



MINNESOTA POLICE AND PEACE OFFICERS ASSOCIATION

525 Park Street, Suite 250 St. Paul, MN 55103-2145
Phone: 651-291-1119 Website: www.mppoa.com

Dear County Attorney Freeman,

The Minnesota Police and Peace Officers Association (MPPOA) represents more than 10,800 public safety professionals statewide, including more than 2,471 peace officers within Hennepin County. I am writing on behalf of those officers to express our organization's deep concerns with the Officer Involved Shooting (OIS) Protocol that your office made effective last year, and to demand that the protocol be revised to address these concerns.

The OIS Protocol states in part that the investigating agency is expected to "seize any cell phone in possession of the involved officer(s), including work-issued and personal phones in their possession before and after the event," as well as to "analyze cell phones and their associated data" as requested by your office. According to news reports, the purpose of seizing both work-issued and personal cell phones is to "understand the 'state of mind' of officers under investigation" following a critical incident.

MPPOA maintains that peace officers who carry personal cell phones, and who do not use those phones for work-related activities, have a reasonable expectation of privacy with respect to those phones. Absent some particularized reason to believe that a phone contains information relevant to an OIS investigation, seizure of a personal cell phone without a warrant would be unjustifiable and a direct violation of the officer's Fourth Amendment rights. (Merely seeking to "understand the 'state of mind'" of the officer certainly would not be sufficient.) This section of the OIS Protocol must be revised accordingly. In the meantime, if and when an investigating agency attempts to seize a personal cell phone from one of our members without justification, pursuant to your office's protocol, MPPOA stands ready to file for an immediate court injunction to block that seizure and otherwise protect our members' constitutional rights.

Further, please note that we have advised our members that if they are involved in an OIS, they should not relinquish their personal cell phones to investigators until they have consulted with their union representatives and/or legal counsel. We have also encouraged our members to ensure that access to their personal cell phones is protected by a password rather than a thumbprint or other biometric mechanism.

On a related note, the OIS Protocol provides that the investigating agency should:

Obtain complete personnel file for involved officer(s), including training records, previous complaints and investigations, hiring information, fitness for duty information, and psychological records as appropriate or applicable. If originating agency will not consent to the release, obtain a search warrant.

The categories of records listed in this section include those typically containing private and highly personal data, such as background investigation and psychological screening records. It has come to our attention that, in connection with the investigation into an OIS taking place in Richfield last year, and presumably pursuant to this section of the protocol, your office requested copies of all personnel records for the officers involved in the incident; in some cases, those records were provided without a warrant, and without any notice to the involved officers. (While this is the only instance that we have been made aware of, it raises the question whether similar requests have been made during other OIS investigations.)

We find this practice alarming, given that your office will eventually issue a report on its charging decision that will be available to the public, and which may refer to private data obtained from the officers' home agencies without a warrant. We recognize that the Minnesota Government Data Practices Act allows for the dissemination of private personnel data in connection with the investigation of a crime committed or allegedly committed by an employee, but that does not authorize the warrantless exchange of such data as a standard element of an OIS investigation. MPPOA demands that that section of the protocol be modified accordingly. Meanwhile, we plan to monitor these disclosures of personnel records closely and to take legal action as necessary.

Thank you for your attention to these matters.

Regards,

A handwritten signature in black ink, appearing to read 'Brian Peters', with a long horizontal flourish extending to the right.

Brian Peters
MPPOA Executive Director