please let me know how you would like to proceed



From: Sean Slatton shslatton@gmail.com
Subject: Re: Slatton v. Hopkins et al.
Date: June 28, 2019 at 12:14 PM
To: Mark(CopsLawyer) Ratner ratnerm@HallEvans.com
Cc: Marni(HOPKINSLAWYER) Kloster MKloster@ndm-law.com, Tamborello, Amber tamborelloa@hallevans.com

Sure. I hereby "withdraw" the FCPD records request so that you instead will send me the records to streamline the process. —Sean Slatton

On Jun 28, 2019, at 12 09 PM, Ratner, Mark S <ratnerm@HallEvans.com> wrote

You can expressly indicate to me you are withdrawing your request, and I will make sure it gets to the FCPD.

If you do not withdraw, then I see no reason for me to provide the records. I was only doing this to streamline the issue a bit. Your call.

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Cc: Marni(HOPKINSLAWYER) Kloster <MKloster@ndm-law.com>; Tamborello, Amber <tamborelloa@hallevans.com>
Subject: Re: Slatton v. Hopkins et al.

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shslatton@gmail.com

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1. You can withdraw your request with the FCPD, and I will produce the records as indicated below.

From: Police Records Request PoliceRecordsRequest@fcgov.com 
Subject: RE: Records Request 16-20128
Date: June 27, 2019 at 5:19 PM
To: Sean Slatton shslatton@gmail.com

PR

Sean,

Please navigate to www.FCPSRecordsPay.com to pay the estimated invoice of \$119.00 using Invoice Number 0128-58289. If actual review and redaction time varies, we will invoice you for the difference. Upon receipt of payment, I will begin work on those items and notify you when they are complete. These items will be placed on CD/DVD/Blu Ray, and will be mailed out when complete.

BWC, Surveillance, Photos, x 3 hours Review/Redaction- \$90.00
Certified Case- \$21.00
Background Check on Sean Slatton-\$8.00

Thank you,

Sarah Cardenas
Monday-Thursday
8 a.m. to 6 p.m.

Email: scardenas@fcgov.com
Records Unit: 970-221-6540
Desk: 970-416-2278

Mailing Address:
P.O. Box 580
Fort Collins, Colorado 80522



2221 S. Timberline Rd
Fort Collins, Colorado 80525

The following e-mail and attachments (if any) contain information that is CONFIDENTIAL, is for LAW ENFORCEMENT USE ONLY and may constitute NON-PUBLIC INFORMATION. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please contact the sender at (970) 221-6540. UNAUTHORIZED USE, DISSEMINATION, DISTRIBUTION, OR REPRODUCTION OF THIS MESSAGE AND ATTACHMENTS (IF ANY) IS STRICTLY PROHIBITED AND MAY BE UNLAWFUL.

From: Sean Slatton <shslatton@gmail.com>
Sent: Thursday, May 23, 2019 2:42 PM
To: Police Records Request <PoliceRecordsRequest@fcgov.com>
Subject: Records Request

Sean Slatton
 720-926-2890
 shslatton@gmail.com

I would like records released via email.

If records (DVD) needs to be sent via mail, my mailing address is:

951 20TH ST #1227
 Denver, CO 80201



Fort Collins Police Services
 PO Box 530
 2221 S. Timberline Rd
 Fort Collins, CO 80521
 Phone: (970)221-6540 option 1
 Email: policerecordrequest@fcps.com

Request for Criminal Justice Records

Date of Request: 5/23/2019

Name of Requestor: Sean Slatton Phone #: 720-926-2890

Address: 951 20TH ST #1227 DENVER, CO 80201 Email: shslatton@gmail.com

***According to Colorado Revised Statute 24-72-305.3, records of official action, criminal justice records, or the names, addresses, telephone numbers and other information in such records shall not be used by any person for the purpose of soliciting business for pecuniary gain. A violation of this section subjects you to misdemeanor charges and upon conviction, a fine of \$100 and/or 90 days in jail. By signing below, I affirm that I will not use the records, or any portion of the records requested for the purpose of soliciting business for pecuniary gain.

Signature Required: *Sean Slatton* Date: 5/23/2019

Complete Appropriate Section for Records Requested: In accordance with Colorado Revised Statutes, 19-1-301 through 304, concerning Children's Code Records and Information Act and 24-72-201 through 206, concerning Inspection, Copying and Photographing Public Records, and 24-72-301 through 24-72-309 concerning Criminal Justice Records, FCPS will provide, for public inspection, records in the custody of the agency which are legally allowed within the provision of the above referenced statutes. FCPS is authorizing dissemination ONLY to the below requestor in accordance with C.R.S. 24-72-304, secondary dissemination may violate this statute and will not be the responsibility of the agency. To request a copy of a record you MUST complete this form, which will be retained in the file of the requested record. All requests are processed as soon as possible, but may take up to 7 working days. Such period may be extended if extenuating circumstances exist such as the request is for an inactive file; an unusually large request or the records need to be reviewed by administration. Your request may require approval through the District Attorney's Office or City Attorney's Office. Should your request be denied, you may request a written explanation as to why. The fee shall be as detailed below, unless actual costs exceed that amount, in which case actual costs may be charged. Actual costs include staff time. Any fees charged in this policy shall include the cost of redacting documents to excise privileged material. Fees may be waived or reduced with prior approval of the Chief of Police.

Case/Incident # 16M3395 CO352016M 003395 Incident Date/Time: 12/3/2016

Incident Location or Type of Incident: Arrest

Person Involved: Name: Sean Slatton DOB: 10/28/1995

Please Mark Type of Records Requested: Payment types accepted: Cash, check or credit card

Case Reports, Calls for Service (CAD report), Other Records: Copy cost .25 per page. Plus: Research, retrieval, redaction, copy fee is \$30 per hour or \$8.00 minimum for one quarter hour. A non-refundable deposit is required at the time of request based on an estimation of copy cost and time required.

Location/address search (Exact Address): _____ Date Range: _____

911/Dispatch Recordings: Research, retrieval, redaction, copy fee is \$30 per hour or \$25 minimum per CD/DVD (payment required in advance to making copies).
 Description of item(s) Requested: _____

CD/DVD - Evidence Digital Media, Photos, Videos: Research, retrieval, redaction, creation fee is \$30 per hour or \$25 minimum per CD/DVD (payment required in advance to making copies).
 Description of item(s) Requested: All video evidence, i.e. Body camera footage, footage from event center cameras etc. Everything.

Certification Letter: \$5 plus copy of report

Background Check - Search consists of arrests, citations or reports made with FCPS only. Requestor must have full name and date of birth of individual being searched. Fee is \$8.00 minimum for one quarter hour plus .25 per page.

Other Records: _____

****Records not picked up within 21 days of requestor being notified, will be destroyed.

For Official Use Only: Estimated Cost: \$ _____ Total Cost: \$ _____ Deposit Paid: \$ _____ Amount Due on Release: \$ _____

ID Verified	<input type="checkbox"/> Yes	<input type="checkbox"/> No	IM.#	_____
Records/Items Released:	_____			
Reason for Denial or Not Charged:	_____			
Prepared by:	Released by:	Authorized by:	Date Requestor Notified:	Date Released:
(FCC# Initials)	(FCC# Initials)	(FCC# Initials)	_____	_____
Revised 02/07/17				Effective 03/06/17