

**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT**

SCRIPPS MEDIA, INC., d/b/a KSHB-TV,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	Chapter 60
OVERLAND PARK, KANSAS,)	
)	
Defendant.)	

**Petition to Enforce the Kansas Open Records Act
(Request accelerated consideration per KSA 45-222(g))**

Plaintiff Scripps Media, Inc., d/b/a KSHB-TV, for its causes of action against Defendant Overland Park, Kansas, states as follows:

A crisis of confidence is spreading

1. For three years, local government officials have repeatedly told the public that former Overland Park Police Officer Clayton Jenison did nothing wrong when he fatally shot John Albers six times as the 17-year-old backed the family's minivan out of the family's garage and that Jenison later voluntarily "resigned for personal reasons."

2. But as statements by other officials and recently discovered documents increasingly raise questions about these claims, a crisis of confidence is spreading, as citizens lose trust in their local government.

3. This Court can resolve this crisis by ordering Overland Park to disclose the complete Officer-Involved Shooting Investigation Team file into the Albers shooting—an order explicitly permitted by the Kansas Open Records Act.

4. Release of this file will either show Jenison's use of force was reasonable (thereby restoring the public's faith in its local government), or show it was not (thereby validating the belief by many that the City is engaged in a cover-up).

John Albers' tragic death

5. On the evening of January 20, 2018, two 911 callers reported that John Albers, a Blue Valley Northwest High School junior who was alone in his family's Overland Park home, had stabbed—or intended to stab—himself with a knife.

6. Overland Park Police Officer Ryan Newlon responded to the calls, arriving and parking across the street from the Albers' home at 5:45 p.m.; Officer Clayton Jenison arrived two minutes later.



7. The two officers stood outside the Albers' home; they did not knock on the Albers' door, nor did they make any attempt to contact anyone inside the house.

8. The officers' movements in the Albers' front yard triggered the Ring doorbell camera mounted on the front of the home across the street from the Albers.

9. That video recording shows that as Newlon returned to his car to retrieve his cell phone, Jenison appears to be standing in front of the single-car garage door nearest the front door, and not in front of the double-car garage door to the left.



10. A short time later, the double-car garage door began to open (as shown by the light beneath the door); Jenison appears safely behind the single-car garage door.



11. As the door fully opens, Jenison moves closer, but appears to continue to stay behind the single-car garage door—as evidenced by the fact Jenison is not blocking the light from the vehicle's taillights, both of which are clearly visible in the video.



12. The Ring app on the neighbor's cellphone notified her that her Ring doorbell was activated, but believing it was a "false alarm," the neighbor "silenced" the video; as a result, the video stopped recording.

13. But what happened next is caught on the dashcam video from Newlon's police vehicle.

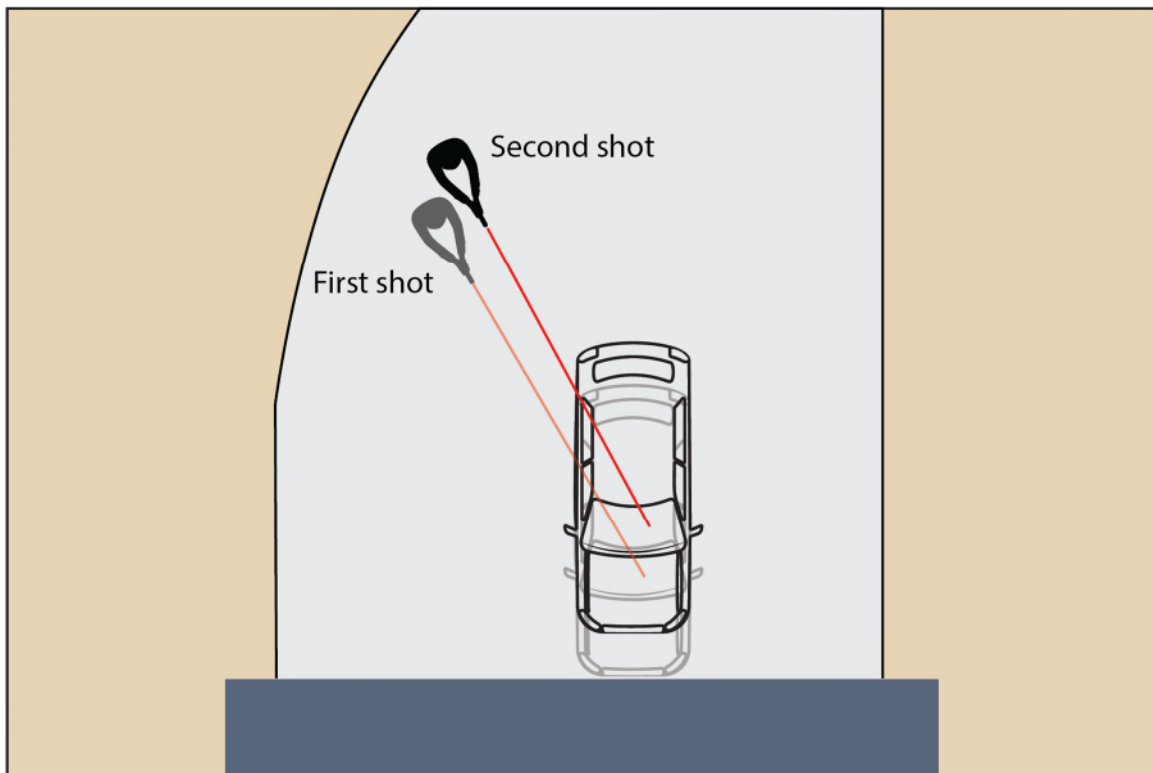


14. As shown on that video, as the garage door opened, Jenison un-holstered his Glock handgun, even though Jenison had not made contact with Albers, had not been threatened by him, or could even confirm it was Albers in the vehicle.

15. Jenison un-holstered his Glock even though the only report he had received was that Albers was considering suicide with a knife.

16. As the vehicle appeared to slowly exit the garage, Jenison—who appeared to be in the vehicle's passenger-side "blind spot" and outside the vehicle's path—yelled "stop, stop, stop," but did not identify himself as a police officer and never said "POLICE."

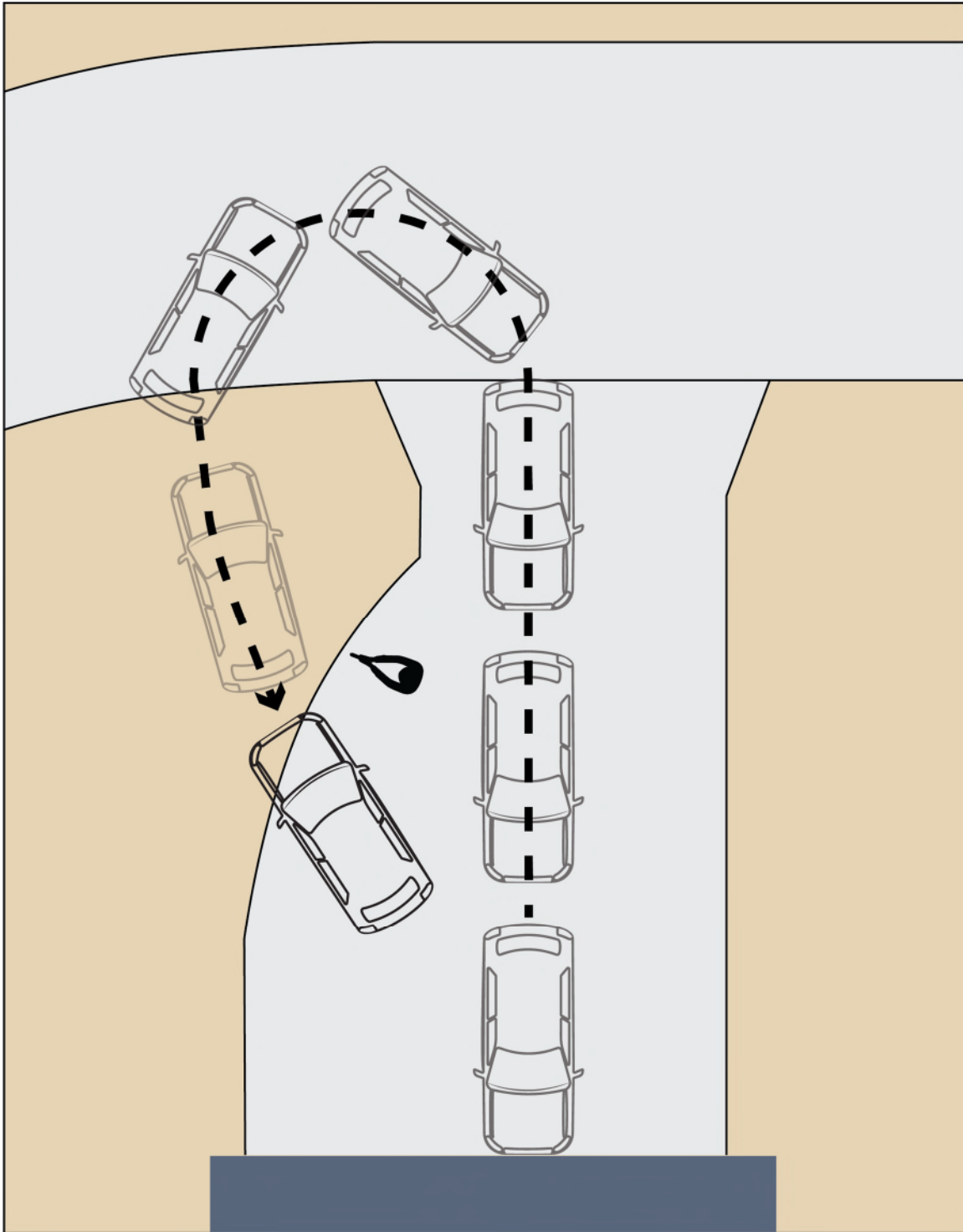
17. Jenison, without warning, then fired two hollow-point bullets through the passenger-side windows of the 2012 Honda minivan, as shown in the diagram below.



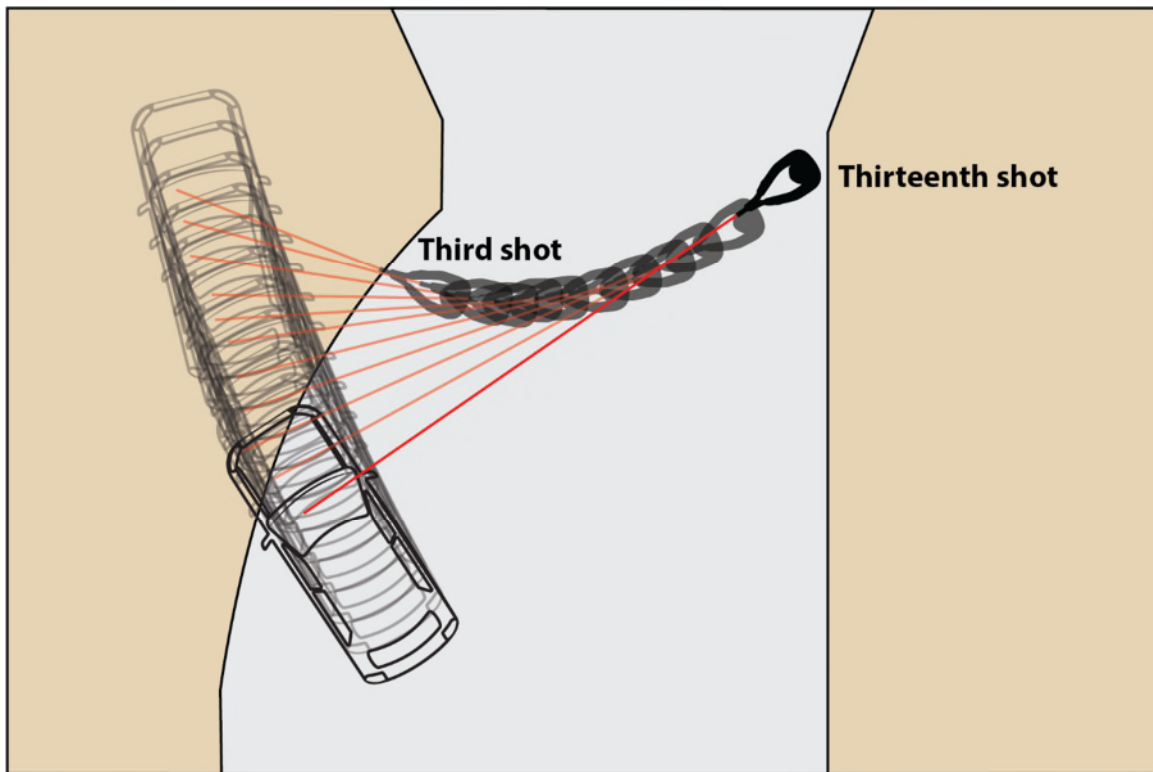
18. Both shots were captured on Newlon's dashcam video, in which the muzzle flash from Jenison's Glock handgun is clearly visible.



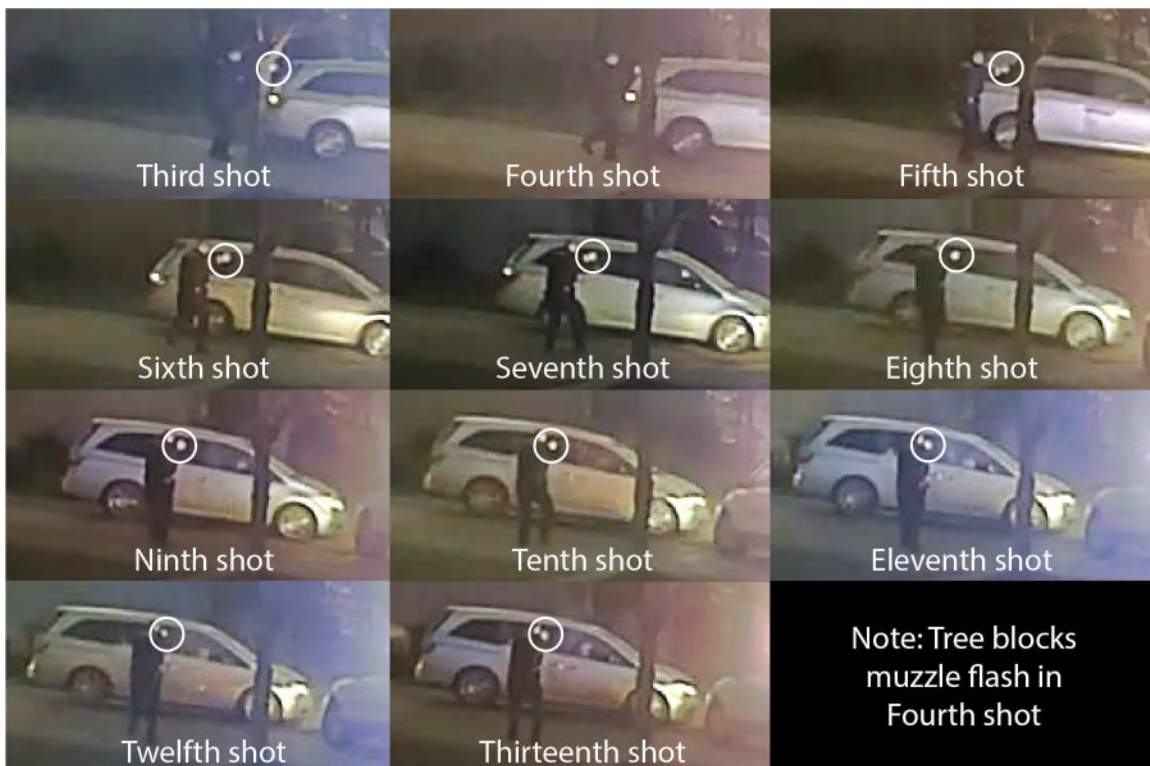
19. Albers lost control—likely because he had been shot—and as the minivan drifted down the driveway in reverse, it did a U-turn, bounced over the curb and began backing up into the Albers' yard, as shown in the diagram on the next page.



20. As the minivan made this U-turn around him, Jenison repeatedly backed up and fired another eleven rounds through the passenger-side windows of the minivan, as shown in the diagram on the next page.



21. This second series of shots was also captured by the dashcam video from Newlon's vehicle.



22. As can be seen from both the screenshots and the diagrams, Jenison shot at Albers eleven more times, even though he never appeared to be in the path of the minivan—either before or after the vehicle did the uncontrolled U-turn.

23. The direction of the thirteen rounds Jenison fired into the minivan further suggests that Jenison was to the side of the Albers' minivan, rather than in the minivan's path.

24. Each shot entered the minivan through the three passenger side windows, shattering them in the process; in contrast, the rear window and front windshield remained intact (as shown in the photos below), suggesting Jenison never shot a round while behind (or in front of) the minivan.



25. In short, Jenison fired thirteen rounds into a vehicle driven by a teenage boy, even though it appears Jenison was never in danger of being run over.

Albers' fatal injuries

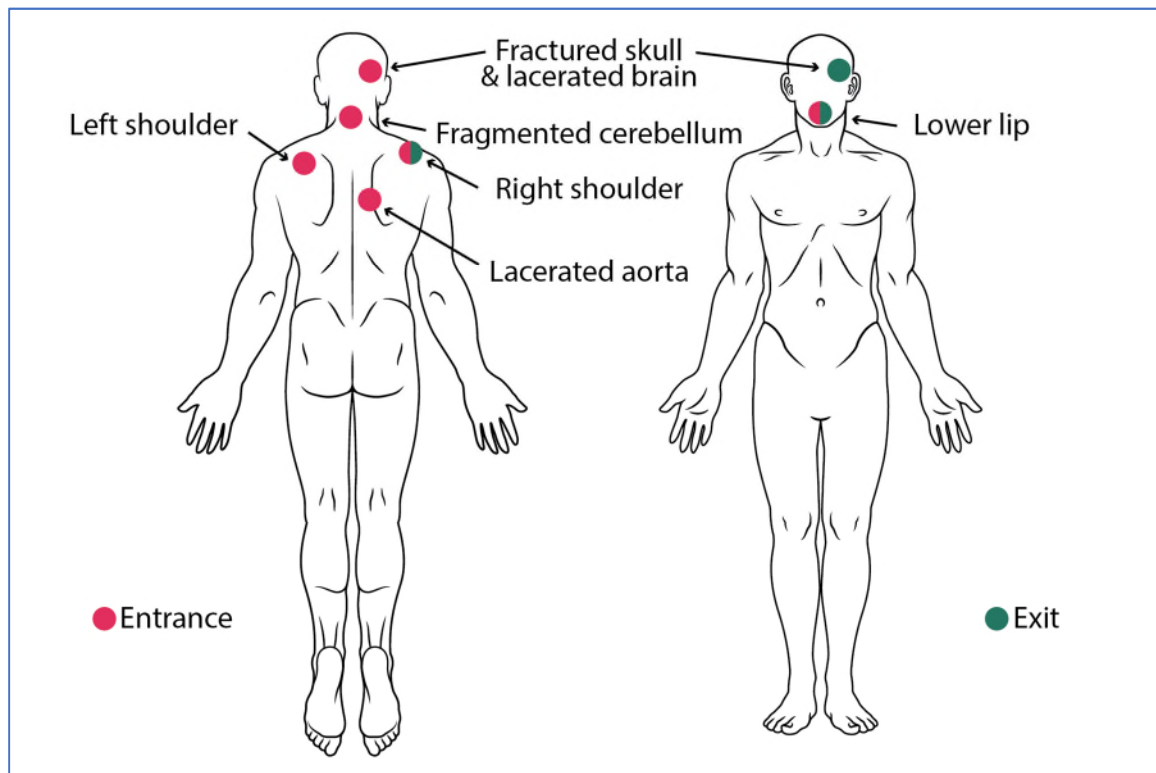
26. An autopsy would later show that Jenison hit Albers six times with .40 caliber hollow-point bullets, which are designed to expand upon impact.

27. The resulting wounds are set forth in the autopsy:

- one bullet entered Albers' head behind his right ear and exited near his left eye, fracturing his skull and lacerating his brain;

- one bullet entered the back of Albers' neck and fragmented his cerebellum (the part of the brain responsible for motor skills);
- one bullet entered Albers' back and lacerated his aorta and pericardium, causing two liters of blood to pool in his chest cavity;
- one bullet hit Albers' right shoulder and another hit his left shoulder; and
- one bullet hit Albers directly in his mouth.

28. These wounds are shown in the diagram below:



29. Albers died at the scene from these wounds.

The initial public interest in Albers' shooting

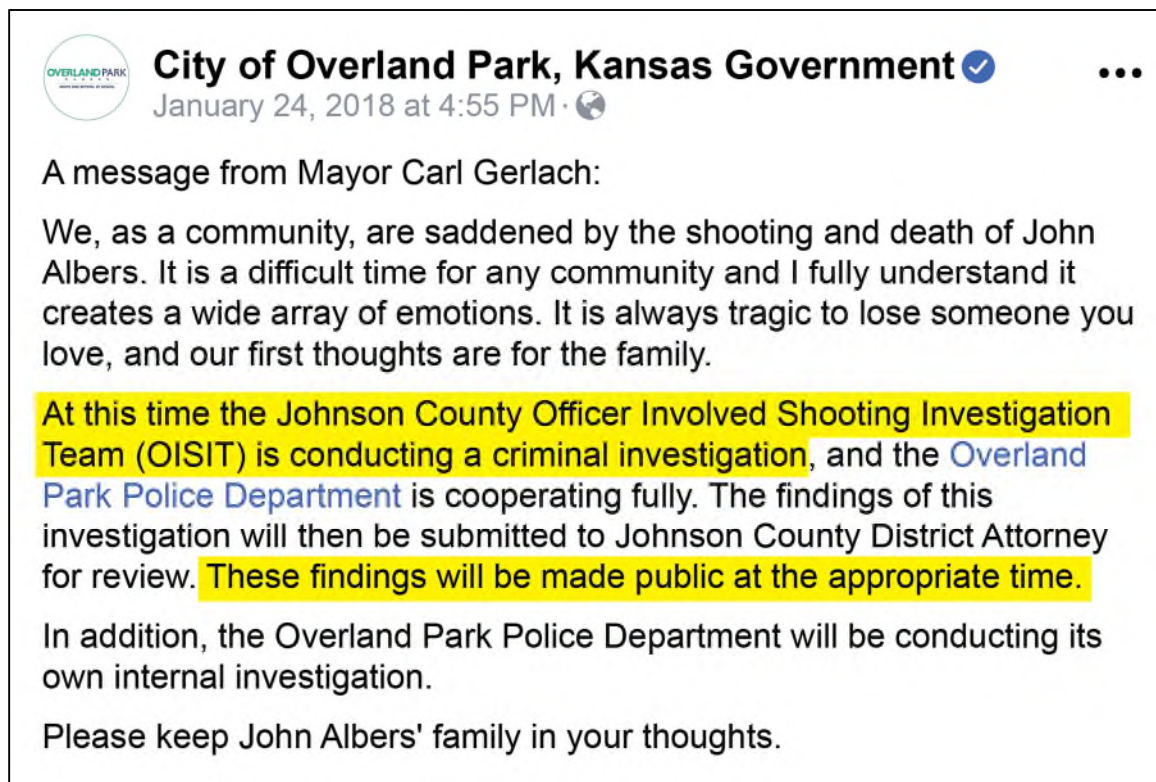
30. The shooting naturally engendered immediate public interest: a police officer called to aid a suicidal teenager instead killed him, shooting at him 13 times while the teen was backing the family minivan out of the family's garage.

31. And the public interest in the fatal shooting only grew once Albers' name was released, for Albers' mother, Sheila Albers, was the long-time principal of Harmony

Middle School in Overland Park and was well-known in the community as someone who had children's interests at heart.

32. Overland Park officials, including Mayor Carl Gerlach, immediately recognized the immense public interest.

33. On January 24, 2018—four days after Albers was shot and killed—Gerlach asked members of the community to be patient while the Johnson County Officer Involved Shooting Investigation Team conducted its investigation, promising that the findings of that investigation would “be made public at the appropriate time.”



The Johnson County OISIT protocols

34. Officer-involved shootings in Johnson County are investigated by the Johnson County Multi-Jurisdictional Officer Involved Shooting Investigation Team, commonly referred to as OISIT (pronounced “ō-sit”).

35. The team operates pursuant to formal protocols, which require members to perform numerous specific tasks, including:

- recover recordings from all in-car video cameras;
- photograph every aspect of the scene;
- take measurements for use in preparing scene and trajectory diagrams;
- prepare a scene diagram;
- photograph all vehicles involved;
- process impounded vehicles for evidence;
- submit evidence to the crime lab; and
- canvas for witnesses.

36. The protocols provide that witness interviews should be conducted as soon as possible, for obvious reasons.

Witness interviews should be conducted as soon after an incident as possible, while the witnesses clearly recall the events. Any delay may impact the accuracy of the witnesses' recall. Witnesses may be influenced by friends and family members, and such influence may be reflected in statements to investigators.

37. In contrast, the protocols allow the involved officer to schedule his or her interview at a date and time of the officer's choosing.

The involved officer should be advised that an interview will be scheduled at a later time, to be determined by the Lead Supervisor, the involved officer, and the involved agency.

38. Thus, an OISIT investigation is not a typical criminal investigation; the officer is not considered a "suspect," and the goal is not just fact-finding—instead, investigators are tasked with determining "whether legal justification of the use of force has been articulated."

An involved officer should not be considered (or referred to as) a “suspect” unless and until such time that it has been determined the officer acted with an intent to violate the law. Even though OIS investigations are criminal investigations, they typically are not focused solely on whether particular actions occurred—they also seek to determine officer intent and whether legal justification of the use of force has been articulated.

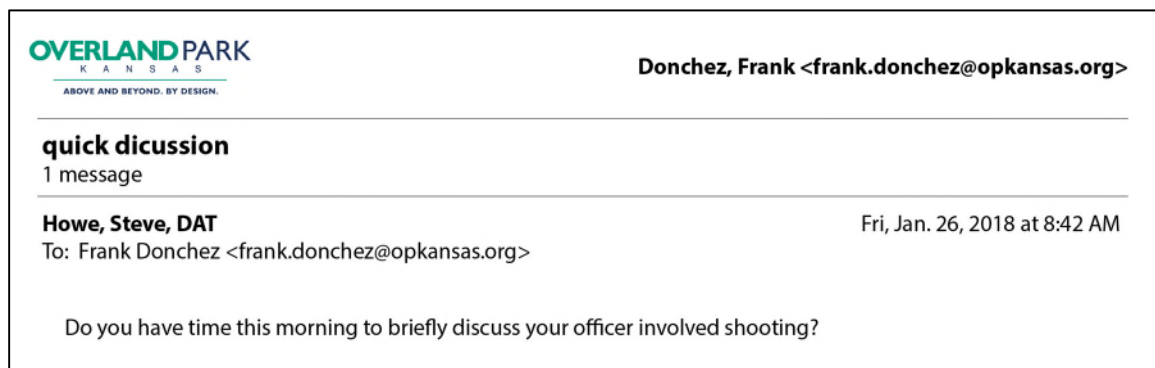
39. Since the OISIT team was formed in 2005 it has investigated more than 25 incidents; none of those investigations resulted in an officer being charged.

The OISIT investigation

40. A Johnson County OISIT investigation was initiated on January 20, 2018, the day Jenison shot and killed Albers.

41. The OISIT investigation lasted six days, at which time the team presented its report to Johnson County District Attorney Steve Howe.

42. After receiving the report, Howe arranged to speak with Overland Park Police Chief Frank Donchez about the results of the OISIT investigation.



43. The two men spoke by telephone that same morning.

The joint press conference: Part 1a


44. Nearly a month later, on February 20, 2018, Howe and Donchez held a joint press conference to purportedly share the outcome of the OISIT investigation with the public.



45. The complete and unedited press conference is available online at <https://www.facebook.com/watch/live/?v=10155994316681221&ref=external>.
46. To begin the press conference, Howe announced that “based on our review of the investigation done by the Johnson County OISIT Team, this office has determined there will be no criminal charges brought against the officer¹ for his use of force.”
47. He continued: “We have deemed, based on the facts and the law, this is a justified use of force.”
48. He then stated he had prepared a “Fact Sheet” which he asserted “set forth the very important facts involved in this incident, which helps clarify and provide some guidance to everyone about why we made the decision we did.”
49. But the “Fact Sheet” did not bring clarity—it only cultivated controversy.

¹ Howe used the term “the officer” because both Overland Park Police and the Johnson County District Attorney’s Office refused to identify the officer by name. It was only later, when Albers’ parents sued Overland Park and Jenison, that Jenison’s name became known to the public.

50. Howe's central contention in the "Fact Sheet" is that Jenison was justified in shooting and killing Albers because after Jenison demanded Albers "STOP THE CAR," Albers "drove the minivan directly at the officer in an aggressive manner."



**Office of District Attorney
Press Release**

da.jocogov.org

MEDIA FACT SHEET-PRESS CONFERENCE

From: Steve Howe
(Olathe, KS)

Date: February 20, 2018

* * *

There was Honda Odyssey minivan in the garage. As the door opened, the minivan backed up, toward the second officer who was standing directly behind it. The officer drew his sidearm. He shouted "STOP THE CAR" in a booming voice that was picked up by another officer's in-car recording system a block away. The van accelerated toward the officer. The officer shot twice while moving away from the van.

* * *

Right out of the garage, the teen drove the minivan directly toward the officer in an aggressive manner. The officer, who was in uniform, shouted "STOP THE CAR." The van was equipped with an operable backup camera, which would have shown the officer behind the van when it backed out of the garage. Recovered social media video showed that the teen knew

51. But many of the statements in the "Fact Sheet" appear to lack any factual support; Howe thus left the public wondering about the sufficiency of the OISIT investigation or, alternatively, whether Howe had even read the OISIT report.

52. First, as noted above, Jenison does not appear to have been standing “directly behind” the minivan when it came out of the double-car garage—it appears he was standing behind the single-car garage door, to the side of the minivan.

53. So even if Jenison was somehow picked up by the vehicle’s backup camera, despite standing in the minivan’s “blind-spot,” it is likely the camera would have only shown that Jenison was safely out of harm’s way.

54. There is a real question, therefore, whether Albers ever “drove the minivan directly toward the officer.”

55. Second, not only does it not appear Albers drove “toward” Jenison, it also appears he never “accelerated” or drove “aggressively” whatsoever; and Howe admitted during the press conference he did not know how fast the van was going.

Q. Were you ever able to determine how fast the van was going?

A. I don’t believe so. Shawn?² No, we were not able to determine how fast it was.

56. In contrast, when a group later reconstructed the events of that evening, they calculated Albers’ speed when backing out of the garage was only 2.5 miles per hour.

57. Third, the publicly-available video does not support the claim Jenison shouted “STOP THE CAR” before firing his first two shots: he instead appears to have made the generic statement “Stop, Stop, Stop,” without referencing the car and without identifying himself as a police officer.

58. And while Jenison was wearing his uniform, that uniform is black and, as shown by the videos, it was dusk when Albers began backing out of the garage; thus,

² Shawn Reynolds, who at the time was the Olathe Police Deputy Chief of Police, led the OISIT investigation into the shooting and was present at the press conference.

even if Albers had seen Jenison, he may have simply seen a man dressed in black waiting outside his garage in the dark, and Jenison’s vague cry of “Stop” may have done nothing to inform Albers who the man was.

59. Finally, there is a real question as to whether Jenison made his vague cry in a “booming voice,” and whether his cry to “Stop” was recorded a block away; instead, it appears Jenison’s shouts were recorded by the “in-car recording system” in Newlon’s police vehicle, which was parked in front of the Albers’ next door neighbor’s house.

60. Howe is correct in referring to the “in car recording system” in Newlon’s vehicle as being what captured Jenison’s shouts.

61. That system—the WatchGuard® 4RE Panoramic in-car camera and microphone system—is not one’s average tape recorder; instead it consists of several components, including a wireless microphone pack which the officer wears on his or her body, and which transmits the audio back to the in-car DVR for recording.

62. Overland Park purchased the WatchGuard® system in 2017, with the recommendation of the Police Department and the City Council’s Public Safety Committee.

63. Overland Park Police Lieutenant Colonel Simon Happer explained to the City Council’s Public Safety Committee that the officer’s “microphone pack” allows the in-camera DVR to record audio outside the police vehicle, and that the WatchGuard® system has a “much better microphone” than the previous system.

Chair Janson stated when he went on his police ride-a-long, he could hear the officer talking just a few feet away as he sat inside the patrol car. Police Lieutenant Colonel Happer replied that the old system did the same thing. The officer wore a microphone pack. The WatchGuard system will provide a much better microphone for audio playback.

64. The video recorded by Newlon's WatchGuard® system shows Newlon's "mic" as activated and recording from "Wireless2," *i.e.*, his microphone pack; thus, Jeni-son's requests for Albers to stop were not picked up "a block away" (as Howe claims), but by Newlon's sensitive body-worn microphone as he was standing across the street.



65. Thus, the public interest, which was first sparked by the news of a police officer shooting an unarmed teenager in his driveway, was fanned into flame by a "Fact Sheet" which raised more questions than it answered.

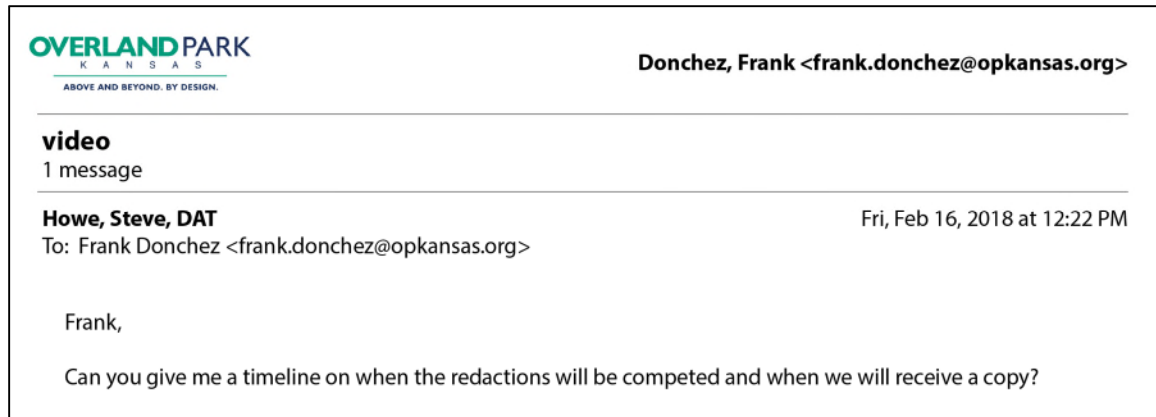
66. As a result, the public was left wondering whether the OISIT investigation was equally flawed or whether Howe ignored the OISIT findings altogether to protect a law enforcement officer.

The joint press conference: Part 1b

67. During the press conference Howe also played redacted copies of dashcam videos from two of the Overland Park police vehicles at the Albers' home that evening.

68. Howe met with the Overland Park Police Department command staff before the press conference to decide which videos to show—and which videos not to show—at the press conference.

69. Howe also allowed Overland Park to redact the videos, as shown by this e-mail which Howe sent to Donchez four days before the press conference.



70. During the press conference, Howe acknowledged the existence of a third video, and even explained how important it was to look at all the video evidence to gain a fuller understanding of what occurred:

Q. There were two angles, how important was having a second look in determining exactly what happened? Sometimes you don't get all the facts just from one viewpoint.

A. Right. And in the case, OISIT did a really good job of getting angles from a variety of locations. **You saw a third vehicle come in right at the end; we also have that video.** So we had a lot of different vantage points to be able to evaluate the case and make this determination that it was a proper use of force. But you're right – from different angles it gives you a different sense of what was going on.

71. Nevertheless, no recordings from the third vehicle have been released.

72. Perhaps even more concerning, officials have pretended that the video and audio recordings from Jenison's police vehicle do not even exist.

73. Overland Park police vehicles are equipped with the WatchGuard® in-car camera system, which contains both a fixed panoramic camera and a separate High-Definition camera on a rotating turret, which uses artificial intelligence to “follow the action;” these cameras are shown in this photo of an actual Overland Park police vehicle.



74. Jenison parked his police vehicle so that it was facing the house directly to the west of the Albers’ house; with its two-camera system, it is likely that both cameras recorded Jenison from the moment he exited his vehicle, through (and after) the time he repeatedly shot and killed Albers.

75. Moreover, the audio recording from the wireless microphone pack Jenison wore could also help the public understand whether Jenison tried to make any other form of communication with Albers, besides his nondescript request to “stop.”

76. Officials have never acknowledged the existence of recordings from Jenison’s in-car camera system; in fact, in a 2019 interview, Howe again reiterated there were only three videos:

Q. Were there three police dash cam videos recorded that night?

A. There were, I believe there were two, maybe three. Two of them had a similar view of it. And the third one came from a different direction.

77. Overland Park Police Chief Frank Donchez also gave an interview in 2019, in which he too said there were just three dashcam videos:

Q. How many videos of police dash camera videos are there?

A. **There are three.**

Q. Three?

A. Yes.

78. Howe and Donchez's secrecy about the Jenison recordings has piqued the public interest, causing the public to ask whether officials are trying to hide something.

The joint press conference: Part 2

79. Donchez also spoke during the press conference; he defended Jenison, asserting Jenison followed Overland Park's "policies and procedures" in shooting and killing Albers.



80. But in doing so, Donchez appeared to inadvertently contradict Howe's statement that Jenison was standing behind the Albers' minivan when the garage door opened, saying that Jenison was not behind the car, but "alongside" it:

He was out of the way at one point, but as you saw, the van turned around and came back at him. I think that one of the misconceptions is that **if you are alongside of a vehicle** you are no longer subject to danger, which isn't even remotely true. One cut of the wheel one way or the other can take you down with the side of that vehicle. So, don't let the fact that **at one point he is alongside the vehicle** fool anybody into believing that he's no longer in danger.

81. Donchez did not correct any of Howe's other factual misstatements.

82. Donchez was asked if Jenison was still on the force:

Q. Is he back on the force?

A. The officer involved has **resigned from the Department** for personal reasons.

83. Donchez's statements regarding Jenison's departure—specifically, that Jenison was no longer on the force and had "resigned ... for personal reasons"—would later be questioned when it was revealed Jenison was paid \$70,000 to leave the force.

84. In sum, Howe and Donchez's press conference only amplified a matter of public interest—a police shooting of an unarmed youth—by making statements about the case and its aftermath which would later be called into question.

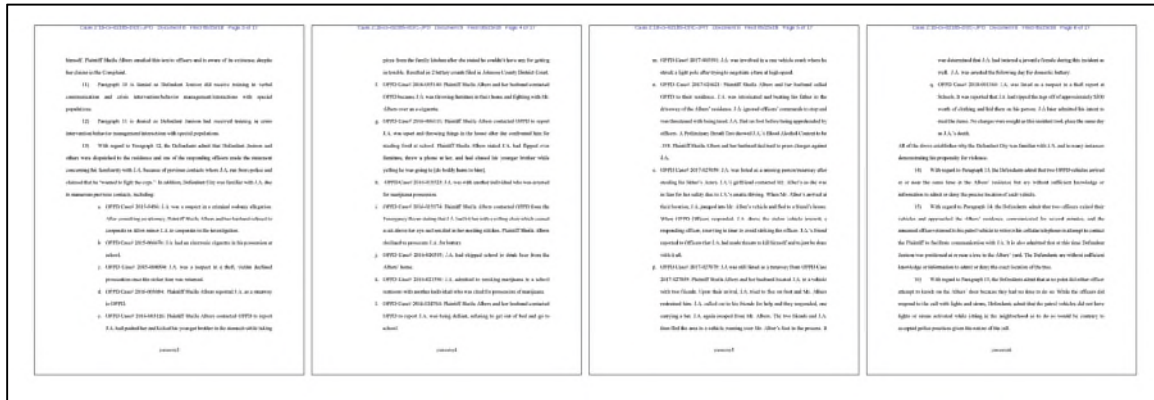
The federal civil rights lawsuit

85. On April 17, 2018, Sheila Albers, John's mother and the administrator of his estate, filed a federal civil rights lawsuit against Overland Park and Jenison.

86. Overland Park and Jenison were represented in that lawsuit by Overland Park Assistant City Attorney Eric Blevins and Michael Seck, a private attorney.

87. Blevins' and Seck's goal from day one appeared to be to prevent the Albers from using the lawsuit to discover the facts about their son's death.

88. In the very first pleading they filed in the case, the two Overland Park attorneys included a four-page recitation of every encounter Albers had ever had with police—many of which were the product of the problems Albers (who was suffering from mental health issues) was admittedly having at home.



89. None of these incidents—which included throwing a phone at his mother, refusing to get out of bed, and skipping school to drink beer—had any relevance to the lawsuit; none were capital offenses and none justified Jenison fatally shooting Albers.

90. Instead, Blevins and Seck appeared to have included them solely in the hope that the Albers would be intimidated into abandoning their lawsuit.

91. Blevins and Seck filed another pleading the same day, which asked the court to prevent the Albers family from conducting discovery in the case, claiming that Jenison was “immune[] from discovery.”

92. Blevins and Seck also tried to get the lawsuit thrown out, arguing that “Jenison’s use of force was not objectively unreasonable.”

93. Finally, Blevins and Seck argued that Overland Park was not responsible for Jenison’s actions, even though they admitted that Jenison was an Overland Park police officer at the time he shot and killed Albers.

94. United States District Judge Daniel Crabtree rejected Blevins’ and Seck’s attempt to have the lawsuit dismissed, finding that:

As the discussion of the first factor noted, the Complaint here alleges, and the video does not contradict, that J.A. was unaware of the police officer’s presence until he was shot. Doc. 4 at

* * *

minivan backed down the driveway. *Id.* at 8–10. Officer Jenison moved toward the minivan, but he did not place himself in the van’s path before he fired the first two shots. *Id.* at 12. Nor does the video show that Officer Jenison was confined in close quarters; to the contrary, defendants appear to concede that the video shows space between Officer Jenison and the minivan. Doc. 10 at 8 (“At this point, Jenison is, generally, to the rear and right of the van.”).

* * *

the minivan as a deadly weapon. Instead, when the first two shots were fired, the facts show that J.A. did not know the person yelling “stop” was a police officer; that Officer Jenison was not standing in a confined area or in the van’s direct path; and that the van slowly backed out of the garage before the officer fired the first two shots.

95. As a result, he ordered the lawsuit to be continued.

96. Less than three months later, on January 11, 2019, Overland Park paid John’s parents, Steve and Sheila Albers, \$2.3 million to dismiss the lawsuit—before any discovery could take place.

The District Attorney’s interview

97. Following the dismissal of the federal civil rights lawsuit, public interest in the case persisted (and increased considering the size of the settlement), and in February 2019, Howe gave an interview to Dhomonique Ricks who, at the time, was a television anchor for WDAF-TV, FOX4.



98. The complete and unedited interview of Howe is available online at <https://www.youtube.com/watch?v=8KzgqAxdbQE>.
99. In that interview, Howe repeated that he released the redacted videos because he believed it was in the public interest to do so: “When we released this information it was because the public had a lot of interest about what really happened, and we wanted to let folks know why we made the decision we did.”
100. But in the interview Howe acknowledged that the videos do not tell the whole story:
- Q. Would it be possible to pull up the video and have you kind of walk us through how you made your decision?
- A. Well, I don’t know if necessarily walking through video would be indicative of me doing that. And the reason why I say that is **it’s just not the video that we use**; we use the interview of all the witnesses in this case, any information we had available to us at the time, and I think, I try to use all of the evidence in making a determination.

101. Howe also reiterated what he said in his 2018 press conference, when he spoke about the importance in his decision-making of what Jenison and other witnesses told OISIT investigators.

Q. Was the interview of the officer also important to your analysis?

A. Absolutely. We use all that information, all the witnesses, any videos, statements of people involved, including the officer who used his weapon, all those are factored in our decision.

102. Yet the public has never seen any witness statements; not from Jenison, not from the other responding officers, and not from the Albers' family friend who witnessed Jenison firing 13 rounds at Albers, killing him.

The Police Chief's interview

103. Chief Donchez also gave an interview to Fox4's Dhomonique Ricks after the civil lawsuit was settled.



104. The complete and unedited interview of Donchez is available online at https://www.youtube.com/watch?v=APhoP1_s7Bw&feature=youtu.be.

105. During that interview Donchez asserted Jenison did nothing wrong:


Q. Did Officer Jenison make any mistakes?

A. Officer Jenison followed policy and by Steve Howe's account he followed Kansas criminal law.

Q. He fired his gun thirteen times; is that excessive force?

A. Not by the state statute and not by our policy.

106. But Donchez's claim that Jenison "followed policy" caused still more controversy, for Overland Park's policy, which Donchez enacted as Chief of Police, explicitly prohibits shooting into moving vehicles, except in self-defense.

	OVERLAND PARK POLICE DEPARTMENT STANDARD OPERATING PROCEDURE		
	NUMBER:	2330	
	TOPIC:	RESPONSE TO RESISTANCE	
	EFFECTIVE DATE:	08/31/2016	
	SUPERCEDES:	03/31/2014	
SIGNATURE:		<u>/s/ Frank Donchez</u> Chief of Police	<u>/s/ Michael Ernst</u> Bureau Commander

**OVERLAND PARK POLICE DEPARTMENT
STANDARD OPERATING PROCEDURE**

Prohibited Use of Deadly Force

Officers will not:

- Use deadly force to effect the arrest or prevent the escape of an unarmed, non-dangerous, fleeing felon.
- Discharge a firearm when it appears likely an innocent person may be injured, unless such discharge is immediately necessary to protect the officer or other person from imminent death or great bodily harm.
- Discharge a firearm at or from a moving vehicle except in self defense or defense of another and when the suspect is using deadly force.
- Fire warning shots. **1.3.3**

107. But bullets don't bend; since all thirteen of the rounds Jenison pumped into the minivan entered through the passenger-side windows, Donchez's implication that Jenison acted in self-defense is questionable.

108. During the interview, Ricks also asked Donchez if Jenison was “encouraged to leave the force,” to which Donchez answered: “He was not.”

109. Ricks then asked Donchez why Jenison was not encouraged to leave the force; Donchez replied that “He left before we even had those discussions.”

110. When Ricks asked Donchez when Jenison left the force, he responded: “I believe he left within a week or two.”

Information is revealed

111. In June of this year, KSHB Investigative Reporter Andy Alcock learned that records from the Kansas Commission on Police Officer Standards and Training (the organization responsible for licensing police officers in the State) showed that Jenison’s last day as an Overland Park Police Officer was March 4, 2018—far more than “a week or two” after the January 20, 2018 shooting.

The Kansas Commission on Peace Officers’ Standards and Training issued Clayton Charles Jenison full-time certification as a Kansas law enforcement officer on April 29th, 2016. As of the date of this letter, his certification is in *good standing*.

Please see the officer’s employment history below:

Full-time officer	Overland Park Police Department	12/07/2015-03/04/2018
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112. On June 12, 2020, Alcock made a Kansas Open Records Act request to the Overland Park Police Department for its payroll records for February and March of 2018.

113. On Friday, June 26, 2020, Overland Park provided Alcock with the requested payroll records for four pay periods.

114. Alcock examined the records and discovered that the average rate of pay for three of the four pay periods was \$32.71 an hour, while the average rate of pay for the other period was \$41.95 an hour, as shown below:

Run Date	Dollar	Hours	Average	
Feb. 7, 2018	\$254,262.69	7,843.00	\$32.42	
Feb. 21, 2018	\$257,442.55	7,836.25	\$32.85	
Mar. 7, 2018	\$318,346.28	7,588.50	\$41.95	
Mar. 21, 2018	\$227,343.35	6,919.25	\$32.86	

115. Multiplying the average rate of pay for the three “standard” periods by the number of hours in the outlier fourth period (7,588.50 hours x \$32.71 an hour), the total pay for that period should have been \$248,219.83, or \$70,126.45 less than the actual pay for that period (\$318,346.28 actual pay - \$248,219.83 calculated pay = \$70,126.45).

116. Alcock shared the payroll information with Sheila Albers, who that week-end discovered the KansasOpenGov.org website; the website showed that Overland Park paid Jenison \$81,040 in 2018—\$34,383 more than he made the entire previous year—even though, according to Chief Donchez, Jenison had “resigned” in January or February 2018, and according to Kansas CPOST, had left the Department in March 2018.

117. The information on the KansasOpenGov.org website is shown below.

City	Year	First Name	Last Name	Position	Gross Pay
Overland Park	2018	Clayton Charles	Jenison	Police Officer	\$81,040
Overland Park	2017	Clayton Charles	Jenison	Police Officer	\$46,657
Overland Park	2016	Clayton Charles	Jenison	Police Officer	\$45,566
Overland Park	2015	Clayton Charles	Jenison	Police Officer	\$2,329

118. Sheila Albers shared the website information with Alcock, and he confirmed her findings; on Monday, June 29, 2020, Alcock confronted Sean Riley, Overland Park’s Manager of Communications, with the information Sheila Albers had uncovered:

Sean,

It looks like Overland Park paid off the Albers kid shooter Officer Clayton Jenison to leave the department, contrary to what was said publicly. He left the department in early March 2018 and yet made about \$35K more money in 2018 than he did in all of 2017.

I'm going to need some response on this one.

Overland Park admits it paid Jenison

119. Faced with this information, Overland Park admitted the very next day it paid Jenison to leave the Police Department.

120. Specifically, on June 30, 2020, Overland Park's Manager of Communications sent Alcock the following statement:

In the best interest of the community, city officials negotiated an agreement with former Overland Park Police Officer Clayton Jenison which resulted in his voluntary resignation and the City providing a final compensation package that included a severance payment as well as other benefits which, together with his 2018 payments for unused vacation and holiday pay (\$686), compensation time payout (\$2,354), and regular pay (\$8,000), totaled \$81,040. The difference between the \$81,040 and the total of \$11,040 for regular pay, unused vacation and holiday pay, and compensation time payout, represents the severance payment.

121. Based on Overland Park's statement, Jenison's severance payment is easy to calculate: it is the difference between the \$81,040 Overland Park paid Jenison in 2018 and the \$11,040 Overland Park paid Jenison for his "regular pay" and accrued benefits, *i.e.* \$70,000.

122. This amount is nearly identical to the estimated \$70,126.45 in excess payments which Overland Park "overpaid" for the pay period run on March 7, 2018. (*See* ¶ 115, *supra*).

Overland Park admits it entered into a severance agreement with Jenison

123. On August 17, 2020, Overland Park's City Manager, Bill Ebel, sent a letter to the Mayor and members of the City Council in which he described Jenison's departure as "a mutually agreeable separation."

Regarding Officer Jenison's Resignation and Severance Agreement, it was my decision to enter into a mutually agreeable separation. At no time did I consult with the District Attorney

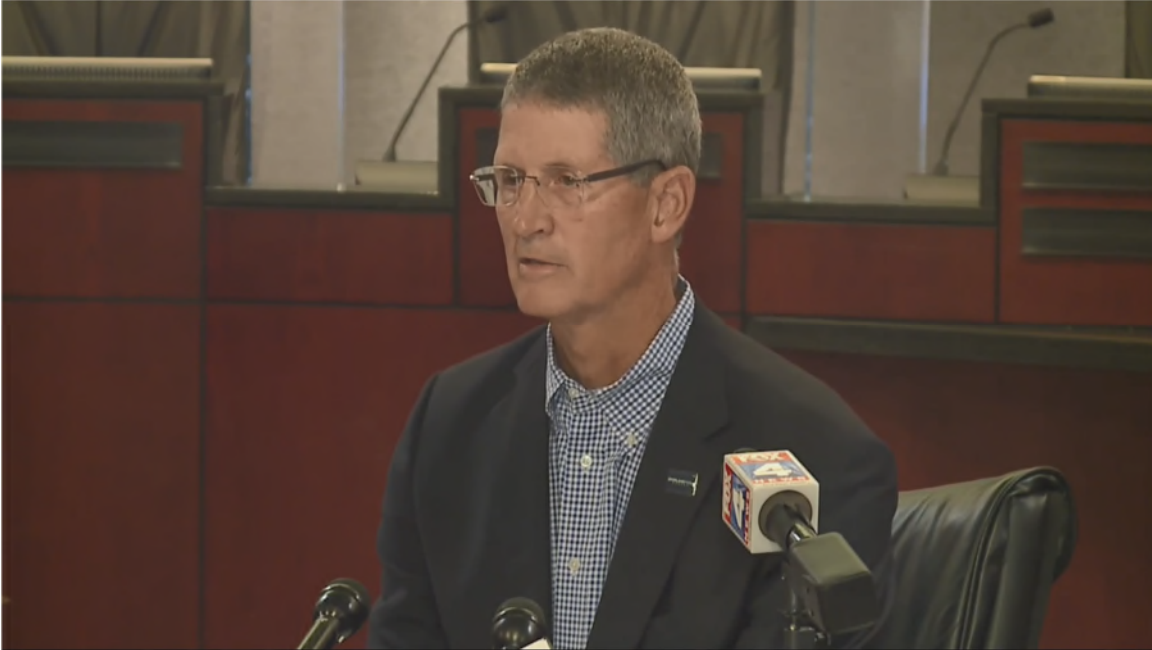
124. That evening, members of the public appeared at the Overland Park City Council meeting and attempted to get an explanation for why the city had paid Jenison \$70,000 after he had shot and killed an unarmed youth pulling out of his driveway.

125. The Mayor, however, refused to recognize these speakers and directed two Overland Park police officers to remove them from the chamber.



126. In response, the officers surrounded the citizens and asked them to leave.

127. But Gerlach eventually caved to the persistent public interest and held a press conference on August 20, 2020, to address the fatal shooting of Albers.



128. The complete and unedited press conference is available online at <https://fox4kc.com/news/overland-park-mayor-details-timeline-following-2018-officer-involved-shooting-of-teen-john-albers/>

129. During the press conference, Gerlach presented a “timeline” drafted by Overland Park’s Legal Department, which showed that Jenison executed his severance agreement—under which he was paid \$70,000 to leave the Department—on February 16, 2018, four days **before** Chief Donchez stated in the recorded February 20 press conference that Jenison had “resigned from the Department for personal reasons.”

February 16, 2018 – Officer Clayton Jenison executed a Resignation and Severance Agreement with the City. The voluntary resignation was tendered on February 16, 2018 with an effective

130. Gerlach also appeared to contradict Donchez by acknowledging that Jenison was both encouraged to leave the force and paid handsomely to do so:

We really didn’t have a way to fire him. So, he could have ... if we would have fired him, we would not have had cause. And if we did not have cause, he could sue us. He could also go back before our civil service

board and be reinstated. Well, that's the one thing we didn't want to happen. And that's why we negotiated to get the agreement signed by him, to get him out. **We did not want him as an officer and we didn't want a chance to have to put him back on the street because the civil service board wouldn't agree with us firing him.**

* * *

They didn't say he didn't do anything wrong, they said there wasn't enough to charge him with, and I think since we, they, couldn't charge him, we had to make a decision - do we fire him, like I mentioned before, and go through long legal battle and have our civil service board actually put him back on, or should we negotiate **and make sure he's out of this community and not an officer in our city anymore.** The City Manager made the decision. He's the one that made that decision to get him out of the community. **And I think everybody agreed, we didn't want him as a police officer anymore.**

131. When Gerlach was asked to explain the inconsistencies in the City's positions, Gerlach repeatedly attempted to shift blame, asserting the decision to pay off Jenison was made by Bill Ebel, the Overland Park City Manager.

132. When Alcock asked why Ebel was not at the press conference, Gerlach responded simply: "Bill's not here."

133. Undaunted, still another reporter asked whether Gerlach could go get Ebel:

Q. Is he here? Can you go get him?

A. He's not here.

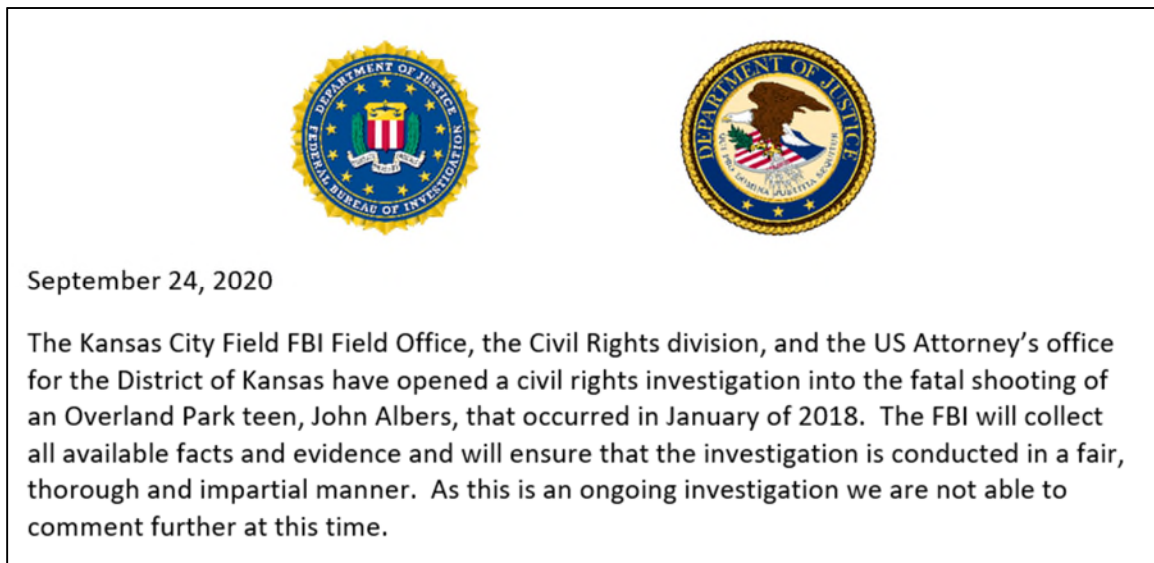
134. Since the press conference, Ebel has not issued a statement or made any other comment correcting the Mayor's declaration that "everybody agreed, we didn't want him as a police officer anymore."

135. Accordingly, the Mayor's press conference, just like Howe's press conference, simply raised more questions than it answered, thereby adding to the growing questions about what happened that evening, and why Jenison left the force.

136. And it appears that local officials have no intent to provide any further information about what happened that tragic evening.

The legitimacy of the public interest is confirmed

137. The demand for more information about why Jenison shot and killed an unarmed teenager recently received the imprimatur of the FBI, the Civil Rights Division of the United States Department of Justice, and the United States Attorney's Office for the District of Kansas when they announced a joint civil rights investigation into the Albers shooting.



138. Considering this development, the legitimacy of the immense public interest into Albers' death can no longer be seriously questioned.

**Count I – Disclosure of the complete OISIT file
(KSA 45-221(a)(10) and KSA 45-222(a))**

139. Plaintiff incorporates by reference the allegations of Paragraphs 1-138.

140. Plaintiff Scripps Media, Inc., is a Delaware corporation which is authorized to conduct business in the State of Kansas.

141. Plaintiff owns and operates KSHB-TV, the NBC television affiliate serving the greater Kansas City area, including Overland Park, Johnson County, Kansas.

142. Defendant Overland Park, Kansas, is a municipal corporation, duly organized and existing under and by virtue of the constitution and laws of the State of Kansas.

143. On February 6, 2020, KSHB Investigative Reporter Andy Alcock made a request under the Kansas Open Records Act to Overland Park for the OISIT file:

Under KORA, I'm requesting a copy of the completed investigation file of the shooting death of John Albers by former Overland Park Police Officer Clayton Jenison.

Specifically, I'm requesting the final and completed report from the Johnson County Officer Involved Shooting Investigation Team and OPPD's Response to Resistance

144. Overland Park is a “public agency” as that term is used in KSA 45-217(f)(1) and is, therefore, subject to the provisions of the Kansas Open Records Act, KSA 45-215, *et seq.*

145. The OISIT file relating to the shooting death of Albers is a “public record” of Overland Park as it is “recorded information, regardless of form, characteristics or location, which is made, maintained or kept by or is in the possession of” Overland Park. (*See* KSA 45-217(g)(1)).

146. Upon completion of the OISIT investigation, the original OISIT case file was provided to Overland Park, pursuant to OISIT’s protocol:

Upon completion of the investigation, the original investigative case file will be provided to the involved agency's chief executive or that person's designee.

147. On February 25, 2020, Overland Park denied KSHB’s request for a copy of the OISIT file:

The request for "the final and complete report from the Johnson County Officer Involved Investigation Team," is denied in its entirety as the Johnson County Officer Involved Shooting Investigation Team ("OISIT") report is a criminal investigation record pursuant to 45-221(a)(10). The entire purpose in forming the OISIT is to investigate officer involved shootings to present the facts and evidence to the Johnson County District Attorney's office to determine if criminal charges should be filed. The results of the OISIT inquiry is the very definition of a criminal investigation record.

148. The unredacted recordings captured by the in-car recording systems for all four officers who responded to the Albers' home are also criminal investigative records.

149. Specifically, KSA 45-217(c) provides as follows: "'Criminal investigation records' means: (1) Every audio or video recording made and retained by law enforcement using a body camera or vehicle camera."

150. The Kansas Open Records Act provides that a District Court can order disclosure of criminal investigative records under the following conditions:

The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

- (A) Is in the public interest;
- (B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;
- (C) would not reveal the identity of any confidential source or undercover agent;
- (D) would not reveal confidential investigative techniques or procedures not known to the general public;
- (E) would not endanger the life or physical safety of any person; and
- (F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

KSA 45-221(a)(10).

151. Pursuant to this authority, this Court can—and should—order disclosure of the complete OISIT file into the fatal shooting of Albers by a police officer who was paid to leave the force.

Local officials have repeatedly recognized the existence of a public interest

152. The circumstances surrounding the killing of an unarmed, suicidal teen by a police officer while the teen was backing out of his family’s garage is a matter of public interest.

153. It is a matter of even greater public interest when no charges are pressed against the police officer who killed him, despite the revelation of facts which appear to many members of the public to support such charges.

154. Since the evening Albers was killed, Overland Park officials have repeatedly recognized this public interest by making public statements, holding press conferences, and sitting for interviews.

155. And yet these same officials have refused to give the public the full picture of what happened that evening, painting contradictory pictures amongst themselves and perpetuating misleading grounds for their decisions, including Jenison’s departure; naturally, this conduct has inflamed the public’s desire to learn the truth.

156. First, on January 24, 2018—four days after Albers was shot and killed—Overland Park Mayor Carl Gerlach recognized that disclosure of the OISIT file was in the public interest, so he promised Overland Park citizens that the OISIT findings would be “made public at the appropriate time.”



City of Overland Park, Kansas Government ✓

...

January 24, 2018 at 4:55 PM · 🌐

A message from Mayor Carl Gerlach:

We, as a community, are saddened by the shooting and death of John Albers. It is a difficult time for any community and I fully understand it creates a wide array of emotions. It is always tragic to lose someone you love, and our first thoughts are for the family.

At this time the Johnson County Officer Involved Shooting Investigation Team (OISIT) is conducting a criminal investigation, and the Overland Park Police Department is cooperating fully. The findings of this investigation will then be submitted to Johnson County District Attorney for review. These findings will be made public at the appropriate time.

In addition, the Overland Park Police Department will be conducting its own internal investigation.

Please keep John Albers' family in your thoughts.

157. Gerlach has yet to fulfill this promise, and Overland Park citizens have been left wondering why.

158. Steve Howe, the Johnson County District Attorney, similarly recognized the public interest in the investigation: first by conducting a press conference with Overland Park Police Chief Frank Donchez in which they released two redacted videos of the shooting, and then by giving an interview after the civil lawsuit was settled.

159. On both occasions, Howe explicitly stated he believed “there was enough public interest” in the case to warrant releasing the videos and felt it was “**in the public’s interest** to go ahead and play a portion of these videos to help provide guidance as to what really happened that day and why the officers acted the way they did.”

160. Chief Donchez similarly recognized the public interest by giving an interview after the City had paid \$2.3 million to settle the civil suit.

161. During that interview Donchez continued to assert that “Officer Jenison followed policy,” when he shot into a moving vehicle.

162. Donchez also described Jenison in that interview as a “good officer” when he was hired, and when asked whether his feelings about Jenison changed, Donchez replied, “absolutely not.”

163. And Mayor Gerlach attempted, and failed, to withstand the public interest, before finally holding a press conference in which he apparently intended to clarify the circumstances surrounding Jenison’s “resignation,” but instead added more fuel to the growing public interest inferno.

164. Accordingly, local government officials have effectively conceded that the circumstances surrounding Albers’ death and its aftermath are a matter of public interest.

Local officials’ conduct has contributed to the public interest

165. Since Albers’ death, the public has yearned to understand how Jenison could have believed the use of deadly force was justified; and this interest has only compounded with the discovery that Overland Park paid Jenison \$70,000 to leave the force because “we didn’t want him as a police officer anymore.”

166. In their joint press conference, Howe and Donchez both created significant public concern that local government officials were attempting to cover up an instance of police misconduct that led to the death of an unarmed youth.

167. Howe did so by citing to “facts” that have since been called into question to justify Jenison’s use of force and Howe’s decision not to press charges.

168. Donchez insisted that Jenison resigned “for personal reasons” and later claimed Jenison resigned before the Overland Park Police Department could encourage

him to do so, even though Jenison was paid handsomely by Overland Park to leave the Department.

169. Both have denied the existence of recordings from Jenison's vehicle.

170. Finally, Mayor Gerlach did nothing to quench the public interest when he asked police officers to round up and remove citizens from an Overland Park City Council meeting for trying to understand why the City had paid Jenison off.

171. Thus, numerous public officials have repeatedly thrust the circumstances of Albers' death and its aftermath into the public spotlight, cultivating controversy with each of their official actions.

172. They have disputed and disagreed upon facts and circumstances arising out of the investigation, as well as why Jenison—who was said to have “resigned ... for personal reasons”—was paid \$70,000 to leave the force.

173. And they have provided inconsistent statements, including whether Jenison performed admirably (as stated by the Police Chief) or whether he did not and, as a result, had to be paid to leave the force (as stated by the Mayor).

174. The public is thus justified in their concern that local government officials may have spent the last three years working to cover up an instance of egregious police misconduct, and they have a right to know whether their concerns are correct.

Disclosure of the OISIT file will promote the public interest

175. Numerous public interests are furthered by disclosure of the OISIT file into the Albers shooting; two of those are: the public interest in providing the public with the true facts surrounding the decision not to press charges against a police officer who

killed an unarmed teen, and the public interest in knowing whether local government officials are attempting to cover up an instance of egregious police misconduct.³

176. These public interests are promoted by disclosing all information gathered during the OISIT investigation, including witness interviews, the missing dashcam video and audio recordings, forensic reconstructions, and so on.

177. Disclosure of the OISIT file will finally give the public the information it needs to “fact check” Howe’s decision not to bring charges against Jenison.

178. And if the OISIT file provides support for Howe’s decision, then it will put to rest claims of a cover-up; but if it does not support Howe’s decision, then the public will know that concerns of a cover up are valid.

179. As such, there truly is no doubt that release of the complete OISIT file into the shooting death of Albers—including the original dashcam video and audio recordings—is in the public interest: either it will support the belief of many as to a cover-up, or it will restore the public’s trust in its government.

No other statutorily-protected interests override the compelling public interest

180. In considering whether to order disclosure of a criminal investigative file, the District Court must balance the public interest in disclosure against five specifically-enumerated factors which might militate against disclosure; none of those factors are applicable here.

181. First, as noted above, District Attorney Steve Howe decided three years ago not to bring charges of any sort against Jenison; as a result, disclosure of the OISIT file will not interfere with any prospective law enforcement action, criminal investigation

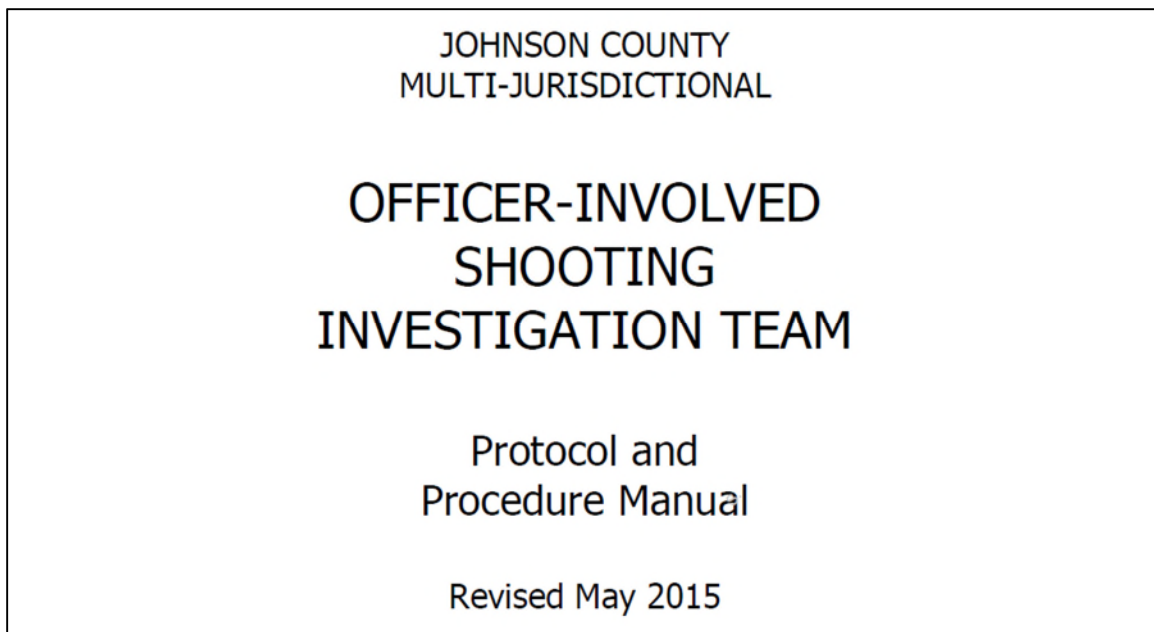
³ Still another public interest is discussed in paragraphs 230-270, *infra*.

or prosecution by either the Overland Park Police or the Johnson County District Attorney.⁴

182. Second, to Plaintiff’s knowledge, disclosure of the OISIT file would not identify any confidential source or undercover agent; if, however, the file contains such information, this Court can redact that information, as KSA 4-221(a)(10) provides the Court can order disclosure “subject to such conditions as the court may impose.”

183. Third, disclosure would not reveal confidential investigative techniques for procedures not known to the general public.

184. As noted above, OISIT investigations are conducted pursuant to a set of formal written protocols and procedures, which are a matter of public record.



⁴ There is no reason to believe disclosure of the OISIT file will interfere with the recently-announced federal civil rights investigation; to the contrary, the federal authorities and the public appear to have the same goal. As stated in the press release announcing the investigation, federal investigators intend to “collect all available facts ... into the fatal shooting of an Overland Park teen, John Albers, that occurred in January of 2018.”

185. Moreover, the OISIT Protocol and Procedure Manual refers to the book “Officer-Involved Shootings and Use of Force: Practical Investigative Techniques,” by David Hatch, a retired Las Vegas Police Detective; the book was published in 2003.

186. The Manual states that much of the material in it comes from Hatch’s book.

Much (although not all) of the material in this manual was suggested by, or adapted from, Hatch’s book. This material is not all-inclusive, nor is all of it directly OIS-related;

187. Hatch’s book is available on Amazon for \$6.82, with free shipping—even for non-Prime members.



188. As such, disclosure of the complete OISIT file would not reveal confidential investigative techniques for procedures not known to the general public.

189. Fourth, disclosure of the OISIT file would not endanger the life or physical safety of any person.

190. Overland Park has previously stated that “several” social media threats were made against Jenison; but the City’s “timeline” states the first of these so-called “threats” were made the day after the shooting—almost three months before Jenison’s name became publicly-known due to the federal civil lawsuit.

191. There is thus no evidence that the dissemination of more information about the shooting has created any danger to Jenison or anyone else.

192. The public has known since April 2018 it was Jenison who shot the teen, and for three years, a large portion of the public has believed Jenison lacked justification for killing Albers.

193. Yet other than vague references to “social media threats,” Overland Park has never identified any specific threats directed towards Jenison, nor, to Plaintiff’s knowledge, have any of these “threats” risen to the level of a criminal threat. *See* KSA 21-5415.

194. Finally, as to subparagraph (F), to the extent the OISIT files might somehow contain the name or other identifying information concerning the victim of a sexual offense, this Court can redact that information.

195. It is thus apparent that the overwhelming public interest in the release of the complete OISIT file concerning the fatal shooting of Albers more than outweighs any recognized interest in continuing to keep the contents of the file secret.

Disclosure of the OISIT file will not hinder future OISIT investigations

196. Overland Park has previously claimed the reason it refuses to release the OISIT file into the Albers shooting is that if any part of the OISIT file is made public, witnesses—both law enforcement and civilian—will not come forward and offer truthful testimony in the future.

197. Thus, Overland Park claims: “public disclosure of **any part** of a criminal investigation records [sic] substantially undermines and hinders the ability of law enforcement officers to investigate and solve crimes.”

198. But Overland Park—and other Johnson County municipalities—regularly disclose portions of OISIT files when they believe it is in their best interest to do so.

199. For example, when the Albers family sued Overland Park in federal court, Overland Park’s attorneys—in an effort to have the family’s lawsuit dismissed—filed with the federal court (and thereby made available to the public) the original unredacted dash camera video recordings from Officer Newlon’s vehicle.

200. Overland Park’s attorneys also filed with the federal court (and thereby made available to the public) the 911 recordings in which two callers said Albers had a knife and was threatening to hurt himself with it.

201. Overland Park’s attorneys also filed with the federal court (and thereby made available to the public) the recordings of the communications between the police dispatchers and the responding officers.

202. These video and audio recordings were all collected as part of—and are included in—the original OISIT file for the Albers shooting.

203. And in one of the pleadings the City’s attorneys filed with the federal court, they explicitly cited portions of the OISIT file which referenced interviews that OISIT officers conducted with Albers’ friends: “Defendants have learned J.A. had threatened suicide on a number of occasions. Specifically, **during the investigation** J.A.’s friends and acquaintances informed officers that J.A. had threatened suicide in the past.”

204. As such, Overland Park has no hesitancy in publicly releasing those portions of the OISIT file that it believes supports its position that Jenison was merely following policy when he shot and killed Albers.

205. And other Johnson County, Kansas cities do the same.

Deanne Choate is shot and killed by officers in Johnson County

206. In 2015, officers from the Gardner, Kansas Police Department were dispatched to the home of Deanne Choate, a 53-year-old grandmother, after they received a call that Choate had a gun and was threatening suicide.

207. Officers found Choate in her darkened bedroom, asleep in her bed, naked; they roused her from her sleep, and demanded that she tell them where the gun was.

208. Choate, who not only had been asleep but also appeared to be intoxicated, initially did not respond to officers—one of whom was carrying an AR-15 assault rifle.

209. After enduring several minutes of officers yelling at her and demanding to know where the gun was, Choate—who was sitting in her bed wrapped in a bedsheet—said: “It’s right here.”

210. Two of the four officers who were in the bedroom then immediately shot her, repeatedly, from point-blank range, killing her.

211. The shooting was investigated by officers with the Johnson County OISIT Team and, based on that investigation, Johnson County District Attorney Steve Howe elected not to charge either officer.

Gardner uses the OISIT file in its defense

212. Choate’s family later sued the City of Gardner and the officers who shot Choate; Gardner was represented by Michael Seck—one of the attorneys who would later represent Overland Park and Jenison in the Albers’ family lawsuit.

213. Just like he and Overland Park Assistant City Attorney Eric Blevins would later do in the Albers’ lawsuit, Seck first tried to get the lawsuit thrown out, submitting the unredacted video recordings of the shooting, claiming they exonerated the officers.

214. United States District Judge John Lungstrum disagreed, finding that the recordings (which Seck had made part of the public file) could be seen as showing that Choate was innocently surrendering the gun to officers—as officers had repeatedly demanded—and that the officers therefore were never threatened by Choate.

215. After the judge refused to dismiss the lawsuit, Seck sent the Choate family’s attorney the complete OISIT file, wielding it as the keystone of Gardner’s defense.

216. Seck also gave the complete OISIT file to his “expert witness,” who relied on the OISIT file to support his opinion that the officers followed policy.

217. The OISIT file was prominently featured in both parties’ extensive public filings in the federal court lawsuit.

218. Those filings show the complete contents of the 618-page OISIT file:

JOHNSON COUNTY MULTI-JURISDICTIONAL OFFICER INVOLVED SHOOTING INVESTIGATION TEAM			
Investigation 15-01			
	<u>Pg.</u>		<u>Pg.</u>
Incident Investigation Report	1	Gardner Police Dept. Reports	415
Commander’s Report	160	Crime Lab Reports	424
Roster of OISIT Team Members	183	CAD Activity Report	534
OISIT Witness List	184	Transcript - Officer Mohny interview	548
OISIT Lead Sheet	185	Transcript - Officer Huff interview	577
OISIT Member Sign-In Sheet	190	Press reports	603
Leads #1-60	195	Autopsy Report	607
In evidence locker	394	Digital media	617
Forensic examination of cell phone	414		

219. Extensive portions of the OISIT file are included verbatim in the public record.

220. Seck, for example, put what the OISIT officers called “Lead #1,” the interview of Choate’s boyfriend who made the 911 call to police, in the public file, along with “Lead #2,” the interview of the first officer to arrive at Choate’s house.

221. Seck also put the original 911 recordings in the public file.

222. The public file also contains the complete, 22-page “Commander’s Report” from the OISIT commander, then-Olathe Deputy Police Chief Shawn Reynolds.⁵

**JOHNSON COUNTY MULTI-JURISDICTIONAL
OFFICER INVOLVED SHOOTING INVESTIGATION TEAM
COMMANDER’S REPORT**

**Deputy Chief Shawn M. Reynolds
Olathe Police Department**

Investigation 15-01

223. Reynolds’ report contains a complete discussion of the Choate OISIT investigation, including the names of each person who was interviewed—both law enforcement and civilian.

224. His report also includes detailed discussions of each witness interview—again, both law enforcement and civilian.

225. Thus, Reynolds’ report contains the exact sort of information that Overland Park now claims disclosing would interfere with future OISIT investigations.

226. For some witnesses, the complete verbatim transcript of their interview is even included in the federal court case files.

⁵ Reynolds also commanded the OISIT investigation into the Albers shooting. *See* n. 2, *supra*.

Transcript

Officer Huff

227. Each of these court filings has been available to the public since May 2018, at the latest; since that time, the Johnson County OISIT Team has conducted numerous officer-involved investigations

228. And yet neither members of the Johnson County OISIT Team nor attorneys at the Johnson County District Attorney's office have complained that OISIT investigations conducted since May 2018 have been compromised by the public release of the OISIT file in the Choate case.

229. As such, Overland Park's claim that disclosure of the OISIT file into the Albers shooting will jeopardize future OISIT investigations is not supported by the facts, as shown by the release of the Choate OISIT file.

Not just “what” happened, but “why”

230. The Choate OISIT file includes recorded interviews with the two officers who shot Choate, as well as with the other two officers who were in the bedroom at the time of the shooting but elected not to fire their weapons.

231. In those interviews, each officer explains whether he did (or did not) perceive a threat and why he did (or did not) shoot Choate in response.

232. The Albers OISIT investigation—which was led by the same commander who led the Choate OISIT investigation—undoubtedly includes similar interviews with Jenison and the other Overland Park officers present that evening.

233. These interviews—and the other information in the OISIT file—will likely answer the question of what happened the evening Jenison shot and killed Albers; but they also may help explain why Jenison fired 13 rounds into the passenger side windows of the Albers’ family minivan when it does not appear Jenison was ever in actual danger.

Jenison joins the Overland Park Police Department

234. Jenison joined the Overland Park Police Department in December 2015; he is shown here with Chief Donchez and his fellow newly-commissioned Overland Park officers upon their graduation from the Johnson County Police Academy in April 2016.



235. Before joining the department, Jenison was a sergeant in the U.S. Army, where he led an infantry team in more than 200 combat missions in Afghanistan.



Combat-induced PTSD and hypervigilance

236. The U.S. Department of Veterans Affairs reports that up to 20% of soldiers returning from combat deployments in the Gulf have been diagnosed with Post-Traumatic Stress Disorder.

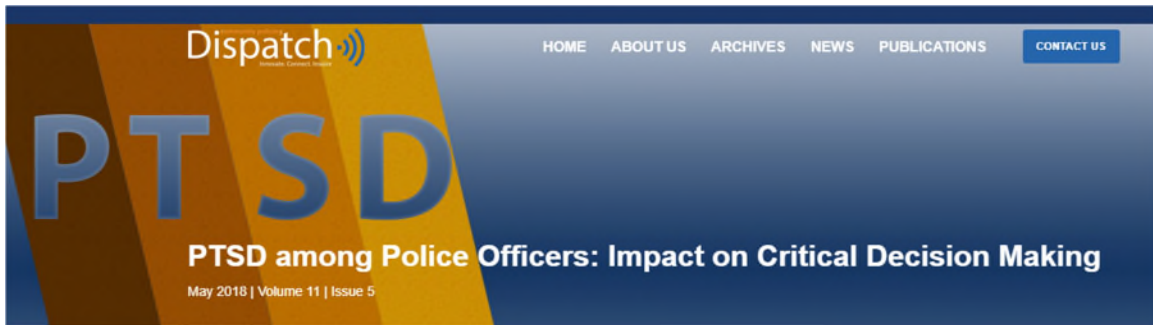
237. A common consequence of combat-induced PTSD is hypervigilance, in which a veteran who was in a dangerous environment for a long time remains constantly on guard and prone to overreaction even after he returns to civilian life.

238. A person suffering from hypervigilance will be constantly scanning their environment for hidden threats, overanalyzing the situation, yet prone to rash decisions.

239. He may also overreact to loud noises, be jittery, and display what may be commonly called paranoia.

240. Veterans who refuse to sit with their back to the door of a room may suffer from hypervigilance.

241. Research funded by the United States Department of Justice shows that hypervigilance in police officers causes them to have a “heightened arousal to threats,” causing an officer’s “fight or flight” analysis to be altered dramatically in favor of “fight.”



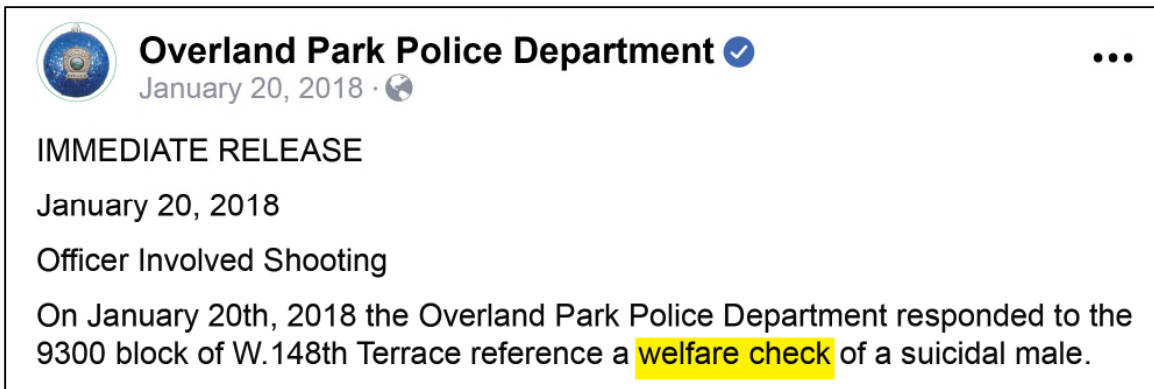
242. As a result, an officer suffering from PTSD is more likely to perceive actions as threatening, while another officer—not suffering from PTSD—would view the actions as non-threatening.

243. The common consequences of hypervigilance are felt primarily by the person suffering from PTSD (such as fatigue, sleeplessness, irritability, etc.); but when a police officer is hypervigilant, his or her overreaction can often have fatal consequences.

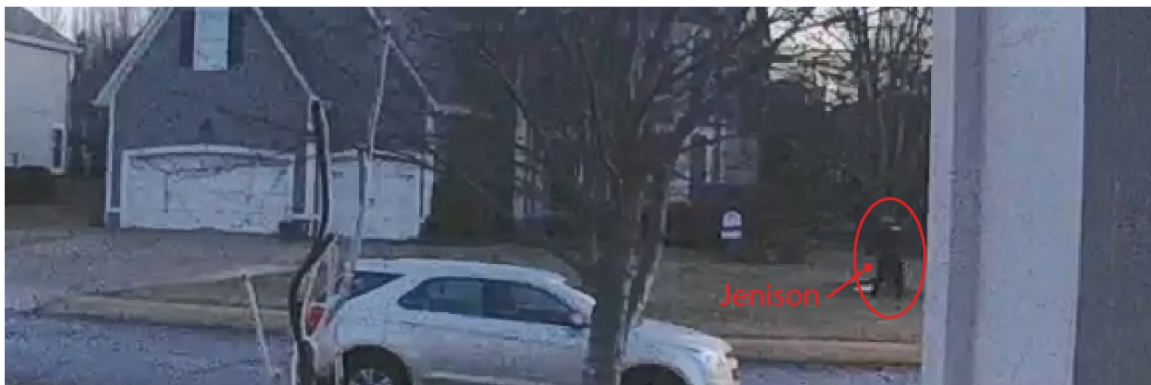
Does hypervigilance explain why Jenison overreacted?

244. Numerous aspects of Jenison’s response on the evening of January 20, 2018 raise important questions as to whether Jenison was hypervigilant and, as a result, fatally overreacted to the situation.

245. Two 911 callers had reported that Albers had—or had threatened—to stab himself; according to the official release by the Overland Park Police Department, Jenison was dispatched to the Albers’ home on a “welfare check of suicidal male.”



246. Despite being dispatched on a “welfare check,” the Ring doorbell camera from the home across the street shows that after Jenison exited his patrol vehicle he did not check on anyone’s welfare except his own: he “took cover” behind a tree in the Albers’ front yard.



247. Jenison did this even though he had no information that anyone inside the house was armed or posed any danger to him whatsoever; in fact, Jenison had been told the teen inside the house was attempting suicide with a knife, not a firearm.

248. And when Jenison later approached the garage, he un-holstered his Glock handgun before the garage door even fully opened—and before the minivan had even begun to move.



249. Then, as the minivan began to move, Jenison did not identify himself as a police officer; he did not, for example, shout “POLICE.”

250. Jenison’s failure to identify himself as a police officer reflects a complete break from his training; in fact, one of the specific questions required by the Johnson County OISIT protocol is:

- Did the officer identify himself or herself as a police officer prior to the discharge of the firearm? How many times? How loudly?

251. And then, of course, there is Jenison’s dramatic overkill: firing 13 rounds into the passenger side of a vehicle driven by an unarmed teen, who appeared to pose no actual threat to Jenison.

Post-shooting statements by Overland Park officials

252. Statements by various Overland Park officials following the Albers shooting further raise questions as to whether Albers was fatally shot because Jenison suffered from PTSD and hypervigilance.

253. In his interview with FOX4, for example, Chief Donchez was asked whether Jenison was ever in the way of the minivan being driven by Albers.

254. Donchez pointedly refused to answer that question; instead, stating only that “Officer Jennison believed that he was in danger.”

Q. I never see him behind the van; he's in the yard. The garage door goes up. The van backs up; there's a good distance. He's not behind the van; he's off to the side. He yells, "Stop, Stop, Stop;" fires two shots. That's when we see the car whip around. "Stop, Stop the car," and fires an additional 11 shots.

Was he ever in the way of that van?

A. **I think that Officer Jenison believed that he was in danger** and that's why he took the response that he took and that was in line with the way the policy was written at the time and, quite honestly, the way it's written now.

255. And in his recent press conference, Mayor Gerlach repeatedly stated that the City did not want Jenison as a police officer, but if the City fired Jenison, he could have sued the City.

We really didn't have a way to fire him. So, he could have ... if we would have fired him, we would not have had cause. And if we did not have cause, he could sue us. He could also go back before our civil service board and be reinstated. Well, **that's the one thing we didn't want to happen. ... We did not want him as an officer and we didn't want change to have to put him back on the street**

* * *

And I think everybody agreed, **we didn't want him as a police officer anymore.**

256. Gerlach never explains why, if Jenison had done nothing wrong, Overland Park "didn't want him as a police officer anymore."

257. Was it because "everyone" understood the risk of putting an officer who was suffering from combat-induced PTSD and hypervigilance "back on the street?"

The OISIT file will contain critical information about the shooting

258. The OISIT file will contain the recording captured by the wireless microphone Jenison was wearing, which will have captured Jenison's statements both during and after the shooting.

259. To date, the Johnson County District Attorney and the Overland Park Police Department have refused to even acknowledge the existence of this recording.

260. The OISIT file will also contain the complete post-shooting interview of Jenison by OISIT investigators.

261. Per the OISIT protocols, that interview will specifically address why Jenison perceived Albers as a threat to his safety.

- Whether the officer was in fear of his or her life or the lives and/or safety of others in the vicinity of the incident.

262. The OISIT file therefore contains valuable information into Jenison's actions—information that has not been shared with the public.

263. Thus, release of the OISIT file into the Albers shooting will shine a spotlight not only on happened that fateful evening, but why it happened.

The greater public interest

264. The reasons behind Jenison's potential overreaction has far-reaching public interest; it is not only of public interest as it relates to the Albers shooting specifically, but it also speaks to the much larger issue of Gulf War veterans in law enforcement—an issue raised in a study by the non-profit Marshall Project in 2017.

265. That study showed that while just six percent of the U.S. population has served in the military, nearly one in five police officers are former soldiers who returned from Afghanistan, Iraq or elsewhere.

266. This mass migration of former soldiers from the battlefield to the streets of America raises important questions.

267. A study by the International Association of Chiefs of Police and the U.S. Department of Justice, for example, warned that police officers who experienced sustained combat operations may have difficulty distinguishing between combat and policing.

in which law enforcement officers work. Sustained operations under combat circumstances may cause returning officers to mistakenly blur the lines between military combat situations and civilian crime situations, resulting in inappropriate decisions and actions—particularly in the use of less lethal or lethal force. This similarity may cause an operational or reactive issue that could result in injury or death to an innocent civilian.

268. Thus, information in the Albers OISIT file detailing whether Jenison may have overreacted due to his experience in having performed “sustained operations under combat circumstances” (*i.e.*, leading over 200 combat missions) addresses an even greater public interest than the fatal shooting of Albers.

269. Specifically, the Albers OISIT file could provide the public with important insights into the ongoing discussion of the potential issues Gulf War veterans face when serving in law enforcement.

270. Thus, disclosure of the OISIT file serves not only the public interest in learning critical information about the Albers shooting, it may also serve the greater public interest in understanding the risks in putting returning Gulf veterans on America’s streets as police officers, without addressing the very real issue of veterans’ PTSD.

WHEREFORE, Plaintiff Scripps Media, Inc., d/b/a KSHB-TV, requests the Court order Defendant Overland Park, Kansas, to provide KSHB with a copy of the requested “final and completed report from the Johnson County Officer Involved Shooting Investigative Team” regarding “the shooting death of John Albers by former Overland Park Police Officer Clayton Jenison,” along with the audio and video recordings from the in-car

recording systems for all four officers who responded to the Albers' home, and that the Court award Plaintiff its costs, together with such other and further relief as the Court deems just.

**Count II – Award of attorney's fees
(KSA 45-222(d))**

271. Plaintiff incorporates by reference the allegations of Paragraphs 1-270.

272. Under K.S.A. 45-222(d), “the court shall award attorney fees to the plaintiff if the court finds that the agency’s denial of access to the public record was not in good faith and without a reasonable basis in fact or law.”

Overland Park’s attempts to keep information secret

273. Overland Park has repeatedly recognized—through press conference after press conference, interview after interview, press release after press release—the existence of a public interest in the circumstances of the fatal shooting of Albers.

274. And as stated in Paragraphs 180-195, *supra*, there are no other statutory interests at play that Overland Park can reasonably rely on to withhold the OISIT file.

275. Therefore, Overland Park’s withholding of the OISIT file is not the product of a good faith reliance on the “criminal investigative records” exception; instead, Overland Park’s only interest is in keeping information about the Albers shooting from the public.

276. Overland Park’s refusal to provide KSHB with a copy of the OISIT file is symptomatic of a larger pattern and practice in which the City has disregarded its obligations under the Kansas Open Records Act by withholding other public records related to the Albers shooting.

The City’s refusal to provide a copy of Jenison’s severance agreement

277. For example, after Alcock exposed the \$70,000 severance payment to Jenison, media outlets—including both KSHB and *The Kansas City Star*—made requests under the Kansas Open Records Act for copies of Jenison’s severance agreement.

278. Even though the Kansas Open Records Act explicitly provides that “employment-related contracts or agreements” are open records under the Kansas Open Records Act, Overland Park denied those requests.

279. Accordingly, on October 10, 2020, *The Star* sued Overland Park for a copy of the Jenison severance agreement.

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS CIVIL COURT DEPARTMENT		
THE McCLATCHY COMPANY, LLC,)	
d/b/a <i>THE KANSAS CITY STAR</i> ,)	
)	
Plaintiff,)	
)	
v.)	Case No. <u>20cv04318</u>
)	Chapter 60
OVERLAND PARK, KANSAS,)	
)	
Defendant.)	
Petition to Enforce the Kansas Open Records Act		

280. In Overland Park’s response to *The Star*’s lawsuit, the City “doubled down” on its position, going so far as to argue that disclosure of the signatures of Jenison and his counsel on the agreement “would be a clearly unwarranted invasion of their privacy.”

The City's response to a request for e-mails about the Albers

281. And on August 21, 2020, Angie Ricono, an investigative reporter for local television station KCTV, made a request under the Kansas Open Records Act for all Overland Park e-mails which included the names "John Albers" or "Sheila Albers."

This is a KORA request for all emails with the domain @opkansas.org which contain the following search terms

"John Albers" and/or "Sheila Albers" since January 20, 2018.

This should include city and police emails so I am including both the city and police PIO.

Please let me know if the cost exceeds \$50. I am happy to accept these in digital form.

282. Overland Park responded that "as a condition to turning over the records," KCTV would have to pay Overland Park \$38,101.11, and that even if KCTV paid that amount, it could not expect to receive the records until "Wednesday, March 1, 2023."⁶

Pursuant to K.S.A. 45-218(f) and K.S.A. 45-219(c), as a condition to turning over the records, the City may require fees to compensate it for the staff time needed to search for responsive records, make copies of the requested records, and redact closed information within those records. The City estimates that it would require appropriate Law Department & Police Department personnel approximately 917 hours total to review 15,740 records and prepare the responsive records, which results in over **\$38,101.11** worth of staff time (or **\$34,166.11** if you only want electronic copies and not physical copies). Please see the attached invoice for additional details. Assuming the appropriate staff work concurrently on your request for 4 hours each week, **the responsive records should be available in 131 weeks (524 hours/4 hours per week), which is approximately Wednesday, March 1, 2023.** If you narrow your request, the estimated fees and response time may be reduced. If you'd like us to proceed with the search and response to your current records request, **please send a check for \$ \$38,101.11 (or \$34,166.11) to the address below:**

City Hall
ATTN: City Clerk
8500 Santa Fe Dr.
Overland Park, KS 66212

⁶ That is two days before the new KCI terminal is to open; does it truly take the same time to respond to a KORA request as it does to build a \$1 billion airport terminal?

283. The City's outlandish financial demand and its astonishing timeline for production of the records shows its disdain for its obligations under the Kansas Open Records Acts.⁷

The City has tipped its hand

284. Overland Park has thus tipped its hand for how it hopes to wait out the swelling public interest in the fatal shooting of John Albers: it will refuse to produce documents that are explicitly open records under KORA, or it will make production of those public records too time consuming and costly.

285. As such, Overland Park's actions in these instances demonstrate a complete lack of good faith in fulfilling its obligations under the Kansas Open Records Act for records relating to the Albers shooting.

286. The same is true regarding Overland Park's denial of KSHB's request for the complete OISIT file in the fatal shooting of Albers; the City is not acting in good faith but is attempting to keep information from the public about a potentially criminal police shooting.

287. Because Overland Park's denial of KSHB's request is not in good faith and is without a reasonable basis in fact or law, KSHB should be awarded its attorney's fees in bringing this action to assert the public interest in this matter.

WHEREFORE, Plaintiff Scripps Media, Inc., d/b/a KSHB-TV, requests the Court order Defendant Overland Park, Kansas, to pay plaintiff's attorney's fees, together with such other and further relief as the Court deems just.

⁷ Not to be lost is the fact Overland Park has 15,740 e-mails which contain John or Sheila Albers' names; this fact is still further evidence of the public interest in the matter.

Dated: January 19, 2021

Respectfully submitted,

LATHROP GPM LLP

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