

conduct investigations into police misconduct, determine when a full investigation is warranted, and make recommendations concerning officer discipline. To help the OPO fulfill its mission, the APOA requires the OPO to have “direct access, without hindrance” to relevant records and personnel. One key section of the APOA requires the City to abandon use of a secret personnel file maintained by APD pursuant to Texas Local Government Code Section 143.089(g), often referred to as the “g file.” Other provisions require the OPO to facilitate transparency by (1) acting as a central repository of documents regarding police officer misconduct; (2) publicly releasing specific information concerning police misconduct; and (3) serving as a liaison between people who complain of police misconduct and the police department itself.

2. Unfortunately, more than six months after the APOA became the law of the City of Austin, Defendants have failed to enforce multiple provisions of the voter-approved reform. Most flagrantly, Defendants Garza and Henderson have refused to discontinue APD use of the secret personnel file known as the “g file.” Despite state law granting discretion to City policymakers as to whether to maintain a “g file,” and despite the mandatory provision of City Code Section 2-15-6(A) of City Code, which bans Austin Police Department use of a “g file,” Garza continues to allow Chief Henderson and the police department to keep information about police misconduct investigations secret and unavailable for civilian review.

3. In addition to his refusal to end use of the “g file”, City Manager Garza has allowed another subordinate, OPO Director Gail McCant, to obstruct enforcement of multiple APOA provisions within her authority. The OPO under McCant’s leadership has failed to conduct investigations into police misconduct; has failed to determine when full investigations of misconduct are warranted; and has failed to make recommendations concerning officer discipline, all of which are required by City Code Section 2-15-10. Under McCant’s direction the Office of Police Oversight has also failed to perform its transparency functions. The OPO is not acting as a central depository of

documents, as required by Section 2-15-3(B)(12); the OPO has not publicly released information as required by Section 2-15-3(E); and the OPO has not acted as a liaison between the police department and people who complain of police misconduct, as required by Section 2-15-3(B)(4).

4. Equity Action was the principal proponent of the APOA initiative petition and subsequent electoral campaign. The organization seeks relief from the Travis County District Court to redress Defendants' lack of compliance with the City's own statute. Equity Action seeks a declaration pursuant to the Uniform Declaratory Injunction Act that Defendants have failed to comply with multiple provisions of the APOA. Further, Equity Action requests injunctive relief to require the City Manager and OPO Director to implement mandatory provisions of the Act.

II. JURISDICTION AND VENUE

5. Texas courts have jurisdiction to "declare rights, status, and other legal relations whether or not further relief is or could be claimed." TEX. CIV. PRAC. & REM. CODE § 37.003(a). Lawsuits against governmental entities are permitted in Texas courts when a pleading alleges an *ultra vires* claim against state officials who fail to perform a purely ministerial act. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 372-73 & n.6 (Tex. 2009). When governmental officers are sued for allegedly *ultra vires* acts (i.e., acts that exceed the bounds of their granted authority or that conflict with the law), governmental immunity does not apply from the outset of the lawsuit. *Houston Belt & Terminal Railway Co. v. City of Houston*, 487 S.W.3d 154, 158 n.1 (Tex. 2016).

6. This court has jurisdiction to resolve the subject matter of this controversy pursuant to Texas Civil Practice and Remedies Code § 37.003.

7. Venue is proper in this Court pursuant to Texas Civil Practice and Remedies Code Sections 15.002(a) and 65.023(a).

III. PARTIES

8. Plaintiff EQUITY ACTION is a nonprofit advocacy organization headquartered in Austin, Texas. Its mission is to strengthen and advance local transformative criminal justice efforts. In pursuit of this mission, Equity Action drafted the Austin Police Oversight Act; organized and financed a successful petition campaign to qualify the APOA for the ballot; and organized and financed a successful election campaign to win voter approval of the Act.

9. Defendant JESÚS GARZA is the Interim City Manager of the City of Austin. At all times relevant to this controversy, in his official capacity, Mr. Garza has served as the chief administrative officer of the City of Austin, with authority over all departments and personnel, including the Office of Police Oversight and its Director and the Austin Police Department and its Chief of Police.

10. Defendant ROBIN HENDERSON is the Interim Chief of Police of the Austin Police Department. In her official capacity, Chief Henderson directs the operations of the Austin Police Department, including its maintenance of secret personnel files pursuant to Texas Local Government Code Section 143.089(g).

11. Defendant GAIL MCCANT is the Director of the City of Austin's Office of Police Oversight. In her official capacity, Ms. McCant directs the operations of the OPO, including its implementation of the APOA.

IV. DISCOVERY CONTROL PLAN

12. Plaintiff intends to conduct discovery under Level 3 pursuant to Texas Rule of Civil Procedure 190.4.

V. STATEMENT OF FACTS

A. Austin Voters Adopted the Austin Police Oversight Act on May 6, 2023

13. The City of Austin maintains a home rule charter pursuant to the Texas Constitution. *See* TEX. CONST., Art. 11, § 5 (authorizing adoption of home rule charters). Under Austin’s charter, Austin voters may directly legislate via the initiative process. CITY CHARTER OF AUSTIN, TEXAS, Art. IV, § 1. Under the City’s rules, to qualify a proposed ordinance for the ballot, a petition campaign must collect and deliver at least 20,000 petition signatures from registered Austin voters within a period of 180 days. *Id.* (deferring to state law for signature requirements); TEX. LOCAL GOV’T CODE § 9.004(a) (requiring 20,000 verified signatures to initiate an election in a city with 400,000 or more voters).

14. Between May and August 2022, Equity Action led a petition campaign to qualify the Austin Police Oversight Act for the ballot. Equity hired and supervised a team of paid organizers to collect petition signatures and received additional support from dozens of local volunteers. Equity built a coalition of community organizations and stakeholders who supported the petition effort. On August 9, 2022, Equity turned in over 33,000 petition signatures to the Austin City Clerk.

15. On September 7, 2022, the Austin City Clerk certified the APOA petition for the ballot. The Austin City Council adopted an ordinance to hold a municipal election on the APOA on May 6, 2023. The APOA was designated as “Proposition A” on city ballots.

16. Once the election was scheduled, Equity hired and supervised a campaign team to win adoption of Proposition A. Equity’s team knocked doors, distributed yard signs, made calls, sent text messages, designed social media ads, participated in community forums, and generally did everything they could to turn out voters in support of Proposition A.

17. The outcome of the election was powerful: 53,258 city voters approved Proposition A and 13,931 voted against, a margin of 79.3% to 20.7%.

18. The election results were canvassed by the Austin City Council on May 16, 2023. Pursuant to the terms of the initiated ordinance, the APOA took effect immediately. AUSTIN CITY CODE, § 2-15-11; *see also* Ex. A (courtesy copy of the APOA, now Chapter 2-15 of City Code).

B. The APOA Contains Mandatory Provisions Concerning Austin Police Department Transparency, Accountability, and Civilian Oversight

19. The opening section of the APOA announces a new “Police Oversight Policy” for the City of Austin:

It is the policy of the City of Austin to have a robust system of civilian oversight over the Austin Police Department that emphasizes transparency, encourages accountability for officer misconduct and facilitates enactment of reforms that systematically reduce police brutality and misconduct. The public release of information about police conduct serves a law enforcement purpose by increasing public trust in police and this policy serves that purpose. AUSTIN CITY CODE, § 2-15-1.

20. The APOA contains various provisions that advance the Act’s overall purpose of promoting oversight, accountability, and transparency. The Act built upon existing policy to define and expand the role of the Office of Police Oversight. *See* AUSTIN CITY CODE, § 2-15-3. The Act creates a new Community Police Review Commission and defines how it should be formed. *Id.*, § 2-15-4. It specifies the duties of the Chief of Police in supporting oversight and transparency. *Id.*, § 2-15-5. Other provisions specify additional rules for transparency and require the City to negotiate future contracts with the Austin Police Association to ensure compliance with the Act. *Id.*, §§ 2-15-6 through 2-15-10.

21. The OPO Director and OPO staff play an essential role in enforcing the APOA. The advance the City’s new oversight policy, the Act guarantees that the OPO Director and staff will have direct and unfettered access to police department records and personnel records concerning police conduct and subsequent APD investigations. *See id.*, § 2-15-3.

22. The OPO is required to conduct their own investigations of police misconduct complaints, determine when a full investigation is warranted, and advise the Police Chief on disciplinary outcomes. As the Act reads:

The [Office of Police Oversight] shall conduct, at minimum, a preliminary investigation of every complaint, determine whether a full investigation is warranted, and make recommendations to the City Manager and the Police Chief regarding potential department policy violations prior to the Chief's decision on discipline. *Id.*, § 2-15-3(B)(10).

23. The OPO is also required to disseminate information to the public in support of its transparency mission.

24. One transparency provision requires the OPO to act as a “central depository” for information relevant to the Police Oversight Policy:

The [Office of Police Oversight] shall act as a central depository for documentation relevant to the mission of the office and make such information available to the public, including but not limited to: complaint outcomes; officer discipline; force incidents; and lawsuits against the City that allege officer misconduct, including the filings and the final settlement amount of any such suits. *Id.*, § 2-15-3(B)(12).

25. A second transparency provision requires the OPO to publicly release information about the Austin Police Department:

The [OPO] Director shall publicly release general information about the police department, a summary of all complaint outcomes, recommendations that discipline be issued, and detailed information about incidents where the Office recommends discipline, including the name of the officer, audit findings, data analysis, and recommendations for policy, training, or legislative changes. *Id.*, § 2-15-3(E).

26. A third transparency provision requires the OPO to “serve as a liaison” between people who complain of police misconduct and the police department itself during the investigation of complaints. *Id.*, § 2-15-3(B)(4).

27. Finally, one of the most important provisions of the APOA requires the Austin Police Department to abandon use of the secret “g file”:

The City shall not maintain a secret police department personnel file related to conduct by police officers under Texas Local Government Code 143.089(g), nor shall the Department

itself. The City and Department shall maintain police personnel files in accordance with Texas Local Government Code 143.089(a). AUSTIN CITY CODE, § 2-15-6(A).

C. Despite Clear Direction from Austin Voters and the City Council, Defendants Failed to Implement Mandatory Provisions of the Act

28. The APOA became operative on May 16, 2023. To date, the City Manager, Police Chief, and OPO Director have failed to comply with numerous mandatory provisions of the Act.

Failure to Discontinue Secret Personnel File (“G File”)

29. Despite the clear mandate of the APOA that requires the Austin Police Department to abandon use of a secret personnel file, APD continues to maintain this file.

30. In fact, as recently October 19, 2023, attorneys for the City of Austin admitted, in Travis County District Court, that the Austin Police Department continues to maintain a “g file” pursuant to Texas Local Government Code Section 143.089(g), even though Section 2-15-6(A) of the APOA specifically prohibits this practice.¹

Failures to Conduct Investigations, Determine When Complaints Warrant a Full Investigation, and Make Recommendations Concerning Discipline

31. Contrary to the mandate of City Code Section 2-15-3(B)(10), the OPO Director has failed to conduct investigations of each complaint concerning police misconduct. The OPO Director has also failed to determine when complaints warrant a full investigation or make recommendations to the Chief of Police regarding officer discipline.

32. The APOA defines “investigation” as follows:

INVESTIGATION means the collection and review of evidence related to a complaint or incident or an administrative review of officer conduct. AUSTIN CODE CODE § 2-15-2(K).

¹ See Ex. B at 26:5-36:21 (hearing transcript of “Motion to Consider,” heard on Oct. 19, 2023, in the matter of *State v. Taylor*, Travis County District Court, Cause No. D-1-DC-20-90049). In that hearing, an Assistant City Attorney of the City of Austin represented that “[t]he police department continues to maintain a confidential G file.” *Id.* at 35:20-36:6.

33. On multiple occasions, the OPO Director has admitted non-compliance with Section 2-15-3(B)(10). Instead of conducting a “preliminary investigation of every complaint,” as required by the APOA, the OPO only checked to determine whether a complainant filed an affidavit. The OPO has refused to conduct research or investigation beyond reviewing the complaint itself.

34. Specifically, as the OPO director has admitted, the OPO does not interview witnesses; the OPO does not interview officers; and in most if not all situations, the OPO does not review officer body camera footage or vehicle dashboard camera footage. The OPO director has also admitted that OPO does not investigate complaints if they are not accompanied by an affidavit.

Failure to Implement Transparency Provisions

35. The OPO does not act as a “central depository for documentation relevant to the mission of the office,” nor does the OPO “make such information available to the public,” as required by Section 2-15-3(B)(12) of the APOA. The OPO Director has admitted on multiple occasions that the Office instead relies on the Austin Police Department to maintain records concerning officer misconduct. Such records are not available to the public.

36. In particular, the OPO does not make information available to the public concerning complaint outcomes, officer discipline, force incidents, or lawsuits against the City that allege officer misconduct. Under Section 2-15-3(B)(12), the OPO is required to provide this information to the public.

37. The OPO has also failed to publicly release information about APD as required by Section 2-15-3(E) of the APOA, including required disclosures concerning “recommendations that discipline be issued” and “detailed information about incidents where the Office recommends discipline.”

38. The OPO has also failed to fulfill its mandate to act as a “liaison” between people who complain of police misconduct and the Austin Police Department, as required by Section 2-15-

3(B)(4) of the City Code. Instead, the OPO directs complainants to contact the Austin Police Department for information concerning their complaints.

VI. CAUSES OF ACTION

A. First Cause of Action — Declaratory Judgment: Defendants Garza and Henderson have unlawfully permitted the Austin Police Department to maintain a secret personnel file, known as the “g file,” in violation of City Code § 2-15-6(A).

39. Equity Action seeks a declaratory judgment that the City Manager and Police Chief have failed to perform their mandatory duty to end City of Austin use of a secret personnel file, known as the “g file,” in violation City Code Section 2-15-6(A).

40. Texas Local Government Code Section 143.089(g) permits—but does not require—city police departments to maintain a confidential personnel file that cannot be shared with “any agency or person” and is exempt from disclosure under the Texas Public Information Act. The “g file” contains records concerning potential police misconduct that did not result in disciplinary action. *See* TEX. LOCAL GOV’T CODE §§ 143.089(a), (g). The Austin Police Oversight Act, Section 2-15-16(A), established a City policy that the police department would not maintain such a file. AUSTIN CITY CODE § 2-15-6(A). In defiance of this new City policy, the City Manager and Police Chief have permitted the police department to continue to maintain a secret personnel file — as admitted by a City Attorney in open court on October 19, 2023. *See* Ex. B (hearing transcript). Equity Action asks this Court to declare that the conduct of Defendants Garza and Henderson to continue use of the “g file” violates Section 2-15-6(A) of the City Code.

B. Second Cause of Action — Declaratory Judgment: Defendants Garza and McCant have failed to ensure that the Office of Police Oversight conducts investigations of police misconduct as required by City Code § 2-15-3(B)(10).

41. Equity Action seeks a declaratory judgment that Defendants Garza and McCant have failed to perform their mandatory duty, pursuant to City Code Section 2-15-3(B)(10), to ensure that

the OPO conducts investigations of every complaint of police misconduct, determines in each case whether a full investigation is warranted, and issues recommendations to the Chief of Police regarding officer discipline.

42. The OPO has not interviewed a single complainant who submitted a complaint of officer misconduct, and the OPO has not interviewed any witnesses who may have witnessed police misconduct. The OPO has failed to review officer body camera and vehicle dashboard camera footage. The OPO has also failed to make determinations as to when a full investigation is warranted and has not issued recommendations regarding officer discipline. Accordingly, Defendants Garza and McCant have failed to fulfill their mandatory duties under Section 2-15-3(B)(10).

C. Third Cause of Action — Declaratory Judgment: Defendants Garza and McCant have failed to ensure that the Office of Police Oversight acts as a “central depository” for information related to the APOA, as required by City Code § 2-15-3(B)(12).

43. Equity Action seeks a declaratory judgment that the City Manager and the OPO Director have failed to perform their mandatory duty to ensure that the Office of Police Oversight acts as a “central depository” for information related to the police oversight policy, as required by Austin City Code § 2-15-3(B)(12).

44. Instead, in violation of City Code, the OPO has relied on the Austin Police Department to store records concerning officer misconduct. Such records are not available to the public. As a result, the public does not have access to records concerning complaint outcomes, officer discipline, force incidents, or lawsuits against the City that allege officer misconduct. Under Section 2-15-3(B)(12), the OPO is required to provide this information to the public. Defendants Garza and McCant have failed to fulfill their mandatory duties under this section.

D. Fourth Cause of Action — Declaratory Judgment: Defendants Garza and McCant have failed to ensure that the Office of Police Oversight publicly releases information about the Austin Police Department, as required by City Code § 2-15-3(B)(4).

45. Equity Action seeks a declaratory judgment that Defendants Garza and McCant have failed to perform their mandatory duty to ensure that the Office of Police Oversight publicly releases information about the Austin Police Department, including “recommendations that discipline be issued” and “detailed information about incidents where the Office recommends discipline,” as required by City Code Section 2-15-3(B)(4).

E. Fifth Cause of Action — Declaratory Judgment: Defendants Garza and McCant have failed to ensure that the Office of Police Oversight acts as a “liaison” between people who complain of police misconduct and the Austin Police Department, as required by City Code § 2-15-3(B)(4).

46. Equity Action seeks a declaratory judgment that Defendants Garza and McCant have failed to ensure that the OPO acts as a “liaison” between people who complain of police misconduct and the Austin Police Department, as required by Section 2-15-3(B)(4) of the City Code.

VII. MOTION FOR TEMPORARY INJUNCTION

47. Equity Action requests that the Court enter temporary injunctive relief to compel Defendants Garza and Henderson to perform their ministerial duty, mandated by the City’s Code of Ordinances, to cease Austin Police Department use of a secret personnel file known as the “g file.”

48. To obtain temporary injunctive relief, a plaintiff must have a cause of action, show a probable right to relief, and demonstrate that it is faced with imminent irreparable harm. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). A plaintiff has a probable right to relief if they have a cause of action for which relief may be granted. *See Universal Health Services, Inc. v. Thompson*, 24 S.W.3d 570, 577–78 (Tex. App.—Austin 2008, no pet.). A plaintiff alleging *ultra vires* conduct satisfies the irreparable-injury requirement by showing likely success on the merits. *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020).

49. In a similar case involving a city’s failure to respect voter-initiated policy reforms, the Texas Supreme Court discussed how a referendum, like a voter initiative, is “the exercise by the people of a power reserved to them, and this power should be protected.” *See In re Woodfill*, 470 S.W.3d 473, 475 (Tex. 2015). As the Court declared, “city officials must perform their ministerial duties.” *Id.* “[W]hen officials refuse to do so, and when there is no adequate remedy by appeal, mandamus may issue.” *Id.*

50. Here, Equity Action will probably prevail on the merits because the City Code imposed on Defendants Garza and Henderson a mandatory duty to end the Austin Police Department’s use of a “g file.”

51. A showing of likely success on the merits is sufficient to satisfy the irreparable injury requirement for a temporary injunction when the merits involve *ultra vires* conduct of a state official. Additionally, Equity Action will continue to suffer irreparable injury for each day that Defendants refuse to honor the results of the initiative election of May 6, 2023.

52. Granting Equity Action’s requested injunctive relief will not result in any harm to the public welfare or to the City of Austin. Most Texas law enforcement agencies—including most city police departments—operate without a “g file.” Improved police oversight and accountability will only serve to reduce police misconduct and thereby reduce harm to the community.

53. Equity Action agrees to post security in the amount and by the means to be determined by the Court. Because temporary injunctive relief will not present any injury to Defendant or the public, Equity Action requests the Court set the bond for a nominal amount not to exceed \$200.

VIII. PERMANENT INJUNCTION

54. After a full trial on the merits, Equity Action requests the Court enter a permanent injunction mandating that Defendants Garza, Henderson, and McCant perform their ministerial duties

under the Austin Police Oversight Act, including: ending APD use of the “g file,” as required by City Code Section 2-15-6(A); conducting investigations of each complaint of police misconduct, as required by Austin City Code Section 2-15-3(B)(10); creating a “central depository” for information related to police oversight, as required by Austin City Code § 2-15-3(B)(12); publicly releasing information about the Austin Police Department, as required by City Code Section 2-15-3(B)(4); and acting as a “liaison” between people who complain of police misconduct and the Austin Police Department, as required by Section 2-15-3(B)(4) of the City Code.

IX. CONCLUSION AND REQUESTS FOR RELIEF

For the foregoing reasons, Equity Action respectfully requests that Defendants be cited to appear and answer and that the Court take the following actions and grant the following relief:

- A. After notice and hearing on Equity Action’s Request for Temporary Injunction, issue a temporary injunction pursuant to Rule 681 of the Texas Rules of Civil Procedure, temporarily require Defendants to perform the above-described ministerial actions;
- B. Pursuant to Texas Rule of Civil Procedure 47(c)(2), Equity Action is seeking non-monetary relief only;
- C. After a trial on the merits:
 1. Enter a declaratory judgment as described above;
 2. Grant a permanent injunction requiring Defendants to perform the above-described ministerial actions;
 3. Award Equity Action court costs and an amount that reflects the reasonable and necessary attorneys’ fees incurred by Equity Action in an amount the Court finds to be equitable and just to be paid by Defendants to Equity Action; and

4. Any other or further relief, in law or equity, that the Court determines that Equity Action is entitled to receive.

Respectfully submitted,

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EXHIBIT A

CHAPTER 2-15. - POLICE OVERSIGHT.

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Footnotes:

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Editor's note— Ord. No. 20220915-087, Pt. 2, effective September 26, 2022, election of May 6, 2023, amended Ch. 2-15 in its entirety to read as herein set out. Former Ch. 2-15, §§ 2-15-1, 2-15-2, pertained to similar subject matter, and derived from Ord. No. 20181115-016, Pt. 2, 11-26-18.

§ 2-15-1 - POLICE OVERSIGHT POLICY.

It is the policy of the City of Austin to have a robust system of civilian oversight over the Austin Police Department that emphasizes transparency, encourages accountability for officer misconduct and facilitates enactment of reforms that systematically reduce police brutality and misconduct. The public release of information about police conduct serves a law enforcement purpose by increasing public trust in police and this policy serves that purpose.

Source: Ord. No. 20220915-087, Pt. 2, 9-26-22.

§ 2-15-2 - DEFINITIONS.

- (A) AGREEMENT means an agreement negotiated between the City of Austin and any association representing Austin police officers;
- (B) ANONYMOUS COMPLAINT means a complaint in which the identity of the complainant is not recorded by the City;
- (C) ASSOCIATION means any organization authorized by Austin police officers to negotiate with the City of Austin on their behalf;
- (D) CITY means either the City Manager or the City Council, depending on whether the Austin City Council elects to exercise direct oversight over the Director of Police Oversight, as provided in Article V, § 7 of the City Charter, or whether the City Council permits the City Manager to supervise the Office of Police Oversight;
- (E) COMMISSION means the Community Police Review Commission;
- (F) COMPLAINT means a verbal or written communication alleging that an officer acted improperly and may have violated any law, policy, rule or agreement governing the actions of any police officer while in the employ of the Austin Police Department;
- (G) COMPLAINANT means any person who submits a complaint;

- (H) DEPARTMENT means the Austin Police Department;
- (I) DIRECTOR means the director of the Office of Police Oversight established in Section 2-15-3 of this chapter;
- (J) DISCIPLINE means a field note, disciplinary suspension, demotion, uncompensated duty, written or oral reprimand, education-based discipline, or any combination of those actions;
- (K) INVESTIGATION means the collection and review of evidence related to a complaint or incident or an administrative review of officer conduct;
- (L) OFFICER means any commissioned police officer employed by the Austin Police Department;
- (M) OFFICE means the Office of Police Oversight established in Section 2-15-3 of this chapter; and
- (N) SERIOUS MISCONDUCT means any act in violation of any law, policy, rule or agreement governing the actions of any officer while in the employ of the Austin Police Department related to one or more of the following:
 - (1) in-custody death;
 - (2) use of force resulting in serious bodily injury;
 - (3) arrest or detention based on false criminal charges;
 - (4) falsification of a police report or false testimony;
 - (5) official oppression; and
 - (6) discriminatory acts.

Source: Ord. No. 20220915-087, Pt. 2, 9-26-22.

§ 2-15-3 - OFFICE OF POLICE OVERSIGHT.

- (A) The Office of Police Oversight is created as an administrative department as provided by the City Charter;
- (B) The office shall:
 - (1) advise the City on the processes and results of investigations involving officers, and any other activities of the department as directed;
 - (2) advise the City on the effectiveness and appropriateness of the department's policies and procedures concerning complaints of police officer misconduct, police officer training, use of force by police officers, community relations, and any other activities of the department as directed;
 - (3) receive complaints and compliments, including anonymous complaints or compliments, concerning the conduct of police officers;
 - (4) serve as a liaison between complainants and the department during investigations of complaints;
 - (5) participate in investigations of officer conduct, including those stemming from anonymous complaints, with the right to gather evidence and directly interview witnesses as determined by the Director;
 - (6) make recommendations to the police chief concerning discipline based on the findings of an

- investigation of officer conduct and department policies;
- (7) address other department activities of public concern as directed by the City;
 - (8) at least once per year, provide both written and oral reports at an open session of the City Council regarding the results of office activities, including information collected and published under § 2-15-3(B)(12) of this Article;
 - (9) work with the City to ensure compliance with a policy that encourages public release of police video recordings, as soon as permitted by law, including videos gathered by vehicle dash cameras and body worn cameras, and with a strong preference for transparency when incidents of significant public interest occur;
 - (10) conduct, at minimum, a preliminary investigation of every complaint, determine whether a full investigation is warranted, and make recommendations to the City Manager and the Police Chief regarding potential department policy violations prior to the Chief's decision on discipline;
 - (11) conduct random assessments of department use of force reviews, analyze all force incident data, and conduct random audits of body camera video and body camera usage;
 - (12) act as a central depository for documentation relevant to the mission of the office and make such information available to the public, including but not limited to: complaint outcomes; officer discipline; force incidents; and lawsuits against the City that allege officer misconduct, including the filings and the final settlement amount of any such suits;
 - (13) determine training requirements for members of the Commission, in consultation with existing members of the Commission;
 - (14) receive briefings related to investigations as requested by the Commissioners, at which the Director or their designee shall include information obtained from the investigation and exercise discretion to omit information of a highly personal nature that would constitute an unwarranted invasion of an individual's personal privacy interests; and
 - (15) conduct community engagement activities.
- (C) The office shall be led by a Director, appointed by the City, who shall supervise and direct all activities of the office;
- (D) The Director and their designees shall have direct access, without hindrance, to relevant department personnel and department records, for purposes of pursuing the City's police oversight policy, including:
- (1) records and personnel with relevant information concerning any use of force incident;
 - (2) records and personnel with relevant information concerning any police misconduct investigation;
 - (3) databases of use of force incident reports; and
 - (4) retained video, including but not limited to police body-worn cameras, police vehicle dash cameras and HALO cameras, as necessary to carry out the responsibilities in § 2-15-3(B), and in accordance with Texas Occupations Code, Chapter 1701.

- (E) The Director shall publicly release general information about the police department, a summary of all complaints, outcomes, recommendations that discipline be issued, and detailed information about incidents where the Commission recommends discipline, including the name of the officer, audit findings, data analysis, and recommendation for policy, training or legislative changes.

Source: Ord. No. 20220915-087, Pt. 2, 9-26-22.

§ 2-15-4 - COMMUNITY POLICE REVIEW COMMISSION.

- (A) The Community Police Review Commission is established as a Board of the City that is independent of and separate from the Austin Police Department;
- (B) The Commission shall consist of eleven members who shall be selected by a process that includes:
- (1) an open application process;
 - (2) review by the City Auditor for applicant eligibility in accordance with this policy; and
 - (3) final selection by the City Manager. The Commission shall operate in accord with the regulations of City Code Chapter 2-1 ("*City Boards*"), except as specifically provided herein;
- (C) The City Manager shall provide staff support to the Commission;
- (D) The Commission may:
- (1) review any investigation of death in custody, serious bodily injury, or other serious misconduct after the completion of any investigation and prior to the issuance of discipline, and/or in response to the request for review by a complainant;
 - (2) recommend to the Police Chief discipline that should be issued in the cases it reviews;
 - (3) request to be briefed by the Director and/or an Internal Affairs Department representative concerning the facts of a particular case under review by the Commission;
 - (4) advise the Police Chief, the Director of the Office of Police Oversight, the City Manager, and the City Council on the effectiveness and appropriateness of the department's policies and procedures concerning complaints of police officer misconduct, police officer training, use of force by police officers, community relations, and any other activities of the department;
 - (5) address other department activities of public concern;
 - (6) assess the effectiveness of the Office of Police Oversight and this ordinance and suggest improvements;
 - (7) report at least annually to the public on the results of its activities, releasing to all interested parties and the public at the same time; and
 - (8) conduct community engagement activities, including public posting of all meeting agendas with the subject matter including incident date and the nature of the incident.
- (E) To be eligible for appointment to the Commission, an applicant must attest that they are independent of

and unconnected to any member of a police department or association representing police officers; that they have never been employed or contracted by any police department or association; and they have not held employment in a police department or police association at any time. No other eligibility requirements may be instituted except by amendment to this ordinance.

(F) Members of the Commission shall:

- (1) have direct access to all necessary records of the department, including records concerning investigations, databases of force incident reports, and all retained video, including but not limited to police body-worn cameras, police vehicle dash cameras and HALO cameras, as necessary to carry out the responsibilities in part (B) of this section;
- (2) be granted secure online access to all necessary materials for as long as they require to adequately prepare for meetings on individual cases; and
- (3) attend 20 hours of training created by the Office of Police Oversight within 90 days of their appointment, which shall be focused on the laws, rules and policies governing the conduct of police officers in Austin in accordance with recommendations of the National Association for Civilian Oversight of Law Enforcement, and members may begin to serve before completion of training.

(G) The Commission shall release to the general public and post on its website all Commission letters making recommendations on reviewed cases and on any other topics pursuant to this ordinance § 2-15-4(D).

(H) City staff shall clearly designate confidential material when presenting such material to Commission Members, and Members shall agree to maintain that confidentiality. Members may speak in general terms about issues that arise in one or more cases without fear of removal, but Members who release confidential information knowingly, after being informed of its sensitive nature, may be removed from further service on the Commission.

Source: Ord. No. 20220915-087, Pt. 2, 9-26-22.

§ 2-15-5 - DUTIES OF POLICE CHIEF.

- (A) In order to ensure the appropriate functioning of the civilian oversight system, the Police Chief retains the authority to discipline officers for misconduct for 365 days starting from the date that a complaint is submitted to the City of Austin or the conduct in question becomes known to the Police Chief or any Assistant Police Chief, whichever is earlier, so long as such discipline occurs within three years of the date of the incident in question;
- (B) When the Police Chief issues a disciplinary decision, they must provide a detailed public, written explanation if the Chief does not follow a recommendation of the Office of Police Oversight to impose discipline;
- (C) If the Commission requests a briefing on a case or investigation, the Police Chief shall direct Internal Affairs to brief the Commission. During any Commission briefing, the presenter should include information obtained from the investigation and exercise discretion to omit information of a highly

personal nature that would constitute an unwarranted invasion of an individual's personal privacy interests.

- (D) The Police Chief shall provide a public written response to any reports issued by the Office of Police Oversight pursuant to § 2-15-3(B)(8) within 90 days;
- (E) The Police Chief shall provide a public written response to any recommendations for officer discipline issued by the Community Police Review Commission pursuant to § 2-15-4(D)(2) within 90 days if the Chief does not follow the recommendation of the Commission; and
- (F) The Police Chief shall provide a public written response to proposals issued by the Community Police Review Commission pursuant to § 2-15-4(D)(3) within 90 days.

Source: Ord. No. 20220915-087, Pt. 2, 9-26-22.

§ 2-15-6 - ENSURING POLICE TRANSPARENCY.

- (A) The City shall not maintain a secret police department personnel file related to conduct by police officers under Texas Local Government Code 143.089(g), nor shall the Department itself. The City and Department shall maintain police personnel files in accordance with Texas Local Government Code 143.089(a).
- (B) The City shall publicly release information about all complaints and force incidents in accordance with Texas Government Code, Chapter 552.
- (C) Both the Office and the Commission will have unfettered access to all information necessary to conduct effective civilian oversight. Body camera video shall be available to members of the public upon request in accordance with Texas Occupations Code § 1701.661 and procedures recommended by the Office, and dash camera video shall be released to a member of the public who presents the information required by Texas Occupations Code § 1701.661.

Source: Ord. No. 20220915-087, Pt. 2, 9-26-22.

§ 2-15-7 - CONTRACTS OR AGREEMENTS MAY NOT ALLOW GRIEVANCES BASED ON THIS POLICY.

The City Council shall not approve any contract or agreement concerning the employment of any officer or civilian within the Austin Police Department, if such contract allows police personnel to file grievances based upon actions of the City, the Office or the Commission that are within the scope of this ordinance, such as maintaining personnel files, investigating incidents, making recommendations to the Chief, and reporting to the public on policy or on individual incidents of misconduct.

Source: Ord. No. 20220915-087, Pt. 2, 9-26-22.

§ 2-15-8 - BAN ON AGREEMENTS THAT CONTRADICT POLICE OVERSIGHT POLICY.

The City Council shall not recommend or approve any contract or agreement concerning the employment of any officer or civilian within the Austin Police Department, unless such contract or agreement is consistent with and fulfills each provision of this Chapter.

Source: Ord. No. 20220915-087, Pt. 2, 9-26-22.

§ 2-15-9 - CIVIL SERVICE COMMISSION COMPLIANCE WITH THIS POLICY.

The Civil Service Commission shall update its rules as necessary to ensure compliance with this policy.

Source: Ord. No. 20220915-087, Pt. 2, 9-26-22.

§ 2-15-10 - CITY ATTORNEY CERTIFICATION OF ANY AGREEMENT AFFECTING AUSTIN POLICE DEPARTMENT PERSONNEL.

Prior to any City Council action to approve any proposed agreement affecting Austin Police Department personnel, the City Attorney shall certify whether or not the proposed contract is consistent with and fulfills each provision of this Chapter.

Source: Ord. No. 20220915-087, Pt. 2, 9-26-22.

§ 2-15-11 - EFFECTIVE DATE.

The effective date of this ordinance shall be the earlier of: (i) ten (10) days after the date of its final passage by the Austin City Council, as prescribed under Article IV, Section 4(a) of the Austin City Charter, or (ii) the date upon which the results of an election required under Article IV, Section 4(b) are canvassed.

This ordinance does not void any contract in effect at the time of its effective date.

Source: Ord. No. 20220915-087, Pt. 2, 9-26-22.

§ 2-15-12 - SEVERABILITY.

- (A) Severability due to unenforceability. If any section, paragraph, clause, or provision of this ordinance is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause, or provision shall not affect any of the remaining provisions of this ordinance, and to this end, the provisions of this ordinance are declared to be severable. This ordinance shall supersede the Austin City Code to the extent there are any conflicts.
- (B) Severability due to mandatory bargaining. To the extent that any provision of this ordinance may be deemed a subject of mandatory bargaining, the City Council shall not approve any contract that fails to fulfill each such provision.

Source: Ord. No. 20220915-087, Pt. 2, 9-26-22.

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REPORTER'S RECORD
TRIAL COURT CAUSE NO. D-1-DC-20-900048

THE STATE OF TEXAS ** IN THE 167TH JUDICIAL
 **
VS. ** DISTRICT COURT OF
 **
CHRISTOPHER TAYLOR ** TRAVIS COUNTY, TEXAS

MOTION TO RECONSIDER

On October 19, 2023, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Dayna Blazey, Judge presiding, held in Austin, Travis County, Texas:

Proceedings reported by machine shorthand.

A P P E A R A N C E S

1
2 Holly E. Taylor
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4 SBOT NO. 00794721

- AND -

4 Gary A. Cobb
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ATTORNEY FOR THE CITY OF AUSTIN

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MOTION TO RECONSIDER

OCTOBER 19, 2023	Page	Vol
Announcements.....	4	
Argument By Ms. Taylor.....	10	
Argument By Mr. Coppola.....	29	
Argument By Mr. O'Connell.....	36	
Argument By Ms. Taylor.....	39	
Argument By Mr. O'Connell.....	44	
Argument By Ms. Taylor.....	47	
Adjournment.....	53	
Court Reporter's Certificate.....	54	

E X H I B I T S

STATE

<u>No.</u>	<u>Description</u>	<u>Offered</u>	<u>Admitted</u>	<u>Vol</u>
1	City Ordinance 2-15-6 Ensuring Police Transparency	10	10	
2	Resolution No. 20230921-099	10	10	
3	CCP Art. 2.1397	10	10	

1 *(Open court, defendant present)*

2 THE COURT: Okay. We're ready to go on the
3 record, and the Court will call Cause No.
4 D-1-DC-20-900048, styled the State of Texas versus
5 Christopher Taylor.

6 Attorneys please state your name for the
7 record.

8 MR. O'CONNELL: Doug O'Connell and Lindsey
9 Adams for Officer Chris Taylor, Your Honor.

10 THE COURT: And for purposes of the record,
11 Christopher Taylor is present in the courtroom.

12 Attorneys for the State?

13 MR. COBB: Gary Cobb for the State of Texas.

14 MS. TAYLOR: Holly Taylor for the State of
15 Texas.

16 MR. COPPOLA: Your Honor, I'm Chris Coppola.
17 I'm here with the City of Austin.

18 THE COURT: Any other attorneys for the
19 State wish to be on the record?

20 MR. DRUMMOND: Not on the record,
21 Your Honor.

22 THE COURT: Okay. Then where we left off, I
23 believe it was Monday at the conclusion of the jury
24 selection and seating the jury, the State made a motion --
25 an oral motion to reconsider. At that time I asked for

1 additional -- any information, any case law, anything that
2 they wanted to present. I have gotten the
3 Attorney General's -- Ms. Taylor's email dated
4 September -- I mean, Ms. Taylor sent an email with the
5 Attorney General's opinion dated, I think -- is it
6 September 18th?

7 MS. TAYLOR: Uh-huh.

8 THE COURT: And your original motion to
9 reconsider filed in May.

10 And then from Mr. O'Connell I have received
11 the Attorney General's opinion dated October 17th. Those
12 are the materials I've read, received.

13 MS. TAYLOR: And, Your Honor, I wasn't going
14 to represent those materials, but I just have a couple of
15 requests. One is that the State be -- because I think
16 everybody was really tired Monday night after -- I think
17 it must have been after 7:00 o'clock at that point. We'd
18 been there all day, and Mr. Gilford made this verbal
19 motion to the Court. I was wondering if I might have an
20 opportunity to make arguments today in support of the
21 motion. That's my request.

22 And then I just have three things for the
23 Court to take judicial notice of. They're all law, not,
24 you know, factual evidence. And I've given them to
25 Mr. Taylor's counsel to look at, and they're taking a look

1 at them now.

2 May I approach?

3 THE COURT: Yes, you may.

4 MS. TAYLOR: Okay.

5 THE COURT: And that was kind of what my
6 thoughts were for today, because it appears that there was
7 some new information in the form of the Attorney General's
8 opinions, that the parties would have an opportunity to
9 present any argument that they wanted to have on their
10 respective positions.

11 MS. TAYLOR: Thank you, Your Honor. So this
12 is just that city ordinance that was in the email that I
13 sent.

14 THE COURT: Okay. And I have -- I printed
15 off a copy of the ordinance.

16 MS. TAYLOR: Okay. So you have it already.

17 THE COURT: So do you want me to take
18 judicial notice of this or what?

19 MS. TAYLOR: Sure. Actually when we -- I'm
20 going to hand you three things and ask --

21 THE COURT: Okay.

22 MS. TAYLOR: -- for you to take judicial
23 notice.

24 The second thing is just an enacting
25 resolution that was passed associated with that city

1 ordinance and the whole -- everything that was part of
2 Proposition A. This city ordinance was part of
3 Proposition A --

4 THE COURT: Correct.

5 MS. TAYLOR: -- that the voters voted on in
6 May, and I'll talk a little bit about that in a minute,
7 but this is a just a resolution associated with that from
8 this September.

9 THE COURT: Okay. And so what is -- a
10 resolution for -- what does this resolution do?

11 MS. TAYLOR: That is a resolution basically
12 enacting or pertaining to that city ordinance, and it has
13 some provisions directing the Office of Police Oversight
14 to take certain action, and there's several whereases that
15 basically just resolve to some of the principles in the
16 ordinance. And it also -- one of the reasons that I
17 wanted to give it to Your Honor is because it actually
18 states the effective date of that ordinance. That's the
19 main reason.

20 THE COURT: What is the effective date of
21 the ordinance?

22 MS. TAYLOR: It was actually effective --
23 and, Your Honor, I apologize for talking right in front of
24 you like this, but --

25 THE COURT: That's okay.

1 MS. TAYLOR: It was actually effective --
2 and I didn't realize it. I don't think anybody on the
3 State's team did. It took effect on May 16th. So it
4 actually took effect before you ruled on the 19th in that
5 hearing, but I didn't realize it. But it had already
6 taken effect. It had not been uploaded to the City's
7 website at that point and I guess codified or whatever,
8 but if -- that's the reason that I've included that
9 resolution from the City Council, so -- is it does
10 state --

11 THE COURT: This resolution was adopted
12 September 21st of 2023, right?

13 MS. TAYLOR: Right. This resolution was,
14 but if you look at the first page, Your Honor, it has
15 several whereases right on the first page there. You'll
16 see that one of the whereases on that first page states
17 when the vote took effect on Proposition A, which was I
18 think May 6th.

19 THE COURT: Uh-huh.

20 MS. TAYLOR: And then it also states the
21 effective date of the ordinance, which was May 16th.

22 And then the third State's exhibit is just a
23 Code of Criminal Procedure statute, that's it. And it's
24 Article 2.1397, Your Honor, which I'm sure you're familiar
25 with.

1 THE COURT: Uh-huh.

2 MS. TAYLOR: So the State would request,
3 Your Honor, for you to take judicial notice of these
4 provisions.

5 THE COURT: Okay. Are you introducing
6 these? I see that they're marked as State's Exhibits 1,
7 2, and 3. I believe you've identified them for purposes
8 of the record. Are you offering them into evidence or
9 what?

10 MS. TAYLOR: I guess you could refer to them
11 as demonstrative exhibits or Court's exhibits. They're
12 just for the Court to take judicial notice of for the
13 purpose of this hearing.

14 THE COURT: Okay.

15 MS. TAYLOR: And I don't know that the Court
16 needs exhibits to do that, but it's just helpful for the
17 purposes of the record, I think.

18 THE COURT: Okay. Since these are what
19 appears to be statutes and City Council resolutions and
20 then also the ordinance as passed, the Court is taking
21 judicial notice of all three documents as requested by the
22 State.

23 THE REPORTER: Can we go off for a second?

24 THE COURT: Yes. We're off the record.

25 *(Discussion off the record)*

1 THE COURT: So does the Defense have any
2 objections to State's Exhibits 1, 2, and 3 being admitted
3 for purposes of this hearing?

4 MR. O'CONNELL: No objections to 1 and 3,
5 Your Honor. I don't think Exhibit 2 is necessarily
6 relevant. We don't need the whereases, and we'd stipulate
7 to the effective date of the ordinance contained in
8 State's Exhibit 1.

9 THE COURT: Okay. I'm going to overrule
10 your objection. State's Exhibits 1, 2, and 3 are admitted
11 into evidence. Your objection is noted for the record.

12 MS. TAYLOR: Thank you, Your Honor.

13 THE COURT: Okay. Now, I see Mr. Coppola is
14 here. Is there any -- are the parties intending to
15 present any witness testimony before we get to arguments?

16 MR. O'CONNELL: Judge, my understanding of
17 what we're doing is, the State is asking you to reconsider
18 your ruling on the City's motion to suppress the State's
19 subpoena for G files.

20 Is that everybody else's understanding?

21 MS. TAYLOR: Your Honor, actually it's a
22 little more nuanced than that. If I may have a moment to
23 just provide a little bit of background.

24 THE COURT: Okay.

25 MS. TAYLOR: And I -- we both notified

1 Mr. Coppola about this hearing because it does pertain to
2 the City's motion to quash, but in essence the State is
3 not asking for the Court to rule differently on which
4 materials would be covered by the motion to quash. The
5 only thing the State is asking you to do is to reconsider
6 one aspect of the Court's ruling on May 19th of 2023.
7 There was an order that the Court signed that day which
8 specified that certain designated statements within
9 Officer Taylor's personnel file, which, as the Court may
10 recall, the State had issued a subpoena duces tecum for
11 this information.

12 The City had filed a motion to quash, which
13 I believe they always do in these situations
14 because -- and this was something that was done back at
15 the beginning of the year because of the fact that they
16 are covered by Local Government Code Section 143.089(g).
17 That's the City's position, and they stated that in their
18 motion to quash. And it is a matter of normal procedure
19 for the City to move to quash any subpoena seeking
20 internal affairs file information on an APD officer.

21 And so they did so, and the Court held a
22 hearing at the beginning of -- or during May prior to our
23 trial, and the Court took some materials from that file to
24 review in camera, as you may recall, and then the Court
25 sent an email ruling on May 18th designating certain

1 materials from that file to be produced in response to the
2 State's subpoena, and then said something to the effect if
3 you have any problems with this or something, you can come
4 forward. And I believe that -- I don't remember whether
5 it was Mr. O'Connell or Mr. Ervin said yes, we would like
6 to be heard. The Court set it for a hearing that Friday,
7 which was May 19th. Do you remember that?

8 THE COURT: All of it.

9 MS. TAYLOR: So unbeknownst to us at this
10 point -- and I apologize, I should be more aware of the
11 effectiveness of local propositions, but Proposition A had
12 been voted on in early May, on May 6th, as this Exhibit 2,
13 the resolution, shows. And, in fact, it took effect after
14 the Court did the first hearing. Before the Court did the
15 second hearing on May 19th, that proposition took effect.
16 It wasn't uploaded to the City's website. We did not know
17 that it had taken effect. I apologize for not being aware
18 of that, but it did. And so that was a factor in our --
19 one of the factors in our asking the Court to reconsider
20 the ruling.

21 Another factor, as the Court knows and as
22 the State presented, is that the Attorney General's Office
23 actually -- the City had made a request to the Attorney
24 General's Office concerning whether or not certain
25 Internal Affairs materials in -- not in this case, but

1 related to a separate request as I understand it, not
2 related to this subpoena duces tecum, needed to be --

3 THE COURT: Wait, hold on a second. Let me
4 just clarify. So are you saying that the request for this
5 public information that's referenced in this Attorney
6 General opinion has nothing to do with Mr. Taylor's
7 personnel file?

8 MS. TAYLOR: I don't think it was a request
9 for Mr. Taylor's personnel file. To be honest,
10 Your Honor, I don't know. I did not view the attached
11 materials because we were trying to avoid any kind of
12 exposure to Garrity material. But in any event, it didn't
13 pertain to this subpoena duces tecum and whether this
14 needed to be released.

15 It did pertain -- the reason that the State
16 called it to your attention initially was because the --
17 that ruling from the Attorney General's Office stated that
18 the Attorney General could not withhold these materials
19 from public release. That would be in response to a
20 Public Information Act or a open records request.

21 THE COURT: Well, hold on --

22 MS. TAYLOR: And by this new material, I
23 mean this type --

24 THE COURT: I'm sorry, I'm going to have to
25 interrupt you, because I want to make sure that I am

1 understanding. Which AG opinion are you referring to now?

2 MS. TAYLOR: I'm talking about -- I'm
3 providing background, so I'm talking about the one on
4 September 18th.

5 THE COURT: Okay.

6 MS. TAYLOR: And as you know, so Mr. Gilford
7 made this motion on Monday. He mentioned the city
8 ordinance to you. He also mentioned this Attorney General
9 opinion from September 18th which held that the City could
10 not withhold from public disclosure these type of
11 materials because the City had represented that it did not
12 maintain a G file. That's what it held, but in addition,
13 you may recall -- and this is something I want to talk
14 about more today, which is the most important part of what
15 Mr. Gilford argued. Is that there's a significant due
16 process concern here regarding the witness officers, not
17 Mr. Taylor's statements within his personnel file, not the
18 statements of Karl Krycia.

19 MR. O'CONNELL: Excuse me, Ms. Taylor. I'm
20 sorry to interrupt.

21 Judge, I'm still not clear on what we're
22 doing. Are we reconsidering the Court's ruling on the
23 City's motion to quash the subpoena? Because if we're
24 doing something else, honestly I'm unprepared to do
25 something else. And I didn't leave here on Monday

1 thinking -- or when the Court notified us of this hearing,
2 I thought the purpose of this hearing was to address the
3 Court's ruling on the City's motion to quash. And so I
4 might be able to save us time because if we're doing
5 something different, we're not prepared to proceed.

6 THE COURT: I don't think we're doing
7 something different. Here's my understanding of what
8 we're doing. Mr. Gilford stood up and made an oral
9 motion, as Ms. Taylor pointed out, late after a full day
10 of jury selection asking me to reconsider my ruling from
11 May --

12 MS. TAYLOR: 19th, Your Honor.

13 THE COURT: -- 19th. And in doing so, he
14 brought to my attention that there was an
15 Attorney General's opinion dated September 18th that he
16 felt was relevant and had bearing on my ruling from
17 May 19th. That's my understanding of what we were here
18 for.

19 MS. TAYLOR: Yes. And he also urged certain
20 due process concerns. Your Honor, as you may recall, he
21 pointed out that the State has a duty under the due
22 process clause and a Court -- a Supreme Court case called
23 Napue to ensure that it does not offer any perjured
24 testimony. And that's even been extended in Supreme Court
25 and Court of Criminal Appeals cases to any testimony that

1 might be misleading, that might leave a false impression
2 with the jury. That is an obligation under the United
3 States Constitution for the State.

4 What Mr. Gilford pointed out to you on
5 Monday -- and again, we were all tired and I realized that
6 it -- that's why we wanted to do this today, is that that
7 creates a problem, because there are five officers who are
8 witnesses for the State of Texas who are the subject of
9 your ruling regarding the motion to quash that we're
10 talking about on May 19th, that you had ordered that the
11 City of Austin Police Department needed to disclose the
12 statements of these officers, which are contained in
13 Officer Taylor's personnel file. They are not charged
14 with any crime.

15 THE COURT: I'm aware, though.

16 MS. TAYLOR: Right.

17 THE COURT: Why are you making this argument
18 today?

19 MS. TAYLOR: So the reason that I'm making
20 this argument today is because it creates -- first of
21 all because there --

22 THE COURT: Why didn't you make this
23 argument back when we had the hearing on May the 19th?

24 MS. TAYLOR: I did, Your Honor. I did make
25 this argument then, and I also filed a motion to

1 reconsider that I have represented to you --

2 THE COURT: Yes, you have.

3 MS. TAYLOR: -- which I filed in May.

4 THE COURT: Okay. And so then I've ruled on
5 that motion.

6 MS. TAYLOR: You did, but --

7 THE COURT: And then the court -- you asked
8 the Court of Appeals to review my ruling, correct?

9 MS. TAYLOR: (Moving head up and down.)

10 THE COURT: And determine whether a writ of
11 mandamus would be appropriate ordering me to change my
12 ruling, and the Court of Appeals said no, denied.

13 MS. TAYLOR: The subject matter of our --

14 THE COURT: So why are we talking about this
15 today?

16 MS. TAYLOR: So that's a good question, and
17 that -- the subject of our writ of mandamus was not this
18 specific problem, and I want to phrase to the Court, which
19 did -- we did raise it in our motion for the Court to
20 reconsider, but it was buried with a lot of other stuff,
21 so I just want to bring it your attention, as did
22 Mr. Gilford, and it is not unrelated to this ordinance,
23 which frankly we didn't know existed at the time we made
24 arguments last time before the Court.

25 So --

1 THE COURT: Tell me how it's related to the
2 ordinance.

3 MS. TAYLOR: So how it's related to the
4 ordinance, is it's all about transparency, basically. And
5 the ordinance states that the City shall not maintain a
6 secret police department personnel file related to conduct
7 by police officers under Texas Local Government Code
8 Section 143.089(g), nor shall the Department itself. The
9 City and the Department shall maintain police personnel
10 files in accordance with 143.089(a), which is the civil
11 service file provision which makes these files --

12 THE COURT: What section of the ordinance
13 are you referring to?

14 MS. TAYLOR: So this is the very first part
15 of this ordinance. It's Ordinance 2-15-6 called --

16 THE COURT: Yes. I have a copy it.

17 MS. TAYLOR: Yes. It's --

18 MR. O'CONNELL: State's Exhibit 1,
19 Your Honor.

20 MS. TAYLOR: And it's Part A, and that is
21 entitled, Ensuring Police Transparency, and that's what
22 we're talking about right now.

23 THE COURT: I'm not seeing Part A.

24 MS. TAYLOR: This is the first exhibit,
25 Your Honor, SX 1, Part A.

1 THE COURT: Okay. So it's Section 2-15-6.

2 MS. TAYLOR: Yes, 2-15-6.

3 THE COURT: Because it's -- the actual
4 ordinance is what I'm looking at --

5 MS. TAYLOR: Right.

6 THE COURT: -- in its entirety.

7 Okay. Section -- subsection 2-15-6 --

8 MS. TAYLOR: Uh-huh.

9 THE COURT: Please continue. I'm now with
10 you on the ordinance -- what section of the ordinance
11 you're referring to.

12 MS. TAYLOR: Right. And I also want to
13 point out to Your Honor -- and this is something that I
14 think we mentioned but did not emphasize to the Court last
15 time, and I realize Your Honor had a lot of different
16 things in front of you. It is Code of Criminal Procedure
17 2.1397 called Duties of Law Enforcement Agency Filing
18 Case. Okay? And this is the third --

19 THE COURT: Is this what you gave me?

20 MS. TAYLOR: Yes.

21 THE COURT: 2.1397. Okay.

22 MS. TAYLOR: This is the third thing I gave
23 you. And I'm going to refer to the final part of this.
24 It's subsection (c). And this is in effect currently, and
25 it applies to this situation. If at any time after the

1 case is filed with the attorney representing the State the
2 law enforcement agency discovers or acquires any
3 additional document, item, or information required to be
4 disclosed to the defendant under Article 39.14 -- that is
5 basically Brady material, and, Your Honor, as you may
6 recall in that ruling that you made, you said that this
7 was Brady material.

8 THE COURT: Uh-huh.

9 MS. TAYLOR: That it is required to be
10 disclosed to the defendant under Article 39.14, an agency
11 employee shall promptly disclose the document, item, or
12 information to the attorney representing the State.

13 Again, it's about transparency. It's about
14 being open with this evidence --

15 THE COURT: Okay. But, Ms. Taylor --

16 MS. TAYLOR: -- Brady evidence.

17 THE COURT: -- this was in effect when you
18 made your argument back on May the 19th.

19 MS. TAYLOR: Yes, it was.

20 THE COURT: You did not make that argument
21 to this Court.

22 MS. TAYLOR: I apologize that I did not
23 emphasize this statute, but I do want to call it to the
24 Court's attention now. You are making a decision now
25 before we start presenting evidence.

1 The end result of all of this is that the
2 State has five witnesses which were the subject of the
3 Court's ruling then, which the State is going to be
4 presenting their testimony, and it is incumbent upon the
5 State not to present any witness testimony that might be
6 false, inaccurate, or somehow leave any kind of false
7 impression or be misleading to the jury. Because the
8 State does not have access to these statements made by
9 these other officers -- I'm not talking about Mr. Taylor's
10 statements, so I'm not talking about anything protected by
11 Garrity here in this case. We're talking about these
12 statements of these other officers who are not charged
13 with any crime, and will not be because the statute of
14 limitations has run, related to these same -- I don't know
15 what's in them, but they could not be charged. They made
16 statements as witnesses about what happened in this case,
17 about the shooting that occurred in this case. They made
18 statements as part of an Internal Affairs investigation.
19 We don't know what those statements said, and we're going
20 to be putting these officers on the stand. Well, that's
21 the plan. They are on our witness list.

22 THE COURT: So let me ask -- this is -- I
23 mean, you are now saying that -- about the issue of
24 suborning perjury.

25 MS. TAYLOR: Yes.

1 THE COURT: This is now the argument. You
2 could have made this argument back when we had the
3 hearing. You could have made the argument back when I
4 asked for responses from motions or motions. What are you
5 doing in other cases?

6 MS. TAYLOR: Your Honor, this has not
7 occurred in other cases. We received this --

8 THE COURT: There are how many use of force
9 cases that have been indicted -- police officers have been
10 indicted in Travis County. Is this something that's being
11 litigated by other courts? Are you making the same
12 argument in the other cases that are pending against -- or
13 have you ever in the past -- I mean, other police officers
14 have been prosecuted in this county. In fact, one of them
15 was prosecuted I think in Judge Urrutia's court within the
16 last year. It was Austin police officers.

17 MS. TAYLOR: Your Honor, I want to reiterate
18 first, I did make this argument in May. I did. I did
19 make the argument, and I made it in a written filing, but
20 I know there was a lot in front of you at that time, but I
21 did make this argument.

22 THE COURT: Okay. So you're re-urging the
23 argument that you made in May?

24 MS. TAYLOR: I am re-urging that argument
25 because we are on the eve of trial, and I am concerned

1 about the practicalities of presenting State's witnesses
2 without knowing what they said before.

3 THE COURT: Okay.

4 MS. TAYLOR: I cannot ensure that our
5 witnesses are making truthful statements. So what
6 Mr. Gilford asked from the Court is for the Court to come
7 up with a plan. If the Court was going to continue to
8 deny this request from the State and our lawful subpoena
9 and our due process concerns, that the Court would somehow
10 have to take over for the State in assessing the
11 truthfulness of the State's witnesses. Which I don't
12 think is normally the Court's job, and it shouldn't be the
13 Court's job, but if we don't have any way to reference
14 these statements, which incidentally are made by officers
15 who are witnesses, not charged with a crime. And
16 Mr. Taylor does not have a standing to assert their
17 personal Fifth Amendment rights. And we are not charging
18 them with any crime, so we wouldn't be using these
19 statements against them, just to ensure truthful
20 testimony.

21 Also the Fifth Amendment in Garrity does not
22 protect people against perjury.

23 THE COURT: Okay.

24 MS. TAYLOR: So we're making that request.
25 We made it at the time.

1 THE COURT: I understand your argument.

2 MS. TAYLOR: Yes. And also I just wanted to
3 point out that the city ordinance exists. I realize that
4 the Attorney General reversed its opinion in 24 hours
5 after Mr. Gilford made those statements on Monday, but
6 nonetheless the ordinance still exists stating that the
7 City does not maintain secret police officer files --
8 personnel files and that the City supports transparency,
9 and I think that's clear from these ordinances.

10 And also I would point out that this
11 provision, 2.1397 in the Code of Criminal Procedure, and
12 also Article 39.14 in the Code of Criminal Procedure,
13 require that a law enforcement agency provide this kind of
14 Brady information to the State. It is part of the State's
15 job. And one of the reasons for that is not just that the
16 State disclose it to the Defense as is required by Brady
17 in Article 39.14 but that the State know what its
18 witnesses have said before so that it doesn't offer any
19 kind of false testimony before the Court and the jury. So
20 that is what we're asking.

21 THE COURT: Okay. I definitely understand
22 your argument. And I don't remember on the writ of
23 mandamus. Was this issue raised in front of the Court of
24 Appeals as far as, you know, the ministerial duty that I
25 had under the section in the Penal Code -- Code of

1 Criminal Procedure?

2 MS. TAYLOR: Your Honor --

3 THE COURT: Did you raise it in the writ of
4 mandamus? I don't remember.

5 MS. TAYLOR: So in the writ itself, I don't
6 think I did. The primary focus of that was merely
7 compliance with the subpoena duces tecum and the laws that
8 we discussed last time. You may remember that City of
9 Lubbock case.

10 THE COURT: Uh-huh.

11 MS. TAYLOR: That was the primary focus of
12 our petition for writ of mandamus. I have may have
13 mentioned this in a supplemental brief that was filed, but
14 it was not the subject of the petition itself, as I
15 recall. I apologize, my memory is not perfect at this
16 point in my life, but I do not believe that was the focus
17 of the petition for a mandamus. We just are coming to a
18 point now where we're about to present evidence and
19 presented with a brick wall in terms of complying with our
20 obligations of the United States Constitution. And we're
21 asking for you to reconsider your decision in light of
22 those concerns.

23 THE COURT: Okay. Does the Defense have a
24 response, or do they want to be heard, or do you have any
25 evidence that you want to present on this issue?

1 MR. O'CONNELL: Your Honor, may I suggest
2 the Court hear from Mr. Coppola first?

3 THE COURT: That seems to be where we're
4 headed.

5 Mr. Coppola, you are an attorney and an
6 officer of the Court, and I am not going to administer the
7 oath to you, but you are -- I am assuming that you are
8 going to provide truthful testimony as an officer of this
9 court.

10 MR. COPPOLA: Well, of course, Your Honor.
11 I don't know if I'm providing testimony. I'll provide
12 argument. Of course, whatever I say to you --

13 THE COURT: Well, I think anything that you
14 say potentially could be informative to this Court in the
15 sense that it could be evidence, because I do want to
16 know -- this is what I'm interested in: What Ms. Taylor
17 was talking about is how this ordinance is rectified --

18 MR. COPPOLA: Yeah.

19 THE COURT: -- with this Attorney General
20 opinion.

21 MR. COPPOLA: And you're holding the
22 September 18th --

23 THE COURT: Yes.

24 MR. COPPOLA: -- Your Honor?

25 THE COURT: No, no, no. I'm holding the

1 October 17th.

2 MR. COPPOLA: Oh, I gotcha.

3 THE COURT: Because from my reading of the
4 October 17th Attorney General's opinion, it says that --
5 so it says, consequentially, this decision serves as the
6 correct ruling and is a substitute for the decision issued
7 on September the 18th.

8 So by my reading, the 18th is no longer a
9 valid ruling, and the Attorney General's Office intended
10 the ruling on October the 17th to supplant it. Is that --

11 MR. COPPOLA: That is my understanding,
12 Your Honor.

13 THE COURT: Okay.

14 MR. COPPOLA: May I approach and provide you
15 with a few materials?

16 THE COURT: Sure. And are these marked? Is
17 this just for my reference?

18 MR. COPPOLA: They're just for your
19 reference.

20 THE COURT: Okay. That's fine.

21 MR. COPPOLA: There's a case. There's a
22 statute, Your Honor, which is 143.004. I have one --

23 THE COURT: Is this the statute that
24 discusses the G file?

25 MR. COPPOLA: No, this is 143.089, which is

1 there, Your Honor.

2 THE COURT: Okay. This is the one that
3 discusses the --

4 MR. COPPOLA: Yes, it is, Your Honor.

5 THE COURT: Okay.

6 MR. COPPOLA: That's correct. I have
7 Government Code 311.016, which is the Code Construction
8 Act. And you already have the October 17th AG ruling, so
9 I won't give you that as well.

10 THE COURT: Okay.

11 MR. COPPOLA: And I'm sorry, Your Honor, my
12 voice -- I'm a little bit under the weather, so my voice
13 isn't as strong as it needs to be.

14 THE COURT: That's fine.

15 THE REPORTER: Can you sit at the table,
16 then?

17 THE COURT: You want him --

18 MR. COPPOLA: I can stand here, if that's
19 okay.

20 THE COURT: Yeah. Or you want to sit on the
21 witness stand, whatever.

22 MR. COPPOLA: I'd rather not sit on the
23 witness stand.

24 THE COURT: Okay. I understand. You can
25 stand there, or I'm sure Mr. Cobb wouldn't mind giving you

1 his seat.

2 MR. COPPOLA: No, I'm okay. I'm happy to
3 stand up, Your Honor.

4 So a couple things I want to say. I mean,
5 first, absolutely the City does promote transparency for
6 its police officers with police -- investigations against
7 police officers. That has long been the policy and stated
8 intent of the City of Austin and the City Council;
9 however, the City's also, of course, obligated to comply
10 with state law. And the state law at issue here, as you
11 well know, Your Honor, is this Texas Local Government
12 Code, Chapter 143.089.

13 THE COURT: Yes.

14 MR. COPPOLA: And again, just to reiterate
15 some of the history of this, you know, we got a subpoena,
16 I want to say, back in November of 2022, something like
17 that. I filed a motion to quash that subpoena, I want to
18 say, in either December or January of 2023. You know, we
19 had a long period of nothing happening in response to that
20 motion. In May, we had the arguments, I think. You know,
21 as Ms. Taylor says, this ordinance was promulgated May
22 16th. You made your rulings, et cetera.

23 You know, admittedly and it is my failure if
24 I didn't raise that ordinance to you during those
25 arguments. It has been -- it has been the City's

1 position, and it remains the City's position, that that
2 section of the ordinance is preempted by 143.089(g).

3 THE COURT: Okay. Hold on. I want to make
4 sure that I'm very clear. And when you say that section
5 of the ordinance --

6 MR. COPPOLA: Yes.

7 THE COURT: -- I want to make sure. Is that
8 the 2-15-6?

9 MR. COPPOLA: Yes, Your Honor, (A).

10 THE COURT: The City shall not maintain a
11 secret police department personnel file related to the
12 conduct of police officers under Local Government Code
13 143.089(g).

14 MR. COPPOLA: Yes.

15 THE COURT: That's what you're referring to?

16 MR. COPPOLA: Yes.

17 THE COURT: So you're saying that only this
18 section of the ordinance?

19 MR. COPPOLA: Well, I'm not making any
20 arguments about any other parts of the ordinance.

21 THE COURT: Okay.

22 MR. COPPOLA: That's the only one --

23 THE COURT: This is the one that's before
24 us.

25 MR. COPPOLA: This is the one that's here,

1 so that's all I want to talk about, if that's okay, Judge.

2 So it's the City's position that that
3 section of the ordinance is preempted by 143.089(g).

4 As you know, Section 143.089(g), which I put
5 in front of you, provides that a city police department
6 may maintain a personnel file on a police officer for the
7 Department's use, and then it says, except as provided in
8 subsection (h), which is not relevant here. The
9 Department may not release any information contained in
10 that file to any agency or person requesting it.

11 That section has been the subject of a lot
12 of litigation. It was, of course, well discussed in my
13 motion to quash. You're familiar with the In re Moore
14 decision, which is the one that essentially requires us to
15 file the motion to quash and then puts a ministerial duty
16 on the Court to review those personnel file materials for
17 Brady and for 39.14 --

18 THE COURT: Is that the Bastrop case?

19 MR. COPPOLA: Yes, it is, Your Honor.

20 THE COURT: Okay.

21 MR. COPPOLA: We went through that process
22 back in May. I presented the materials to the Court. You
23 made your ruling and determined that those files did
24 contain some Brady and some -- perhaps some 39.14(h)
25 information. Ultimately, of course, you ordered that they

1 be produced to the Defense only.

2 The City takes no position on whether or not
3 those files should also be produced to the State. I don't
4 have any arguments about that at all.

5 In terms of the preemption argument, Judge,
6 the case I handed you, what that one holds is essentially
7 that -- this is a Texas Supreme Court case which holds
8 that a city ordinance is preempted when the state law
9 is -- when it's inconsistent with the state law. If there
10 is no reasonable construction that be can made of the two
11 to give them both effect, then the ordinance has to yield
12 to the state law.

13 The reason I'd say they're preempted, Judge,
14 is -- you know, when you look at 143.089(g), it uses the
15 word "may." It gives police departments the authority --
16 the legal authority and permission and power to keep these
17 files. And that --

18 THE COURT: But -- Mr. Coppola, I'm sorry to
19 interrupt, but my understanding is it's permissive. It
20 does not require the city --

21 MR. COPPOLA: So --

22 THE COURT: -- city to -- it does not
23 require a city to maintain what we're referring to as G
24 files; is that correct?

25 MR. COPPOLA: It doesn't require them to

1 maintain it, but when you look at the Code Construction
2 Act which I provided you, Judge, which is that Government
3 Code 311.016. I can give you another copy. I know you're
4 floating in paper up there.

5 THE COURT: Here it is.

6 MR. COPPOLA: It says "may" -- and this is
7 Part 1. "May" creates a discretionary authority or grants
8 permission or power.

9 And so it's the City's position that
10 143.089(g) gives the police department the power and its
11 own discretionary authority to keep these files. The City
12 Council -- you know, whatever we all feel about whether
13 this is a good state law or not, but the City Council
14 doesn't have the authority to revoke that power from the
15 police department through an ordinance.

16 THE COURT: And are you saying that this
17 Bates case is what --

18 MR. COPPOLA: That Bates case is not --
19 that's just cited for the general proposition that a city
20 ordinance will be preempted by state law if it's
21 inconsistent with state law. It doesn't talk about this.
22 This issue has not been litigated specifically. The --
23 whether the city ordinance is preempted. So I just -- I
24 handed you that Bates case for the general rule.

25 THE COURT: Okay.

1 MR. COPPOLA: The other thing I would say is
2 that Chapter 143 itself, which is 143.004, provides the
3 only mechanism for a city to opt out of Chapter 143, which
4 is through a petition and a vote of the voters. That was
5 recently amended as well in September of 2023 to actually
6 take that power away for cities over a certain size, but
7 nonetheless that is the sole method by which a city can
8 opt out of Chapter 143 and it cannot do so by ordinance.

9 THE COURT: Isn't that what we did? Didn't
10 we hold an election?

11 MR. COPPOLA: But we didn't hold an election
12 under Chapter 143. What you see is under Chapter 143,
13 you've got to hold an election to adopt or repeal this
14 chapter as provided by this section. So there's got to be
15 a petition requesting an election that's signed by a
16 number of qualified voters, et cetera, et cetera, and that
17 petition has to be about repealing Chapter 143.

18 THE COURT: But in essence, isn't that what
19 the ordinance did?

20 MR. COPPOLA: The ordinance did not purport
21 to repeal 143.

22 THE COURT: By stating, this City shall not
23 maintain a secret police file.

24 MR. COPPOLA: That just addresses, you know,
25 one of many provisions in Chapter 143. What state law

1 requires is a petition to reject or adopt the entire thing
2 altogether.

3 THE COURT: All of 143?

4 MR. COPPOLA: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. COPPOLA: So that is the sole mechanism
7 for accomplishing that purpose. If the idea was to pick
8 and choose certain parts of 143 that the City would opt
9 out of, that's not possible under state law. That's my
10 point.

11 THE COURT: Okay. I understand.

12 MR. COPPOLA: And I don't know if that was
13 the objective or not. I'm not sure. But anyway, that's
14 what the law is.

15 So, ultimately, to the extent that the State
16 is arguing that the ordinance has superseded the state law
17 and has, you know -- has indicated that the police no
18 longer keep a confidential G file, that the police
19 department no longer keeps a confidential G file, it's the
20 City's position that that is preempted by state law. The
21 police department continues to maintain a confidential G
22 file as it is empowered to do by state law. And that I
23 think is what's recognized implicitly, although not
24 explicitly, implicitly in that more recent Attorney
25 General's opinion.

1 THE COURT: And so the City -- you are
2 saying that the City does maintain G files?

3 MR. COPPOLA: The police department.

4 THE COURT: The police department does
5 maintain a G file?

6 MR. COPPOLA: Yes, Your Honor.

7 THE COURT: And the reason they do that,
8 according to you, is because state law under 143.089
9 preempts --

10 MR. COPPOLA: Yes, Your Honor.

11 THE COURT: Okay.

12 MS. TAYLOR: Your Honor, may I very briefly
13 respond?

14 THE COURT: Well, I was going to let him
15 finish.

16 MS. TAYLOR: Oh, I'm sorry.

17 MR. COPPOLA: I'm finished, Your Honor.
18 Unless you have any more questions for me, that's -- I
19 think I've addressed all of the arguments of the State.

20 THE COURT: Okay.

21 MR. COPPOLA: Thank you, Your Honor.

22 THE COURT: Does the -- Defense counsel, do
23 you have an argument, Mr. O'Connell?

24 MR. O'CONNELL: Yes, just very briefly,
25 Your Honor. First, we adopt the City's position on this

1 matter, but more importantly, nothing in the law has
2 changed. The Attorney General's opinion that Mr. Dexter
3 Gilford cited on Monday has been withdrawn and replaced.
4 Mr. Coppola just informed the Court that Section A of the
5 ordinance is preempted by state law. The status of the
6 law hadn't changed. In other words, this issue has been
7 fully litigated. We've gone through this once. And not
8 only was it litigated in this courtroom, but the Court of
9 Appeals heard this issue and rejected it. Here we are
10 three days away from starting evidence in this murder
11 trial. The jury has been sworn in. The Morton form has
12 been signed. And I respectfully submit that this issue is
13 too late. We ought not to be having to deal with new
14 evidence coming in at this late hour that could --

15 THE COURT: And are you speaking to the
16 State's argument of the suborning perjury? Are you
17 speaking to the argument of -- tell me --

18 MR. O'CONNELL: Both, Your Honor.

19 THE COURT: I understand her to be making
20 two arguments.

21 MR. O'CONNELL: Yeah. I'm addressing both,
22 but the underlying issue that we're faced with is --
23 unless the Court's entertaining the idea of another
24 continuance and resetting this trial with a jury already
25 sworn in, we're facing an issue where the State would, I

1 believe, ask the Court to let new evidence in that would
2 somehow affect their ability to render an opinion on
3 whether or not an officer is being truthful or perjuring
4 themselves on the witness stand.

5 And the other thing I'll --

6 THE COURT: Let new evidence in? I don't
7 understand that.

8 MR. O'CONNELL: Well, they're asking for
9 Internal Affairs statements, and that would be evidence.

10 THE COURT: Right. They're asking for
11 statements to be produced to them.

12 MR. O'CONNELL: Right.

13 MS. TAYLOR: Just to clarify for the
14 purposes of the record, the State is not requesting that
15 these be admitted in evidence.

16 MR. O'CONNELL: But it would certainly be
17 something we'd have to review and consider and impact our
18 trial strategy potentially. But I don't believe any of
19 these officers -- there is any realistic issue about their
20 truthfulness and honesty in making statements, because as
21 the Court knows, when there is a witness-officer involved
22 in an officer-involved situation, there's two statements.
23 One made to SIU, Special Investigations Unit, and one made
24 to Internal Affairs. SIU is not privy to Internal Affairs
25 statements, but the opposite is not true, Internal Affairs

1 is privy to SIU statements. So if there was dishonesty or
2 a conflict in those two statements, it would have been
3 identified by Internal Affairs and would have resulted in
4 a dishonesty allegation or perhaps something worse,
5 because as Ms. Taylor correctly noted, Garrity does not
6 protect false statements.

7 THE COURT: Correct. Correct. So my
8 question to you is, you have seen the IA statements and
9 you have seen the SIU statements. Do you anticipate any
10 impeachment evidence coming in as it pertains to these
11 witnesses should the State call them?

12 MR. O'CONNELL: No.

13 THE COURT: Are the statements similar?

14 MR. O'CONNELL: Yes.

15 THE COURT: Okay.

16 Ms. Taylor --

17 I'm sorry, Mr. O'Connell, was that it?

18 MR. O'CONNELL: For all the reasons I've
19 stated, we ask the Court to maintain your original
20 decision quashing the -- I'm sorry, granting the City's
21 motion to quash the subpoena.

22 THE COURT: Okay. Thank you.

23 Ms. Taylor, would you like to respond?

24 MS. TAYLOR: Your Honor, I think you
25 partially granted and partially denied that motion to

1 quash. To clarify for the record, these particular
2 statements, the Court said that the subpoena was quashed
3 with regard to these statements and that they needed to be
4 disclosed. You initially ruled, I believe correctly, on
5 May 18th that they should be disclosed in response to the
6 State's lawful subpoena in court to both parties. You
7 then changed your ruling on May 19th to direct --

8 THE COURT: Ms. Taylor, you're repeating
9 yourself.

10 MS. TAYLOR: Yes, I know.

11 THE COURT: We've already been through all
12 this.

13 MS. TAYLOR: I know. Direct APD to disclose
14 them only to the State. That's the only piece that we
15 dispute.

16 THE COURT: I'm very clear on that. You
17 made that in your opening argument.

18 MS. TAYLOR: Yes.

19 THE COURT: I understand your position. I'm
20 asking if you have a response to Mr. Coppola or
21 Mr. O'Connell's argument?

22 MS. TAYLOR: Yes, Your Honor, I do. I
23 apologize.

24 THE COURT: Please give it.

25 MS. TAYLOR: First of all, I would like to

1 say that Mr. Coppola said that -- apparently indicated
2 that there's some sort of disagreement between the Austin
3 Police Department and the City Council concerning the
4 meaning of this ordinance and whether it can take effect
5 with regard to the state statute. I imagine that this
6 will be litigated somewhere in some civil court, but I
7 just want to point out that his statement that it is only
8 the view of the City Council that this ordinance means
9 what it says, which is they don't keep a G file. It is
10 not just the opinion of the City Council. According to
11 this resolution, which the Court has in front of you,
12 under the third whereas, whereas on May 6th, 2023,
13 approximately, 4 in 5 Austin voters overwhelmingly
14 approved Prop A and rejected Prop B.

15 Prop A enacted this provision, and that is
16 why it took effect on May 16th. So it wasn't just the
17 Austin City Council. It was 4 out of 5 Austin voters who
18 did exactly what the Court said and stated that this
19 particular provision that the City of Austin did not keep
20 a G file.

21 THE COURT: So, Ms. Taylor, please respond
22 to Mr. Coppola and Mr. O'Connell's argument about how a
23 city ordinance is a city ordinance preempted by state law.

24 MS. TAYLOR: So I don't think the state law
25 preempts it. And, in fact, Your Honor, you were actually

1 on to this when you asked Mr. Coppola about this statute.
2 Mr. Coppola is fixating on the second sentence of the
3 statute. I'd like to call the Court's attention to the
4 first sentence.

5 THE COURT: And tell me -- we've got lots of
6 statutes. Which statute are you referring to?

7 MS. TAYLOR: Right. So we're talking about
8 the one that is at issue here. This is Local Government
9 Code, Section 143.089, subsection (g), and I am focused on
10 the first sentence of that statute, which is, a fire or
11 police department may maintain a personnel file on a
12 firefighter or police officer employed by the Department
13 for the Department's use.

14 Then it goes on to say that if they do, they
15 may not disclose it, et cetera, et cetera, et cetera. But
16 it means that the City can choose. It means that the City
17 can choose. The term "may," as Your Honor pointed out
18 earlier, according to the Code Construction Act -- and
19 this is our Government Code, Section 311.016, which
20 Mr. Coppola brought into court today, provides in
21 subsection 1 that "may" creates a discretionary authority
22 or grants permission or a power.

23 This statute clearly grants permission to
24 the City of Austin to make a decision. Not only the City
25 Council, but also 4 out of 5 Austin voters voted that this

1 was the law in this city. So I don't think that this
2 dispute has any meaning. And I will say that this
3 Attorney General opinion that came down on October 17th
4 was based -- was changed only on the basis of the City of
5 Austin's assertions. If you look at a footnote in that
6 decision, it specifically says, we're relying on your
7 assertions, and if something changes and you aren't
8 keeping a G file, our decision may be different. There's
9 a footnote that says that. They basically changed their
10 decision because the City of Austin told them to change
11 it.

12 THE COURT: That's exactly how I read it.

13 MS. TAYLOR: Yes.

14 THE COURT: But Mr. Coppola is saying the
15 City of Austin keeps a G file.

16 MS. TAYLOR: Uh-huh. I want to point out
17 something else that Mr. Coppola said right at the
18 beginning. He said he takes no position -- by the way,
19 this AG decision is only about the public release of these
20 records. It doesn't pertain to whether they need to be
21 disclosed to a prosecutor's office to ensure that it
22 presents truthful testimony in a trial.

23 And by the way, the Defense's assertions
24 that there's no conflict here do not -- are not a
25 substitute for the State's constitutional duty to ensure

1 that it presents testimony. We cannot supplant the
2 State's duty and give it to the Defense. That doesn't
3 work. We still have this duty under the Constitution.

4 But Mr. Coppola said he takes no position on
5 whether these files should be produced to the State, and
6 Mr. O'Connell stated that he adopts the City's position on
7 this matter. That's the first thing he said. So I think
8 that the case is closed on that point.

9 THE COURT: So that is a -- I think that is
10 a valid point. The City has no position on whether the
11 statements are given to the State. And if the City has no
12 opinion, then I'm assuming there's no objection.

13 Mr. O'Connell, you said you adopt the City's
14 position.

15 MR. O'CONNELL: Yeah. I misspoke. We
16 certainly object to the State doing an end run around
17 settled Supreme Court law, specifically Garrity.

18 THE COURT: Okay. That only pertains to
19 your client's statement.

20 MR. O'CONNELL: Well, and we furthermore
21 think that all of this is an end run around the idea that
22 an officer who is not disciplined has a right to
23 confidentiality as described in state law so that they
24 cannot -- so they can testify truthfully and fully in IA
25 interviews without fear of public repercussions.

1 And finally, once again, I would suggest
2 that we're here on Thursday evening before evidence starts
3 on Monday, and this has been litigated all the way to the
4 Third Court of Appeals.

5 THE COURT: And, Mr. O'Connell, on that
6 particular argument, the Court is making note of the fact
7 that we are now here on the eve of trial after a jury has
8 been seated and sworn with the State's argument that they
9 should be allowed under the provisions of preventing any
10 type of false statement or perjured statement. And I am
11 not persuaded. I mean, this is -- it's such a late hour.
12 Please let me finish.

13 You waited until the last minute the last
14 time on the eve of trial after we'd had a hearing to tell
15 me oh, there's one other matter. I forgot to bring up the
16 City's motion to quash the subpoena that's been on file
17 for five months. We had a whole hearing, and now you want
18 to bring in and litigate this issue of your constitutional
19 obligation to prevent perjured testimony. It's too late.
20 If you want to talk about the statute, if you want to talk
21 about how the ordinance -- I'm very interested in how the
22 ordinance --

23 Mr. Coppola, has there been any litigation
24 on this ordinance as it pertains to this specific issue?

25 MR. COPPOLA: No, Your Honor.

1 THE COURT: Okay. Have you received other
2 requests or have you filed other motions in criminal
3 cases, in which the defendant was a police officer, to
4 quash subpoenas?

5 MR. COPPOLA: Since that ordinance was
6 passed?

7 THE COURT: No.

8 MR. COPPOLA: Or ever?

9 THE COURT: Ever.

10 MR. COPPOLA: Oh, I'm -- I think --

11 THE COURT: I mean, has the State ever sent
12 a subpoena in a case where an officer is the --

13 MR. COPPOLA: Oh. Well --

14 THE COURT: -- is charged?

15 MR. COPPOLA: I mean, ever? Yes, of course.
16 Yes, Your Honor.

17 THE COURT: Okay. And what happened -- what
18 were the rulings in those cases?

19 MR. COPPOLA: Well, I mean, if we -- I mean,
20 we could go back to the In re Moore case, for example,
21 which was in a different county, but I mean, that --

22 THE COURT: I'm talking about here.

23 MR. COPPOLA: Here in Travis County?

24 THE COURT: I'm talking about in Travis
25 County. We've got 20 pending --

1 MR. COPPOLA: I know, and I just can't -- I
2 can't honestly -- Your Honor, I can't think of whether I
3 received subpoenas in any of those cases on this --

4 THE COURT: And that's my question. I
5 mean --

6 Ms. Taylor, you will have an opportunity,
7 but don't interrupt.

8 That's my question. The State is now
9 standing up and saying we have this extreme constitutional
10 obligation to the accused in this case, and I want to know
11 what other cases are they making that argument. There are
12 20 indicted -- or I don't know how many indicted police
13 officers.

14 MR. COPPOLA: Your Honor, I --

15 THE COURT: Is this being litigated in other
16 courts?

17 MR. COPPOLA: I'm just uncomfortable making
18 a blanket statement, but to this extent, no, this argument
19 has not been made in other courts where the State has
20 raised this due process concern. Not in another court.
21 That's fair to say.

22 THE COURT: Okay. Ms. Taylor -- and we need
23 to -- this is going to be our final round of arguments,
24 so...

25 MS. TAYLOR: Your Honor, I just want to say

1 that the State subpoenas these records frequently because
2 it is our ethical obligation to do so, and I am not aware
3 of any Court ever ruling like this Court did, that the
4 State does not have the results of its own subpoena. So
5 this issue would not have been litigated, because no other
6 judge has ruled in this manner.

7 THE COURT: What other cases have you
8 filed --

9 MS. TAYLOR: Your Honor, I think at least in
10 the civil rights division, we generally file them across
11 the board.

12 THE COURT: When there is an officer? I
13 mean, I know that there's another pending officer-involved
14 case in my court and this issue has not been litigated.

15 MS. TAYLOR: Again, it wouldn't have been
16 litigated unless a Court ruled that we weren't entitled to
17 the information.

18 THE COURT: Well, you haven't even filed a
19 subpoena.

20 MS. TAYLOR: We have filed subpoenas,
21 Your Honor, and I don't know at this moment in what cases
22 we filed subpoenas, but we -- I assure you that we have.

23 THE COURT: I just find it unusual, and I
24 have talked to some of my colleagues of how they have
25 resolved this case -- this particular issue in terms of

1 when an officer has been indicted and is standing trial
2 and the State tries to subpoena the G file, and there was
3 not a lot of oh, yeah, we've handled that a lot.

4 MS. TAYLOR: Your Honor, I don't understand
5 why the ruling is different because the defendant is an
6 officer. We're not asking for his statement. Police
7 officers are witnesses in many cases.

8 THE COURT: You're asking for his G file.
9 That's what's different.

10 MS. TAYLOR: The only thing is --
11 Your Honor, these are not his statements that are in the
12 file. They are the statements of other officers who were
13 witnesses to this shooting.

14 THE COURT: Okay. So please continue with
15 your argument. I won't interrupt you anymore.

16 MS. TAYLOR: I apologize, Your Honor.

17 They're the statements of other officers.
18 They are not protected by Garrity in those cases. Those
19 officers aren't charged with a crime related to this, and
20 they won't be. They are just witness officers just like
21 any other criminal case. There's no reason for this case
22 to be treated differently.

23 THE COURT: Why were we not litigating this
24 in May? I know you raised it in your motion for
25 rehearing, but when you made -- when we had the hearing on

1 the City's motion to suppress and we had a hearing on
2 Monday and we had a hearing on Friday, and I have not
3 heard that argument orally made. You did make it in -- I
4 did read the motion for reconsideration when you raised it
5 at that point, but if it's such an important
6 constitutional due process as you are saying, this should
7 have been litigated way back when.

8 MS. TAYLOR: Your Honor, if I may, I very
9 clearly set out this argument in May, and that was
10 months --

11 THE COURT: Not in court. You set it out in
12 a motion for rehearing.

13 MS. TAYLOR: When we came in and we verbally
14 argued it that Monday morning, I made the argument then,
15 and Your Honor said that you understood the arguments that
16 I had raised in my motion.

17 THE COURT: That was not the crux of your
18 argument. I'm not going to argue with you. Just finish
19 your argument. And I'm going to take this under
20 advisement.

21 MS. TAYLOR: Okay.

22 THE COURT: So please finish your argument.

23 MS. TAYLOR: Thank you. And I want to
24 apologize because I know there was a lot in front of you
25 at the time and quite a few arguments, but I did -- I did

1 make the argument at that time.

2 I guess what I would say -- I want to sum up
3 and just say basically it's not too late. Mr. O'Connell
4 saying it's too late to raise this argument, but the State
5 hasn't presented any witness testimony yet in this case.
6 And we want to comply with our obligations under the
7 United States Constitution when we do it. And if we
8 can't, we have to ask this Court to step in to fill in for
9 the State where it cannot to ensure that the State's
10 witnesses are offering truthful testimony. I'm not
11 suggesting that these witnesses wouldn't, but we have this
12 core constitutional obligation, and if the Court isn't
13 going to allow the State to comply with its obligations
14 under the Constitution, we're going to have to ask you,
15 Your Honor, to step in and figure out a way to do this.
16 Whether this means that we have to take time between our
17 witnesses for the Court to review their statements or some
18 sort of voir dire process, I don't know, but that's one of
19 the reasons that we're bringing it up again for Your Honor
20 now, because we have not started presenting testimony yet.
21 Thank you.

22 MR. O'CONNELL: Nothing further --

23 THE COURT: I think it's their motion, so
24 that's the end. That's the final argument. It's their
25 motion.

1 Okay. The Court is going to take this under
2 advisement. I will issue a ruling tomorrow. I know that
3 the clock is ticking and the hour is late. The testimony
4 will start on Monday, but I would like an opportunity to
5 discuss this with my staff attorney.

6 So Court's in recess on the Christopher
7 Taylor matter.

8 MR. O'CONNELL: Your Honor, I think we had
9 discussed amongst the parties doing one more order of
10 business related to Mr. Taylor's case --

11 THE COURT: Okay.

12 MR. O'CONNELL: -- if you'd like.

13 THE COURT: Yeah, I want to take care of
14 everything now.

15 MR. O'CONNELL: I understand. Our
16 understanding is the government intends to call
17 Officer Krycia as a witness.

18 THE COURT: Okay.

19 MR. O'CONNELL: And -- one moment,
20 Your Honor.

21 *(Sotto voce discussion)*

22 THE COURT: Does that conclude the business
23 that we need to take up today?

24 MR. COBB: Yes, Your Honor.

25 MR. O'CONNELL: Yes, Your Honor.

1 THE COURT: So I will enter my ruling -- I
2 will enter a written ruling, and I will file it tomorrow
3 unless the parties want to come back and listen to my
4 ruling. I'll do it by written order.

5 MR. COBB: We'll read it.

6 THE COURT: I'll do it by written order.

7 Okay. Then if there's nothing else, we'll
8 see everybody Monday, 9:00 a.m.

9 MR. O'CONNELL: Thank you, Your Honor.

10 THE COURT: Opening statements, and then
11 we'll be ready to roll through witnesses until 5:00 p.m.,
12 correct?

13 MR. COBB: Indeed.

14 THE COURT: Okay. Have a good weekend.

15 *(Proceedings adjourned)*

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1 STATE OF TEXAS)
)
 2 COUNTY OF TRAVIS)

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4 I, Shonna K. Castillo, Official Court Reporter in and
 5 for the 167th District Court of Travis County, State of
 6 Texas, do hereby certify that the above and foregoing
 7 contains a true and correct transcription of all portions
 8 of evidence and other proceedings requested in writing by
 counsel for the parties to be included in this volume of
 the Reporter's Record, in the above-styled and numbered
 cause, all of which occurred in open court or in chambers
 and were reported by me.

9 I further certify that this Reporter's Record of the
 10 proceedings truly and correctly reflects the exhibits, if
 any, admitted by the respective parties.

11 WITNESS MY OFFICIAL HAND this the 22nd day of
 12 October, 2023.

13 CERTIFIED FOR THE USE OF REBECCA WEBBER'S OFFICE
 14 ONLY.

15 /s/ Shonna K. Castillo
 16 SHONNA K. CASTILLO, Texas CSR No. 4896
 17 Expiration Date: 10/31/25
 18 Official Court Reporter
 19 167th Judicial District Court
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