



I am denying the release of the body worn camera (bwc) footage associated with this incident based on an analysis I have conducted which weighs both the public and private interests involved. I have concluded that release of the Deputies body camera footage is contrary to the public interest and is also contrary to private interests and confidentiality interests. I have conclude that such interests outweigh the public interest right to know, and the ability to review the bwc footage at issue in this case.

Criminal justice records act (CCJRA) disclosure is subject to discretion of the Sheriff, and pursuant to Colorado Revised Statute (C.R.S.) sections 24-72-304 and -305, the Sheriff must balance the public and private interests involved in the inspection request and determine whether to allow full disclosure, redacted disclosure, or no disclosure of the record. See *Harris v. Denver Post*, 123 P.3d 1166, 1175 (Colo.2005)

Disclosure of bwc footage in this case is governed by CCRJA, and the following factors are properly utilized when making a decision to whether or not such video evidence should be released or withheld:

1. The privacy interest of individuals, if any, who may be impacted by a decision to allow disclosure of the record;
2. The agency's interest in keeping confidential information confidential;
3. The agency's interest in the integrity of on-going investigations'
4. The public purpose to be served in allowing disclosure of the record; and
5. Any other pertinent considerations relevant to the circumstances of particular records request, including whether disclosure would be contrary to the public interest. *Supra*.

In considering whether or not to deny the of release of the body camera footage in this case I have looked to *Supra* at 1174-75 for guidance, and in doing so I have weighed the public and private interests involved in the request to release such records, and have determined that the public interest associated with bwc release do not outweigh the concerns over harm to the public interest, and private interests of the deceased in relation to these concerns. Therefore disclosure of the body camera footage should not occur. In addition to a "Harris Analysis," I have also reviewed Colorado Open Records Law statute and case law for additional guidance in this analysis, such as the statutes and case law governing the "allowance or denial of inspection" such as C.R.S. 24-72-204 which would allow a custodian of record (such as the Elected Sheriff) to deny such information if such rational under CORA applies.

Also, pursuant to 24-72-305(5) and (8) disclosure of such records may be denied when those records that include details of security procedures or how officers will prepare, engage or react in any given situation.



Furthermore, 24-72-305 provides that inspection of a CCJRA record may be denied if contrary to the public interest. See *Martinelli v. District Court*, 612 P.2d 1083 (1980). Likewise, pursuant to § 24-72-305(6), C.R.S., the grounds for the denial included balancing the weighed merits of both the public and private interests involved, and I have concluded that release is contrary to the public interest because of the concern that public and Deputy safety may be compromised from a security standpoint if policies and procedures are released to the general public/requesting individual by showing what tactics are sanctioned or employed by the Elbert County Sheriff's Office (ECSO), and the potential for individuals to have knowledge of how to counteract such strategies or policies, or how to circumvent these strategies/policies. I also find that denial on this basis is not based on any interest to avoid or impeded public interest or scrutiny of public officials or law enforcement personnel conduct in any case, including this one. I find in this case that the public interest served by allowing for inspection of this record and being able to review the bwc footage in this case as well as reviewing the circumstances of the ECSO personnel involved in this incident, and the interest in acquiring knowledge in the strategies and policies utilized by the ECSO in this instance does not outweigh the potential harm to the public interest and public safety concerns of compromised public and Deputy safety by the release of policies/procedures and accompanying strategies of the ECSO in this and similar instances. I also conclude that denial on this basis is not based on any interest to avoid or impeded public interest or scrutiny or public officials of law enforcement personnel conduct in any case, to include the one at issue.

Moreover, a CCJRA record or report may be considered contrary to the public interest and therefore not released as there continues to be an ongoing investigation that would likely be substantially hampered by release, or if reporting parties/witnesses could be subjected to harassment and intimidation if their names and contents of statements revealed. See C.R.S. 24-72-305(5); and *Johnson v. CO DOC*, 972 P.2d 692 (Colo. Ct. App. 1998). Denial of the release of the bwc footage in this case is supported by the agency's interest in the integrity of on-going investigations. I also find the denial of the release of bwc footage in this case in relation to the interest in the right to a fair and impartial trial, even a civil trial, is not based on any interest to avoid or impeded public interest or scrutiny of public officials or law enforcement personnel conduct in any case, counting this incident.

Elbert County has received notice that this incident is going to be involved in litigation surrounding this incident, which is likely to result in a civil trial. As a result, additional investigation is likely to occur, meaning this case very much remains an ongoing investigation up to and throughout such a trial, therefore release would be contrary to the public interest as it may substantially harm the ongoing investigation to release information related to the parties involved, potential witnesses as this may subject those



parties to harassment and intimidation if their information, names, or contents of their statements are released prior to a potential trial. On balance I conclude the denial of the release of bwc footage in this case in relation to this interest is not based on any interest to avoid or impeded public interest or scrutiny of public officials or law enforcement personnel conduct in any case, including this one.

In addition to the concerns cited in the prior paragraph, releasing the bwc footage to include the statements made and witnesses captured therein may substantially harm the public interest in fair and impartial witnesses or administration of justice at any trial by tainting any potential jury pool should the body camera footage be disseminated. This concern is especially acute in a jurisdiction such as Elbert County which has a small population from which a potential jury pool may be pulled from in the future litigation. I also find the denial of the release of bwc footage in this case in relation to the interest in the right to a fair and impartial trial, even a civil trial, is not based on any interest to avoid or impeded public interest or scrutiny of public officials or law enforcement personnel conduct in any case, including this one

Additional considerations related to the privacy interests of the decedent and decedents kin and estate have been taken into account, as the deceased's personal and medical information are contained within this recording and are so pervasive that an appropriate level of redaction cannot be made in order to sanitize this recording. The aforementioned, as well as an appropriate respect for the privacy interest of the decedent and decedent's family, and the interest in keeping confidential information confidential, leads me to conclude that these interests weigh heavily against the release of this body camera footage. Release of the bwc footage in this incident would be contrary to the agency's interest in keeping confidential information confidential. I also find the denial of the release of bwc footage in this case in relation to the interest in the right to a fair and impartial trial, even a civil trial, is not based on any interest to avoid or impeded public interest or scrutiny of public officials or law enforcement personnel conduct in any case, including this one.

For these reasons I deny the request to release the bwc footage associated with this case. The agency's interest in keeping confidential information confidential; the agency's interest in pursuing ongoing investigations without compromising them; the public interest to be served in allowing inspection; and any other pertinent considerations.

A handwritten signature in black ink, appearing to read 'SHAYNE HEAP', is located below the text.

Shayne Heap
Elbert County Sheriff