

# Analysis of Law and Policy Affecting the Cambridge Police Department's Release of Involved Officers' Names After Critical Incidents

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## Overview

At the direction of the Cambridge Police Commissioner, consistent with a Policy Order of the Cambridge City Council, PERF examined the Cambridge Police Department's (CPD) decision to withhold the involved officer's name from the public in the wake of the fatal shooting of Arif Sayed Faisal on January 4, 2023. PERF was also asked to make policy recommendations to CPD for releasing involved officers' names moving forward. CPD welcomed and was fully engaged in the process.

After examining the applicable law, professional rules, and CPD policy, PERF concludes:

- CPD could have — legally and ethically — released the officer's name during the weeks after the shooting.
- Its decision not to do so was based on CPD's past practices, the statewide practices of law enforcement agencies in Massachusetts, and the absence of a relevant CPD policy.
- CPD's ability to release the officer's name changed when the judge overseeing the inquest into the matter ordered that no information could be shared publicly until the inquest is complete; from that point on, CPD could no longer provide the officer's name (or any other information) to the public.

Below, PERF presents the relevant procedural history of this incident, analyzes various rationales law enforcement agencies sometimes cite for withholding an involved officer's name from the public and offers policy guidance moving forward.

## Background

As of the date of this report, an inquest into the circumstances of the fatal shooting has not yet concluded; PERF will not receive police reports about the incident until the inquest is complete. Therefore, the basic facts mentioned in this report are based on consistent news accounts.

On January 4, 2023, a CPD officer shot and killed Arif Sayed Faisal, a 20-year-old college student experiencing an apparent mental-health-related issue. The shooting took place after Mr. Faisal — who had reportedly jumped through a glass window and was cutting himself — refused to drop a long knife and advanced toward officers.<sup>1</sup> That incident sparked unrest and demands for transparency by community members.<sup>2</sup>

Two factors unique to the city of Cambridge ("the city") and its police department significantly affected the public response to the incident. First, CPD does not have a body-worn

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<sup>1</sup> See e.g., <https://www.cbsnews.com/boston/news/man-armed-machete-shot-killed-cambridge-police-officer/>; <https://www.nbcboston.com/news/local/man-with-machete-prompts-police-response-in-cambridge/2936142/>

<sup>2</sup> See e.g., <https://www.thecrimson.com/article/2023/2/3/sayed-faisal-cover/>

camera (BWC) program, so there was no video of the incident to release to the public.<sup>3</sup> It appears that the current and previous CPD Commissioners, as well as the CPD union and some Cambridge city councilors, have supported implementing a BWC program for years, but there was resistance from others in city government as well as some city residents.<sup>4</sup> This tragic incident has reinvigorated the push for BWCs, and CPD recently took the proactive step of sending a member of its executive staff to a national meeting focused on BWC best practices.<sup>5</sup>

The other factor complicating CPD's response to the incident – and leading to public frustration - reflects that this was the first officer-involved CPD fatality in more than two decades. Therefore, the general order governing CPD's response had not been updated to reflect some modern transparency trends. Specifically, CPD had no policy language about whether and when to release the shooting officer's name.

Not having a policy on name release distinguishes CPD from other national law enforcement agencies that have implemented such a policy,<sup>6</sup> but the same cannot be said of law enforcement in Massachusetts. While it's possible that other police agencies in the state proactively release involved officers' names within days of fatal critical incidents, PERF was not able to identify any. This likely presents an opportunity for CPD to be a leader in the state.

#### CPD Actions Concerning Release of Shooting Officer's Name

At the time of the fatal shooting, CPD's policy governing officer-involved shootings had not been updated since 2008, and its only reference to the release of an officer's name occurred in the context of how officers could guard against telephone harassment if their names were somehow released to the public:

*"In order to protect against crank or abusive calls, officers should be advised to have phone calls answered by another person for several days if their names are released to the public."*<sup>7</sup>

Because CPD had no policy requiring the release of the officer's name within a specified time frame - or prohibiting it - CPD was free from the inception to make its own choice about whether to release the shooting officer's name. When CPD decided not to release the name in the immediate aftermath of the shooting, the public was left wondering why CPD did not disclose information that other agencies routinely release expeditiously.

For instance, a 2016 PERF review of agencies in the Washington, DC area found that even then, many departments had updated their policies to provide for the expedited release

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<sup>3</sup> <https://www.masslive.com/news/2023/01/cambridge-officials-have-always-wanted-body-cameras-for-police-so-why-dont-they-still-have-them.html>

<sup>4</sup> [https://myemail.constantcontact.com/It-s-Happening-in-Cambridge.html?soid=1114093348634&aid=k\\_LMjHl6CVE](https://myemail.constantcontact.com/It-s-Happening-in-Cambridge.html?soid=1114093348634&aid=k_LMjHl6CVE)

<sup>5</sup> [https://www.policeforum.org/index.php?option=com\\_jevents&task=icalevent.detail&evid=75](https://www.policeforum.org/index.php?option=com_jevents&task=icalevent.detail&evid=75)

<sup>6</sup> To be sure, CPD is a progressive agency, leading the .

<sup>7</sup> No. 402, *Post-Shooting Incident Guidelines*, Section (V)(B)(9). The Order's apparent focus on landline telephone harassment and its silence about potential abuse via social media are further evidence that it was outdated.

of an involved officer's name after a critical incident. These included: Anne Arundel County (MD) Police Department – within 24 hours; Baltimore (MD) Police Department – within 48 hours; Howard County (MD) Police Department – “As quickly as possible”; Montgomery County (MD) Police Department – within 24 hours; Prince George's County (MD) Police Department – within 24 hours; and Prince William County (VA) Police Department – within three to five days.

PERF determined that CPD withheld the officer's name based on past practice within the department (concerning non-fatal incidents and other acts of potential misconduct), as well as the current practice of other Massachusetts law enforcement agencies. Those factors, as well as a belief that it was not permitted to release the name without the express consent of the local prosecutor, rather than a desire to keep information hidden from the public, steered CPD's response in the weeks after the shooting.

After the local prosecutor announced an inquest<sup>8</sup> (a practice authorized in Massachusetts in which a judge investigates the circumstances of a death to determine whether a crime took place),<sup>9</sup> CPD informed PERF that it was not releasing the officer's name because, according to the local prosecutor, the judge presiding over the inquest had issued an order directing that no entity could release information about the incident until the inquest was complete.<sup>10</sup>

To be sure, the judge's order precludes CPD from releasing the name until the inquest is complete. But as noted above, nothing in law or policy automatically prevented CPD from releasing the name *before* the judge issued that order.

On May 15, 2023, the Cambridge City Manager, consistent with a City Council Policy Order, requested that CPD work with PERF to establish a policy on the release of the names of officers involved in any use of force incident resulting in injury or death, “including retroactively.”<sup>11</sup>

### Rationales for Withholding Names

To prevent confusion about these issues as CPD develops its new policy, this section addresses some rationales law enforcement agencies cite when withholding officers' names from the public. Going forward, CPD should begin with the presumption that it will release the officer's name within a specific period of time, and then thoughtfully consider whether reasons exist that would legitimately and in good faith justify withholding it from the public.

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<sup>8</sup> <https://www.bostonglobe.com/2023/02/23/metro/middlesex-da-announces-inquest-into-fatal-cambridge-police-shooting-college-student/>

<sup>9</sup> <https://www.mass.gov/doc/frequently-asked-questions-about-inquests/download>

<sup>10</sup> PERF also reviewed a press release issued by the Middlesex District Attorney on February 23, 2023, indicating that by order of the Court, no further details would be provided about the incident until the inquest process had been completed.

<sup>11</sup> City of Cambridge Calendar Item #2, May 22, 2023.

## **Public Records Law Exemptions**

Every state including Massachusetts,<sup>12</sup> as well as the federal government, has a public-records-access law (i.e., freedom of information or sunshine law). Public access laws stand for the principle that records of public entities, including police agencies, are assumed to be available to the public unless a specific exemption exists that allows the record to be wholly or partially withheld.<sup>13</sup> *Absent such an exemption, the records, and information contained in them (such as an officer's name) are public.*

**In terms of police agencies and officer-involved shootings, proactively releasing information that the public would be entitled to know by virtue of the state's public access law is an act of good faith that reinforces public trust.** But as noted above, there are exemptions to public access and agencies generally invoke one of the following to avoid releasing an officer's name after an officer-involved shooting.

### **i. Pending Investigation**

Public records laws generally contain some type of "pending investigation" exemption. However, the fact that a matter is pending investigation, by itself, does not justify the blanket denial of all information about the incident until the underlying investigation is complete. Instead, most agencies can legitimately withhold information about a pending investigation only if its release would interfere with the pending investigation itself or law enforcement's ability to function in general.

The Massachusetts Public Record Law is no different. Investigatory materials are defined as materials:

"... compiled out of the public view by law enforcement or other investigatory officials the disclosure of which ... **would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.**"<sup>14</sup>

According to the Massachusetts Supreme Court, police officers occupy positions of "special public trust" that favor transparency of public records about them.<sup>15</sup> It would therefore be a heavy burden to show that releasing an officer's name, *standing alone*, would run so counter to public interest that withholding it would be justified by the Public Records Law.

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<sup>12</sup> Massachusetts Public Records Law, Mass. Gen. Laws ch. 4 § 7(26) *et. seq.*

<sup>13</sup> Glavin, W.F., Secretary of the Commonwealth, *Guide to the Massachusetts Public Records Law* (2020) [SB101-Public-Records-Law-Guide.pdf \(frcog.org\)](#)

<sup>14</sup> Mass. Gen. Laws ch. 4 § 7(26)(f) (emphasis added)

<sup>15</sup> See *Bos. Globe Media Partners, LLC v. Department of Criminal Justice Info. Servs.*, 484 Mass. 279 (2020).

Absent a good-faith reason why releasing an officer's name would prejudice CPD's ability to conduct its work effectively, CPD should release involved officers' names proactively moving forward. (See the "Policy Recommendations" section below for specifics.)

## **ii. Safety of the Officer**

The Massachusetts Public Records Law, like other public access laws, also contains an exemption allowing agencies to withhold records (and information within them) if release would endanger or threaten a person or persons' safety.<sup>16</sup> After critical incidents, police agencies have occasionally withheld officers' names on this basis as well.

PERF does not minimize the importance of officer safety, especially in the highly charged environment that can follow critical incidents. But blanket denials based on safety, with no corresponding threat assessment, are hollow. As detailed below in the Policy Recommendations, PERF believes that moving forward, CPD should engage in safety assessments after critical incidents and, in the absence of specific threats that would justify withholding the names, release them within a pre-determined time frame, after informing the officer and implementing safety provisions.

In reviewing these Public Records Law exemptions, PERF does not suggest that in any given case, these or other exemptions could not be validly invoked to withhold an officer's name or other information. The point, rather, is that invoking an exemption as a blanket rationale to avoid public release, without corresponding facts that support that action, runs counter to principles of transparency and can erode public trust.

## **Rules of Professional Conduct**

At some point prior to the judge's order, CPD advised PERF of its belief that it could not release the officer's name according to the *Massachusetts Rules of Professional Conduct*. Those rules govern attorney conduct but can affect law enforcement indirectly. Specifically, Rule 3.8(f)(2) requires that prosecutors "take reasonable steps to prevent ... law enforcement personnel" from making statements that the prosecutor would be prohibited from making. But again, in this case, the release of the officer's name would not have violated the *Rules of Professional Conduct*.

According to Rule 3.8, prosecutors (and members of law enforcement working with them) shall refrain from making statements "that have a substantial likelihood of heightening public condemnation of the accused" or "materially prejudicing" a proceeding.<sup>17</sup> In other words, it is incumbent on the prosecutor and law enforcement to refrain from making statements that would be expected to prejudice public opinion against a person accused of a crime or, presumably, a person against whom a criminal charge is possible.

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<sup>16</sup> Massachusetts Public Records Law, Mass. Gen. Laws ch. 4 § 7(26)(n).

<sup>17</sup> See also Mass.R.Prof.C. 3.6(a)

These rules are no different from those promulgated by President Obama’s Task Force on 21st-Century Policing, which called for increased transparency when law enforcement agencies communicate with the public after critical incidents.<sup>18</sup> The Task Force recommended that information be released early and updated regularly if it could be done “without compromising the integrity of the investigation or anyone’s rights.”

Unless CPD can, in good faith, after consultation with the prosecutor, articulate why releasing the name of the officer in a critical incident would prejudice public opinion such that the officer’s rights are affected, or show that release of the name would credibly compromise the investigation, PERF recommends that the agency proactively release it going forward.

In this case, the public knew early on that an officer fired a weapon and killed a man. It is difficult to imagine how replacing “an officer” with the officer’s name might have prejudiced the outcome of the investigation.

### **The Commonwealth’s Right of Privacy Statute**

Massachusetts law provides, “A person shall have a right against unreasonable, substantial or serious interference with [that person’s] privacy.”<sup>19</sup> Violation of the statute occurs when “facts of a highly personal or intimate nature” are disclosed about a person, “with no legitimate reason for doing so.”<sup>20</sup>

Here, the information that the CPD is considering releasing about officers, following critical incidents, is their names – not their addresses, private medical information, or any personal or intimate details about their lives. As noted above, the Massachusetts Supreme Court has held that police officers occupy positions of trust that lean in favor of transparency regarding their records.<sup>21</sup> And, far from having no legitimate interest in releasing the name, CPD and the city have a very compelling reason to do so – being transparent with the public they serve.

Accordingly, it does not appear that Massachusetts’s Privacy Statute provides a justification to automatically withhold an officer’s name from the public after a critical incident.

### **Summary**

The statutes and rules highlighted above allow agencies to delay the release of information, or withhold it altogether, *under certain circumstances*; they should not be used as blanket justifications to keep information from the public. As detailed below, PERF recommends that CPD make determinations about whether to release information - such as the officer’s

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<sup>18</sup> Final Report of the President’s Task Force on 21<sup>st</sup> Century Policing (May 2015), [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>19</sup> Mass. Gen. Laws c. 214 § 1B.

<sup>20</sup> *Alexander v. Clarke*, 0905456H (Mass. Super. Mass. Super May3, 2011).

<sup>21</sup> *Bos. Globe v. Department of Criminal Justice*, *supra*.

name in a critical incident – on a case-by-case basis, and after thoughtful deliberation, with a presumption that the information will be made public.

### Policy Recommendations

The new critical incident policy that CPD is drafting will greatly assist the agency, the public, and officers, by establishing consistent timelines and clear expectations. The policy should specify that the release of information such as an officer's name, will take place within prescribed timeframes — subject to relevant legal and professional standards, including the Massachusetts Public Records Law and Massachusetts Rules of Professional Conduct.

PERF recommends that the Cambridge Police Commissioner, in consultation with appropriate staff and the prosecuting authority, should *assume* that certain information will be released to the public unless a legitimate, good-faith reason exists to withhold it. PERF recommends that CPD's new policy include language capturing the principles below:

- 1. Unless a specific, articulable, good-faith reason exists not to do so, within 24-36 hours of an officer-involved critical incident CPD should publicly disclose:**
  - **Preliminary facts about the incident**, including, at a minimum, where and when it took place and the number of people injured or deceased.
  - **Preliminary information about the officer(s) involved**, such as length of time as an officer and length of time with CPD (if the officer transferred from another agency), rank, assignment, prior uses of force, and status (e.g., modified assignment or leave pending the investigative outcome.)
  - **An estimated time frame for how and when further information will be released, including the officer's name.**
    - CPD policy should specify that the agency will begin its threat assessment to determine whether a credible risk to officer safety exists during this time.
    - CPD must consider and begin to address officer wellness during this time (see #2 below).

The above principles balance the public's desire for information with the CPD's need to consult with staff and the prosecuting authority to identify whether any *genuine* issues exist that conflict with the presumption of information release. They also present a timeframe within which CPD must begin its threat assessment and provide the public and the involved officer with its good-faith expectation about when the name will be (presumptively) released.

- 2. CPD should, within two to five days of an officer-involved critical incident, publicly disclose the name of the involved officer(s) unless circumstances exist that justify not releasing that information.**



- This two-to-five-day period allows CPD to conduct a meaningful threat assessment.
- If the assessment reveals no credible threat to safety, CPD should release the name within two days. If there are genuine threat indicators, the assessment should continue. And if, after five days, a credible risk persists, the officer's name may be legitimately withheld for as long as the risk remains. CPD should, however, communicate why it is withholding the name from the public. And if the threat abates, the name should be released.
- If circumstances other than officer safety justify withholding the officer's name (and this will generally be rare) CPD should broadly communicate that to the public (e.g., "Release would impede CPD's ability to conduct this [or other] investigation(s)."). CPD should also be prepared to defend that justification after the investigation is complete.
- **Before an officer's name is released publicly, CPD must ensure that the involved officer has been notified and given access to departmental services.** These include mental health assistance, peer support, and a full explanation of the officer's rights.

## Conclusion

The issue of whether and when CPD should have released the involved officer's name in this fatal incident ultimately stemmed from the lack of a clear protocol and will be mitigated once CPD updates its policy.

Notwithstanding the lack of policy, if, after examining the issues outlined above, CPD had chosen to release the officer's name, it could have legitimately done so — until the judge issued the order directing that no information could be shared until the inquest was complete. As of this writing, the inquest is continuing.

CPD is an agency that has, over time, demonstrated leadership in several key areas of reform, including juvenile diversion programs,<sup>22</sup> and trauma-informed police practices.<sup>23</sup> CPD now appears poised to lead the state of Massachusetts in developing a policy to release officers' names after critical incidents.

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<sup>22</sup> <https://www.cambridgema.gov/-/media/Files/policedepartment/Safety%20Net%20Manual%20FINAL.pdf>

<sup>23</sup> <https://www.cambridgema.gov/-/media/Files/policedepartment/SpecialReports/guideforatraumainformedlawenforcementinitiative.pdf>