

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE OHIO ATTORNEY GENERAL  
AND  
CITY OF COLUMBUS, DIVISION OF POLICE**

WHEREAS, it is the desire of the City of Columbus Division of Police ("LEA") to assure that an independent, professional, unbiased and prompt investigation is performed after sworn personnel of the LEA discharge a firearm that results in physical harm to any person, are involved in a use of force resulting in life-threatening injury or death that occurs as a result of persons being taken into custody, while in custody, or while being detained by sworn personnel of the LEA (hereinafter collectively referred to as a "Critical Incident"). Critical incident does not include the shooting of an animal, training accidents, vehicle accidents, discharge of a firearm where no injuries occur, or incidents occurring at any correctional or detention facility; and

WHEREAS, the Ohio Attorney General, Bureau of Criminal Investigation ("BCI"), in certain circumstances, provides such investigative services to law enforcement agencies; and

WHEREAS, to ensure that an independent, professional, unbiased and prompt investigation is always performed, the LEA desires that BCI perform investigations of Critical Incidents for the LEA involving their sworn personnel who are duly authorized to carry a firearm; and

WHEREAS, it is thus the desire of the LEA and BCI to set forth the terms under which BCI will perform such an investigation for the LEA; and

NOW, THEREFORE, be it agreed by the parties hereto, each in consideration of the mutual promises and obligations set forth herein, that:

**I. PURPOSE**

The LEA seeks to increase the legitimacy of Critical Incident investigations with the public through impartial, unbiased, timely, and transparent investigations performed by BCI. Accordingly, the LEA desires that BCI perform investigations of Critical Incidents.

**II. AUTHORITY**

Per Ohio Revised Code (R.C.) 109.54(A), BCI may investigate any criminal activity in this state that is of statewide or intercounty concern when requested by local authorities and may aid federal authorities. R.C. 109.54 *et seq.*

- A. The superintendent of BCI has the authority to recommend cooperative policies for the coordination of the law enforcement work and crime prevention activities pursuant to R.C.109.55.

**III. CONSIDERATION FOR SERVICES**

- A. LEA shall allocate grant funding to BCI to off-set the costs of assuming the responsibilities and providing investigatory services consistent with the purposes of this agreement.
- B. The following grant funding schedule shall apply to this Agreement:

- a. For the initial term, which spans from October 28, 2024, through March 31, 2025, LEA shall remit \$1.00 to BCI.
  - b. For the first optional renewal, which spans from April 1, 2025, to March 31, 2026, LEA shall remit \$350,000.00 to BCI on or before April 1, 2025.
  - c. For the second optional renewal, which spans from April 1, 2026, to March 31, 2027, LEA shall remit \$495,000.00 to BCI on or before April 1, 2026.
- C. All grant awards are subject to funds being appropriated and authorized by the Columbus City Council. Grant awards are not connected to any incident, investigation or any set number of incidents and do not impart any form of authority over any decision related to an investigation.
- D. Should the Agreement be terminated any time after April 1, 2025, BCI shall issue a prorated refund to LEA for that term calculated as follows: \$958.90 per day (i.e. \$350,000 divided by 365 days) multiplied by the number of days left in the contract term. Any refund owed under this section shall be made within ninety (90) days after the Agreement is terminated and is subject to funds being appropriated.

#### IV. CITY OF COLUMBUS DIVISION OF POLICE RESPONSIBILITIES

Upon the occurrence of a Critical Incident as described in this Memorandum of Understanding (the "MOU") the LEA may:

- A. Immediately submit an official request for investigation of the Critical Incident investigation to BCI from the LEA Chief of Police, or his/her designee by calling BCI's communications center, at 855-BCI-OHIO (855-224-6446). The LEA may communicate to third parties that it has submitted a request to BCI for an investigation, but unless and until given permission by BCI, no LEA will communicate to any third party that BCI will be performing an investigation.
- B. Provide the following information:
  - 1) An overview of the incident, including the number of employees involved and witnesses.
  - 2) An agency contact name and that contact's direct phone number. The contact person shall be an individual or supervisor uninvolved in the actual incident and shall perform this function until an Investigations Supervisor from the LEA is assigned to the Critical Incident.
  - 3) The number and location of scenes; GPS-recognizable addresses are preferred.
  - 4) The current location and status of the individuals involved, whether those involved are deceased, at the hospital, in custody or at large.
  - 5) Environmental details, i.e., indoors or outdoors, any hazards or special circumstances such as weather conditions that could alter evidence, multiple scenes or a large volume of evidence.
- C. Provide the following assistance:
  - 1) Ensure that the safety and well-being of the public, employees, subjects and investigators are maintained. Summon medical assistance for the injured.

- 2) In conjunction with Paragraph C. 13 below, ensure that any and all involved LEA personnel remain accessible until BCI investigators release them.
- 3) Preserve the crime scene. Establish and maintain an adequate perimeter with physical barriers (crime scene tape, for example) and preserve all evidence without disturbing or moving it. Remove nonessential personnel from the scene.
- 4) Maintain a crime scene access-control log. Document the people who were within the scene during or after the incident, including all police, fire and EMS personnel.
- 5) Provide personnel (uninvolved in the incident) to control traffic, crowds and the scene.
- 6) If necessary, notify the county coroner.
- 7) Notify the county prosecutor.
- 8) If necessary, make notifications to next of kin.
- 9) If necessary, provide uniformed employees to accompany BCI agents when conducting interviews related to the critical incident.
- 10) The LEA agrees not to conduct any *Garrity* interviews of involved employees until notified by BCI that doing so would not hamper the criminal investigation.
- 11) Provide a briefing to BCI personnel that omits any *Garrity*-derived statements or evidence.
- 12) To the extent possible, ensure all witnesses and/or the involved employee(s) are kept apart (though not necessarily alone).
- 13) Transport the involved employee(s) to a single, safe location (such as a hospital or police facility) to await contact by BCI.
  - a) Direct the employee(s) to remain clothed as the employee was at the time of the incident until the employee is photographed.
  - b) Direct the employee to keep the employee's firearm holstered until it is inspected/collected by BCI.
  - c) Assure that all involved employees remain separated from one another.
- 14) Make involved employees reasonably available to BCI investigators for interviews when requested.
- 15) Determine whether any photographs or recordings (including photos or videos from civilian and employee cellphones) were taken prior to BCI's arrival and, if so, obtain and preserve them.
  - a) Determine whether any additional physical evidence exists outside of the scene and, if so, identify its location and take steps to assure the evidence is maintained until BCI arrives.
  - b) Should exigent circumstances arise which could lead to the potential destruction of evidence, assist BCI by collecting and preserving said evidence.
- 16) Identify all witnesses and request that they remain available for interviews with BCI, and if need be, detain such witnesses until BCI can attempt to obtain a statement from said witnesses. The LEA will not question the involved employee(s) regarding the incident except as directed in the "Involved-Employee Statements" section of the BCI Law Enforcement Guide to Requesting BCI Investigative Services for an Officer-Involved Critical Incident ("BCI Booklet").
- 17) If requested by BCI, and if available for use, bring an LEA mobile command unit to the scene for use by BCI.
- 18) Take responsibility for filling out the Uniform Crime Reporting (UCR) or Ohio Incident Based Reporting System (OIBRS) information for the incident as well as any additional optional or mandated statistical incident reports.

- 19) Assign an Investigations Supervisor to serve as a liaison for the investigation in order to facilitate communication.

**D.** Provide the following unredacted records:

- 1) Audio and video recordings, including dashcam, bodycam, surveillance footage, etc.
- 2) Incident reports, including any witness statements or use-of-force reports (excluding any *Garrity*- derived reports).
- 3) Dispatch logs, radio logs, CAD reports.
- 4) Audio recordings from 911 or other phone calls related to the incident.
- 5) Photographs, videos (including personal cellphone videos) or other recordings taken by employees, witnesses or anyone else.
- 6) Radio recordings for the time frame in question.
- 7) Crime scene log (see BCI Booklet, Page 4 for a sample log).
- 8) EMS run reports and a list of all first responders.
- 9) The involved employee's personnel file (including disciplinary or internal affairs records for previous incidents) but excluding copies of any internal affairs investigation or *Garrity* statements related to the current incident under investigation.
- 10) The involved employee's training records.
- 11) Ohio Peace Employee Training Commission (OPOTC) certification records for any involved employee.
- 12) Firearm qualification records for the involved employee(s).
- 13) Copy of agency's use-of-force policy.
- 14) Mobile data terminal entries and instant messages from the vehicle of the involved employee(s).
- 15) Police reports/recordings of any previous law enforcement encounters with the subject(s).
- 16) Any other pertinent records or recordings that would help provide a complete and accurate understanding of the incident under investigation.

**V. BCI RESPONSIBILITIES**

Upon receiving a request from LEA as described herein, BCI may:

- A.** In its discretion under R.C. 109.54(A), BCI will decide whether to accept the LEA request to perform a critical incident investigation. Such BCI determination may include communications with LEA and other individuals as deemed necessary by BCI.
- B.** Communicate the decision reached in Section V.A. to the LEA.
- C.** Contact a BCI special agent supervisor, who will contact the LEA's point of contact to gather further details to assist in the dispatching of appropriate personnel. The special agent supervisor shall provide the LEA an estimated time of arrival. A team of BCI special agents from multiple disciplines, to include agents from BCI's Crime Scene Unit and Special Investigations Unit, as determined by the situation, shall respond. The time of day and the agents' physical proximity to the incident location are the primary factors affecting response time. BCI will make every effort to ensure the agents assigned will be free of any perceived conflict of interest regarding the investigation.

- D. Conduct the investigation as a criminal investigation, not internal or administrative, hereinafter called "the investigation." One Investigations Supervisor from the LEA shall be permitted to accompany BCI special agents during most activities to the extent that his/her participation does not hamper the investigation, that independence is maintained, and that *Garrity* information does not impact the criminal investigation. Regardless, no employee of the LEA will be permitted to be present during interviews with the involved employee(s).
- E. Coordinate and lead the investigation. Allowing the presence of a representative from the LEA is a courtesy that can be revoked. The investigation takes precedence over any internal or administrative investigation. BCI does and will work independently of the LEA's policies, procedures and chain of command in the investigation. In order to preserve BCI's independence, professionalism, lack of bias and promptness, BCI is not and will not be bound by any collective bargaining agreement between the LEA and the union(s) representing their sworn personnel.
- F. Collect all evidence secured by the LEA and maintain all evidence gathered during the course of the investigation at a facility controlled by BCI.
- G. If, during the course of the investigation, BCI learns of any issues of an exigent/emergent nature which could pose a danger to police or public safety, BCI shall inform the LEA Chief of Police of their concerns. This would include provision to the Chief of Police of a copy of any additional video footage of the incident discovered during the course of the investigation. Additional video footage will be provided only after the BCI investigation has been completed.
- H. Prior to releasing the scene, but at the conclusion of the on-scene investigation, BCI will notify the LEA and allow the assigned Investigations Supervisor and the LEA Chief of Police or the designee of the Chief to conduct a walk-through of the scene.
- I. After the investigation is completed, BCI will provide the completed investigative report to the appropriate prosecutor's office and, with the prosecutor's approval, to the LEA.
- J. Make no determination or provide any opinion on whether a use of force was legally justified.
- K. Investigate potentially related crimes only when the investigation into the employee-involved critical incident leads to evidence of other potential criminal conduct by the employee(s) involved in the Critical Incident, or upon request by the LEA, and with approval by BCI, when the employee involved Critical Incident and related crimes are inextricably intertwined with the employee involved Critical Incident, the LEA upon request from BCI will assist with the investigation of these potential related crimes. Otherwise, the LEA is responsible for any investigation, filing of charges and prosecution of other potential crimes leading to, contemporaneous with or subsequent to the employee-involved Critical Incident.
- L. BCI, with the assistance of the LEA, will coordinate with the union(s) representing LEA's sworn officers to arrange the formal interview of any involved employee(s). As part of the interview process, BCI at a minimum will provide the employee with an admonition (Criminal Investigation Notification – BCI-INVEST-34) informing the employee that the investigation

is criminal, not internal; that the employee's participation in the interview is voluntary; that the employee has the right to refuse to answer any questions; and that, the employee is not compelled to cooperate. At the investigating agent's discretion, the *Miranda* warning may also be read to involved individuals. The interview shall be recorded, and the employee(s) shall be afforded his/her right to legal counsel should the employee express such desire verbally or in writing.

#### **VI. EVIDENCE**

All evidence pertinent to the Critical Incident investigation shall generally be stored under the control of the BCI's property room in accordance with established evidence collection, preservation, and storage procedures. LEA shall be responsible for storage, transportation, and handling costs of extraordinary items such as, but not limited to, vehicles and hazardous materials. No evidence pertinent to the Critical Incident investigation shall be released or destroyed without the consent of the prosecutor charged with reviewing or prosecuting the case. Once the criminal review or prosecution is complete, all property will be returned to the LEA for proper storage, return, or disposal.

#### **VII. CUSTODIAN OF RECORDS**

BCI shall be designated as the custodian for all records for Critical Incident investigations. All original reports, statements, and other documentation shall be filed and maintained by BCI. Investigative reports authored by LEA shall be written in accordance with BCI's report writing standards.

#### **VIII. CONFIDENTIALITY**

To maintain the integrity of the investigations, LEA shall not discuss or disclose any information or material outside its obligations under this MOU without the prior written consent of BCI. Any information gathered and/or report(s) generated by the LEA during the course of its investigations that are maintained by the BCI, LEA, a prosecutor, the Attorney General, or a special prosecutor, except those designated as public records under applicable law, is deemed a confidential law enforcement investigatory record for purposes of Ohio Revised Code Section 149.43. This Confidentiality Section does not, however, affect or limit the right of discovery granted under the Ohio Revised Code, the Rules of Criminal Procedure, and/or the Rules of Juvenile Procedure.

#### **IX. CASE ASSIGNMENTS**

The BCI supervisor with designated oversight for operational and investigative matters will be responsible for opening, monitoring, directing, and closing Critical Incident investigations in accordance with existing BCI policy and the applicable Ohio Attorney General guidelines. Assignments of cases to personnel will be based on, but not limited to, experience, training and performance, in addition to the discretion of the BCI supervisor with designated oversight for operational and investigative matters. For BCI administrative purposes, Critical Incident investigations will be entered into the relevant BCI computer or case management system.

## **X. CONFLICT OF INTEREST**

It is of vital importance that LEA and BCI maintain the integrity of all Critical Incident investigations by only including professional, independent, unbiased, and conflict-free investigators on each investigation. While it is understood that conflicts will periodically arise, it is imperative that any conflicted personnel be excluded from any significant investigative activity or privileged information regarding the conflicted matter. As the manner in which any conflicts or perceived conflicts are addressed can have serious implications for the Critical Incident investigations, the recusal of a personnel shall be documented by the LEA and/or BCI.

## **XI. MISCELLANEOUS**

- A. **Liability.** Each Party to this MOU shall be responsible for its own acts and omissions and those of its officers, employees and agents. In no event shall any Party be liable to any other Party for indirect, consequential, incidental, special, or punitive damages, or lost profits.
- B. **Media.** Media releases regarding any Critical Incident investigations will be coordinated through the Ohio Attorney General's Office public information officer. In addition to the prohibition in Section IV.A. above, the LEA will refrain from conducting their own releases of information. This MOU does not preclude the right of LEA to conduct their own media releases, however, it is requested that BCI be consulted prior to any substantive release of information that may hamper the integrity of the investigation.
- C. **Entire Agreement.** This MOU constitutes the entire understanding between the parties. Neither party may further modify or amend the terms of this MOU except by a written agreement signed by both parties. Neither this MOU, nor any rights, duties, or obligations described herein, shall be assigned by either party hereto without the prior written consent of the other party. This MOU shall be construed under the laws of the State of Ohio. No modification, amendment, alteration, addition or waiver of any section or condition of this MOU shall be effective or binding unless it is in writing and signed by an authorized representative of the LEA and BCI.
- D. **Expenses.** LEA shall be responsible for any necessary and actual expenses incurred by their respective employee(s), including, but not limited to wages, overtime, insurance of every type and description, expenses incurred for food, lodging, or travel, and any other necessary and actual employee associated expenses during the course of Critical Incident investigations. Except as expressly provided herein, no Party shall have the right to bind or obligate another Party in any manner without the other Party's prior written consent.
- E. **Headings.** The headings in this MOU have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this MOU.
- F. **Term and Termination.** This MOU is made effective as of October 28, 2024 and shall continue in effect through March 31, 2025. This MOU may be renewed by mutual, written agreement of the parties for up to two additional terms of up to one year each term. Such renewals shall expire no later than March 31, 2027. Either party may terminate this MOU upon sixty (60) days prior written notice to the other party for any reason whatsoever.

G. Applicable Law. This MOU is made and entered into in the State of Ohio and shall be governed and construed in accordance with the laws of Ohio. This MOU is not intended to confer any rights, privileges, or benefits upon individuals or entities in excess of those conferred and permitted by law.

*(signature page follows)*

IN WITNESS WHEREOF, the parties have executed this MOU as of the latest day and year written below.

AGREED:

**CITY OF COLUMBUS DIVISION OF POLICE**



Name: Kate Pishotti

Title: Director of Public Safety

Date: 11/28/24

Approved as to form:



Name: Zach Klein, Columbus City Attorney

Date: 11/21/2024

**OHIO ATTORNEY GENERAL**



Name: Bruce Pijanowski

Title: Superintendent, BCI

Date: November 26, 2024

Approved as to form:



Kari Hertel, Principal Assistant Attorney General

Date: 10/25/2024