



February 27, 2019

Officer Meister,

In response to the pre-disciplinary hearing report issued by Hearing Officer Jeff Hazlett, I note the following:

On Thursday, December 13, 2018 at 2227 hours, although technically off-duty, you were present in the Dispatch area of the Police Department when a call was received about a person shot at 111-1/2 Corry Street. Officer Paul Raffoul and Dispatcher Ruth Peterson were also present. Disp. Peterson advised both you and Officer Raffoul of the call. Officer Raffoul left the building to respond to the scene. During this time, Disp. Peterson also received information regarding a person with an assault rifle and wearing a ballistic vest getting into a black Volvo and fleeing the scene. You remained in the Department for another five+ minutes, during which time you are seen looking at your phone. You are seen leaning over to say something to Disp. Peterson, then seen exiting the PD. The camera on the front door of the Bryan Center shows you leaving the building at 2232:53 and walking toward your vehicle. The camera on the south side of the Bryan Center shows you pulling from the parking lot onto Dayton Street at 2235 hours, 2 minutes and 7 seconds after exiting the building. This includes the time to walk to your vehicle, get your keys out, get into the vehicle, put your seatbelt on, start the vehicle and drive to the entrance.

Your failure to respond to the scene resulted in an investigation being initiated by my office into whether or not your actions were appropriate, given all circumstances. I requested an investigator from the Clark County Sheriff's Office to perform the investigation. Det. Brian Melchi was assigned by Sheriff Burchett. Det. Melchi, accompanied by Deputy Amanda Mitchell, completed the investigation and returned the results to me. Those results were as follows:

That you violated the Yellow Springs Police Department Code of Ethics in two ways: first, by failing to act upon your fundamental duty to serve the community to safeguard lives and property in that you did not respond to the scene of what could have been an active shooting; second, that you also violated the YSPD Code of Ethics by sharing confidential information with your spouse.

That you violated Section 320.5.8 of the YSPD General Orders Manual, "Performance," in that both you and your spouse made repeated calls to the YSPD Dispatch to ask for updates on the notification to the spouse of the deceased, thus interfering with an ongoing incident by taking the dispatcher away from her duties.

That you violated Section 703 of the Village of Yellow Springs Personnel Manual, "Unacceptable Behaviors," in that you were negligent in your duties by failing to respond to the scene.

Finally, the investigators noted that they felt you were not truthful in your statement that you had offered to Disp. Peterson to respond, if necessary.

Pursuant to the findings, procedure provided you the right to a pre-disciplinary hearing before a neutral third party hearing officer. You chose to avail yourself of this right and hearing officer Jeffrey Hazlett was suggested by your attorney, David Duwel. The Village accepted Mr. Hazlett as hearing officer and the pre-disciplinary hearing was held on February 7, 2019 at the offices of Coolidge Wall. I received the full report from Mr. Hazlett on February 19, 2019.

The report found that the policies of the Police Department were ambiguous and not clear enough to fully direct your actions, that your actions were judgement calls and that there were no grounds for imposition of discipline.

The report also found that it is a YSPD practice that officers respond to calls alone. However, it should be noted that this is a practice resulting from staffing limitations and shift assignments, as opposed to policy, and in no way reflects the expectations placed upon officers to act safely and appropriately.

I have several concerns regarding your behavior in this instance. First and foremost, that you failed to respond to a shooting event in this Village. I would expect any officer with the Yellow Springs Police Department, who stands ready in uniform, badge and weapon, to respond to the scene of a shooting unless instructed by a supervisor that they are not needed, particularly if another officer is responding alone. Your expressed concern about overtime authorization took a policy out of context (Section 410: Overtime Compensation, Village of Yellow Springs Personnel Policy Manual), and is not in keeping with the practices of the department, of which an officer of your experience should be well aware. Additionally, Disp. Peterson stayed past her 2300 hours end of shift to assist the oncoming dispatcher with no such concern evident. Policies cannot be perfectly tailored for every situation, and a shooting to which only one officer is available to respond is the definition of "emergency." No one would have questioned it had you responded. I note that there have been times in the past when you have worked overtime on your day off without prior authorization, and that you were not disciplined for it.

I am further concerned with your statement to Disp. Peterson that she needed to contact a sergeant before you turned and left the building. Disp. Peterson has more years of experience dispatching than you do as a road patrol officer. I'm sure she is well aware of what needs to happen. So why would you make that statement? I'm concerned you made this statement due to lingering emotions over your demotion. This, in turn, makes me question your objectivity and critical thinking skills, as I did in your 2018 discipline.

Additionally, I am concerned with Officer Raffoul's statement when questioned as to whether he asked you to accompany him or not. His response was, "No, I didn't think I needed to. I thought he was right behind me." As a result, Officer Raffoul was the only law enforcement officer on the scene for 11 minutes, before another law enforcement officer arrived. This left Officer Raffoul to deal with securing evidence and handling crowd control with only the assistance of unarmed emergency medical personnel. Securing evidence and crowd control is not their job. It was a responsibility that you should have felt compelled to share with Officer Raffoul.

It also seems there has been a wealth of misinformation made public during this ongoing disciplinary procedure. First, what did Officer Raffoul mean when he radioed that the scene was “secure” and that EMS personnel could enter? When questioned, Officer Raffoul responded that he meant they (EMS) could enter to administer potentially life-saving medical attention, but that the scene still had evidence to gather and crowds to control. Again, as a long-time law enforcement officer, you should fully understand what that means and also fully understand that one officer cannot easily secure a shooting scene alone. In fact, Greene County 9-1-1 Dispatch stayed on the line with the original call and, upon hearing the information, dispatched three deputies to assist, without having been asked. Again, Officer Raffoul was by himself, trying to perform all necessary tasks, for 11 minutes. But this was publicly mischaracterized as meaning he did not need help.

Additional misinformation is that you (1) asked Officer Raffoul if he wanted you to respond, (2) that you asked Disp. Peterson if she felt you should respond and (3) that you waited for a supervisor to be called before leaving to see if you were needed to respond. Officer Raffoul disputes your statement in that you never asked him that question and also by his sworn testimony that he thought you were “right behind him.” In the Clark County investigation, Disp. Peterson also disputes your statement in that she would have told you to go, had you asked. In the pre-disciplinary hearing report, she states she did not hear you advise her you were available. I also point out that neither Officer Raffoul or Disp. Peterson have the authority to approve your overtime so, if that was your concern, it would not have been alleviated by simply asking either of them. I further want to address your statement that you waited for a supervisor to be called to see if you should respond. I note that the first call to a supervisor was made at 2234, after you had exited the building to the parking lot. The call ended nearly 2 minutes later, after you had exited the parking lot onto Dayton Street. Therefore, you did not wait when you could have done so. What you could have done, were you truly concerned, was offer to make the call to the supervisor yourself, as Disp. Peterson was both talking on the phone with the caller and talking with Officer Raffoul on the radio. Had you contacted the supervisor yourself while standing there, that would have not only allowed Disp. Peterson to continue with her other duties, but would have immediately alleviated your alleged concern re: overtime, as you could have asked Sgt. Knapp directly if he wanted you to respond. I also note that *all* Yellow Springs officers, including yourself, have been encouraged to call a supervisor when in *any* doubt about how to handle a situation.

I further note that statements you were quoted in the Yellow Springs News as making conflict with statements you made during the investigation and the pre-disciplinary hearing.

Also, there is the public concern that you had no mentoring sessions with Chief Carlson, which were required by your previous discipline Memorandum of Understanding (MOU). I note several things about this concern. The first is that many of the items in your MOU were delayed or rescheduled due to the need for you to take extensive personal time last fall to deal with private matters. I also note that there were, in fact, two joint meetings and two individual meetings in compliance with the MOU. You and Chief Carlson both met individually with the third party mediator to begin the process. Then, you met jointly twice, once with Ruthe Ann Lillich as a third party and once with the mediator as a third party. When you returned to work after dealing with your private matters, the third party mediator attempted to contact you to continue the process and you did not respond to the emails/phone calls. After a month, the mediator reached out to you again to continue the process, at which point you declined to

participate any further in the sessions. The mediator, via an email on which both you and Chief Carlson were copied, noted that you would explain, yourself, why you declined to continue the sessions. You have never provided that explanation, making it impossible for me to address whatever your concern may have been and allowing the process to resume. I should note, at this point, that the sessions with the third party mediator were part and parcel of your MOU and were a primary approach that Chief Carlson intended to use to mentor you, to help you feel more secure with a trusted third party familiar to both of you. Your refusal to meet with the mediator potentially puts you in violation of your previous discipline. Finally, I note that the MOU specifically states, "Failure to meet the goals set forth in this document during the specified timeframe may lead to termination of your employment. A decrease in performance after successfully completing the period contemplated in this memorandum may also result in termination of your employment without the issuance of a warning or an improvement plan. Nothing in this document represents a promise or contract of future employment or changes the at-will nature of your employment relationship. By signing this Memorandum of Understanding, the parties commit to moving forward in a positive and constructive manner." I also note that your previous disciplinary decision states, "...this discipline may be considered in any future disciplinary action for other violations not noted in this document."

The Guidelines for Village Policing, a document prepared by Village Council in conjunction with public input and meant to be one of the primary guiding documents for all police officers in Yellow Springs, specifically notes that safety is a primary concern of the public. While this policy addresses safety in more general terms, I specifically note the call to be *proactive* in ensuring public safety. With the minimal facts known when the call came into dispatch that evening (i.e. that someone had been shot and that there may have been another person with an assault rifle in the area), *proactive*, in my mind, would have been to respond to the scene and, as an officer far more senior than Officer Raffoul and with far more training, ensure not only the safety of the public but also the security of the scene to preserve the evidence for the investigation.

Clearly, I disagree with many of the findings of Hearing Officer Hazlett. I believe that he has interpreted select portions of policies, as opposed to interpreting these policies as a whole. I also note that I disagree with his timeline of events. Most significantly, I fully and firmly believe that it was your duty, as a sworn Yellow Springs Police Officer, standing there in dispatch in full uniform, weapon and badge, to respond to the scene of a potential active shooter/shooting.

Hearing Officer Hazlett has found that YSPD policies are ambiguous. We will strive to make them clearer, and I have instructed Chief Carlson to immediately begin working on this with our Human Resources Officer and Village Solicitor. Notably, Chief Carlson implemented a clarificatory policy directive via email on February 21, which reads:

"All,  
Because there has been some confusion surrounding responding to calls for service while on duty or off duty, please read and understand the following:

I will be making changes to the policy but in the meantime, please follow this directive **effective immediately**.

If you are in uniform on the premises and able to assist your fellow officer/s for any call for service related to an emergent situation where public safety and the safety of your fellow officer may be at risk, I expect you to respond without question.

You do not need to contact a supervisor and your overtime will not be questioned. If you have any doubt whether to respond or not please remember a supervisor is always available.

I will not question any required immediacy of action to facilitate our primary objective of being safety centered.

If you have questions about this policy, it is your duty to request further clarification.

Thank you for all that you do.

Chief''

However, it is difficult to ensure that every situation is completely covered by a specific policy, nor should this be the expectation given that we have general policies and procedures that guide performance and decision making such as the Guidelines for Village Policing. All Village employees are expected to perform their duties diligently, employing professionalism and common sense. Any employee who is not clear on what those duties are or what my statement means should contact their immediate supervisor or our Human Resources Officer for clarification.

Although I disagree with many of Hearing Officer Hazlett's findings, and I also point out that his conclusions directly conflict with the findings of the Clark County investigation, I have no choice but to accept the determination that Village policies do not expressly state that an officer – in uniform, on the premises and able to assist a fellow officer – is expected to respond to any call for service related to an emergent situation in which public safety and the safety of a fellow officer may be at risk. For this reason, I cannot impose further discipline on you. However, I want to be clear that, in my opinion, you did not perform your duty consistent with the spirit and intent of and the goals established in the Guidelines for Village Policing, other Village policies and your Oath of Office as a Yellow Springs Peace Officer.

Because the previous MOU did not progress properly due to extenuating circumstances, I am extending that MOU to six (6) months from the date of issuance of this letter.

Your previous MOU from your 2018 discipline is modified as follows. First and foremost, I need to be clear that the sessions with the third-party mediator (TPM) are mandatory, not optional. These meetings will occur twice a month on a day and at a time set by the TPM. Additionally, Chief Carlson will initiate separate mentoring sessions with you, also twice a month, on the weeks you do not meet with the TPM. Ruthe Ann Lillich, our HR Officer, will be present at these sessions. Again, these are mandatory sessions, not optional.

Both you and Chief Carlson will attend a monthly meeting with myself and HR Officer Lillich to ensure that this MOU is progressing properly. This meeting will occur immediately following the second mentoring session each month. Example: you, Chief Carlson and HR Officer Lillich will meet for the

mentoring session. Once that session is complete, I will be notified and will join the group to discuss the overall progress of the MOU.

All other conditions of the previous MOU apply, including attending training classes to be chosen by the Chief. The monthly assessments will be provided at the meetings with myself, and these are separate from both the meetings with the TPM and the additional mentoring meetings with Chief.

I hereby instruct the Chief that one topic to be specifically covered is safety, as noted in both the Oath of Office for officers as well as the Guidelines for Village Policing, and what is expected of our officers in that regard.

I have also attached to this letter the previous MOU.

As a final note, I want to make you fully aware that many residents of the Village have difficulty accepting your decision not to respond in this situation. While some citizens have come forward to support your actions, I have been contacted directly by numerous business owners, residents and employees of the Village who strongly disagree with your actions. (When I say "employees," please note that this includes some of your fellow police officers other than Chief Carlson, Sgt. Watson or Sgt. Knapp.) These people are uncomfortable coming forward to speak publicly because of concern about possible retribution they would receive in doing so. They are afraid to put comments in writing because they will be requested as public records. Business owners fear economic impacts. Residents fear Facebook and other public avenues of retribution. Your fellow employees are concerned that they, too, will be retaliated against by certain segments of the public. I strongly encourage you to work diligently to repair these relationships. It will be difficult in that you will have to make the effort to seek out these people and encourage them to speak to you truthfully. They will be reluctant to do so. But I note that I have acted in the **spirit of my oath of office** by making you aware of this issue and speaking for those afraid to speak for themselves publicly.

The path forward is not clear and some steps undefined. We must all work diligently to find that positive, constructive path forward. I expect all employees to participate in the healing process in an active and constructive manner.

Patti Bates  
Village Manager

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David Meister                      Date

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Ruthe Ann Lillich                      Date