



U.S. Department of Justice

Civil Rights Division

Washington, D.C. 20530

*Via Electronic Mail*

Mr. Steve T. Descano  
Office of the Fairfax Commonwealth's Attorney  
4110 Chain Bridge Road, Suite 114  
Fairfax, Virginia 22030

February 6, 2020

Dear Mr. Descano,

I write in response to your December 13, 2019 request that an FBI agent who investigated the death of Mr. Bijan Ghaisar appear as a summary witness before a state grand jury in Fairfax County. As you know, the Department could not process that request in the very short period of time before the grand jury expired. Since the expiration of the grand jury, you did not—to my knowledge—renew that request or otherwise contact the Department regarding that request. Nevertheless, as a matter of courtesy and comity, I write to clarify the Department's position about your request.

After a lengthy and thorough investigation into Mr. Ghaisar's death, the Department of Justice declined to bring federal charges. At the outset of the investigation, the Department invited Fairfax County to participate in the Department's investigation. Fairfax declined to do so. When Fairfax County subsequently commenced its own investigation, the Department voluntarily shared its investigative files with the County. To be clear, your request contemplates having an FBI agent appear before the state grand jury, not as a fact witness but to summarize the evidence collected in the federal investigation. Nothing prevents Fairfax County from having its own detectives now review those same case files, conduct their own investigation, and testify before the Fairfax County grand jury. For the reasons set forth below, the Department cannot agree at this time to provide an FBI agent to appear before the state grand jury.

The U.S. Park Police is a component of the U.S. Department of the Interior. The Department of the Interior has requested that the Department of Justice provide legal representation to the U.S. Park Police officers in connection with pending civil litigation relating to Mr. Ghaisar's death. The Department of the Interior has also asked that the United States support the U.S. Park Police officers' anticipated assertion of immunity defenses, regardless of whether the Department of Justice ultimately represents the officers. The Department's Civil Division is currently evaluating those requests.

Should the Department undertake to represent the U.S. Park Police officers, it will be ethically bound to advocate zealously on their behalf, consistent with its longstanding guidelines and practices regarding the representation of federal agents by the Department. In view of the possibility that the Department may represent the officers, the Department is unable to authorize

Department employees, including FBI agents, to appear before a state grand jury in Fairfax County.

It is the longstanding position of the United States that a federal officer may not be prosecuted by a State for actions undertaken in the course of performing the officer's official duties, when the officer had an objectively reasonable basis to believe that the officer's actions were necessary to fulfill the officer's duties. *See, e.g., In re Neagle*, 135 U.S. 1, 75-76 (1890); *Wyoming v. Livingston*, 443 F.3d 1211, 1221 (10th Cir. 2006); *Kentucky v. Long*, 837 F.2d 727, 745 (6th Cir. 1988); *West Virginia v. Laing*, 133 F. 887, 890-91 (4th Cir. 1904); *see also* Seth P. Waxman & Trevor W. Morrison, *What Kind of Immunity? Federal Officers, State Criminal Law, and the Supremacy Clause*, 112 Yale L.J. 2195 (2003). In such cases, the Department may be obliged to participate in the litigation and assist the officers in asserting their immunity defense to the prosecution and otherwise take all appropriate measures to protect the interest of the United States.

For these reasons, the Department of Justice cannot agree at this time to your December 13 request that an FBI agent appear before the state grand jury.

Sincerely,

A handwritten signature in blue ink, reading "Eric S. Dreiband".

Eric S. Dreiband  
Assistant Attorney General  
Civil Rights Division  
United States Department of Justice



[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Tuesday, November 21, 2017 6:35 PM  
**To:** trthibault@fbi.gov  
**Cc:** [REDACTED]  
**Subject:** OIS Assistance

Supervisory Special Agent Thibault,

Good evening, I've have briefed Detective [REDACTED] who works under command in the Major Crimes Bureau. He will be reaching out to you to assist and support your lead efforts in the U.S. Park Police officer involved shooting (OIS) which occurred November 17, 2017, within the confines of Fairfax County.

It is my understanding that FCPD will provide support to your efforts in investigating this OIS which the FBI will be present to the United States Attorney for adjudication.

Detective [REDACTED] will coordinate and facilitate interviews with FCPD officers, produce necessary and required police reports and all evidence within the possession of FCPD which is relevant, needed and germane to the OIS incident.

If there is anything you need, please feel free to reach out to me. My contact information is listed below.

Respectfully,

[REDACTED]

[REDACTED] Major  
Commander, Major Crimes Bureau  
12099 Government Center Parkway  
Fairfax, Va. 22035  
Cell: [REDACTED]  
Ofc: 703-246-7888

[REDACTED]

---

**From:** Thibault, Timothy R. (WF) (FBI) <trthibault@fbi.gov>  
**Sent:** Tuesday, November 21, 2017 7:40 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED] Arseni, Giulio J. (WF) (FBI); Dawson, James A. (WF) (FBI)  
**Subject:** Re: OIS Assistance

Major [REDACTED]

Thank you and we look forward to working with your office.

Kindly

Tim

----- Original message -----

**From:** [REDACTED]  
**Date:** 11/21/17 6:34 PM (GMT-05:00)  
**To:** "Thibault, Timothy R. (WF) (FBI)" <trthibault@fbi.gov>  
**Cc:** [REDACTED]  
**Subject:** OIS Assistance

Supervisory Special Agent Thibault,

Good evening, I've have briefed Detective [REDACTED] who works under command in the Major Crimes Bureau. He will be reaching out to you to assist and support your lead efforts in the U.S. Park Police officer involved shooting (OIS) which occurred November 17, 2017, within the confines of Fairfax County.

It is my understanding that FCPD will provide support to your efforts in investigating this OIS which the FBI will be present to the United States Attorney for adjudication.

Detective [REDACTED] will coordinate and facilitate interviews with FCPD officers, produce necessary and required police reports and all evidence within the possession of FCPD which is relevant, needed and germane to the OIS incident.

If there is anything you need, please feel free to reach out to me. My contact information is listed below.

Respectfully,

[REDACTED]

[REDACTED] Major

Commander, Major Crimes Bureau  
12099 Government Center Parkway  
Fairfax, Va. 22035  
Cell: [REDACTED]  
Ofc: 703-246-7888

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Tuesday, November 21, 2017 9:01 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Re: OIS

Direct. Thanks.

Major, [REDACTED]  
Commander,  
Major Crimes Bureau  
Fairfax County Police Department  
4100 Chain Bridge Rd.,  
Fairfax, VA 22030  
Cell [REDACTED]  
Ofc 703 246 6820

On Nov 21, 2017, at 8:58 PM, [REDACTED] wrote:

Fyi...setting up interviews with Fairfax Officers as soon as 1300 hours tomorrow at Station 2. Spoke with their first line and made him aware as well.

[REDACTED]  
[REDACTED]  
Detective  
Major Crimes Bureau/Cold Case Squad  
Fairfax County Police Department  
703-246-7860 (W) [REDACTED]  
[REDACTED]



**From:** Roessler, Edwin C. Jr.  
**Sent:** Wednesday, November 22, 2017 8:18 AM  
**To:** FCPD  
**Subject:** Awareness - USPP OIS 11/17/17 Mt. V Area

Awareness:

As you know on Friday November 17<sup>th</sup>, two United States Park Police (USPP) officers were involved in the deployment of deadly force in the Mount Vernon District of our County. The following update is provided to all of you as a matter of transparency based upon the best information I have been provided to date:

- Our officers provided support roles in the pursuit.
- Our officers DID NOT deploy deadly force although they were on the scene of the event.
- I directed the FCPD OIS protocol for investigative purposes related to our involvement so that we give attention to detail and account for all of our officer's actions. Additionally, OIS staff were sent to offer any requests for assistance for the USPP investigation team.
- Our officers were not directly involved in the deployment of deadly force and as such, I consider them to be law enforcement witnesses (indirectly involved). Based on this conclusion they remain on full duty.
- The OIS response team includes Peer Support and other ISS staff and they are providing support to all involved.
- FCPD ICV captured digital evidence of the pursuit and the deployment of deadly force by the USPP. This is evidence which will not be released at this time.
- The Office of The Assistant United States Attorney has informed me and the Chief of the USPP that he shall investigate the OIS involving the USPP and the FBI will be the lead investigators. The FBI has requested support from the FCPD MCB Cold Case Unit to assist them in this investigation. We are providing support to the FBI along with the USPP.

This morning I will send a statement to our community to make absolutely transparent what our role was during and after this critical event.

Be Safe,

Chief Roessler

Sent from [Mail](#) for Windows 10

[REDACTED]

---

**From:**

**Sent:**

[REDACTED]  
Wednesday, November 22, 2017 8:22 AM

**To:**

**Subject:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
Situational Awareness

Commanders,

As you know, on Friday, November 17, 2017, two officers from the United States Park Police Department were involved in a deployment of deadly force (shooting) in the Mt. Vernon area of Fairfax County. The officer involved shooting incident occurred following a vehicle pursuit. Some of our officers assisted in a support capacity as the vehicle pursuit came to an end within Fairfax County. Current information indicates that no FCPD officers were involved in the deployment of deadly force, rather, scene security, rendering first aid, and other such support functions.

As you may know from media accounts, ([WashPo article](#)) the FBI is taking the lead in investigating this US Park Police OIS. I have assigned Detective [REDACTED] from our Cold Case Unit, and our resident OIS subject matter expert, to support the FBI in their investigative efforts. Detective [REDACTED] will assist with coordination of interviews, gathering evidence, police reports, etc.,

This email is to inform you of this coordination effort so that you may assure your effected officers that we (FCPD) are supporting the FBI as they conduct their investigation of the U.S. Park Police OIS, and that Detective [REDACTED] is our designated liaison person.

If you have any questions or concerns, please feel free to reach out to me,

[REDACTED]  
[REDACTED] Major  
Commander, Major Crimes Bureau  
Fairfax County Police Department  
12099 Government Center Parkway  
Fairfax, Va. 22035  
Cell: [REDACTED]  
Ofc: 703-246-7888



[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Wednesday, November 22, 2017 9:25 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** DPSC Radio Traffic & 911 tapes

[REDACTED]

Just want to ensure that you know that no one has yet reached out to DPSC to request that the radio traffic and 911 tapes, if any exists, be preserved and NOT released to the public/media, due to this now being a criminal matters being investigated by the FBI.

Could you take care of that? Also, know that [REDACTED] will be requesting a copy of the radio traffic for his IA file.

Thanks again,

[REDACTED]

[REDACTED] Major  
Commander, Major Crimes Bureau  
Fairfax County Police Department  
12099 Government Center Parkway  
Fairfax, Va. 22035  
Cell: [REDACTED]  
Ofc: 703-246-7888