


MARICOPA COUNTY SHERIFF'S OFFICE

Memorandum

 Joseph M. Arpaio, Sheriff	To: David Hendershott Chief Deputy	From: Capt. James Miller Commander Internal Affairs Division
	Subject: Incident with City of Phoenix in receiving F.O.I.A. information	Date: June 12, 2008

Introduction:

Between April 24, 2008 and June 11, 2008 Lt. Tucker and Lt. Anglin requested F.O.I.A. information from the City of Phoenix. During this time they were advised of several delays in getting the information to us. We were finally advised that the information was ready. Lt. Tucker spoke with the supervisor and relayed that we could accept the information very quickly and efficiently by scanning the information into a laptop computer. This would be easier for their staff and ours. We would provide all the equipment, all we requested was a work location that was semi-private so we could avoid any disruption to their operation. The supervisor agreed.

On 6-11-2008 Sgt. Cruz and D.O. Beck responded to the City of Phoenix building with a high speed digital scanner and a laptop in order to retrieve the information. A short time after their arrival, Sgt. Cruz telephoned Lt. Tucker and requested some assistance. He advised that members of the media (Channel 5 News, Channel 12 News and The New Times) were at their location and disrupting their ability to obtain the information.

Discussion:

Lt. Tucker and I responded to the City of Phoenix building. Upon my arrival, the only media person left in the lobby was Ray Stern from the New Times. Sgt. Cruz told me that the City of Phoenix personnel told him that he could only utilize a portion of the public counter located in the lobby to set up the scanner and laptop. While scanning documents, members of the news media began to show up in the lobby. They began to photograph and film them while asking questions. Sgt. Cruz told them that he had no comments and tried to continue working. At this point, their backs were facing the lobby area where the news group was operating which caused a stressful and somewhat unsafe situation.

Eventually the media persons left with the exception of Stern. Stern began asking what Sgt. Cruz was doing etc. Sgt. Cruz advised him that he had no comment and that he was working. Stern attempted to get Sgt. Cruz to speak further with him. He said, "I understand one of you is a Lieutenant. Are you ashamed of that, because I'm not ashamed of what I do?" He further commented that the documents they were scanning were public record and he could see them if he wanted. Stern then asked him, "What would happen if I reached into the box and took a document?" Sgt. Cruz then warned him to stay away so they could work. Stern became belligerent and argumentative. He made the statement, "Just get me a chair because I'm not going anywhere." At that point Sgt. Cruz stopped all work and called for assistance.

I spoke to Stern who was still standing next to the counter where Sgt. Cruz had been working. I asked him if he was going to interfere with the Deputies while they did their work.

He replied that he had spoken to the City Attorney and was told the documents were public record and that he could look at anything that was in the boxes. I told him that I didn't care what the City of Phoenix allowed him to see, but the documents were given to the Sheriff's Office and we were not going to release them to him. He then asked, "What's the big secret?" I told him that I had no intention in debating anything with him. I told him that if he wanted to see any documents he would have to get them from the city clerks, not the deputies. I further warned him that if he touched the deputies or our equipment or interfered again, he would be arrested. He continued arguing that the City Attorney told him he could see the public documents that we were looking at. I told him that he did not have the right to take documents away from us while we were working with them. He needed to get the documents he wanted from the clerks. I asked him if he intended to interfere with our efforts or not. At this point a clerk told him that if he wanted to see the documents, she would provide them to him after we were done with them. She even put a completed box of documents on the counter. Stern was completely disinterested in those documents or the comments of the clerk. He instead kept saying that the City Attorney told him he could see anything that we looked at.

I then took a document and held it in front of him and said, "Take it." I hoped that he would then understand that it would be inappropriate to simply grab something out of an individual's hand, even if the item was a public document. When he didn't take the document I felt that I had attained at least a stale mate with him. I told Sgt. Cruz and Officer Beck to continue with their work. I told Lt. Tucker to position himself between Stern and our staff in order to provide security. I further instructed him that if Stern touched any deputy, that he was to be arrested.

At this point a plain clothed Phoenix Police Officer arrived. I briefed her on the situation and that we were going to try to continue with our work. I heard Stern telling her that the City Attorney told him he could look at anything we were given and that we had threatened to arrest him. I also heard the clerk tell her and Stern again that he could look at the documents when we were done with them. She further explained that their policy is that they release documents to the party requesting them and they can examine them. She again pointed to the box of documents on the counter and offered to let him see them. Stern was again completely disinterested in looking at those documents. The female took no action except to make a call and continue to talk to Stern.

Next to arrive were two commanders with the Phoenix Police Department. They told me that they were liaisons between the Police and the City Manager. I briefed them of the incident. They also spoke with Stern. They did nothing to assist us. They simply stood to the side made small talk with me. Meanwhile, Stern was continuing to loudly state his position. The officers would not even intervene to the point of warning Stern not to touch the deputies or attempt to grab documents.

At this point a female from the City Attorney's Office arrived with what appeared to be a copy of the Arizona Revised Statutes. She entered without even looking at any Sheriff's personnel and approached Stern. She began to show him an opened page. At one point Stern asked, "Can they arrest me for taking something out of the box?" She shrugged and raised both of her arms in the air as to indicate that she had no idea. Stern became emboldened and again got loud implying that he had some permission from the City Attorney etc.

I felt that the city employees' actions or inactions were empowering Stern. I was afraid that he would escalate the situation by trying to push through the deputies in order to grab a document. I stepped between the Sheriff's employees and the city employees, who were

standing around and behind Stern. I warned Stern that there was only one way to find out for sure if we would arrest him or not. This was an attempt to definitively state my intentions as a method to discourage him from taking action.

One of the commanders then finally became involved. He stepped in front of me to block me from Stern and said, "Don't let this guy come between us." As Stern continued to regale everyone in the lobby, I asked the commander what he meant. The Commander told me that I shouldn't arrest Stern because the documents were public record. I was flabbergasted at his response and became animated with him. I explained that if Stern touched any deputy he would be arrested and it would not be wise for him to interfere with us if we took that action. I further explained those documents were given to us and we don't have to share them with anyone. He replied that the documents were not ours because we did not pay for them. I then said that if the documents were Phoenix's, how could Sheriff's employees release them? They would have to be released by the clerks, which is what we have been saying the entire time. At this point I was extremely frustrated and disappointed. I warned the commander that if he interfered with our arrest, there would be a problem.

The situation remained at a tense stand off. I noticed that Stern began looking at some of the documents that were in the box we had completed. Eventually, the clerks assisted him in filling out a F.O.I.A. request for the documents that he had already been provided.

Eventually, the City Attorney entered the lobby. Like most city employees that were involved in this situation, he walked straight toward Stern and gave a friendly "hello" without even acknowledging the existence of any Sheriff's employee. He asked Stern, "Is everything going alright?" Stern responded to him by his first name and shook his hand. He began to tell him that we were not allowing him to see the documents. This was while he had documents in his hand and a box of documents on the counter next to him. He then told the attorney that we had threatened to arrest him. The attorney finally looked over at us and gasped, "For what?" Stern continued talking while the attorney shook his head, no. The City Attorney said, "I'd get an attorney." The attorney turned and walked out. This statement again emboldened Stern and he became more agitated and willing to argue. As the attorney reached the elevator doors, he yelled back at Stern, "Just don't interfere with their copying."

Lt. Tucker yelled back, "Thank you, that's what we've been trying to tell him." I told Stern, "Now that you've heard it from the City Attorney, do you finally believe it?" He only responded, "He (the attorney) was confused about that." Shortly after that, Stern requested a single document to be copied and left.

Conclusions:

I was outraged with the unfair and disparate treatment that we received from the City of Phoenix. I was completely incensed that the Phoenix Police Commanders would not even listen to the City Clerks who were continuously supporting our position and echoing the reasonableness that Stern had no right to take away documents we were working with. It is ludicrous to suggest that any person can remove a document from the possession of another simply because it is a public record. I am appalled that the Phoenix Police were either unable or unwilling to support such a simple position. I was further infuriated that any member of the Phoenix Police Department would fail to come to the aid of another law enforcement officer while performing his duties and then dare to threaten interference with a potential arrest if one was needed to maintain the order that they refused to help keep.

I can suspect that someone from the City of Phoenix alerted the media to our presence in the building. I further estimate that this was an attempt to exacerbate and inflame the fact that we requested F.O.I.A. information from them. It was uncanny how the media showed up, in force, to film and interview deputies receiving routine public documents at the exact time our staff arrived.

I can further deduce that the City Attorney conspired in some way to partner with Stern. This is evident by Stern telling Sgt. Cruz, almost immediately, that he had met with the City Attorney and that the attorney told him that he could look at any document. Stern made this same statement a multitude of times to anyone who would listen. Additionally, there was a very warm greeting between the two in front of us with Stern calling the attorney by his first name.

I believe that someone from the City of Phoenix shared a great deal of information about the F.O.I.A. request with Stern. I noticed this when Sgt. Cruz reported that Stern antagonistically told him that he heard there was a Lieutenant requesting information. There was no Lt. present at that time, however, there were Lt.'s dealing with the City of Phoenix at a much higher level to request and orchestrate getting the information.

I feel it is possible that the Phoenix Police were instructed not to interfere with Stern's attempt to antagonize us and do nothing to assist us. This was apparent by their lack of intervention during the entire ordeal. These officers would not even warn Stern to stay away from armed deputies as a safety concern. Protecting the personal space of any law enforcement officer while he is occupied is a primary and fundamental responsibility and accepted practice of any professional organization, especially when they respond to assist.

I couldn't help but feel that the Phoenix Police were not there to assist another law enforcement agency in performing their duties. They didn't even act as passive observers since they showed so much attention to Stern. I felt by the end of the encounter that they were there to protect Stern. The most significant response by the Phoenix Commander was to "warn" me not to take action against Stern.

I suspect that the Commanders were much more aware of and had been previously briefed about the situation. They didn't appear to be simply some available responders to assist the Sheriff's Office with a disruptive situation. One of them pointed out that we did not pay for the documents. This potentially attacked our standing that we were in control of the documents and wouldn't have to release them. This small detail of not paying was never discussed at anytime by any party present until it was brought up by the Commander. It would be impossible for him to have known that detail unless he had been told by a high level official that was part of the extensive orchestration and planning to receive the documents. It is also quite a technical detail that could attack the legal standing of "possession" in this situation which suggests some legal expertise.

My staff and I were humiliated and subjected to unnecessary badgering from New Times reporter Stern for simply doing our job. We didn't receive adequate and appropriate assistance from the Phoenix Police Department because we represented the Maricopa County Sheriff's Office. I feel there is some evidence to suggest that an official(s) from the City of Phoenix took part in orchestrating or allowing this ordeal to occur.

I have instructed my staff that any time they conduct business at the City of Phoenix building, they are to expect resistance and animosity. Since I am unwilling to subject my staff to any further humiliation, they will always take with them adequate staff and

equipment to self sustain the operation at hand. We will not rely on the Phoenix Police Department as a resource or back up.