



NEW YORK CITY DEPARTMENT OF CORRECTION

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Via email

Chair Dwayne C. Sampson
Board of Correction
City of New York
2 Lafayette Street, Suite 1221
New York, NY 10007

Dear Chair Sampson:

I write in response to your letters of January 11, 2023, and January 12, 2023, concerning DOC's decision to curtail BOC's off-site access to Genetec video, body-worn camera footage, and the handheld video folder. My purpose in writing is to explain the reasons for my decision.

As you indicate, on November 16, 2022, Courtney Gross, a NY1 reporter, submitted a FOIL request to BOC requesting (i) body-worn footage "from September 20, 2022, showing Erick Tavira's transition from AMKC to GRVC"; and (ii) genetec video from the morning of October 22, 2022, showing the lack of a suicide prevention aide working Tavira's unit as well as footage showing the time period between 12:50a.m. to 2:20a.m. in the vicinity of Tavira's cell." The specificity of this request makes it obvious that someone told the reporter what to seek. On January 5, 2023, BOC responded to the first of these requests and released the body-worn footage of the September 20, 2022 incident after making modest redactions. The footage was then shown on NY1 on Thursday January 12, 2023.

BOC's actions in this matter are deeply disturbing. First, the records that the reporter sought are DOC records, yet she chose to go to BOC to obtain them. Undoubtedly, she concluded that she

would find a more receptive audience with BOC than with us. Second, the footage was released even though there are on-going investigations by numerous agencies - - BOC, SCOC, DOI and the Attorney General's office - - into Mr. Tavira's death. As you know, FOIL exempts disclosure of materials that "would interfere with law enforcement investigations." Public Officers Law §87(2)(e)(i); see New York Disability Rights v. New York State Commission of Correction, 194 AD 3d 1230, 1234 (3d Dept. 2021) (records about inmate death under investigation by SCOC are exempt from disclosure). Had the reporter contacted any of the other agencies charged with investigating Mr. Tavira's death, I am confident that none of them would have provided what BOC disclosed.¹

Importantly, BOC's decision to disclose the Tavira footage comes against a backdrop of other actions that indicate its desire to portray DOC in a negative light and not simply fulfill its oversight duties. On June 22, 2022, BOC responded to a FOIL request from the Legal Aid Society for a memorandum about intake processing at EMTC. In doing so, it redacted the first sentence of the memorandum. That sentence stated this: "While facility leadership have done a great job with the limited resources given, they need more staff in order to meet the needs of an ever-growing population." Apparently, a decision was made to redact that sentence because it was favorable to DOC and not in the Legal Aid's interest.

Another disturbing incident occurred on September 23, 2022, when BOC staff made a presentation to prosecutors in the Manhattan District Attorney's Office, which included photographs of conditions on Rikers Island. The photographs were apparently left with that office and subsequently obtained by a Gothamist reporter, who published them. I have been informed that the presentation sought to inform Manhattan prosecutors that the conditions on Rikers were such that that they should be reluctant to recommend an arrestee be detained here. I have read the City Charter,

¹ Any claim that the September 20, 2022 footage was determined to be unrelated to Mr. Tavira's death is hard to take serious. In its most recent Death Report, BOC, over our objection, reported on our supposed non-production to clinic appointments in 2021 for individuals who died in the second half of 2022. See, e.g., Death Report at 9 ("Mr. Bradley [who died in June 2022] missed 86 medical visits from October 17, 2021, through June 13, 2022). BOC takes a subjectively broad view of what relates to a death when it suits its purpose.

and nowhere do I find authority for BOC to do roadshows to present DOC in the worse possible light.

Another incident occurred in October 2022 and involved the release of a BOC report of lockdowns. At 6:10 p.m. on October 22, a Saturday night, I received an email from BOC's Executive Director informing me that "the Board will put out a [lockdown report] on its public website" on Monday "by close of business" and asking for our "input on any inaccuracies." On Monday morning, I gathered our staff to prepare a response. At 12:04 p.m., however, the report was released. Giving DOC notice on a Saturday night and then releasing a report ahead of an already unreasonable deadline is hardly how a responsible oversight agency should act.

All of these actions have a common theme: BOC staff seem to have an agenda that gives me no confidence that unfettered access to video footage is warranted.

I want to stress that I appreciate BOC's authority under the City Charter to "inspect . . . all books, records, documents, and papers of the department." I have consulted with the Corporation Counsel's Office before making my determination. I believe that these steps are in accord with the Charter provision. BOC staff (and Members if they choose) can inspect DOC video footage Monday through Friday 9:00 a.m. to 6:00 p.m. and take notes on what they see. My staff have been instructed to provide no interference. If there are exigent circumstances that require inspection at other times, please contact Allie Robertson, and we will attempt to make appropriate accommodations.

I regret that my actions occurred during your first weeks as Chair. Working together with you to improve our jails is essential as we move forward.

Respectfully,

A handwritten signature in black ink, appearing to read 'L. Molina', written over the word 'Respectfully,'.

Louis A. Molina
Commissioner