

DATE: April 3, 2023

TO: MARK GRIFFIN, LAW DIRECTOR  
KARRIE HOWARD, DIRECTOR OF PUBLIC SAFETY  
DORNAT A. DRUMMOND, POLICE CHIEF  
DOROTHY TODD, DEPUTY POLICE CHIEF  
CHRISTOPHER VILAND, SUPERINTENDENT OF INTERNAL AFFAIRS  
PATRICIA FITZGERALD, ASSISTANT UNITED STATES ATTORNEY  
TIMOTHY MYGATT, DEPUTY CHIEF, CRT  
JONAS GEISSLER, CRT  
ACRIVI COROMELAS, CRT  
SARA DECARO, CRT  
MICHELLE HEYER, AUSA  
MICHAEL EVANOVICH, USAO CIVIL RIGHTS INVESTIGATOR

FROM: AYESHA HARDAWAY, INTERIM MONITOR

RE: The City of Cleveland's Supplemental Response: "Response to Monitoring Team: Gannon-Kilnapp Incident & the Current State of the System of Accountability"

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## **INTRODUCTION**

The Monitoring Team has had the opportunity to review the above-referenced supplemental response submitted by the City to the Monitoring Team on March 1, 2023.

As previously noted, the incident took place on July 20, 2020, wherein a probationary officer accidentally shot his Field Training Officer. The Division reviewed the incident at a June 3, 2021 Force Review Board Meeting. After the Monitoring Team expressed concerns regarding the FIT investigation and FRB findings and recommendations relating to the incident, the Division assigned Internal Affairs Superintendent Chris Viland to review the investigation and administrative review of the incident.

Superintendent Viland identified numerous issues and concerns regarding the handling of the case in a September 19, 2022 memorandum. The Monitoring Team followed up with additional issues and concerns in a draft memorandum dated November 21, 2022. The City initially responded to the Monitoring Team's memorandum and recommendations with a one-page response, dated December 16, 2022, requesting a "paradigmatic shift to view not only this case, but all future after action type reviews."

On January 5, 2023, the Monitoring Team requested that the City provide evidence that the recommendations made by Superintendent Viland and the Monitoring Team, along with the identified accountability deficiencies therein, had been addressed through CDP's governance structure in its policies, training, and related instruction to its members. The City initially responded with a short memo, dated January 31, 2023, that failed to specifically respond the Monitoring Team's request. The City ultimately responded on March 1, 2023 with a document

entitled: “Response to Monitoring Team: Gannon-Kilnapp Incident & the Current State of the System of Accountability,” which is the subject of this memo. Specifically, the City has represented this memo as providing an “explanation regarding how the Gannon-Kilnapp incident has led the City to ensure that its system of governance is more closely aligned with elements of accountability, transparency, and accuracy.”

The Monitoring Team continues to evaluate the City’s response to this critical incident because it implicates and impacts many issues of significant importance to the Consent Decree and the overall system of accountability.

#### **ISSUES & CONCERNS REGARDING THE CITY’S RESPONSE**

1. Although the City represents that the CDP has learned from the incident, the most recent submission of the Division’s FRB annual training did not include any reference to lessons learned from the FRB’s poor adjudication of this case. Specifically, although the City states in page 3 of its response that: “The City recognizes the unsupported finding in its initial use of force reporting and has taken measures as indicated in that assessment to increase analysis standards in response to this incident specific failure,” there is no evidence to indicate how this has been done with respect to the functioning of the FRB. The Monitoring Team recommends that the CDP conduct in-person FRB annual training that includes this incident as a scenario, to ensure FRB members understand what went wrong and are given the tools needed to ensure no similar FRB failures in the future.
2. Although the City repeatedly states that retraining was identified as necessary for Officer Gannon, no documentation has ever been provided to show that any re-training actually occurred. In fact, although the City notes that “[t]he Board re-affirmed retraining for officers involved in this incident,” it then goes on to state: “the involved officer left the Division and was not subject to internal administrative discipline once he resigned.” What the City failed to note was that Officer Gannon was subsequently rehired and was reassigned to Patrol. The City fails to note that he was rehired and has provided no documentation that re-training was provided prior to him being reassigned out to Patrol. It is important to note that IA Pro indicates that Officer Gannon is currently assigned to the District 3 Violent Crime Reduction Team (VCRT). Further, the City has not explained to the Monitoring Team the rationale for rehiring Officer Gannon after he performed poorly during his probationary period in the incident under review.
3. In pp. 9-12 of its response, the City represents extensive training and process changes (including updates to IA template reports and checklists and updates to the IA Pro database) at Internal Affairs that have been implemented since August 2022.<sup>1</sup> Up until this response, the City had not informed the Monitoring Team of the implementation of any of these changes, nor has the City submitted the training curriculum or process changes referenced in the City’s response to the Monitoring Team or the DOJ for review and comment. The Monitoring Team questions how these changes could have been implemented without

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<sup>1</sup> The City includes documentation of IA training on 3/8/23, at p. 42; updated IA report templates (undated), at pp. 43-54, and other undated checklist & IA Pro documentation at pp. 54-60.

notice to, or approval by, the DOJ and the Monitoring Team given that the City recognized in its memorandum (at p. 2) that: "... the accountability and governance structure that is in place was in part created and implemented with the assistance of the DOJ and the MT and authorized by the Court. CDP respects this input and authorization and also understands that the CDP is not free to change/amend/update/implement any policies or procedures without additional required and official input."

4. The City identifies in page 13 of its response, a Search and Seizure training that is represented to have "contained elements from this type of incident." The Monitoring Team calls to the City's attention that this training does not, in fact, appear to be related to Gannon-Kilnapp incident given that it appears to have been de-escalation training with a person with a knife threatening self-harm, rather than training relating to an officer faced with a lethal threat who needs to react safely and tactically.<sup>2</sup>
5. The City includes in its response a copy of DN 2.01.03 (adopted April 27, 2020). Without additional information or explanation, the Monitoring Team considers this response to not be applicable since it was issued *before* the incident at issue took place on July 20, 2020.<sup>3</sup>

### CONCLUSION

Ultimately, the Monitoring Team is concerned that the City appears to be failing to recognize that its accountability mechanisms are related and intended to create a system of checks and balances. Internal Affairs, the Force Investigation Team, the Force Review Board, training and hiring have all been identified as areas where improvements can be made to reduce the risk of this type of incident reoccurring. Until the Division and the City recognize and act on these issues robustly and holistically, significant concerns remain about the whether the accountability mechanisms created by the Consent Decree have been successfully implemented.

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<sup>2</sup> The City includes documentation of this training in pages 21-40 of its response.

<sup>3</sup> This Divisional Notice is attached in pp. 14-20 of the City's response.