

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF GASTON

SUPERIOR COURT DIVISION

FILED

2015 AUG 28 P 12: 02

CIVIL ACTION # 15 CVS 3203

CLERK OF SUPERIOR COURT, C.S.C.

DAN DEITZ, ELLEN DEITZ TUCKER )  
Plaintiffs, )

v. )

COMPLAINT

CITY OF BELMONT, BARRY WEBB in his )  
Official capacity as City Manager for the City of )  
Belmont )  
Defendants. )

**INTRODUCTION**

1. This action is brought pursuant to the Uniform Declaratory Judgment Act, N.C. Gen. Stat. § 1-253, and North Carolina’s Public Records Act, N.C. Gen. Stat. §§ 132, to challenge the Defendants’ denial of the Plaintiffs’ public records request.
2. This action arises from the Plaintiffs’ public records request dated July 8, 2015 and the subsequent communications between the parties.
3. Plaintiffs sought access to an investigative report (hereinafter the “ISS Report”) compiled for the City of Belmont, at taxpayer expense, by the U.S. ISS Agency, a private investigative services agency based in Huntersville, NC.
4. Defendants issued a blanket denial of Plaintiffs’ public records request on July 15, 2015, stating that any documents responsive to Plaintiffs’ request are personnel records made confidential by N.C. Gen. Stat. § 160A-168, and as such, are not public records.
5. N.C. Gen. Stat. § 160A-168 provides that certain employee records are private and therefore not public records subject to inspection under N.C. Gen. Stat. § 132-6.

6. N.C. Gen. Stat. § 160A-168 sets out a two-part test, both prongs of which must be satisfied to qualify a record as a city personnel record. That test defines city personnel records as those records (1) gathered by the city (2) with respect to a particular employee. Plaintiffs allege that the ISS Report meets neither of these requirements, and is therefore not a city personnel record but instead a public record subject to disclosure under N.C. Gen. Stat. § 132-6 for two independent reasons.
7. Plaintiffs ask this Court for declarations (1) that the ISS Report was not “gathered by the city” for purposes of N.C. Gen. Stat. § 160A-168, and is therefore a public record subject to disclosure and (2) that the ISS Report is not in its entirety a document with respect to individual employees of the City of Belmont, and therefore any portions not commenting on individual employees are subject to disclosure.
8. Plaintiffs further ask this Court to compel production of the ISS Report pursuant to N.C. Gen. Stat. § 132-9(a), based on the requested declarations in Paragraph 7, *supra*.
9. Plaintiffs further ask this Court to order Defendants to pay Plaintiffs’ reasonable attorneys’ fees in accordance with N.C. Gen. Stat. § 132-9(c).

#### **PARTIES**

10. The allegations of Paragraphs 1-9 are incorporated herein by reference.
11. Plaintiff Dan Deitz (hereinafter “Plaintiff Deitz”) is a natural person residing in North Carolina. He requested the relevant records by and through counsel on July 8, 2015, and had that request denied in full by Defendants.
12. Plaintiff Ellen Deitz Tucker (hereinafter “Plaintiff Tucker”) is a natural person residing in California. She requested the relevant records by and through counsel on July 8, 2015, and had that request denied in full by Defendants.

13. Defendant Barry Webb is the City Manager of the City of Belmont. Pursuant to N.C. Gen. Stat. § 132-2, he is the custodian of the records that Plaintiffs seek. He is being sued in his official capacity as City Manager.

14. Defendant City of Belmont is a municipal corporation in North Carolina that has in its possession the public records sought by Plaintiffs. Further, following Plaintiffs' public records request, Defendants' response was made on behalf of the "City of Belmont."

### **VENUE AND JURISDICTION**

15. The allegations of Paragraphs 1-14 are incorporated herein by reference.

16. This action is brought pursuant to N.C. Gen. Stat. § 1-253 and N.C. Gen. Stat. § 132-9(a). This Court has jurisdiction over the subject matter of this action pursuant to both N.C. Gen. Stat. § 1-253 and N.C. Gen. Stat. § 132-9(a).

17. This Court has jurisdiction over the parties pursuant to N.C. Gen. Stat. § 1-75.4.

18. Venue is proper in this Court as to both Defendants pursuant to N.C. Gen. Stat. § 1-77(2).

### **FACTUAL ALLEGATIONS**

19. The allegations of Paragraphs 1-18 are incorporated herein by reference.

20. In February of 2012, Plaintiffs' sister, Donna Deitz, was killed in a car crash caused by Lester Norman, who was fleeing officers of the Belmont Police Department (hereinafter "BPD").

21. Following the crash and Plaintiffs' sister's death, Plaintiffs commissioned a private investigation into the death of their sister. Plaintiffs' private investigator made a public records request for the ISS Report that was denied by Defendants, as described in Paragraph 35, *infra*.

22. Ever since the crash, Plaintiffs have been involved in raising awareness about the dangers of police chases. Plaintiff Tucker regularly comments on deaths resulting from police chases. For example, see a recent article from *IndyStar* on police chases with comments by Plaintiff Tucker highlighted, attached hereto as Exhibit A.
23. In the wake of allegations of misconduct against BPD, Defendants decided that it was necessary to conduct an investigation into the activities of BPD.
24. Defendants decided not to use the City's own human resources department to conduct this investigation, but instead opted to use an outside, third-party firm.
25. On September 8, 2014, the U.S. ISS Agency, LLC (hereinafter "ISS") sent a proposal to the Town of Belmont to "conduct an internal, unbiased investigation into allegations of misconduct and mismanagement within the Belmont Police Department." See the ISS Proposal, attached hereto as Exhibit B.
26. In its proposal, ISS states that "this investigation is an internal personnel investigation, not a criminal inquiry. As such information gathered will be protected and kept confidential. In addition to town or police policy regarding such investigations, the information collected is protect by N.C.G.S. 160A-168: *Privacy of Employee Personnel Records* and cannot be released except under the terms of this law." See the ISS proposal, attached hereto as Exhibit B.
27. To the extent that ISS's statement in paragraph 26, *supra*, is intended as a statement of law that the resulting ISS Report is not a public record, it is an incorrect statement of law, as discussed in Paragraphs 41-62, *infra*.
28. From October of 2014 to February of 2015, ISS conducted an investigation into allegations of misconduct within BPD.

29. In its initial proposal, ISS estimated that this investigation would cost the taxpayers \$15,625.00 and take approximately three weeks. Upon information and belief, the investigation ultimately cost the taxpayers between \$80,000 and \$90,000 and took over three months.
30. Upon information and belief, the ISS Report is a large document spanning several hundred pages in length.
31. Upon information and belief, there is information within the ISS Report that is either directly or indirectly related to Plaintiffs' sister's death. Plaintiffs have no way of knowing for certain whether this is the case, as Defendants refuse to let Plaintiffs see any portion of the ISS Report.
32. ISS is comprised of individuals who are neither employees nor representatives of the City of Belmont.
33. Ultimately, ISS produced a report (the "ISS Report") detailing misconduct within BPD.
34. On April 17, 2015, following the release of the ISS Report, Charlie Franklin was terminated as Chief of Police for the City of Belmont. See Charlie Franklin's Notice of Termination from City Manager Barry Webb, attached hereto as Exhibit C.
35. On June 4, 2015, a private investigator retained by Plaintiffs requested from Defendants a copy of the complete U.S. ISS Agency Report as part of a public records request. Counsel for Defendants responded by stating that "any documents responsive to this request are made confidential by N.C. Gen. Stat. § 160-168, and are not public records." See correspondence between Defendants' counsel and Plaintiffs' private investigator, attached hereto as Exhibit D.

36. On July 8, 2015, Plaintiffs submitted a public records request, by and through counsel, requesting a complete copy of the ISS Report. See Plaintiffs' public records request attached hereto as Exhibit E.
37. On July 15, 2015, Defendants responded to Plaintiffs' public records request, by and through counsel, and stated that "Any documents responsive to [Plaintiffs'] request are made confidential by N.C. Gen. Stat. § 160A-168, and as such, are not public records." This response constituted a blanket denial of Plaintiffs' public records request. See Defendants' response to Plaintiffs' public records request, attached hereto as Exhibit F.
38. On August 3, 2015, Plaintiffs' counsel notified Defendants and Defendants' counsel of Plaintiffs' intent to file a public records lawsuit. See Plaintiffs' demand letter, attached hereto as Exhibit G.
39. As of this writing, Defendants have not responded in any way to Plaintiffs' demand letter.
40. The parties fundamentally disagree as to whether the ISS Report is a public record subject to disclosure under N.C. Gen. Stat. § 132-6, or is instead a personnel record made confidential by the provisions of N.C. Gen. Stat. § 160A-168.

**FIRST CLAIM FOR RELIEF (DECLARATORY JUDGMENT)**

41. The allegations of Paragraphs 1-40 are incorporated herein by reference.
42. Pursuant to N.C. Const. Art. VII § 1, cities and towns exist at the pleasure of the State of North Carolina, and derive all of their powers from the State of North Carolina.
43. North Carolina's appellate courts have repeatedly affirmed the settled doctrine that cities have no inherent powers, but instead have only those powers delegated to them by legislative enactment. *See, e.g. City of Asheville v. State*, 192 N.C. App. 1, 20 (2008); *In*

re Ordinance of Annexation No. 1977-4, 196 N.C. 1, 16-17 (1978); King v. Town of Chapel Hill, 367 N.C. 400, 404 (2014).

44. N.C. Gen. Stat. § 160A-20.1 allows cities to “contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in.” While Defendants may have the right to contract with ISS to perform an investigation, the General Statutes do not grant Defendants the power to delegate away their rights, duties, and obligations under N.C. Gen. Stat. § 160A-168 and N.C. Gen. Stat. §§ 132.
45. N.C. Gen. Stat. § 160A-4 sets forth a policy that grants of authority to cities should be broadly construed unless “contrary to...the public policy of this State.”
46. North Carolina has a strong public policy in favor of governmental transparency. N.C. Gen. Stat. § 132-1 plainly states that “it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law.” Our state’s Courts have further recognized that there is a “strong policy in favor of disclosure” of public records. N. Carolina Elec. Membership Corp. v. N. Carolina Dep’t of Econ. & Cmty. Dev., 108 N.C. App. 711, 716 (1993).
47. In 2010, the North Carolina Supreme Court held that a “state agency has the burden of compliance” with the Public Records Act. It further held that this approach is “entirely consistent with the policy rationale underpinning the Public Records Act, which strongly favors the release of public records to increase transparency in government.” State Employees Ass’n of N. Carolina, Inc. v. N. Carolina Dep’t of State Treasurer, 364 N.C. 205, 214 (2010).

48. The U.S. ISS Agency is a third party that gathered information and then turned that information over to the city in the form of the ISS Report. The ISS Report was therefore not “gathered by the city.”
49. In News and Observer Pub. Co., Inc. v. Poole, 350 N.C. 465 (1992), the North Carolina Supreme Court held that under a similar statute, information gathered by a third party as part of an investigation is not a personnel record unless the information was first gathered by the employing state agency. Poole, 350 N.C. at 475. Information gathered by ISS and then turned over to Defendants cannot be protected from public disclosure pursuant to the rule in Poole.
50. Given the inability of Defendants to delegate away their statutory rights, duties, and obligations, and considering North Carolina’s strong public policy in favor of governmental transparency, Defendants are incorrect in their assertion that the ISS Report is not a public record, as it was not “gathered by the city” but was instead gathered by a third party.
51. This Court should declare that the ISS Report was not “gathered by the city,” and is therefore not a personnel record as described in N.C. Gen. Stat. § 160A-168, but is instead a public record subject to disclosure in its entirety pursuant to N.C. Gen. Stat. § 132-6.

**SECOND CLAIM FOR RELIEF (DECLARATORY JUDGMENT)**

52. The allegations of Paragraphs 1-51 are incorporated herein by reference.
53. In denying Plaintiffs’ public records request, Defendants cite N.C. Gen. Stat. § 160A-168 as the statute that prevents disclosure of the ISS report.



54. Records are only subject to the provisions of N.C. Gen. Stat. § 160A-168 if gathered “with respect to” a particular employee.
55. Plaintiffs have identified no particular employees “with respect to” whom there is information within the ISS Report, or the extent to which the ISS Report is a document “with respect to” particular employees.
56. Upon information and belief, there are portions of the ISS Report that are not records “with respect to” specific City of Belmont employee. These portions might include an Executive Summary, Table of Contents, Indices, and any portions of the Report that comment on general practices within BPD rather than the behavior of specific officers.
57. In Defendant Webb’s April 17, 2015 termination letter to former Belmont Chief of Police Charlie Franklin, Webb cited reasons for Franklin’s termination including: improper use of City property or equipment, failure to meet work standards over a period of time, violation of administrative operating policies, failure to follow established policies and procedures, falsification of records, misuse of Drug Asset Forfeiture funds, and other reasons. See Charlie Franklin’s Notice of Termination from City Manager Barry Webb, attached hereto as Exhibit C.
58. In order for Defendant Webb draw such conclusions about Chief Franklin based on the ISS Report, the ISS Report must in some part touch on broader questions that go beyond personnel issues that are only “with respect to” City employees.
59. N.C. Gen. Stat. § 132-6(c) plainly states that “No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is comingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection,

examination, or copying of the public records, the public agency shall bear the cost of such separation.”

60. In Roch Smith v. City of Greensboro, 08 CVS 5569 (Guilford Cty. Sup. Ct. 2008), Judge John O. Craig was confronted with a very similar fact pattern wherein the City of Greensboro had hired a third-party firm to investigate its police department, and the Plaintiffs sought access to the resulting Report. Judge Craig noted that “When a city maintains records that combine records that are open to public access with records that are not, North Carolina General Statutes § 132-6 requires the government to permit access to the public portions, either by extracting the public parts from the whole or by excising the confidential parts.” He then ordered the Defendant City of Greensboro to provide those plaintiffs with redacted portions of that Report including the Executive Summary, Introduction, and items from the Appendices. See the March 6, 2009 Order of Judge John O. Craig of Guilford County Superior Court in the case of Roch Smith v. City of Greensboro, 08 CVS 5569 (Guilford Cty. Sup. Ct. 2008), attached hereto as Exhibit H.
61. Defendants have not offered to give Plaintiffs a redacted copy of the ISS Report, but instead have denied Plaintiffs’ public records request in its entirety.
62. This Court should declare that the ISS Report is not “with respect to” individual employees, at least not in its entirety, and that the portions of the ISS Report that are not “with respect to” individual employees are public records subject to disclosure pursuant to N.C. Gen. Stat. § 132-6. If necessary, Plaintiffs request that this Court conduct an *in camera* review of the ISS Report to determine what portions qualify as public records subject to disclosure.

**THIRD CLAIM FOR RELIEF (COMPEL DISCLOSURE OF PUBLIC RECORDS)**

63. The allegations of Paragraphs 1-62 are incorporated herein by reference.
64. Plaintiffs have above asked this Court for declarations that the ISS Report is a public record for two independent reasons. See Paragraphs 41-62, *supra*.
65. Plaintiffs request that, pursuant to N.C. Gen. Stat. § 132-9(a), this Court order Defendants to produce the ISS Report to the extent that the Court determines that it is a public record subject to disclosure under N.C. Gen. Stat. § 132-6.

**FOURTH CLAIM FOR RELIEF (ATTORNEYS' FEES)**

66. The allegations of Paragraphs 1-65 are incorporated herein by reference.
67. Pursuant to N.C. Gen. Stat. § 132-9(c), Plaintiffs request that this Court order Defendants to pay Plaintiffs' reasonable attorneys' fees.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs respectfully request the following relief:

68. That judgment be entered declaring that the ISS Report was not "gathered by the city" and is therefore not a personnel record subject to the provisions of N.C. Gen. Stat. § 160A-168, but instead is a public record subject to disclosure pursuant to N.C. Gen. Stat. § 132-6.
69. That judgment be entered declaring that the ISS Report, or portions thereof, is not a record "with respect to" individual employees and is therefore subject to disclosure pursuant to N.C. Gen. Stat. § 132-6 to the extent that it is not commenting on individual employees. If necessary, Plaintiffs request that this Court conduct an *in camera* review of the ISS Report to determine what portions qualify as public records subject to disclosure.
70. That this Court order Defendants to produce the portions of the ISS Report that it determines are public records subject to N.C. Gen. Stat. § 132-6.

71. That this Court order Defendants to pay Plaintiffs' reasonable attorneys' fees pursuant to N.C. Gen. Stat. § 132-9(c).

72. That Plaintiffs be granted such other and further relief as the Court deems just and proper.

**REQUEST FOR JURY**

73. Plaintiffs request a jury for any such matters that might be tried by a jury.

This the 28<sup>th</sup> day of August 2015.

For the Plaintiffs:

/s/ Elliot Engstrom

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# **EXHIBIT A**

*INDYSTAR* ARTICLE  
FEATURING  
COMMENTARY BY  
PLAINTIFF TUCKER

# Grandmother dies in crash with a fleeing shoplifting suspect

Justin L. Mack and Tim Evans 8:22 p.m. EDT June 8, 2015

*Police identify Indianapolis woman, 63, who died; woman, 37, and 11-year-old boy remain hospitalized.*



*(Photo: Kelly Wilkinson/The Star)*

A theft suspect fleeing police ran a red light in Fountain Square and slammed his SUV into a pickup truck and car Monday morning, killing the 63-year-old woman driving the truck and seriously injuring two others.

Matthew Edmonds, 21, Indianapolis, is facing preliminary charges of resisting law enforcement, theft and driving while suspended with a prior conviction in the incident, which began shortly after 8 a.m. at the Walmart in Beech Grove and ended 12 minutes later at Prospect Street and State Avenue.

The crash killed Donna Niblock, 63, Indianapolis, who was pronounced dead at Eskenazi Hospital. Her 11-year-old grandson was listed in critical condition Monday at Riley Hospital for Children at IU Health. LaDonna

Rogers, 37, Indianapolis, another passenger in the pickup driven by Niblock, was listed in serious condition at Eskenazi Hospital.

The driver of the other car was not injured.

Details of the theft-in-progress report that prompted Edmonds to flee police were not available Monday.

Beech Grove police received the report at 8:07 a.m. A responding officer spotted the suspect's vehicle, a silver Chevy Tahoe, leaving the store parking lot and began to follow it north in the 4600 block of South Emerson Avenue.

The Beech Grove officer activated his emergency lights in an attempt to stop Edmonds but, instead of stopping, the vehicle sped off on Emerson. Beech Grove police briefly chased Edmonds — who was driving at a high rate of speed and briefly traveling west in the eastbound lanes of Raymond Street — before calling off the pursuit three minutes later because of safety concerns.

As police from Beech Grove chased Edmonds north on Emerson, then west on Raymond, the pursuit moved into the jurisdiction of the Indianapolis Metropolitan Police Department. A statement from IMPD said department officers, who share the same police radio frequency as Beech Grove officers, "were already aware of the initial theft run at the Walmart and subsequent pursuit headed towards Southeast District."

At 8:14 a.m., Beech Grove officials called off the pursuit as Edmond's SUV turned north on Perkins Avenue. At that point, IMPD officers also were instructed by a supervisor not to chase the SUV because of safety concerns.

"At this point due to children getting onto a school bus on Perkins Avenue, an IMPD supervisor made the determination for IMPD officers to also terminate the vehicle pursuit," the IMPD statement said.

Edmonds briefly evaded police after the pursuit was halted, but an IMPD officer on Pleasant Run Parkway soon spotted the SUV. The IMPD officer followed the SUV and provided radio updates to other officers in the area but did not have his siren on and was not traveling at a high rate of speed, said Lt. Richard Riddle, an IMPD spokesman.

Riddle said that it appears Edmonds saw the IMPD vehicle as he drove north on State "and actually sped up through this intersection" of Prospect and State, where he slammed into the pickup truck traveling west on Prospect. His SUV then careened into a sedan stopped at the intersection for a red light.

After the collision, Riddle said, Edmonds got out and tried to flee on foot. He was quickly arrested by officers in the area.

Edmonds, who listed a Gary address in recent police and court records, previously appeared in court in Marion County on several misdemeanor charges, including battery, criminal mischief and theft.

He pleaded guilty in 2013 to a theft charge and was sentenced to probation. Last July, Edmonds was arrested on charges that included criminal mischief and battery resulting in bodily injury. Edmonds agreed to a guilty plea on the criminal mischief charge, while the battery charge was dismissed. He was sentenced to a day in jail and was put on probation. A no contact order also was filed against him in connection with the case.

Gilbert Torres said he didn't see the crash Monday, but he heard the crunching metal as the vehicles collided in the intersection. After police arrived, Torres was among the dozens of community members who walked to the crash site to see what happened.

"I was just a few doors down on Prospect, so we heard the loud boom and all the craziness," Torres said. "I just can't believe it. And they said he was shoplifting? This isn't worth that. For a little kid to get hurt over shoplifting, that's crazy, man."

Pam Shireman had seen Edmonds fleeing police as she waited at a bus stop.

"I was standing there waiting for the bus (on Emerson), and all of a sudden I seen that silver Tahoe in the wrong lane, driving like 100 miles per hour into oncoming traffic," she said. "Me and the bus driver was praying that he didn't hit anybody head-on. Then we get up here on the bus and see ... it's sad. It's just horrible."

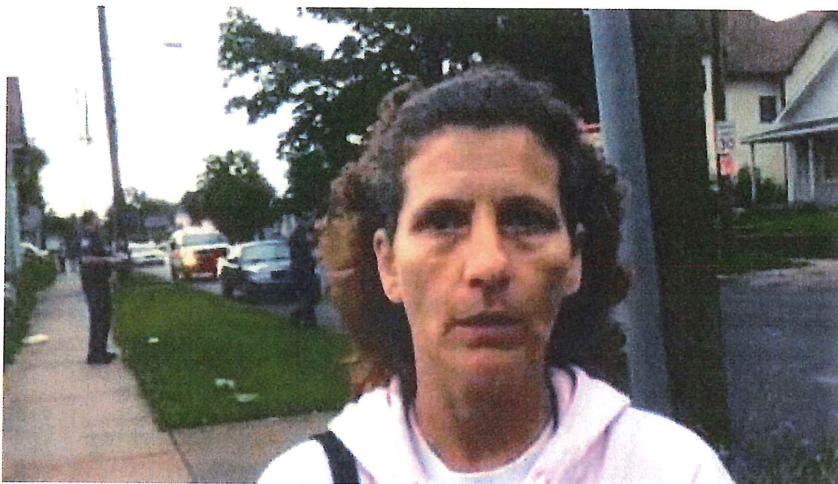
Even though police had called off the pursuit, "the psychology has already been put in motion" in the suspect's mind, said Ellen Deitz Tucker, spokeswoman for PursuitSafety, a national nonprofit working to reduce pursuit deaths and promote law enforcement alternatives to chasing nonviolent suspects.

At least one person dies, on average, every day in the United States in police pursuits, according to data from PursuitSafety. Innocent bystanders such as Niblock account for an average of three deaths a week, and one law enforcement officer dies on average every six weeks, Tucker said.

Many of those deaths occur after police have suspended chases, she said.

Star reporter Jill Disis contributed to this story.

Call Star reporter Justin L. Mack at (317) 444-6138. Follow him on Twitter: @justinlmack.



A witness describes seeing vehicle on the run from police and then the aftermath crash. (Kelly Wilkinson / The Star)



INDIANAPOLIS STAR

[Shoplifting getting more brazen, violent](#)

<http://www.indystar.com/story/news/crime/2014/05/17/shoplifting-getting-brazen-violent/9229841/>

### When IMPD is involved in pursuits

Indianapolis police officers have wide discretion to initiate pursuits in cases ranging from those involving felons to traffic infractions.

Although officers do not need permission to initiate a pursuit, a supervisor determines how long a pursuit should continue and when it should be terminated.

Before initiating and during the course of any pursuit, the pursuing officer and supervisors must consider the following:

# **EXHIBIT B**

## **THE ISS PROPOSAL**





*Proposal  
Town of Belmont  
Internal Personnel Investigation Services  
September 8, 2014*

***Project Proposal***

The US ISS Agency, LLC (ISS) understands that the Town of Belmont seeks to employ independent investigators to conduct an internal, unbiased investigation into allegations of misconduct and mismanagement within the Belmont Police Department. ISS proposes to provide these private investigative services to the Town of Belmont. We offer, specifically, to investigate all allegations made, to accurately establish the facts and circumstances involved, to document the impact and consequences of any inappropriate behavior, and prepare a report for the Town Manager that will document all findings and serve as the basis for decisions related to these allegations.

***Company Overview***

***Who We Are***

The US ISS Agency, LLC (ISS) is a private security firm located in Huntersville, North Carolina. Robert Schurmeier, a retired deputy chief of police from the Charlotte-Mecklenburg Police Department, and Paul Lyon, a retired ATF supervisory agent founded the company in 2004. At its inception, ISS provided pre-employment screening services and its first client was the City of Charlotte. Since that time, ISS has expanded its lines of business to include private investigations for both the private and public sectors, due diligence investigations for key hires, and risk and security consulting for corporations, government, and law enforcement. ISS is licensed as a security company in North and South Carolina.

***Experience***

The ISS staff is comprised of law enforcement veterans and experienced data analysts. Four former deputy chiefs of police of the 2,400 member Charlotte-Mecklenburg Police Department are part of the ISS team. Bob Schurmeier commanded the CMPD investigative division for a number of years and served as interim chief of police. Dave Stephens served as the head of the department's Internal Affairs for a decade, overseeing all personnel investigations. Jack Boger also served as the interim chief of police and led the administrative division, managing the human resources, training, and planning functions. David Graham served for many years in various investigative capacities, including Homicide and Internal Affairs, before retiring as deputy chief of the department's investigative division. In addition, Mike Sloop recently retired as a patrol supervisor serving in several administrative roles within patrol as well as other areas

of the Department. Our data analysts are knowledgeable and experienced in the field. They have expertise in database searches, data analyses, and report writing.

ISS's experience in the field of internal investigations, particularly in police departments, is unparalleled. Dave Stephens and David Graham have many years of experience conducting and managing these types of investigations. This experience includes not only citizen complaints such as use of force, police-involved shootings, unlawful arrest, and unbecoming conduct, but also internal allegations such as harassment, hostile work environment, discrimination, criminal allegations, and all other internal policy violations. Jack Boger has many years experience managing personnel issues including hiring, firing and discipline, as well as policy development and application. Bob Schurmeier has extensive experience in conducting and managing the most serious and complex criminal investigations, as well as overseeing the application of personnel policy.

### **Quality**

ISS is committed to the highest quality services. In furtherance of that goal, one of our staff, Jack Boger, is a former college English instructor who has helped us identify a staff of editors. They review completed reports to ensure they are well-written, technically correct, concise, and understandable. Samples of all work are reviewed by management to ensure that they meet our high standards. ISS employs only experienced investigators and analysts with proven records of accomplishment in the field to ensure that investigations are thorough, complete, and properly documented. Their work is supervised by staff with over a century of experience in the field.

### **Integrity**

ISS understands the importance of integrity to the investigative process. As former law enforcement officers with years of experience in upholding ethical standards, we know that collecting information lawfully and properly, conducting appropriate analyses of that information and accurately reporting it is critical to the investigative function. ISS is committed to integrity in information gathering, analyses and reporting.

### **ISS Services**

ISS offers a range of services, beginning with pre-employment screening. Other services include corporate and government related private investigations, due diligence investigations for key hires, biometric fingerprinting, computer forensics, security, and risk consulting, and consulting in police policies and practices. ISS holds company private investigations licenses in North and South Carolina and has investigators licensed in both states.

We serve a variety of clients from both the public and private sectors. We are currently on the federal GSA 738-X schedule and hold a contract with the Transportation Security Administration providing vetting services. ISS has completed over 4,000 background investigations for TSA, while meeting all contractual standards for quality and timeliness. We also serve other municipal governments and corporations providing pre-employment screening services and due diligence investigations. Our clients include corporations who utilize our services for executive hiring and governments who use ISS to screen candidates for city manager and other executive level positions.

**Selected Clients**

Our clients include:

- Transportation Security Administration
- City of Charlotte, North Carolina
- Mecklenburg County, North Carolina Sheriff's Office
- Davidson College Police Department
- Charlotte Fire Department
- Local police agencies
- Fortune 500 and 100 companies

***Town of Belmont Project Team***

The ISS Project Team for the Town of Belmont is comprised of five veteran law enforcement managers or supervisors with well over a century of experience among them. All are retired deputy chiefs of police or supervisors from the Charlotte-Mecklenburg Police Department. Each brings a different perspective to this project based upon their background, education, and experience.

***Project Leader: David Graham***

David Graham served with the Mecklenburg County Police Department, beginning in 1981, until its merger with the Charlotte Police Department in 1993. David worked in most areas of the Department, retiring in 2010 as Deputy Chief of Police of the Investigative Services Group. More than 17 years of David's career was in investigations including criminal investigations, Internal Affairs, and Intelligence. David is a graduate of the University of North Carolina at Charlotte with a Bachelor of Science degree in Law Enforcement and Administration. David also obtained a Master of Criminal Justice degree with a concentration in police administration and job satisfaction from UNC-Charlotte. In addition, he is a graduate of the Senior Management Institute for Police and the Department of Defense Polygraph Institute. David is a licensed private investigator in North and South Carolina. David will manage this project as well assist in conducting the investigation.

***Investigator: Dave Stephens***

Dave brings a wealth of experience from his 29 years in policing. He retired from the CMPD as deputy chief of Field Services, leading the department's 1,300 officer patrol division. He has significant senior management experience with organizational issues, administration, homeland security planning, crime prevention, and CPTED programs. He has extensive investigative expertise gained from his ten years as head of the CMPD Internal Affairs, managing sensitive and confidential personnel investigations. Dave is a licensed private investigator in North Carolina. He holds a B.A. in Political Science from the University of North Carolina at Charlotte. He is also a graduate of the Administrative Officers Management Program at N. C. State University and the Senior Management Institute for Police sponsored by the Police Executive Research Forum and the JFK School of Government at Harvard University.

***Investigator: Jack Boger***

Jack specializes in addressing technical, organizational, and administrative issues facing public and private organizations. Much of his career was spent in executive levels of the CMPD where

he rose to the rank of deputy chief and served for a time as interim chief before retiring. He brings broad experience in budgeting, staffing, hiring, and promotional procedures, human resources, and policy development. Interestingly, prior to becoming a police officer, Jack taught English at UNC-Charlotte.

Jack holds a B.A. and M.P.A. from UNC-Charlotte and an M.A. in English from the University of Florida. He is also a graduate of the Northwestern Traffic Institute and the Senior Management Institute for Police. Jack is a licensed private investigator in North Carolina.

***Investigator: Mike Sloop***

Mike retired from the Charlotte Mecklenburg Police Department with 30 years of service ending his diverse career as a patrol supervisor. He oversaw personnel matters, staffing, budget, inventory, and equipment needs while developing crime prevention strategies that focused police resources on crime patterns and repeat offenders. Mike served in criminal investigations as a detective, on SWAT, and in an administrative role in the Department's Human Resource Department. Mike holds an associate degree from Central Piedmont Community College.

***Bob Schurmeier***

Bob completed his first career after 29 years with the Charlotte-Mecklenburg Police Department (CMPD), retiring as deputy chief over investigations. Bob pioneered a number of initiatives that have become models for other law enforcement agencies. Among them: he established the Department's innovative Homicide Cold Case Unit and forged partnerships with local hospitals to establish procedures and training to better preserve forensic evidence in the course of emergency room treatment.

Bob is a past president of the North Carolina Chapter of the FBI National Academy Associates and the North Carolina Police Executives Association. He is a graduate of the Secret Service's Dignitary Protection School, the Senior Management Institute for Police, and the FBI National Academy. He earned a B.A. in Political Science from the University of North Carolina at Chapel Hill. Bob is a licensed private investigator in North and South Carolina.

***Scope of Work***

ISS proposes to conduct this investigation in conformance to all applicable laws and personnel policies of the Town of Belmont, as well as best practices in the field. The investigation will involve review of all allegations and issues pertaining to employee misconduct, the collection, and review of documentary evidence, interviewing all persons who may have relevant information regarding the allegations and issues, the analysis and evaluation of evidence gathered, and the preparation of a thorough and complete report documenting both the investigative steps taken and our findings.

The investigation will consist of the following tasks:

- Meet with the Town Manager to clarify expectations, agree upon the scope of the investigation, and obtain his full and complete perspective.
- Collect and review all available written documents, recordings, or similar documentary materials related to the allegations in question. This would include Town and police

rules and policies, which define standards of employee conduct and limits on behavior that are relevant to the allegations made or issues identified. Investigators will review all of the information to gain a thorough understanding of the allegations and issues themselves, the context of the allegations and issues, and procedures that should be followed.

- Develop an investigative plan based upon the information listed above. This plan, among other things, will identify the individuals to be interviewed, the information and other evidence to be sought, and the time and resources required to do this. This investigative plan may be modified based upon information gathered during the course of the investigation, but this will be done with the participation and concurrence of the Town Manager or his designee.
- Prepare written summaries of all investigative interviews and similarly document any findings made.
- Evaluate all evidence collected during the investigation to determine the facts and circumstances of the case. This process of assessment and reassessment will occur consistently throughout the investigation to keep work on the most productive course, to ensure that key issues are addressed, and to prevent omissions. As noted above, this analysis may indicate that additional work is required.
- Prepare a written report to the Town Manager that documents all relevant facts and circumstances found by the investigation and addresses the issues that are critical to the Town and the police department. The report will summarize the investigative findings including any violations of Town or police policies and rules for consideration by the Town Manager.
- ISS investigators will meet regularly with the Town Manager to ensure that he is informed of the progress of the investigation.
- ISS investigators will be available to meet with Town officials as needed and requested by the Town Manager.
- ISS investigators will be available as needed for consultation regarding any future actions based upon investigative results.

#### ***Confidentiality***

ISS understands that this investigation is an internal personnel investigation, not a criminal inquiry. As such, information gathered will be protected and kept confidential. In addition to town or police policy regarding such investigations, the information collected is protected by N.C.G.S. 160A-168: *Privacy of Employee Personnel Records* and cannot be released except under the terms of this law. ISS, accordingly, will ensure that all information collected is protected and held in compliance with all applicable laws and Town of Belmont policies. In all cases, and without exception, ISS will defer to the Belmont Town Manager, or other parties

authorized by the Belmont Town Manager, in the release and discussion of information related to this investigation.

***Timeline***

ISS is prepared to begin work upon approval of this proposal. We anticipate that work can be completed within a six week period.

***Costs***

The costs related to this project are primarily related to investigators' time and expenses. We anticipate some costs for copying, records fees, and other minor miscellaneous costs.

***Investigator Time***

Investigative services will be billed at an hourly rate. The costs for the investigators include hours spent on tasks such as obtaining and reviewing records, scheduling and conducting interviews, reviewing interviews and preparing written interview summaries, preparing written reports, consulting with the Town Manager, meetings with town officials, and travel to and from work sites. Our understanding is that between 12 and 20 potential employees and others associated with the investigation will need to be interviewed during the investigation. Interviews are likely to average one to two hours each with some lasting longer. Our experience tells us that producing accurate written interview summaries requires time equal to 1.5 times of what is required for each interview. Producing a final written report will consume approximately 40% of the hours used in this project. ISS estimates that 125 investigative hours will be required for this investigation. The actual hours may be more or less depending on the final scope of the investigation.

***Specialized Investigation***

If the investigation requires specialized investigative services such as computer forensics, polygraph, or other technical services, these services will be presented to the Town Manager and agreed upon. Such specialized services will be billed at a rate agreed upon by and with prior approval of the Town Manager.

***Expenses***

ISS will bill for expenses associated with investigative tasks, travel, meals, and administrative costs such as copying at a reasonable and customary rate. Mileage will be reimbursed at the current IRS rate of 55 cents per mile.

***Pricing***

- Investigative Services at \$125.00/hour for an estimated 125 hours for an estimated total of \$15,625.00.
- Expenses will be reimbursed at the reasonable and customary rates.
- Specialized Investigative Services will be billed at an agreed upon rate, depending upon the required service.

- Costs for ISS services related to any future litigation or court proceedings or other actions will be determined at the time the services are required.

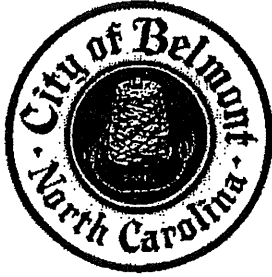
**Cost Control**

ISS will make every effort to minimize the hours required for this investigation. Interviews and on-site work will be scheduled to maximize the use of investigative hours and reduce travel time. ISS investigators will regularly inform the Town Manager of the progress of the investigation and the costs incurred. Costs in excess of the estimated 125 hours will be incurred only with prior approval of the Town Manager.

# **EXHIBIT C**

## **CHARLIE FRANKLIN'S NOTICE OF TERMINATION FROM CITY MANAGER BARRY WEBB**





# City of Belmont

115 N. MAIN STREET  
POST OFFICE BOX 431  
BELMONT, N.C. 28012  
PHONE (704) 825-5586  
www.cityofbelmont.org

## MEMORANDUM

To: Charlie Franklin, Chief of Police

From: Barry Webb, City Manager

Re: Notice of Termination

Date: April 17, 2015

I am providing this memorandum as a formal notice of your termination as Chief of Police for the City of Belmont. As cited in your suspension notice of April 10, 2015, this action is being taken due to violations of the following Personnel Policy regulations:

### Article IX, Section 2 -- Unsatisfactory Job Performance

1. Demonstrated inefficiency, negligence, or incompetence in the performance of duties.
2. Improper use of City property or equipment.
3. Discourteous treatment of other employees.
4. Absence without approved leave.
5. Habitual pattern of failure to report for duty at the assigned place.
6. Failure to meet work standards over a period of time.
7. Violation of administrative operating policies.
8. Failure to adhere to or comply with City policies and/or programs.

Specific actions leading to this finding include the following:

- Failure to maintain/update policies/procedures/general orders; failure to follow established policies and procedures.
- Failure to secure Internal Affairs (IA) records.
- Failure to follow IA process.
- Repeated violation of departmental policy and procedures for promotions.
- Failure to comply with departmental policy on internal discipline.
- Improper handling of demotions.
- Violation of City policy regarding employees' rights to access Human Resources as called for in the grievance procedure.
- Failure to address hostile work environment complaints.
- Failure to provide proper internal communication in violation of General Orders.

- Missing from duty excessive amounts of time without approved leave, resulting in administrative authority not being maintained.
- Excessive misuse of City email system for personal and personal business purposes.
- Misuse of City-owned property.
- Improper treatment of other employees, including treatment of a retaliatory nature.
- Improper use of POPAT test.

**Article IX, Section 5 – Detrimental Personal Conduct**

1. Falsification of records.
2. Willful misuse in the handling of City funds and property.
3. Willful acts that threaten City employees.
4. Serving a conflicting interest.
5. Harassment of an employee with threatening language.
6. Flagrant violation of work rules and regulations.
7. Conduct unbecoming a public officer or employee.
8. Failure to notify supervisor for failure to report for duty without approved leave.

Specific actions leading to this finding include the following:

- Missing from duty excessive amounts of time without approved leave, resulting in administrative authority not being maintained.
- Misuse of Drug Asset Forfeiture funds.
- Deletion of report pertaining to an officer's traffic accident and failure to provide information to the City's Safety Committee.
- Voiding citations in violation of General Orders.
- Misuse of City-owned property.
- Providing false statements to employees regarding actions being taken at the direction of the City Manager.
- Falsification of time records.

Under the terms of the Charter of the City of Belmont, you are entitled to request a formal removal proceeding with the City Council by submitting such request in writing. This written request must be submitted by 9:00 a.m. on Friday, April 24, 2015.

Cc: Debra Brown, Human Resources Officer

# **EXHIBIT D**

**CORRESPONDENCE  
BETWEEN  
DEFENDANTS'  
COUNSEL AND  
PLAINTIFFS' PRIVATE  
INVESTIGATOR**

Parks Wilson, Esq.  
Belmont City Attorney  
P.O. Box 901  
Belmont, NC 28012

March 27, 2015

Dear Mr. Wilson;

Pursuant to NCGS Chapter 132, Public Records Act, and any other applicable public record law(s) please provide me with the following information;

- 1) All contracts, agreements or other documents that record services by U.S. ISS Agency LLC. to the City of Belmont (City Manager Barry Webb);
- 2) Evidence of payment(s) made with public funds to U.S. ISS Agency LLC. including the amount(s) ;
- 3) Reports and documents in their entirety by any definition including but not limited to all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by or provided to U.S. ISS Agency LLC. and any employee or representative of the City of Belmont ;
- 4) E-mail(s) between any employee of the City of Belmont and U.S. ISS Agency LLC. (reference #3 above) ; and
- 5) A blank copy of any confidentiality or nondisclosure form(s) used in connection with the investigation conducted by U.S. ISS Agency LLC.

I may agree that the identity of employees and / or former employees (but only those who were specifically subject to the purpose (investigation) U.S. ISS Agency LLC. was contracted) included in #3 above may be redacted and I'm willing to entertain a discussion regarding this. However, with this possible exception, the entire un-redacted report is in-fact subject to NCGS Chapter 132 which states in-part;

*"Identifying information shall be confidential and not be a public record under this Chapter. A record, with identifying information removed or redacted, is a public record if it would otherwise be a public record under this Chapter but for the identifying information. The presence of identifying information in a public record does not change the nature of the public record. If all other public records requirements are met under this Chapter, the agency of the State or its political subdivisions shall respond to a public records request, even if the records contain identifying information, as promptly as possible, by providing the public record with the identifying information removed or redacted."*

This information should be provided without delay in-advance of a determination regarding the redaction of the employees and former employee's identities.

Hostile work environments, coercion, intimidation, falsifying of records and yes criminal acts cannot be shrouded from public disclosure by City Manager Barry Webb's publicly invoked "because it deals with personnel issues". Nor is the work product of U.S. ISS Agency LLC. protected by attorney – client privilege which is described in NCGS 132 and states in-part;

"...made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts..."

I reiterate, with the possible redaction of specific employee names, everything requested in this correspondence is public information.

Thank you for your prompt attention to this communication.

John Faber  
3736 Atlas Dr.  
Charlotte, NC. 28269

**From:** Brad Kline [<mailto:bkline@cshlaw.com>]  
**Sent:** Wednesday, May 20, 2015 4:15 PM  
**To:** [john@sagmainc.com](mailto:john@sagmainc.com)  
**Subject:** Response to Public Records Request

Mr. Faber,

I hope this correspondence finds you well. Attached please find the City of Belmont's response to your public records request. If you have any questions, please do not hesitate to contact me.

Regards,  
Brad Kline

Brad Kline  
*Attorney at Law*

P +17049403427  
F +17048315503

Post Office Box 30787  
Charlotte, NC 28230

[WWW.CSHLAW.COM](http://WWW.CSHLAW.COM)

**Confidentiality Notice:** If you are not the intended recipient of this message, you are not authorized to intercept, read, print, retain, copy, forward, or disseminate this communication. This communication may contain information that is proprietary, attorney/client privileged, attorney work product, confidential or otherwise legally exempt from disclosure. If you have received this message in error, please notify the sender immediately either by phone (800-849-4444) or by return e-mail and destroy all copies of this message (electronic, paper, or otherwise).

CHARLOTTE OFFICE

2907 PROVIDENCE RD., SUITE 200 (28211)  
POST OFFICE BOX 30787  
CHARLOTTE, NORTH CAROLINA 28230  
TELEPHONE (704) 332-8300  
FAX (704) 332-9994



CRANFILL SUMNER & HARTZOG<sup>LLP</sup>

BRAD P. KLINE  
ATTORNEY AT LAW  
DIRECT DIAL #: (704)940-3427  
DIRECT FAX #: (704)831-5503  
EMAIL: BKLINE@CSHLAW.COM  
[WWW.CSHLAW.COM](http://WWW.CSHLAW.COM)

June 4, 2015

**VIA E-MAIL: [john@sagmainc.com](mailto:john@sagmainc.com)**

John Faber  
3736 Atlas Drive  
Charlotte, NC 28269

Dear Mr. Faber:

The City of Belmont responds to your public records request as follows:

1. Un-redacted copies of contracts, agreements or other documents that record services by U.S. ISS Agency LLC to the City of Belmont including its representatives

**RESPONSE: Responsive documents are attached hereto.**

2. Evidence of payment(s) made with public funds to U.S. ISS Agency, LLC including the amount(s).

**RESPONSE: Responsive documents are attached hereto.**

3. Agreements of future payments to U.S. ISS Agency LLC.

**RESPONSE: No responsive documents exist.**

4. Reports and documents in their entirety by any definition including but not limited to all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by or provided to U.S. ISS Agency LLC and any employee or representative of the City of Belmont.

**RESPONSE: Any documents responsive to this request are made confidential by N.C. Gen. Stat. § 160-168, and are not public records.**

5. E-mail(s) between any employee of the City of Belmont and U.S. ISS Agency LLC (reference #3 above).

**RESPONSE: Any electronic correspondence responsive to this request that is not made confidential by N.C. Gen. Stat. § 160-168 is attached hereto. Certain identifying information has been redacted in the attached documents pursuant to the requirements of N.C. Gen. Stat. § 160-168.**

6. A blank copy of any confidentiality or nondisclosure form(s) used in connection with the investigation conducted by U.S. ISS Agency, LLC.

**RESPONSE: There are no formal confidentiality and/or nondisclosure forms used in connection with the investigation conducted by U.S. ISS Agency, LLC. However, a notice sent to City of Belmont employees regarding the investigation is attached hereto.**

7. A copy of the Termination Letter served to Charlie Franklin.

**RESPONSE: Responsive documents are attached hereto.**

If you have any questions regarding the City's response, please do not hesitate to contact me.

With best regards, I am

Sincerely,



Brad P. Kline

BPK/kjm

cc: Barry Webb (via e-mail: [blw@cityofbelmont.org](mailto:blw@cityofbelmont.org))



# **EXHIBIT E**

## **PLAINTIFFS' JULY 8, 2015 PUBLIC RECORDS REQUEST**



100 S. Harrington Street  
Raleigh, NC 27603

phone: 919.834.2099

fax: 919.834.2350

email: [clf@nccivitas.org](mailto:clf@nccivitas.org)

web: [nccivitas.org](http://nccivitas.org)

July 8, 2015

Mr. Barry Webb  
City Manager  
City of Belmont—City Hall  
115 North Main Street  
P.O. Box 431  
Belmont, NC 28012  
[bwebb@cityofbelmont.org](mailto:bwebb@cityofbelmont.org)

Dear Mr. Webb:

I write on behalf of Mr. Dan Deitz and Mrs. Ellen Deitz Tucker, who have retained my services to help them access public records that are within your custody. Pursuant to G.S. §§ 132, I am requesting on their behalf copies of public records that contain information regarding the investigation of misconduct within the Belmont Police Department. Specifically, I am requesting on their behalf a complete copy of the investigative report prepared and completed by the U.S. Investigative Security Services Agency, LLC. Should you need further specificity to identify the document(s) to which I refer, please let me know.

My clients understand that the ISS report may contain confidential material. However, G.S. § 132-6(c) states, "No records request to . . . obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation . . . ." Furthermore, if you deny any part of this request, please cite the exemption(s) and/or reason(s) for denial.

I request that you provide this information in electronic format whenever possible. Please send any electronic records to me via e-mail at [elliott.engstrom@nccivitas.org](mailto:elliott.engstrom@nccivitas.org). Any physical records should be sent to: Attn: Elliot Engstrom, 100 S. Harrington Street, Raleigh, NC 27603.

Please apprise me of any copying fees or special service fees that will be assessed prior to taking any action that would require payment by my clients. I would further ask that if I am mistaken, and these records are in fact not in your custody but that of another public officials, that you please let me know.

Sincerely,

Elliot Engstrom  
Attorney  
Civitas Institute  
Center for Law and Freedom

*North Carolina's Conservative Voice*

**Subject:** CLF Letter July 8

**Date:** Thursday, July 9, 2015 at 4:31:19 PM Eastern Daylight Time

**From:** Elliot Engstrom <Elliot.Engstrom@nccivitas.org>

**To:** bwebb@cityofbelmont.org <bwebb@cityofbelmont.org>

Dear Mr. Webb,

Yesterday, a letter containing a public records request was mailed to you from the Center for Law and Freedom in Raleigh. For your convenience, please find attached an electronic copy of that letter. Please do not hesitate to contact me with any questions or concerns.

All the best,

Elliot Engstrom



**Elliot Engstrom**

**Staff Attorney**

**Center for Law and Freedom**

919.834.2099 | [nccivitas.org](http://nccivitas.org)

[Facebook](#) | [Twitter: @CivitasCLF](#)

CONFIDENTIALITY NOTICE: This message, including all of its content, is privileged and confidential. It is intended only to be read by the individual or entity named above or their designee. Any distribution of this message by any person who is not the intended recipient is strictly prohibited. If you have received this message in error, do not read it. Please immediately notify the sender and delete it. Thank you.

# **EXHIBIT F**

**DEFENDANTS' JULY 15,  
2015 RESPONSE TO  
PLAINTIFFS' PUBLIC  
RECORDS REQUEST**

CHARLOTTE OFFICE

2907 PROVIDENCE RD., SUITE 200 (28211)  
POST OFFICE BOX 30787  
CHARLOTTE, NORTH CAROLINA 28230  
TELEPHONE (704) 332-8300  
FAX (704) 332-9994



CRANFILL SUMNER & HARTZOG LLP

BRAD P. KLINE  
ATTORNEY AT LAW  
DIRECT DIAL #: (704) 940-3427  
DIRECT FAX #: (704) 831-5503  
EMAIL: BKLINE@CSHLAW.COM  
[WWW.CSHLAW.COM](http://WWW.CSHLAW.COM)

July 15, 2015

*Via E-Mail: Elliot.Engstrom@nccivitas.org*  
*and US Mail*

Elliott Engstrom  
Civitas Institute  
100 S. Harrington Street  
Raleigh, NC 27603

Dear Mr. Engstrom:

Please allow this correspondence to serve as the City of Belmont's response to the public records request set forth in your letter dated July 8, 2015. In that correspondence, you requested a complete copy of the investigative report prepared and completed by the U.S. Investigative Security Services Agency, LLC.

Any documents responsive to this request are made confidential by N.C. Gen. Stat. § 160A-168, and as such, are not public records. The provisions of N.C. Gen. Stat. § 160A-168 therefore preclude the City of Belmont from producing the documents you requested.

If you have any questions, please do not hesitate to contact my office.

With best regards, I am

Sincerely,

Brad P. Kline

BPK/kjm

cc: Barry Webb (via e-mail: [blw@cityofbelmont.org](mailto:blw@cityofbelmont.org))

# EXHIBIT G

PLAINTIFFS' AUGUST 3,  
2015 DEMAND LETTER  
TO DEFENDANTS



**CIVITAS**  
INSTITUTE  
CENTER FOR LAW AND FREEDOM

100 S. Harrington Street  
Raleigh, NC 27603

phone: 919.834.2099

fax: 919.834.2350

email: [clf@nccivitas.org](mailto:clf@nccivitas.org)

web: [nccivitas.org](http://nccivitas.org)

August 3, 2015

Mr. Brad Kline  
2907 Providence Rd., Suite 200  
Post Office Box 30787  
Charlotte, North Carolina 28230

Dear Mr. Kline,

Thank you for your letter dated July 15, 2015, addressing my clients' request for public letters pursuant to N.C. Gen. Stat. §§ 132. In your letter, you stated that any documents responsive to their request are made confidential by N.C. Gen. Stat. § 160A-168, and as such are not public records.

Respectfully, I must disagree with your opinion. For the reasons stated below, my clients are preparing to file suit against the City of Belmont pursuant to N.C. Gen. Stat. § 1-253 and N.C. Gen. Stat. § 132-6. We will wait to file suit for at least two weeks from the date of this letter to give you and city officials time to consider the situation.

While it is true that certain personnel files are not subject to disclosure under N.C. Gen. Stat. § 160A-168, that statute also puts limits on what qualify as personnel records. Specifically, it states:

**"For purposes of this section, an employee's personnel file consists of any information in any form gathered by the city with respect to that employee."**

Our position is that the U.S. I.S.S. report (the "Report") was neither "gathered by the city," nor is "with respect to" any particular employee. Rather, the report was a third-party investigation into the Belmont Police Department paid for by taxpayers.

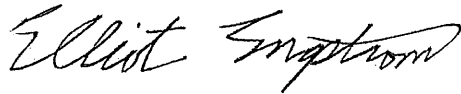
While we understand that the report was conducted at the City's behest with taxpayer funds, this does not make the information within "gathered by the city." Further, we do not believe that the U.S. I.S.S. Agency (the "Agency") acted as the "agent" of the city. While in its "Preamble to Investigative Interviews", the agency stated that its investigators were to act "as agents of the City of Belmont," this statement is not controlling.

Finally, I would advise you that similar issues have been litigated twice before in North Carolina's courts. First, in *News and Observer Publishing Company, Inc. v. Poole*, 350 N.C. 465 (1992), the North Carolina Supreme Court held that under a similar statute, information gathered by a third party as part of an investigation is not a personnel record unless the information was first gathered by the employing state agency.

Second, in *Roch Smith, Jr. v. City of Greensboro*, 08-CVS-5569, the City of Greensboro had contracted with Risk Management Associates ("RMA") to conduct an investigation into the Greensboro Police Department. The plaintiffs sought disclosure of the report, in part based on the North Carolina Supreme Court's ruling in *Poole*. Ultimately, the trial court ruled that the executive summary of the RMA report was a public record. The report in dispute was leaked before the Court of Appeals could provide a ruling.

My clients are prepared to file suit in Gaston County Superior Court should the City not otherwise provide access to the Report. I look forward to discussing your thoughts, questions, and concerns as we move forward.

All the best,

A handwritten signature in cursive script that reads "Elliot Engstrom".

Elliot Engstrom  
Staff Attorney  
Center for Law and Freedom  
Civitas Institute

cc: Barry Webb



# EXHIBIT H

ORDER OF JUDGE JOHN  
O. CRAIG OF GUILFORD  
COUNTY SUPERIOR  
COURT IN THE CASE OF  
ROCH SMITH V. CITY OF  
GREENSBORO, 08 CVS  
5569

NORTH CAROLINA  
JUSTICE

IN THE GENERAL COURT OF

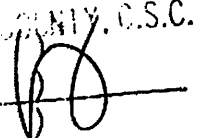
FILED

GUILFORD COUNTY 09 MAR -6 PM 3:06

SUPERIOR COURT DIVISION  
08 CVS 5569

ROCH SMITH JR; SAMUEL  
S. SPAGNOLA,

BY \_\_\_\_\_

GUILFORD COUNTY, C.S.C.  


Plaintiffs,

vs.

CITY OF GREENSBORO,

Defendant.

)  
)  
)  
)  
)  
)

ORDER

THIS MATTER coming on for hearing before the undersigned Superior Court Judge in Plaintiffs' action seeking production of records from the Defendant, City of Greensboro, pursuant to North Carolina General Statutes § 132.

FINDINGS OF FACT

1. The Plaintiffs initially made a written public records disclosure request dated October 31, 2007 to the Defendant, City of Greensboro, pursuant to North Carolina General Statutes § 132.

2. As a result of discussions between the Plaintiffs and agents and/or representatives of the Defendant, City of Greensboro, the Plaintiffs modified their request for public records in correspondence dated November 30, 2007.

3. The Plaintiffs' initial and amended request for public records encompassed a large volume of material and required the devotion of extensive time to identify and prepare and provide the copies of requested documents.

4. The parties settled all public records issues with the exception of the following two matters when this matter came on for hearing:

a. Whether or not the RMA Report is a public record that must be provided to the Plaintiffs pursuant to North Carolina General Statutes § 132.; and

b. Whether the closed session minutes provided to the Plaintiffs regarding the investigations or evaluations of the Greensboro Police Department under the administration of David Wray redacted information that should have been

disclosed to the Plaintiffs as a public record pursuant to North Carolina General Statutes § 132.

5. North Carolina General Statutes §132-1 defines a public record as “all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.”

6. The Defendant, City of Greensboro, did not provide the Plaintiffs with the requested RMA Report because outside legal counsel advised that the RMA Report is a personnel record and pursuant to North Carolina General Statutes § 160A-168 is protected from disclosure to the public.

7. The RMA Report requested by the Plaintiffs was generated as a result of a joint investigation with Risk Management Associates (RMA) and the Defendant's in-house Legal Department. Defendant's employees Attorneys Blair Carr and ToNola Brown-Bland conducted employee interviews with representatives of RMA. The investigative report was sent to the Defendant by RMA. The RMA Report consists of information concerning the performance of several current and former employees of Defendant, and includes an Executive Summary, Introduction and Appendix items A. through Y.

8. The Plaintiffs requested information from closed sessions of the City Council.

9. The Defendant, City of Greensboro, did not provide the Plaintiffs with unredacted closed session minutes because North Carolina General Statutes § 143-318.10(e) provides that minutes of closed sessions “may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.”

10. The Defendant, City of Greensboro, met with the Plaintiffs in an effort to have a clear understanding of their public records request. Outside legal counsel and in-house legal counsel for the Defendant, City of Greensboro, wrote the Plaintiffs in an effort to explain why the City of Greensboro could not provide the RMA Report and portions of the requested closed session minutes.

11. The public records law does not require the Defendant, City of Greensboro, to provide the Plaintiffs with an explanation or legal justification for refusing to release requested documents. Nevertheless, the Defendant, City of Greensboro, did notify Plaintiffs that state statues prevented the release of the RMA Report and certain portions of closed session minutes.

12. When a city maintains records that combine records that are open to public access with records that are not, North Carolina General Statutes § 132-6 requires the government to permit access to the public portions, either by extracting the public parts from the whole or by excising the confidential parts.

13. The Court reviewed the RMA Report and the redacted closed session minutes in dispute.

14. The Defendant, City of Greensboro, acted with substantial justification in denying access to the RMA Report; and in releasing redacted portions of the requested closed session minutes.

15. Review of the documents submitted for review indicate a small portion of the RMA Report has portions that may be redacted and provided to the Plaintiffs; and a small portion of the redacted closed session minutes should be unredacted and provided to the Plaintiffs.

**NOW, THEREFORE, THE COURT ORDERS, ADJUDGES AND DECREES AS FOLLOWS:**

1. The Defendant, City of Greensboro, shall produce to the Plaintiffs the following documents from the RMA Report:

- a. A redacted copy of the Executive Summary;
- b. A redacted copy of the Introduction; and
- c. Items from the Appendix identified as
  - A. Initial newspaper article on the finding of the Hinson tracking device dated 6/10/2005
  - B. "Secret Police" newspaper article dated 6/16/2005
  - C. Chief David Wray's press statement dated 6/17/2005
  - D. "Connect the Dots" newspaper article dated 6/19/2005
  - E. CALEEA Assessment of Internal Affairs & Special Intelligence Section by Kleinknecht dated 7/27/2005
  - F. GPD Organizational Chart
  - G. GPD Directives
  - H. GPD SOP's
  - K. Newspaper article on surveillance at Beverly Hinson's residence
  - L. Corporal Webb's report of Beverly Hinson's complaint and e-mail from Captain Lojko dated 6/17/2005
  - M. Corporal Webb's unedited report of Beverly Hinson's complaint dated 6/24/2005
  - N. Letter to Beverly Hinson advising her of findings dated 7/6/2005

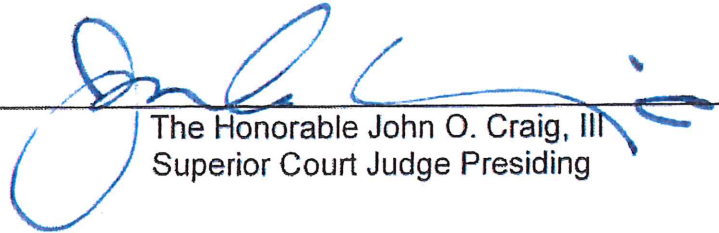
2. The Defendant, City of Greensboro, shall provide another copy of the closed session minutes to the Plaintiffs, unredacting the portions as directed by this Court.

3. The Plaintiffs are not entitled to attorneys' fees in this matter as the Defendant, City of Greensboro, acted with substantial justification in denying access to the public records in question; and the Defendant, City of Greensboro, sought the advice of an attorney and such advice was followed.

4. The Defendant, City of Greensboro, will provide the Court with the documents ordered to be redacted for review and approval by the Court.

5. The Defendant, City of Greensboro, will serve the Plaintiffs with a copy of the documents ordered to be produced in this matter within 10 days after service of this Order on the Plaintiffs in this action.

This the 6<sup>th</sup> day of March, 2000.

  
The Honorable John O. Craig, III  
Superior Court Judge Presiding