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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-343

Filed 5 March 2025

Mecklenburg County, No. 23 CVS 16437

IN RE: PETITION OF NICHOLAS A. OCHSNER

Appeal by petitioner from order entered 27 October 2023 by Judge Karen Eady-Williams in Mecklenburg County Superior Court. Heard in the Court of Appeals 23 October 2024.

Lauren P. Russell for petitioner-appellant.

Kurt E. Lindquist II for respondent-appellee.

DILLON, Chief Judge.

Petitioner Nicholas Ochsner appeals from an order denying his motion to compel disclosure of information concerning a shooting of a trespasser by a security guard. We affirm.

I. Background

Allied Universal Security Service (“AUS”) contracts with property owners to provide security at various commercial properties. On 8 September 2023, two AUS personnel responded to a trespasser relieving himself at one of these properties.

When the AUS security personnel approached the trespasser, the trespasser attempted to flee, firing a gun at the AUS personnel. In response, one of the AUS guards fired back, mortally wounding the trespasser.

A dispatcher from AUS called 911, and Charlotte-Mecklenburg Police Department (“CMPD”) arrived on scene and began investigating the shooting. Petitioner, who is a news reporter, requested from both AUS and CMPD the names and addresses of the AUS security guards involved in the shooting. CMPD provided some information to Petitioner but ultimately declined the request to reveal the identities of the AUS officers. AUS did not disclose any information to Petitioner.

Petitioner filed a petition pursuant to N.C.G.S. § 132-1.4(d), requesting access to the names and addresses of the AUS security guards involved in the shooting incident. After a hearing on the matter, which included the trial court conducting a review of documents *in camera*, the trial court denied Petitioner’s petition to compel disclosure. Petitioner timely appealed.

II. Analysis

On appeal, Petitioner argues that the trial court erred in determining that AUS was not required to produce any records or communications pursuant to N.C.G.S. § 132.1-4(c).

“The question of whether a trial court has followed the plain language of a statute is a question of statutory interpretation that is ultimately a question of law for the courts.” *Matter of K.B.*, 386 N.C. 68, 72 (2024) (citation omitted). Questions

of law regarding statutory interpretation are reviewed de novo. *Swauger v. Univ. of N.C. at Charlotte*, 259 N.C. App. 727, 728 (2018) (citation omitted).

General Statute 132-1.4 was created to provide protection for records of criminal investigations and intelligence information. Subsection (a) states that, generally, records of criminal investigations conducted by public law enforcement agencies are not considered public records. “ ‘Records of criminal investigations’ means all records or any information that pertains to a person or group of persons that is compiled by public law enforcement agencies for the purpose of attempting to prevent or solve violations of the law” N.C.G.S. § 132.1-4(b)(1).

Subsection (c) of that statute, however, describes the records which shall be considered public, which may be subject to disclosure, notwithstanding that they are part of a criminal investigation, as follows:

- (1) The time, date, location, and nature of a violation or apparent violation of the law reported to a public law enforcement agency.
- (2) The name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted.
- (3) The circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons, or pursuit, and a description of any items seized in connection with the arrest.
- (4) The contents of “911” and other emergency telephone calls received by or on behalf of public law enforcement agencies, except for such contents that reveal the natural voice, name, address, telephone number, or other

information that may identify the caller, victim, or witness. In order to protect the identity of the complaining witness, the contents of “911” and other emergency telephone calls may be released pursuant to this section in the form of a written transcript or altered voice reproduction; provided that the original shall be provided under process to be used as evidence in any relevant civil or criminal proceeding.

(5) The contents of communications between or among employees of public law enforcement agencies that are broadcast over the public airways.

(6) The name, sex, age, and address of a complaining witness.

N.C.G.S. § 132-1.4(c)(1)-(6).

The record shows that AUS falls within the definition of a public law enforcement agency, which is defined as “a municipal police department, a county police department, a sheriff’s office, *a company police agency commissioned by the Attorney General* . . . and any State or local agency, force, department, or unit responsible for investigating, preventing, or solving violations of the law.” *Id.* § (b)(3) (emphasis added).

Here, AUS was investigating/preventing the crime of *trespassing* when the trespasser was fatally shot, as falls within the definition of a public law enforcement office. However, the event AUS was investigating was the trespass. We do not believe that any of the exceptions found in subsection (c) apply to AUS’s actions concerning the trespassing beyond the information already made known to Petitioner. And once the trespasser was killed, there was nothing further to investigate in connection with

the trespassing charge.

Regarding part (1) of subsection (c), the record shows that Petitioner has already been made aware of the time, date, location, and nature of the trespassing violation. Regarding parts (2) and (3), to the extent that the trespasser was under “arrest” during any portion of his encounter with the AUS security guards for the suspected trespassing, the record shows that Petitioner has been provided the information required to be provided in these parts. As to the remaining parts, AUS was no longer investigating the trespassing when any 911 call was made nor was any crime under investigation at this time. Though the dissent points out that a call was made to report the unsuccessful assault by the trespasser, there is no indication that the call was made in anticipation of an arrest of the trespasser, as the trespasser had already been mortally wounded when the call was made.

CMPD investigated a shooting, rather than the trespassing. CMPD has already provided Petitioner some information regarding the shooting. However, Petitioner is appealing the denial of his access from AUS to the identity of the AUS employee(s) who were involved in the shooting of the trespasser.

We conclude that Petitioner is not entitled to AUS employee identities under subsection (c). We note that no one was arrested, charged, or indicted for the shooting. No one was placed under arrest for the shooting. There was no complaining witness concerning the shooting. We have also reviewed the record and arguments concerning the 911 call. We note that neither Petitioner nor Respondent provided

the trial court with any evidence or arguments pertaining to the communication methods used by AUS and CMPD employees. The trial court reviewed the records at issue *in camera* and determined that disclosure of this information was not warranted.

We, therefore, affirm the trial court's order denying Petitioner disclosure of the names or addresses of the AUS employees involved in the shooting.

AFFIRMED.

Judge TYSON concurs.

Judge HAMPSON dissents by separate opinion.

Report per Rule 30(e).

HAMPSON, Judge, dissenting.

I would vacate the trial court’s order and remand for further proceedings. The Opinion of the Court errs by concluding AUS is not required to comply at all with the disclosure requirements of N.C. Gen. Stat. § 132-1.4(c)(1)-(6) (2023).

There is no dispute AUS—a company police agency commissioned by the Attorney General pursuant to N.C. Gen. Stat. § 74E-1, *et seq.*—constitutes a public law enforcement agency as defined by N.C. Gen. Stat. § 132-1.4(b)(3). As such, AUS has a clear obligation to disclose public records identified in N.C. Gen. Stat. § 132-1.4(c)(1)-(6) (2023). *See Gannett Pac. Corp. v. N. Carolina State Bureau of Investigation*, 164 N.C. App. 154, 159, 595 S.E.2d 162, 165 (2004) (“Plaintiffs are clearly entitled to any information defined as public records under sections 132–1.4(c)”).

Certainly, AUS has a duty to provide public records related to its officers’ initial response to the report of public urination. The majority, however, reasons that as AUS was not the investigative authority with respect to the shooting, AUS has no duty whatsoever to comply with public records requests. In my view, this narrow analysis parsing out a developing law enforcement investigation into separate incidents—and thus carving out AUS from *any* responsibility to provide public records or to present potentially applicable records for *in camera* judicial review—is

erroneous.

Under Section 132-1.4(c), AUS has an obligation to provide the following types of public records:

- (1) The time, date, location, and nature of a violation or apparent violation of the law reported to a public law enforcement agency.
- (2) The name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted.
- (3) The circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons, or pursuit, and a description of any items seized in connection with the arrest.
- (4) The contents of “911” and other emergency telephone calls received by or on behalf of public law enforcement agencies, except for such contents that reveal the natural voice, name, address, telephone number, or other information that may identify the caller, victim, or witness. In order to protect the identity of the complaining witness, the contents of “911” and other emergency telephone calls may be released pursuant to this section in the form of a written transcript or altered voice reproduction; provided that the original shall be provided under process to be used as evidence in any relevant civil or criminal proceeding.
- (5) The contents of communications between or among employees of public law enforcement agencies that are broadcast over the public airways.
- (6) The name, sex, age, and address of a complaining witness.

N.C. Gen. Stat. § 132-1.4(c)(1)-(6).

Here, there was a report of an alleged or apparent violation of law—public urination/trespass—made to a public law enforcement agency: AUS. Petitioner alleges AUS officers were taking the alleged perpetrator into custody. AUS proffered its officers were issuing a citation to the alleged perpetrator—i.e. charging him with the offense. *See* N.C. Gen. Stat. § 15A-302 (2023).

As such, AUS generally has a duty to disclose public records as defined by N.C. Gen. Stat. § 132-1.4(c)(1)-(6) arising from this investigation into the alleged violation of law. *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 462, 515 S.E.2d 675, 685 (1999) (“Absent ‘clear statutory exemption or exception, documents falling within the definition of “public records” in the Public Records Law must be made available for public inspection.’ ” (citation omitted)). To allow AUS to simply refuse to produce anything at all—or at a minimum compel AUS to produce potentially responsive records for in camera review—was error. At a minimum, the trial court’s order should be vacated and this matter remanded to compel AUS to at least produce pertinent records for review related to its investigation and response to the reported event at the Epicenter on the night in question.

This includes—rather than excludes—the shooting. The shooting was part of the AUS investigation into the alleged public urination/trespassing complaint. These records would include any emergency calls and other communications covered by the statute as well as reports of the alleged violation of law made to AUS and details of any alleged offense as contemplated by the statute.

Indeed, even if one views the shooting as an entirely separate incident with no connection to AUS responding to the alleged public urination/trespassing complaint, AUS still retains a responsibility to disclose public records related to its involvement in the shooting itself. All indications from the Record are the alleged perpetrator opened fire on the AUS officers, thereby allegedly committing—at a minimum—an assault on public law enforcement officers and potentially attempted murder. AUS officers responded in self-defense. I have no problem concluding there was, at least, an “apparent violation of the law.” Moreover, this apparent violation of the law was reported to AUS—a public law enforcement agency. The indications from the Record are that it was an AUS dispatcher that reported the incident to CMPD. Thus, Section 132-1.4 (c)(1) is clearly implicated. This further begs the questions: who reported the alleged violation of law to AUS and how it was reported?

The fact is the dispatcher learned of AUS officers being assaulted by gunfire somehow. To the extent AUS has records of any emergency calls or communications broadcast over the public airwaves from or between their officers and/or dispatcher, AUS, those constitute public records.¹ N.C. Gen. Stat. § 132-1.4(c)(4)-(5). While there

¹ The trial court dismissed out-of-hand the notion there may be communications broadcast over the public airwaves. The fact is, though, we have no way of knowing. There was no evidence presented and nothing for the trial court to review. The majority puts this burden to show evidence of such communications on petitioner—an impossible task in light of AUS’ recalcitrance. To the contrary, it was AUS’ burden to verify there were no such communications or otherwise produce those communications for *in camera* review to permit the trial court to ascertain whether such recordings should be disclosed.

may be other grounds to redact, delay, or deny disclosure of those records, they remain public records. At a minimum, AUS should be compelled to disclose and submit for review any such records.

Furthermore, the AUS officers may well constitute “complaining witnesses.” “Complaining witness” is defined as “an alleged victim or other person who reports a violation or apparent violation of the law to a public law enforcement agency.” N.C. Gen. Stat. § 132-1.4(b)(5) (2023).² Again, the officers may constitute victims of an alleged or apparent violation of law: the perpetrator allegedly assaulted them with a firearm, potentially attempting to murder them. At a minimum, the identity of who reported the shooting to AUS dispatch constitutes a complaining witness. As such, the identity of the complaining witness may be subject to disclosure under Section 132-1.4(c)(6).

Thus, AUS has an obligation to produce public records related to its investigation of the incident at the Epicenter on the night in question including the initial complaint and subsequent shooting. It may be it has no such records or has records it contends are non-responsive to the request or should be protected from disclosure for other reasons. If so, it should so certify and submit any the records for

² AUS takes the position its officers could not be victims of a crime because they were not actually shot. This position is quite astounding and plainly untenable as it ignores basic criminal law.

in camera review—as CMPD did.³ Therefore, the trial court erred in denying Petitioner’s request out-of-hand and declining to compel AUS to produce public records for judicial inspection.

This approach is consistent with our Supreme Court’s instruction:

The final determination of possession or custody of the public records requested is not properly conducted by the state agency itself. The approach that the state agency has the burden of compliance, subject to judicial oversight, is entirely consistent with the policy rationale underpinning the Public Records Act, which strongly favors the release of public records to increase transparency in government. Judicial review of a state agency's compliance with a request, prior to the categorical dismissal of this type of complaint, is critical to ensuring that, as noted above, public records and information remain the property of the people of North Carolina. Otherwise, the state agency would be permitted to police its own compliance with the Public Records Act, a practice not likely to promote these important policy goals.

State Emps. Ass'n of N. Carolina, Inc. v. N. Carolina Dep't of State Treasurer, 364 N.C. 205, 214, 695 S.E.2d 91, 97 (2010). Consequently, the trial court’s order should be vacated and this matter remanded for additional proceedings. Accordingly, I respectfully dissent.

³ There appears to be a thread running through AUS arguments and noted in the majority opinion which might imply AUS is absolved from producing public records by the fact CMPD produced some records. I see no authority for absolving an entity subject to the public records law from disclosing public records on the basis another agency complied with producing its own records. In fact, CMPD’s eventual compliance only further underscores AUS’ stonewalling.