



**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

MAY 23 2018

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Edward N. Siskel  
Corporation Counsel  
Department of Law, City of Chicago  
121 North LaSalle Street, Suite 600  
Chicago, Illinois 60602

Dear Mr. Siskel:

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) understands that the Civilian Office of Police Authority (“COPA”) possesses video in COPA Log 1089338 that shows an ATF agent getting shot. ATF also understands that COPA has a requirement to release this video to the public no later than July 3, 2018 unless asked to delay release. By this letter, ATF requests that COPA not only refrain from releasing the referenced video prior to July 3, 2018, but also that COPA delay release for an additional thirty calendar days beyond July 3, 2018.

In support, the Illinois Freedom of Information Act exempt the referenced video from public release under 5 ILCS 140/7(1)(d). Specifically, Illinois exempts records from further release where the release would “interfere with pending ... law enforcement proceedings conducted by any law enforcement agency.” Illinois also exempts further release where the release will “create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing.” Finally, Illinois exempts further release where the release would “obstruct an ongoing criminal investigation by the agency that is the recipient of the request.”

The shooting our ATF agent occurred only a few weeks ago, on May 4, 2018. As noted in several newspapers, ATF arrested Ernesto Godinez in this matter. More recently, the United States Attorney’s Office for the Northern District of Illinois filed a criminal complaint against Mr. Godinez. In preparation for the expected proceedings, ATF continues to investigate the shooting.

ATF’s investigative efforts include witness interviews as well as other investigative steps. While it is true that investigators spoke with several witnesses shortly after the shooting, investigators have not successfully identified and interviewed all potential witnesses. These efforts remain ongoing. As such, it is imperative that we preserve witness statements independent of any video evidence.

Mr. Edward N. Siskel, Corporation Counsel

As noted in several professional journals, memory is not always a perfect process. “[M]emory frequently updates as one is exposed to new information, or other people provide input, or the original memory is reinterpreted or filled in. Memory is a product of all these sources and is always subject to further change.” Nancy Franklin & Michael Greenstein, *A Brief Guide to Factors that Commonly Influence Identification and Memory of Criminal Events*, 85-Apr N.Y. St. B.J. 10, 12 (2013). Given this admonition, any release of the referenced video will impact the recollection of witnesses expected to appear during criminal proceedings in this matter. For the same reasons, release will affect the success of the ongoing criminal investigation and also deprive Mr. Godinez of a fair trial.

Of equal importance, the video will also unfairly affect potential jurors. Courts recognize that pre-trial publicity leads to bias, including opinions of a defendant’s guilt or innocence and of the strength of evidence. Matthew Mastromauro, *Pre-Trial Prejudice 2.0: How Youtube Generated News Coverage Is Set to Complicate the Concepts of Pre-Trial Prejudice Doctrine and Endanger Sixth Amendment Fair Trial Rights*, 10 J. High Tech. L. 289, 289 (2010). Courts also note the “different impact that the medium of coverage has upon the prejudicial nature of the press coverage. In particular, courts have noted that video makes a stronger impression on a possible jury member than the same information copied into a transcript.” *Id.* (citing *United States v. Saunders*, 611 F. Supp. 45, 49 (S.D. Fla. 1985)). As a result, any release of the referenced video will affect the overall fairness of the pending criminal proceedings by creating pre-trial biases.

If you have any questions in this matter, please feel free to contact me at 312-846-7200.

Sincerely yours,



Celinez Nunez  
Special Agent in Charge  
Chicago Field Division

CC Jay Westensee