

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1:15-CV-01046
)	
Plaintiff,)	JUDGE SOLOMON OLIVER, JR.
vs.)	
)	<u>CITY OF CLEVELAND’S RESPONSE</u>
CITY OF CLEVELAND,)	<u>TO THE “NOTICE SUBMITTING</u>
)	<u>MONITOR’S RECOMMENDATION</u>
Defendant.)	<u>REGARDING THE UNITED STATES</u>
)	<u>OF AMERICA’S MOTION TO</u>
)	<u>ENFORCE”</u>

On August 6, 2021 the Monitor filed a “Notice Submitting Monitor’s Recommendation Regarding the United States of America’s Motion To Enforce.” (Dkt. 374, “Recommendation”). The Monitor’s Notice followed the filing of (1) the “Motion to Enforce the Cleveland Community Police Commission’s [“CPC”] Right to Access Information” filed by the United States (Dkt. 365, “Motion”) and (2) the City of Cleveland’s Response to the Motion of the United States. (Dkt. 370, “Response”). For the reasons addressed in its Response to the United States, the City opposes the Monitor’s recommendation that the Court issue the Order proposed by the United States with its Motion. Before entering any Order, the City respectfully requests that the Court schedule a status conference with the Parties and the Monitor to address the issues presented regarding the scope of CPC information and document requests under the Consent Decree.

The Consent Decree establishes the CPC and defines its role. The City notes that the Monitor has expressed a belief that “guidance from the Court to the City is essential –

inclusive of CDP and CPC – with some rules of engagement.” (Recommendation, at p. 2). The City believes a status conference would assist the Court in developing appropriate guidance regarding the scope and authority provided by Paragraph 19 of the Consent Decree with respect to information requests:

19. The City will provide access to all information requested by the Commission **related to its mandate, authority, and duties** unless it is law enforcement sensitive, legally restricted, or would disclose a personnel action. (emphasis added).

The City has objected where it believes the CPC has requested either the production of documents or information requiring substantial work to complete from the CDP where a request is outside the Commission’s “mandate, authority, and duties.”

An example of an ongoing City objection is to the CPC request that CDP produce all disciplinary letters going back to 2014. Notwithstanding that an agreed compromise was believed to have been reached that provided discipline letters to the CPC from 2019 going forward, the United States makes clear with its Motion that the CPC continues to argue for the production of voluminous disciplinary letters for all officers that were issued during the 2014 – 2018 period. (See Motion at p. 5, FN2). While the Order suggested by the United States speaks in terms of disciplinary records being provided to the CPC for the period 2019 going forward, the City perceives that a continuing conflict exists.

The Consent Decree is a forward looking document and the CPC does not have a mandate relating to the review of discipline records addressing “personnel actions” going back seven years. Discipline letters provided to the CPC for 2019 and going forward satisfy the CPC’s expressed rationale for seeking the records, reviewing whether CDP is applying “aggravating and mitigating circumstances when sanctioning officers.” (Motion,

FN2). Moreover, as was previously noted, the Monitor agreed to provide the CPC with discipline letters issued in 2021 and after going forward. Such compromise preserved the City's fundamental objection to the production of "personnel action" records, while providing a method that allows the CPC to review discipline letters issued from 2019 going forward.

The City believes it has the right as a Party to the Consent Decree to question burdensome requests for information that appear to be outside the scope of the CPC's "mandate, authority, and duties." As noted above, the City requests this Court schedule a status conference to address concerns regarding the terms of the Consent Decree in this matter.

Respectfully submitted,

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Director of Law

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CERTIFICATE OF SERVICE

The undersigned certifies that the City of Cleveland's Response to the Notice Submitting Monitor's Recommendation. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. Pursuant to the requirements of the Consent Decree the Monitor Team has been delivered a copy of this filing.

/s/ Gary S. Singletary
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