



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

INVESTIGATIVE REPORT	No. 17-004
By	Re: Phoenix Police Department's Critical Incident Transparency Protocol
MARK BRNOVICH ATTORNEY GENERAL	
December 04, 2017	

To: The Honorable Doug Ducey, Governor of Arizona  
The Honorable Steve Yarbrough, President of the Arizona Senate  
The Honorable J.D. Mesnard, Speaker of the Arizona House of Representatives  
The Honorable Jay Lawrence, Requesting Member of the Arizona Legislature  
The Honorable Michele Reagan, Secretary of State of Arizona

**I. Summary**

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-194.01, the Attorney General's Office ("Office") has investigated the City of Phoenix Police Department's Critical Incident Transparency Protocol ("Transparency Protocol"), which provides guidelines for the public dissemination of records and information following certain incidents. Based on a review of relevant authorities and materials during the limited 30-day period in § 41-194.01(B), the Attorney General has determined that the Transparency Protocol **does not violate** state law.

## **II. Background**

### **A. The Office's Investigation**

On November 8, 2017, the Office received a signed request for legal review of the Transparency Protocol pursuant to A.R.S. § 41-194.01 from Representative Jay Lawrence ("Request"). The Office asked the City of Phoenix to provide a voluntary response. The City cooperated with the Office's review. In performing the required investigation during the limited 30-day period, the Office reviewed relevant materials and authorities.

The Office's legal conclusions are set forth below. The facts recited in this report serve as a basis for these conclusions, but they are not administrative findings of fact and are not made for purposes other than those set forth in A.R.S. § 41-194.01.

### **B. Relevant State Law**

The Request contends that the Transparency Protocol violates A.R.S. § 38-1109, which provides in relevant part:

An employer shall not include in that portion of the personnel file of a law enforcement officer that is available for public inspection and copying any information about an investigation until the investigation is complete or the employer has discontinued the investigation.

A.R.S. § 38-1109(A). In short, the statute prohibits a police department from including information about an ongoing administrative disciplinary investigation in the publicly-available portion of an officer's employee-personnel file.

### **C. The Transparency Protocol**

The Transparency Protocol "contains guidelines for timely and standardized release of existing video, records, and information following a police critical incident." A critical incident includes: officer-involved shootings; exceptional use of force; death or injury of an officer; in-

custody deaths; and incidents generating significant community concern. The Transparency Protocol further provides a guidance timeline for when certain information should be released, and to whom it should be released.

### III. Analysis

The Transparency Protocol does not conflict with A.R.S. § 38-1109. Section 38-1109 governs very limited conduct—placing information about an ongoing administrative disciplinary investigation in the publicly-available portion of an officer’s employee-personnel file. The Transparency Protocol provides no guidance about whether or when such information should be included in an officer’s file. And the dissemination of information and records about a critical or other high-profile incident pursuant to the Transparency Protocol does not itself violate A.R.S. § 38-1109. Section 38-1109 does not make such information confidential, or otherwise prohibit its dissemination or regulate its handling beyond the confines of the employee-personnel file. Consequently, the Transparency Protocol does not violate A.R.S. § 38-1109.<sup>1</sup>

### IV. Conclusion

The Office concludes under A.R.S. § 41-194.01(B) that the City of Phoenix Police Department’s Critical Incident Transparency Protocol **does not violate** state law. Pursuant to A.R.S. § 41-194.01(B)(3), “the attorney general shall take no further action.”



Oramel H. (O.H.) Skinner  
Chief of Government Accountability  
& Special Litigation Unit

---

<sup>1</sup> Given this lack of a state law violation, the Office need not address other possible bases for determining that the Transparency Protocol does not violate state law under A.R.S. § 41-194.01, *e.g.*, whether the Transparency Protocol is an “ordinance, regulation, order or other official action adopted or taken by the governing body of [the] city.” A.R.S. § 41-194.01(A).