

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

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)  
MAURA O'NEILL, as administrator of the Estate )  
of Madelyn E. Linsenmeir, )  
)  
Plaintiff, )  
) C.A. No. 20-30036-MGM  
v. )  
)  
CITY OF SPRINGFIELD, *et al.* )  
)  
Defendants. )  
)  
)

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**OPPOSITION TO SPRINGFIELD DEFENDANTS' MOTION TO CERTIFY AND  
AMEND THIS COURT'S ORDER OF MAY 5, 2021 FOR INTERLOCUTORY APPEAL**

**INTRODUCTION**

Defendants City of Springfield, Zanazanian, McNabb, and Rodriguez (the “Springfield Defendants”) appear to be seeking leave to take an interlocutory appeal from a bifurcation order that this Court did not enter. *See Mot.* (D.E. 36) at 1 (moving for certification to appeal “so much of the order that requires the case against the City of Springfield to be bifurcated and tried before the remaining issues”); *see also Mem.* (D.E. 37) at 7 (identifying the purported “controlling issue” for appeal as “whether the *Monell* claim should be tried first, or not”). Perhaps this confusion could have been avoided if the Springfield Defendants’ counsel had conferred with the Plaintiff’s counsel prior to filing this motion as required under Local Rule 7.1. But, they did not. *See Mot.* at 2 (no L.R. 7.1 certificate). The motion could be denied on that basis alone. *See, e.g., McGee v. Benjamin*, No. CIV.A. 08-11818-DPW, 2012 WL 959377, at \*11 n.12 (D. Mass. Mar. 20, 2012) (stating failure to comply with L.R. 7.1 is a basis to deny motions).

To the extent the Springfield Defendants are actually moving for leave to appeal the Order entered against them in *this* case, the motion should be denied for several reasons. First, the Springfield Defendants cannot show a substantial ground for difference of opinion with the Court's Order denying dismissal. They argued that, as a matter of law, police cannot be liable for deliberate indifference that actually caused a prisoner to die in custody, so long as the police transferred the detainee to a different custodian at any time prior to the moment of death. The Court correctly rejected that outrageous contention, and the Springfield Defendants have not shown that any court, anywhere, has ever adopted such a rule. Second, the Springfield Defendants have not shown the other elements necessary to justify an interlocutory appeal, including because the dismissal of Count I would not materially advance the ultimate determination of the litigation, where Count IV would remain pending and requires an assessment of essentially the same set of facts.

A detour to the First Circuit would unnecessarily delay the progression and resolution of this case, and also increase the costs and other burdens on both the parties and the courts. Plaintiff respectfully requests that the Court deny the Springfield Defendants' motion and notice a scheduling conference for the purpose of moving this case forward into discovery and trial.

## **ARGUMENT**

### **I. THE SPRINGFIELD DEFENDANTS CANNOT MEET THEIR HEAVY BURDEN TO JUSTIFY INTERLOCUTORY APPEAL WHERE THIS COURT'S ORDER PROPERLY APPLIED EXISTING CIRCUIT PRECEDENT, AND WHERE THERE IS NO SUBSTANTIAL GROUND FOR ANY DIFFERENCE OF OPINION.**

As a general rule, the First Circuit “do[es] not grant interlocutory appeals from a denial of a motion to dismiss.” *See Caraballo-Seda v. Municipality of Hormigueros*, 395 F.3d 7, 9 (1st Cir. 2005). Pursuing such an appeal under Section 1292(b) “is an extraordinary procedure and

the party seeking it bears a heavy burden of convincing the court that exceptional circumstances justify a departure from the basic policy of postponing appellate review until after the entry of final judgment.” *See United Air Lines, Inc. v. Gregory*, 716 F. Supp. 2d 79, 89 (D. Mass. 2010) (citation and internal quotation marks omitted). Among other things, the party seeking appellate review is required to show a controlling question of law “as to which there is substantial ground for difference of opinion.” *See Caraballo*, 395 F.3d at 9 (quoting 28 U.S.C. § 1292(b)). Thus, certification of an interlocutory appeal is not justified by the mere fact that “a question of law has not been authoritatively addressed” or that “the parties themselves disagree as to the interpretation of persuasive authority.” *See Henderson v. The Bank of New York Mellon Corp.*, C.A. No. 15-10599-PBS, 2016 WL 11003504, at \*2 (D. Mass. Feb. 17, 2016) (citation and internal quotation marks omitted). Rather, the party seeking review must show, for example, that “the circuits are divided and a court follow[ed] the minority view,” or that “the caselaw in the district courts nationwide is divided.” *Id.*

Here, the Springfield Defendants have failed to carry their “heavy burden” to show a substantial ground for a difference of opinion with the Court’s order. The First Circuit generally applies ordinary causation standards to 42 U.S.C. § 1983 claims. *See Drumgold v. Callahan*, 707 F.3d 28, 48 (1st Cir. 2013). This Court therefore correctly ruled that “general tort causation principles” are applicable to Section 1983 claims like Count I. *See* May 5, 2021 Order (D.E. 32). In their motion to dismiss, the Springfield Defendants did not dispute that the Complaint adequately alleges such causation—in summary, that the Springfield Defendants’ caused Madelyn’s death by failing in their constitutional duty to provide their prisoner with necessary medical care, the lack of which resulted in her pain, suffering, and ultimately her preventable

death from a treatable, but untreated, infection. *See, e.g.*, Complaint (D.E. 1) ¶¶57–60, 76–82; Mot. to Dismiss Mem. (D.E. 21) (no argument under ordinary tort causation principles).

Instead, the Springfield Defendants relied exclusively on the exception to the ordinary causation rules articulated in *Coscia v. Town of Pembroke*, 659 F.3d 37, 38–40 (1st Cir. 2011), where a prisoner had been released from custody and committed suicide after being free and able to seek his own medical care for 14 hours. The Springfield Defendants argued that, under *Coscia*, the Springfield police were free to violate Madelyn’s rights *ad infinitum* without consequence, so long as they transferred her to the Western Massachusetts Regional Women’s Correction Center (the “WCC”) prior to the moment of her death. *See* Mot. to Dismiss Mem. (D.E. 21). The Court correctly ruled that *Coscia* is inapplicable here because (unlike the decedent in *Coscia*) the Complaint alleges that “Ms. Linsenmeir’s liberty was never restored and she could not seek or receive medical care on her own.” *See* May 5, 2021 Order (D.E. 32). The Court also correctly distinguished *Coscia* on the grounds that, unlike a suicide occurring 14 hours after release from custody, Madelyn’s harm occurred in part while she was in Springfield’s custody, and therefore the Springfield Defendants’ “deliberate indifference directly ‘intensified’” that harm. *See id.*

The Springfield Defendants have not shown any ground to overturn the Court’s reasoning. Indeed, the Springfield Defendants have not shown that any court, anywhere, has ever adopted their proposed rule, even when applying *Coscia*. *See* Mem. (D.E. 37) at 9. The rare circumstances in which courts have relied upon *Coscia*’s “causation exception” appear to be essentially the same as those presented in *Coscia* itself: the suicidal actions or thoughts of a person who is not in custody. *See, e.g.*, *Perfetto v. Ellis*, No. 18-1124, 2019 WL 11029626, at \*2 (1st Cir. Oct. 2, 2019) (alleged failure to “anticipate that [plaintiff] would experience, but not act

upon, suicidal thoughts following his release"); *Cutlip v. City of Toledo*, 488 F. App'x 107, 113, 116 n.9 (6th Cir. 2012) (suicide in home where decedent "was not incarcerated, institutionalized, or put under a similar restraint at the time that he killed himself"); *Reeves v. Town of Hingham*, No. 19-11474, 2020 WL 759370, at \*1, \*3 (D. Mass. Feb. 14, 2020) (suicide in home); *Dunlap v. City of Sandy*, No. 17-01749, 2018 WL 4782263, at \*3, \*7–8 (D. Or. Jun. 4, 2018) (suicide in personal vehicle); *Watson v. Adams*, No. 12-03436, 2015 WL 1486869, at \*7–8 (D.S.C. Mar. 31, 2015) (suicide in home); *Estate of Pridemore v. Bluegrass Regional Mental Health Board*, No. 11-38, 2012 WL 6691597, at \*2, \*8 (E.D. Ken. Dec. 21, 2012) (suicide in motel approximately eight hours after release); *Elam v. City of Aurora*, No. 11-02156, 2012 WL 4005839, at \*1, \*3–4 (D. Colo. Sept. 12, 2012) (intoxicated decedent fell from balcony roughly four hours after release from custody, either by suicide or accident).<sup>1</sup> Given that courts have applied *Coscia* in cases where the decedent died free, there are no substantial grounds to disagree with this Court's ruling that *Coscia*'s exception does not apply where Madelyn was continuously in custody from her arrest until her death. See *Caraballo-Seda*, 395 F.3d at 9 (explaining "similar holding" by other courts in the same district "supports a finding that no 'substantial ground for difference of opinion' exists") (citing 28 U.S.C. § 1292(b)); *Henderson*, 2016 WL 11003504, at \*3 (denying interlocutory appeal of motion to dismiss where the defendant "failed to show the existence of a substantial difference of opinion among courts"). On this basis alone, the Springfield Defendants' motion should be denied.

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<sup>1</sup> One *Coscia*-applying case did not involve a suicide, but apparently addressed a similar claim that failure to provide mental health services after release from custody left the plaintiff "homeless and unstable." See *Gould v. Bertie County*, No. 14-3066, 2015 WL 11090417, at \*2–3 (E.D.N.C. Jan. 13, 2015) (internal quotations omitted). Another involved a claim that a sheriff failed to provide medical services for a facial injury after the plaintiff was released from custody. See *Olivarez v. Kearny County Jail*, No. 19-3140, 2019 WL 6327589, at \*3–4 (D. Kan. Nov. 26, 2019).

**II. A DETOUR OF PART OF THIS CASE TO THE APPEALS COURT  
WOULD NOT RESOLVE THE CONTROLLING ISSUE OR  
MATERIALLY ADVANCE THE LITIGATION.**

The Springfield Defendants’ motion for interlocutory review should also be denied for failing to demonstrate the other two requirements of Section 1292(b): a “controlling question of law,” and a showing that “an immediate appeal from the order may materially advance the ultimate termination of the litigation.” *See Caraballo-Seda*, 395 F.3d at 9 (citing 28 U.S.C. § 1292(b)). It appears that the purported “controlling question” asserted by their motion and memo is an order of bifurcation that has never actually entered in this case. *See Mot.* (D.E. 36) at 1; *Mem.* (D.E. 37) at 6-7. And an appeal would not advance the litigation where the Springfield Defendants concede that, even if *Coscia* is applied to bar the Due Process claim in Count I, that ruling would not resolve Count IV against the individual officers (which encompasses the same facts) nor the closely-related claims against the Hampden County Sheriff’s Department and its staff. *See Mem.* (D.E. 37) at 10; *see Caraballo-Seda*, 395 F.3d at 9 (holding that, “since the rest of the claims based on the same underlying facts have proceeded in the district court, the interlocutory appeal . . . issue does not materially advance the ultimate termination of the litigation” (internal quotation marks omitted)).

In addition to not resolving the claims against the Springfield Defendants, an unnecessary interlocutory appeal to the First Circuit would only delay discovery and aid Springfield’s years-long campaign to conceal what happened to Madelyn. Madelyn died on October 7, 2018. On October 15, 2018, counsel for Madelyn’s family diligently submitted a records request to the City of Springfield for all information about her time in the City’s custody. The City failed to produce any records, and Madelyn’s family was forced to file a lawsuit to compel the City to produce the most basic information about her detention. *See Linsenmeir et al. v. City of*

*Springfield et al.*, No. 1879CV00872 (Mass. Super.). Then, in responding to that lawsuit, the City falsely claimed that it had no records of any internal investigation into Madelyn’s death, when in fact an investigation had already been conducted. *Compare* Complaint (D.E. 1) ¶82 (alleged failure to disclose investigation), *with* Springfield Answer (D.E. 82) (admission that investigation was not disclosed). After Plaintiff’s counsel learned that an investigation may have occurred and been submitted to Springfield’s Community Police Hearing Board (the “CPHB”) for disciplinary action, counsel submitted a new records request again seeking the investigation records. *See* Ex. A (May 9, 2019 letter w/o exhibits, describing sequence of events) at 3–4. The City again unlawfully withheld various records concerning the investigation. *See id.* at 4–6. The City ultimately disclosed certain of these unlawfully-withheld records—including previously undisclosed interview notes—but only after the Plaintiff’s counsel sent yet another demand letter. *See id.* And, even as of today, the City has never informed Madelyn’s family of the CPHB’s findings or recommendations for discipline, nor which officers were ultimately disciplined by the Police Commissioner.<sup>2</sup> Postponing discovery while the First Circuit rejects the Springfield Defendants’ meritless appeal would merely serve to delay, once again, the City’s disclosure of what it really knows about this case.

### **CONCLUSION**

For all the foregoing reasons, Plaintiff respectfully requests that the Springfield Defendants’ motion for leave to pursue interlocutory appeal be denied.

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<sup>2</sup> Under the relevant Springfield Executive Orders, the CPHB makes findings of fact and recommendations for discipline, which are forwarded to the Commissioner for a final decision. *See Executive Orders, Springfield: Community Police Hearing Board, SPRINGFIELD*, <https://www.springfield-ma.gov/cos/index.php?id=2984> (last updated Oct. 24, 2019).

June 1, 2021

Respectfully submitted,

*/s/ Daniel L. McFadden*

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically served on all the parties through the court's CM/ECF system.

June 1, 2021

*/s/ Daniel L. McFadden*  
Daniel L. McFadden

# EXHIBIT A



Massachusetts

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May 9, 2019

**Via Electronic Mail**

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Re: Public Records Request No. R000847-041119

Dear Attorney DeSousa:

I write to address certain deficiencies in the response by the City of Springfield (the “City”) to Public Records Request No. R000847-041119 (the “April 2019 Request”), which was submitted on behalf of the American Civil Liberties Union of Massachusetts, Inc. (the “ACLUM”) on April 11, 2019.

Among other things, we are requesting that the City immediately collect and produce all notes created by Sergeant Monique McCoy and any other investigators in connection with the investigation ordered by Special Order #18-261 and any other investigation related to Madelyn Linsenmeir, including all notes of interviews with police officers and witnesses. It is apparent that such notes exist and are responsive to the April 2019 Request (as well as the public records request we submitted on behalf of Madelyn’s family in 2018), yet the City neither produced them nor even acknowledged their existence.

We are also requesting production of various documents that the City reports it has withheld or redacted, including without limitation (a) the case review form prepared by the Springfield Community Police Hearing Board (the “CPHB”) in connection with Complaint SO-18-261, (b) the unredacted email dated March 14, 2019, at 9:40 a.m., from SPD Internal Investigation Unit (“IIU”) official Kara L. Goodchild regarding the cancellation of a hearing scheduled for March 20, 2019, (c) SPD Interdepartmental Correspondence #PO 18-466, dated November 13, 2018, (d) the November 18, 2018 email from Captain Tarpey to Lt. Stephen Wyszynski, (e) the

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unredacted Special Report to Police Commissioner John R. Barbieri from Sergeant Monique McCoy, and (f) Sgt. Albert P. Witkowsky's November 27, 2018 inter-departmental memorandum.

#### A. Background

##### 1. Madelyn Linsenmeir's Arrest, Detention, and Death.

On September 29, 2018, Madelyn Linsenmeir was arrested, booked, and detained by the Springfield Police Department (the "SPD"). The video of her booking process reveals among other things, that Madelyn stated "I'm very ill right now," "I'm gonna like literally going to pass out from pain," and "I might need to go to the hospital." When asked "Why do you think you're gonna need to go to a hospital," Madelyn stated, among other things, "I can't breathe," and "my chest really hurts" and "feels like it's caving in." She also disclosed repeatedly that felt like she was about to "pass out," and was having problems with her feet and right knee. Video footage from later that evening depicts, among other things, Madelyn speaking again with SPD officers in the booking area, during which she is crying and gesturing repeatedly towards her chest and rib cage area. Despite these interactions, there is no indication that any SPD officer or staff member provided Madelyn with any medical assistance, or arranged for her evaluation and treatment by any medical professional, during her time in SPD custody.

Madelyn was later transferred to the custody of the Hampden County Sheriff's Department. On October 4, 2019, she was rushed to the hospital, where she remained in custody. She died there on October 7<sup>th</sup>. Following an autopsy, the Office of the Chief Medical Examiner of the Commonwealth of Massachusetts determined that she suffered from infective endocarditis of the tricuspid valve, with septic emboli and cavitary lesions of the lungs, and septic arthritis of the right knee, among other things. That office further determined that her cause of death was "Complications of Methicillin-Resistant *Staphylococcus Aureus* Septicemia in the Setting of Tricuspid Valve Endocarditis."

##### 2. The 2018 Public Records Request and Resulting Litigation.

On October 10, 2018, on behalf of certain of Madelyn's family members, we sent a request to then-SPD Commissioner John Barbieri that "all documents, correspondence, and other evidence relating to Madelyn Linsenmeir's arrest, detention, and death, and any investigation thereof, will be preserved and not destroyed." See Ex. A (October 10, 2018 Letter). On October 15, 2018, on behalf of those same family members, we submitted to the City a public records request, later assigned Reference Number R000251-101518 (the "October 2018 Request"). See Ex. B (October 15, 2018 Request). Among other things, the October 2018 Request sought (a) "[a]ll documents relating to Madelyn Linsenmeir's arrest, booking, and detention, including without limitation any . . . [n]otes, correspondence, and reports relating to the arrest, booking, and any related investigation," (b) "[a]ll reports, notes, interview summaries, and other documents relating to any investigation of Madelyn Linsenmeir's death, or obtained or reviewed as part of any such investigation," and

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(c) “[a]ll other public records concerning, relating or referring to Madelyn Linsenmeir that are in the possession of the Springfield Police Department.” *See id.*

On November 26, 2018, having received no substantive response to the October 2018 Request, we and other counsel filed, on behalf of Madelyn’s family members, a public records suit in Hampden Superior Court, styled *Linsenmeir et al. v. City of Springfield, et al.* (Docket No. 1879CV00872) (the “Public Records Suit”), to demand access to the requested records. *See Ex. C* (Complaint w/o exhibits). Our co-counsel Luke Ryan emailed a copy of the complaint in the Public Records Suit to the City Solicitor later that same day, and attorney Kathleen Sheehan accepted service on the City’s behalf.

Approximately two weeks later, on December 13, 2018, the City provided the first substantive written response to the October 2018 Request. *See Ex. D* (Dec. 13, 2018 Response Letter). That response disclosed the existence of various responsive documents. These documents included the Arrest Report for Madelyn’s arrest (No. 18-3399-AR), and video recordings of her booking by, and certain other interactions with, the SPD. The documents also included a report by Sergeant Albert Witkowsky, dated November 2, 2018, in which he describes the process by which the documents had been collected. The City produced the listed documents to us incrementally over the next two months, and the Public Records Suit was dismissed without prejudice on February 22, 2019.

At no time during this process did the City disclose that there was an internal investigation into Madelyn’s arrest, detention, and/or death. Nor did the City produce to Madelyn’s family any documents disclosing the existence or substance of any such investigation. To the contrary, in response to the October 2018 Request’s demand for “[a]ll reports, notes, interview summaries, and other documents relating to any investigation of Madelyn Linsenmeir’s death, or obtained or reviewed as part of any such investigation,” the City affirmatively stated on December 13<sup>th</sup> that “[t]he City does not have any records that are responsive to your request.” *See Ex. D* (Dec. 13, 2018 Response Letter at response #10).

3. The 2019 Public Records Request and Resulting Disclosure for the First Time of an SPD Internal Investigation Related to Madelyn Linsenmeir.

At some point in 2019, the CPHB posted to its website a YTD Detail Report for Quarter 4 of 2018. *See Ex. E* (CPHB YTD Detail Report: 2018 Quarter 4). This report similarly does not disclose the existence of any investigation or proceeding relating to Madelyn. However, it contains a cryptic entry for Complaint Number SO-18-261 (“Complaint 18-261”), which notes that the “Incident Date” is “9/29/2018,” the “Address” is “130 Pearl St.,” and that the “Summary” is “Investigation into the report authored by Sgt A Witkowsky.” The document also indicates that the CPHB already conducted a Case Review regarding Complaint 18-261 on December 13, 2018, and that the matter was scheduled for a CPHB hearing. The City’s online calendar indicated that this hearing was scheduled to occur on March 20, 2019. However, that

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calendar entry has since been deleted. It appears that the hearing was cancelled and has never been rescheduled. The matter appears to have been closed without action.

On April 11, 2019, I submitted the April 2019 Request, which sought “[a]ll records concerning” Complaint 18-261, as well as “[r]ecords, including email and other correspondence, concerning the cancellation of the CPHB’s hearing concerning [Complaint 18-261] that was scheduled for March 20, 2019.” *See Ex. F* (April 2019 Request). The City produced written responses and records on April 26<sup>th</sup> and May 3<sup>rd</sup>. *See Exs. G & H* (written responses).

Having reviewed these materials, it is clear that Complaint 18-261 relates to Madelyn’s interactions with the SPD. It appears from these documents that, on November 28, 2019—*i.e.*, two days after Madelyn’s family filed the Public Records Suit—Police Commissioner Barbieri initiated Complaint 18-261 by ordering an investigation into matters relating to Madelyn Linsenmeir’s arrest, booking, detention, and death. *See Exs. I* (Special Order 18-261, dated Nov. 28<sup>th</sup>), J (police statements), & K (IIU report). Among other things, the investigation appears to have resulted in the creation of a large number of police statements between November 29 and December 10, 2018, and of an IIU report dated December 12, 2018. After the IIU submitted its report on December 12<sup>th</sup>, the CPHB conducted its Case Review the very next day.

This investigation could not have been a secret from the leadership of the City or the SPD. Yet, when the City made its written response to the October 2018 Request on December 13<sup>th</sup> (*i.e.*, the very same day the CPHB conducted its Case Review), the City omitted any mention of this investigation or the numerous documents created during it that were responsive to the October 2018 Request. *See Ex. D* (Dec. 13, 2018 Response Letter). The City did not disclose this investigation at any other time during the pendency of the Public Records Suit, which remained active until almost three months later. These facts strongly suggest that the City and/or the SPD intentionally concealed this investigation and the resulting proceedings from Madelyn’s family members. If the City or the SPD wishes to offer an alternative explanation, please provide it immediately in writing.

### **B. Deficiencies in the City’s Public Records Responses**

The records produced in response to the April 2019 Request were responsive to the October 2018 Request and should have been produced months ago. In all events, even the City’s belated production is materially incomplete in numerous respects.

First, it appears that IIU investigators, including specifically Sergeant McCoy, orally interviewed SPD personnel in connection with the investigation ordered by Special Order #18-261. It appears that the IIU then showed a number of those people video recordings of their own interactions with Ms. Linsenmeir, thus placing them in a position to know which assertions could be contradicted by the video evidence and which could not. After viewing these videos, these personnel were asked to produce written statements. The City has produced those written statements, but not the notes memorializing the initial oral interviews, which it appears are the only records

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that would capture the officers' independent assertions concerning their interactions with Madelyn while she was in their custody. Accordingly, the City should immediately collect and produce all notes created by Sergeant Monique McCoy and any other investigators in connection with the investigation ordered by Special Order #18-261 and any other investigation related to Madelyn Linsenmeir, including all notes of interviews with police officers and other witnesses. *See, e.g., Antell v. Attorney General, 752 N.E.2d 823, 826 (Mass. App. Ct. 2001)* (ordering disclosure of interview notes created during investigation of alleged police misconduct).

Second, in its letter of May 3<sup>rd</sup>, the City stated that it is withholding the CPHB Case Review form for Complaint 18-261, evidently as disciplinary documentation constituting a personnel file or information. However, it is well established that the mere fact that a police department's "internal affairs process might lead to discipline . . . does not transmute all materials in an internal affairs investigation" into a personnel file or information exempted from disclosure. *See Worcester Telegram & Gazette Corp. v. Chief of Police, 787 N.E.2d 602, 607-08 (Mass. App. Ct. 2003)*. Rather, while the actual "notice from the disciplining authority to the particular employee advising of the disciplinary decision" might be exempt from disclosure, "the interviews, the reports, [and] the conclusions and recommendations" from the internal affairs process and "the documenting of its results to the complainant" are not. *See id.* at 609. Here, as we understand the SPD's internal affairs process, the CPHB conducts a Case Review of investigative information gathered by the IIU. *See Executive Order: Community Police Hearing Board for Springfield Police Department* (Dec. 29, 2017) § 4(B). The CPHB then submits the Case Review form to the Commissioner, who personally decides whether to issue a charging letter to one or more SPD officers to allege that there is reasonable cause to believe the officer violated the Policies and Procedures of the Police Department. *See id.* The Case Review form therefore functions not as a notice to the employee, but rather as a record of "conclusions and recommendations" that are integral to the "bricks and mortar" of the investigation and are consequently subject to public release. *See Worcester Telegram, 787 N.E.2d at 609.* The form created in this case should, therefore, be produced.

Third, the City is withholding from the production (1) the unredacted email dated March 14, 2019, at 9:40 a.m., from SPD Internal Investigation Unit ("IIU") official Kara L. Goodchild regarding the cancellation of a hearing scheduled for March 20, 2019, *see Ex. L* (email dated March 14, 2019), (2) SPD Interdepartmental Correspondence #PO 18-466, dated 11/13/2018, and (3) the November 18, 2018 email from Captain Tarpey to Lt. Stephen Wyszynski. It appears the City contends these are all personnel records, but we see no basis for such assertion. The latter two documents were created roughly two weeks before the IIU investigation even began, such that they could not be part of the resulting disciplinary process. And the first document is an internal record of the CPHB, not a notice to any individual officer, and is therefore subject to release in its entirety. *See Worcester Telegram, 787 N.E.2d at 609.* The City should produce these records.

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Fourth, the City produced the Special Report to Police Commissioner John R. Barbieri from Sergeant Monique McCoy, dated December 12, 2018, with substantial redactions. It appears these redactions are intended principally to conceal (a) quotations from the Arrest Report from Madelyn's arrest, and (b) information from Madelyn's death certificate. As to the Arrest Report, our understanding is the City has already publicly released the document,<sup>1</sup> so we fail to see why its content must be redacted now. As to the information from the death certificate, we understand that document is also public and has been released to the press.<sup>2</sup> Accordingly, we fail to see the purpose of these redactions, and the City should provide the unredacted Special Report.

Fifth, in its letter sent on April 26, 2019, the City states that it is in possession of Sgt. Albert P. Witkowsky's November 27, 2018 inter-departmental memorandum, and that this memorandum is responsive to multiple portions of the April 2019 Request. *See Ex. G at 1(a) & (b).* The City does not assert that this memorandum is exempt from production. However, it appears the City did not produce this memorandum. As far as we can determine, the only memorandum authored by Sgt. Witkowsky that we have received is dated November 2, 2018. The City should produce Sgt. Witkowsky's November 27, 2018 memorandum, as well.

### C. Conclusion

I thank you for your attention to this matter. Please produce the requested documents promptly, and in all events no later than Friday, May 17, 2019. We reserve all rights.

Sincerely,

*/s/ Daniel L. McFadden*

Daniel L. McFadden

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<sup>1</sup> "Springfield police release records on arrestee from Vermont who later died," MassLive (Dec. 21, 2018), available at: <https://www.masslive.com/news/2018/12/springfield-police-release-records-on-arrestee-from-vermont-who-later-died.html>

<sup>2</sup> "Madelyn Linsenmeir, subject of viral obituary about opioid epidemic, died from blood poisoning and complications from MRSA," MassLive (Jan. 24, 2019), available at: <https://www.masslive.com/news/2019/01/madelyn-linsenmeir-subject-of-viral-obituary-about-opioid-epidemic-died-of-blood-poisoning-and-complications-from-mrsa.html>