

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

KELLY MERRILL, ET AL.

Plaintiff

v.

Civil Action No.:
1:17-CV-40088-MLW

TOWN OF TOWNSEND, ET AL.

Defendant

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Chief Robert Eaton, In his Official and Individual capacity
70 Brookline Road
Townsend, MA 01469

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Timothy M. Burke, Esq.
160 Gould Street, Suite 100
Needham, MA 02494

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ROBERT M. FARRELL

CLERK OF COURT

/s/ – Kimberly M. Abaid

Signature of Clerk or Deputy Clerk



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KELLY MERRILL and ADAM COTTY)

Plaintiffs)

V.)

TOWN OF TOWNSEND, CHIEF ROBERT M.)
EATON AND SERGEANT RANDY GIRARD ,)
in their Official and Individual capacities)

Defendants)

Case No:

COMPLAINT AND JURY DEMAND

I. INTRODUCTION

In this action, the Plaintiffs Kelly Merrill and Adam Cotty ("Plaintiffs") seek redress for willful violation of the Criminal Offender Record Information System Act, M.G.L.A. 6 § 177 as well as substantial violations of their rights under Federal and Massachusetts' Civil Rights laws and Common Law Torts. This action also arises under the Fourth Amendment to the United States Constitution, and under 42 U.S.C. § 1983.

Officers of the Townsend Police Department including, but not limited to, Chief Robert Eaton, willfully violated the provisions of the CORI and CJIS statute(s) by wrongfully obtaining and disseminating Plaintiffs' criminal record without a legitimate lawful purpose.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, because the case involves claims arising under 42 U.S.C. § 1983. The court also has supplemental jurisdiction over the other claims pursuant to 28 U.S.C. § 1367.
2. Venue in this action lies in this jurisdiction pursuant to 28 U.S.C. § 1391, because the acts described herein were committed in Massachusetts and the parties are located in Massachusetts.

III. PARTIES

3. The Plaintiff, Kelly Merrill ("Ms. Merrill"), is a natural person with a residential address

located in Townsend, Massachusetts within Middlesex County.

4. The Plaintiff, Adam Cotty, ("Mr. Cotty") is a natural person with a residential address located in Townsend, Massachusetts within Middlesex County.
5. At all relevant times, the Defendant, Chief Robert Eaton ("Chief Eaton"), was a duly appointed police officer employed by the Townsend Police Department. Defendant Eaton is being sued in both his individual and official capacity.
6. At all relevant times, the Defendant, Sergeant Randy Girard ("Sergeant Girard "), was a duly appointed police officer employed by the Townsend Police Department. Sergeant Girard is being sued in both his individual and official capacity.

IV. FACTS

Background on CORI and CJIS Regulatory Violations

7. The Massachusetts Criminal Offender Records Information ("CORI") Act governs the dissemination of criminal records in Massachusetts. Mass. Gen. Laws c. 6 § 172.3
8. Among other things, the CORI Act states that "[a]ny individual or entity that receives or obtains criminal record information from any source in violation of [the Act], whether directly or through an intermediary, shall not collect, store, disseminate, or use such criminal offender record information in any manner or for any purpose." Id. § 172(1).
9. The CORI Act also authorizes civil suits for damages arising from any violation of sections 168 through 172 of the act. Mass. Gen. Laws c. 6 § 177.
10. To prove a CORI violation, a plaintiff must show that (1) the information at issue was protected under CORI; (2) the defendant received or obtained that protected information; (3) the defendant collected, stored, disseminated, or used that protected information; (4) the defendant did so outside the authority granted by the statute; and (5) the defendant was at fault. Mass. Gen. Laws ch. 6 § 172; Bynes v. School Committee of Boston, 411 Mass. 264, 270–71, 581 N.E.2d 1019 (1991).
11. If the defendant committed the violation willfully, the statute provides that the Court shall award exemplary damages, costs, reasonable attorneys' fees, and disbursements. See Mass. Gen. Laws c. 6 §§ 172, 177.
12. Protected Information; "Criminal offender record information" is defined by the statute as "records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release." Mass. Gen.

Laws ch. 6 § 167.

13. A “criminal justice agency” is defined by the statute as a “Massachusetts agency which performs as its principal function activities relating to crime prevention” 803 CMR 2.02.
14. The Townsend Police Department is a Massachusetts criminal justice agency.
15. The CORI Act allows employees of criminal justice agencies to obtain CORI to the extent “necessary for the actual performance of their criminal justice duties.” Mass. Gen. Laws ch. 6 § 172(a)(1).
16. As detailed herein, on multiple occasions, members of the Townsend Police Department performed Criminal Offender Record Information checks on both of the Plaintiffs, in willful violation of the Criminal Offender Record Information System Act, M.G.L.A. 6 § 177, and knowingly obtained personal information relating to the Plaintiffs for uses not permitted under 18 U.S.C. § 2721(b), in violation of 18 U.S.C. § 2722.

Violations of CORI and CJIS by the Townsend Police Department

17. On or about September 27, 2016, the Townsend Board of Selectman (hereinafter “Board”) conducted an open meeting and at that time, discussed the appointment of Plaintiff, Kelly Merrill, to the position of assistant to the Town Administrator, James M. Kreidler Jr. (hereinafter “Town Administrator Kreidler”)
18. The Board of Selectmen meeting was public and carried on Local Television.
19. Personnel at the Townsend Police Station, including a patrol officer and Defendant Sergeant Randy Girard, who were viewing the Board of Selectmen meeting.
20. Based upon Town Counsel’s subsequent investigation, it was determined that Sergeant Girard subsequently instructed the Department Dispatcher to run a Board of Probation (“BOP”) query on Plaintiff Kelly Merrill.
21. Defendant Chief Robert Eaton (hereinafter “Chief Eaton”) “stated that Defendant Girard was ‘upset’ with the appointment of Plaintiff Kelly Merrill, that the police officer (Sgt. Girard) felt that an inadequate background check had been done on Ms. Merrill by the Town Administrator, and that he (Sgt. Girard), as a police officer, had the right to conduct his own background investigation.” (Exhibit 1)
22. Sergeant Girard was not satisfied with the negative results of the CORI check he had run on Ms. Merrill and on October 11, 2016, Defendant Girard subsequently ran another Board of Probation “BOP” query on Plaintiff’s Merrill’s boyfriend, Plaintiff Adam Cotty.
23. On or about October 11, 2016, Defendant Girard provided the results of the illegal BOP queries that were run on the Plaintiffs to Chief Eaton.

24. At that time, Chief Eaton knew or should have known that illegal CJIS queries had been run on the Plaintiffs by members of his department for no legitimate police purpose, but rather in an attempt to have Ms. Merrill's employment with the Town terminated and to embarrass members of the Town's Administration for hiring her.
25. Chief Eaton failed to disclose the improper use of the CJIS system by Sgt. Girard. Rather than investigate or discipline these officers for their improper use of the CJIS system, Chief Eaton condoned their illegal use of the CJIS system and attempted to justify their additional dissemination of the confidential material.
26. When Chief Eaton was advised by Town Counsel that these CJIS checks were illegal and run for no lawful police purpose. Eaton insisted that the officers had the right to run these checks in order to conduct "background investigations" of the Plaintiffs.
27. Chief Eaton stated to Town Counsel that police officers could run these checks and that "the ends justified the means" because the police officers believed that an inadequate background had been conducted by the Town Administrator.
28. It is important to note that Defendant Eaton and others within the Department, including Defendant Randy Girard held personal animosity toward the Town Administrator and certain members of the Board of Selectmen and subsequently used the issue of the hiring of Plaintiff Merrill as a means to politically embarrass these public officials and adversely affect their positions within the Town.
29. On or about October 27, 2016, Chief Eaton intentionally disseminated the Plaintiffs' confidential CJIS information to member(s) of the Townsend Board of Selectmen for the purpose of having the Board of Selectmen revoke the hiring of Ms. Merrill.
30. The Board refused to do so, citing the illegal actions of the Chief and member(s) of his department and ordered an investigation of the Chief's conduct. On or about November 22, 2016, Defendant Eaton abruptly resigned from his position and refused to provide pertinent information regarding the illegal acquisition of the CORI data by members of the Department and its subsequent dissemination.
31. On November 23, 2016, the Town provided the following press release regarding Defendant Eaton's misconduct;

"Over the past week, however, the Chief had been directed by Town Counsel to provide certain information related to an ongoing investigation within the police department regarding unlawful background checks on private civilians (Plaintiffs) being conducted by department personnel. The Chief gathered the requested information but refused to provide it to Counsel as directed even after being provided three time extensions. Just late yesterday afternoon Counsel ordered him to immediately provide the information that he had. The Chief did not do so and then hours later, while meeting with the Board of Selectmen, the Chief removed his badge and hat, placed them on the table and left the

room...Counsel is proceeding with the investigation in spite of the fact that the Chief failed to provide the information prior to leaving.” (Exhibit 2)

32. On November 27, 2016 Town Counsel Advised Chief Eaton, orally and in writing, that the investigation into the improper CJIS queries was under the jurisdiction of Town Counsel and he should take no further action.
33. On December 27, 2016 the Town provided the following press release;

“In the matter of the ongoing investigation into police department personnel unlawfully accessing and using confidential and protected background information relating to citizens of Townsend the Board offers the following update:

 1. Of the four involved employees, to date, two employees have made admissions to serious violation of Townsend Police and Commonwealth of Massachusetts rules and regulations related to their unlawful use of confidential background records of Townsend citizens. These employees have cooperated with the town in this investigation and have received a level of discipline commensurate with their offenses. The town can say no more as these are now personnel matters and part of ongoing investigations.
 2. One employee has been placed out on administrative leave pending the conclusion of the investigation.
 3. And lastly, only employee, after having first invoked his right to not self-incriminate, has since resigned from the Townsend Police Department. The Board has accepted his resignation conditioned upon his cooperation with ongoing investigations.” (Exhibit 3)
34. Despite his apparent resignation and knowledge of the illegality of these CORI/CJIS violations, Defendant Eaton continued his interference with the investigation being conducted by Town Counsel.
35. On January 31, 2017 Town Counsel advised Chief Eaton: “By this email I am advising you to discontinue your separate investigation and to immediately turn over to me any information that you have derived from this investigation which has not been previously given to me. You are not to take any further action which could interfere with the investigation being conducted.” (Exhibit 4)
36. On February 8, 2017, Commissioner Slater of the Department of Criminal Justice Information Services (“DCJIS”) sent correspondence to Chief Eaton, and only Chief Eaton, outlining his “findings” after reviewing the limited information that had been provided to him by Chief Eaton.
37. It is important to note that Chief Eaton deliberately made false and misleading statements to Commissioner Slater regarding the actions of members of his department in an attempt

to justify their actions in performing these CORI checks as well as attempting to conceal Eaton's own misconduct.

38. Despite the fact that Defendant Eaton made false and misleading statements to Commissioner Slater, the Commissioner nevertheless found that members of the Townsend Police Department had violated the strict requirements for accessing the CJIS system.

"On that occasion (redacted) noted that (redacted) and other Townsend PD employees were watching the proceedings of the local town meeting on television. During that meeting there was discussion about Kelly Merrill being hired as an administrative assistant for the Townsend Town Administrator. It was at that time that someone at the station ((redacted) states that she cannot remember who it was) instructed Considine to run a query on Kelly Merrill, which the dispatcher did. As part of that query, a search of the Board of Probation files was initiated. The DCJIS finds that this inquire was initiated for no criminal justice purpose." (emphasis added) (Exhibit 5)

39. On February 9, 2017 Chef Eaton was again advised by Town Counsel; "I want to emphasize that this investigation is ongoing and until it is completed all the documents associated with this matter continue to be confidential. Neither the CJIS report nor the substance of the report should be released to anyone at this point in time. You should not take any action in connection with the investigation." (Exhibit 8)
40. On February 10, 2017, Defendant Eaton sent a memorandum to the Townsend Board of Selectman and the Town Administrator regarding the CJIS investigation.
41. Despite being instructed on multiple occasions to refrain from any involvement in the investigation Defendant Eaton stated, "I would be remiss if I did not conduct my own internal investigation into the allegations of misconduct and/or criminal activity by my officers." (Exhibit 6)
42. Despite the clear finding of wrongdoing made by Commissioner Slater, Defendant Chief Eaton wrote;
- "As chief law enforcement officer, **it is my lawful obligation to release credible and factual information that clears anyone from being wrongly accused.** With this being said, pursuant to the recent ruling I received Wednesday February 9, 2017 from the Commonwealth of Massachusetts Department of Criminal Justice Information Services (DCJIS), this report unequivocally exonerates all 3 police officers who were wrongfully accused from any wrongdoing."
43. Despite the obvious deception in Eaton's remarks that "this (DCJIS) report unequivocally exonerates all 3 police officers who were wrongfully accuse from any wrongdoing," Defendant Eaton then threatened the Board of Selectman that if they did not make a public statement exonerating the three officers within the next two hours he would issue a public statement notifying citizens of the CJIS alleged conclusions.

44. Defendant Chief Eaton then published his false assertions regarding the conclusions reached by Commissioner Slater in the CJIS report to the Townsend community.
45. On February 10, 2017, the Town issued the following press release in contradiction to Defendant Eaton's deliberate misrepresentations;

"The Town of Townsend announced this evening that it has placed Police Chief Robert E. Eaton on administrative leave with pay pending the investigation into the improper use of the CJIS computer system by members of the police department. The board ordered an investigation into this matter in November when it learned that records containing criminal history of two individuals (Plaintiffs) who were not under police investigation were delivered to the police chief. The records on their face showed that the CJIS system had not been used for proper police purposes, a determination that has since been confirmed by the state administrators of the CJIS system." (Exhibit 7)
46. On February 16, 2017 Townsend Town Counsel, David C. Jenkins drafted a letter to Commissioner Slater of DCJIS and informed him that Chief Eaton was not authorized to have had any involvement with the investigation. Jenkins also requested a further review from Commissioner Slater that has not been forthcoming. (Exhibit 1)
47. Town Counsel stated that Chief Eaton had supplied Commissioner Slater with "erroneous and incomplete information with respect to the Town's concerns regarding the use of its CJIS System."
48. "My (Town Counsel) reading of your report (DCJIS) indicates to me that you were not informed that the October 10, 2016 CJIS inquiry was done to discredit a Town employee. I am advised that protected information concerning the employee has been referenced in social media."
49. The information obtained through the illegal CJIS query has been further illegally and widely disseminated to other members of the public by the Defendant Eaton, Defendant Girard and/or other members of the Department and subsequently published and republished through a variety of social media platforms including, but not limited to Facebook and Townsend Town Forums.
50. The only parties in possession of this protected and confidential information were the Defendant Eaton, Defendant Girard and members of the Department. The subsequent publication of CORI and CJIS protected information to others outside the Department was done maliciously and in an obvious attempt to inflict further emotional distress and embarrassment on the Plaintiffs within the community where they reside.
51. A small sampling of the salacious and malicious nature of these comments and videos regarding the Plaintiffs is attached hereto and incorporated by reference, including claiming that Ms. Merrill had a criminal history, was dealing in drugs, referring to Ms. Merrill as a "crack whore" who allegedly met Town Administrator Kreidler at a

Methadone clinic.

COUNT I

(Wrongful Dissemination of CORI)

Against Defendants Eaton, Girard and the Town of Townsend

52. The Plaintiffs repeat and incorporate by reference the allegations contained in Paragraphs 1 through 53 of the Complaint as fully set forth herein.
53. On multiple occasions in 2016, members of the Townsend Police Department performed Criminal Offender Record Information checks on both of the plaintiffs, without a lawful, in willful violation of the Criminal Offender Record Information System Act, M.G.L.A. 6 § 177.
54. Pursuant to Mass. Gen. L. ch. 6, § 172, the CORI may be disseminated ” “only to (a) criminal justice agencies; (b) such other agencies and individuals required to have access to such information by statute ...; and (c) any other agencies and individuals where it has been determined [by the criminal history systems board (board), that the public interest in disseminating such information to these parties clearly outweighs the interest in security and privacy.”
55. Pursuant to Mass. Gen. L. ch. 6, § 167, CORI is defined as ”“records and data in any communicable form compiled by a criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release.”
56. The Defendants, their agents, and employees deliberately and wrongfully accessed CORI and CJIS information and subsequently disseminated it to injure, embarrass and publicly harm the Plaintiffs
57. In disseminating the Police Report and the information contained therein, the Defendants disseminated private CORI in violation of Mass. Gen. L. ch. 6, § 172.
58. As a result of Defendants' actions, the Plaintiffs suffered damages, including, but not limited to emotional distress, loss of community standing and employment opportunities.

COUNT II

(Mass. Gen. L. ch. 12, §§ 11H and 1H)

Against Defendants Eaton and Girard by both Plaintiffs

59. The Plaintiffs repeat and incorporate by reference the allegations contained in Paragraphs 1 through 59 of the Complaint as fully set forth herein.
60. The Defendants have maliciously interfered with and attempted to interfere with the exercise or enjoyment by the Plaintiff of rights secured by the Constitution and laws of

the United States, and of rights secured by the Declaration of Rights and laws of the Commonwealth of Massachusetts by means of threats, intimidation or economic coercion.

61. Defendants' interference with Plaintiff's rights included the wrongful disclosure of the Police Report and the CORI contained therein to Plaintiff's employer, the Town of Townsend, which was intended to cause and caused a deprivation of Plaintiff's property interests in continued public employment and her occupational liberty interest in preserving her future professional reputation, earning capacity and employment opportunities, and which interfered with Plaintiff's procedural due process rights by means of economic coercion, threats and intimidation.

62. As a result of the Defendants' actions, the Plaintiff suffered damages.

COUNT III
(42 U.S.C. § 1983)

63. The Plaintiffs repeat and incorporate by reference the allegations contained in Paragraphs 1 through 63 of the Complaint as fully set forth herein.

64. Defendants' actions as described above were performed under color of law.

65. Defendants' actions subjected, or caused the Plaintiff to be subjected, to a deprivation of her rights, privileges and immunities secured by the Constitution and Laws of the United States in violation of 42 U.S.C. § 1983.

66. More specifically, Defendants' actions as described above subjected or caused the Plaintiff to be subjected, to a deprivation of her property interests in continued public employment and liberty interests in preserving future professional reputation, earning capacity and employment opportunities, in violation of Plaintiff's rights to procedural due process.

67. As a result of Defendants' actions, Plaintiffs' suffered damages.

COUNT IV
(Invasion of Privacy)

68. The Plaintiffs repeat and incorporate by reference the allegations contained in Paragraphs 1 through 68 of the Complaint as fully set forth herein.

69. Pursuant to Mass. Gen. L. ch. 214, § 1B, the Plaintiffs have a "right against unreasonable, substantial or serious interference with his (their) privacy."

70. The Defendants' dissemination of the CORI and related CJIS information and the information contained therein constituted an unreasonable, substantial or serious interference with Plaintiffs' privacy in violation of Mass. Gen. L. ch. 214, § 1B.

71. As a result of Defendants' conduct, the Plaintiffs have suffered damages, emotional concern and distress, loss of reputation.

COUNT IV
(Intentional Infliction of Emotional Distress)

72. The Plaintiffs repeat and incorporate by reference the allegations contained in Paragraphs 1 through 72 of the Complaint as fully set forth herein.
73. By their extreme and outrageous conduct, as described, including but not limited to willfully violating the provisions of the CORI statute by obtaining and disseminating Plaintiffs' criminal record without a lawful purpose the Defendants intentionally and/or recklessly inflicted and caused severe emotional distress to both Plaintiffs.
74. As a direct and proximate cause of the acts and omissions of Defendants, the Plaintiffs' have suffered damages.

THE PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL COUNTS.

Respectfully submitted,
For Plaintiffs,
By their attorney,

/s/ Timothy M. Burke
Timothy M. Burke, BBO #065720
160 Gould Street, Suite 100
Needham, MA 02494-2300

Dated: June 7, 2017

Certificate of Service

I hereby certify that this document was filed through the ECF system and will therefore be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be mailed via first class mail to those registered as non-participants.

Dated: June 7, 2017

/s/ Timothy M. Burke

Exhibit 1

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101 Arch Street, Boston, MA 02110
Tel: 617.556.0007 | Fax: 617.654.1735
www.k-plaw.com

February 16, 2017

David C. Jenkins
djenkins@k-plaw.com

BY FACSIMILE (617) 660-4613
AND BY FIRST CLASS MAIL

James F. Slater, III, Commissioner/
FBI CJIS Systems Officer
Commonwealth of Massachusetts
Executive Office of Public Safety & Security
Department of Criminal Justice
Information Services
200 Arlington Street, Suite 2200
Chelsea, MA 02150

Re: Town of Townsend Police Department

Dear Mr. Slater:

Please let me introduce myself as Town Counsel for the Town of Townsend. In November 2016, I was directed by the Board of Selectmen (the "Board") of the Town of Townsend to investigate concerns regarding the Police Department's use of the CJIS System. The authority for the Board to designate me as an investigator of this matter is derived from G.L. c. 41, §23B, as well as the Townsend Town Charter, Section 3-2(e). At the initiation of the investigation, I informed Chief Robert M. Eaton that I was to conduct this investigation and that he was not to conduct a separate inquiry into this matter. Over the last several weeks, I repeatedly advised Chief Eaton that he was not to conduct a separate inquiry into this matter.

I am in receipt of your letter to Chief Eaton dated February 8, 2017. That correspondence finds that the inquiry concerning a Town employee as directed by _____ on September 27, 2017 was unlawful. You concluded: "The DCJIS finds that the inquiry was initiated for no official criminal justice purpose." As indicated below, _____, the officer in charge of the September 27, 2016 shift resigned before he could be interviewed regarding his involvement in this event

On the basis of your correspondence, Chief Eaton last Friday issued a Memorandum to the Board, a copy of which is attached. In that memorandum and in contradiction to your findings, Chief Eaton wrote, "... pursuant to a recent ruling I received on Wednesday, February 8, 2017, from the Commonwealth of Massachusetts Department of Criminal Justice Information Services (DCJIS), this report unequivocally exonerates all 3 police officers who were wrongfully accused from any wrongdoing." Chief Eaton then published his false conclusion to the community, causing substantial turmoil. You will see that Chief Eaton gave the Board two (2) hours to act on his demands.

James F. Slater, III, Commissioner/
FBI CJIS Systems Officer
February 16, 2017
Page 2

Upon review of this matter, it is evident that your agency was supplied with erroneous and incomplete information with respect to the Town's concerns regarding the use of its CJIS System. The purpose of this correspondence is to alert you to the information that we have at the present time with the hope that you will reconsider your correspondence dated February 8, 2017, and in conjunction with the Town, undertake a more complete analysis of this matter.

The Chief of Police has been placed on administrative leave with pay. He was scheduled to be interviewed yesterday and has postponed that interview on the basis of

The Town's investigation is continuing, but it would appear that the following facts are supported by the evidence in this case: On September 27, 2016, the Board conducted an open meeting and at that time, discussed the appointment of [redacted] Assistant to the Town Administrator. The Board of Selectmen meeting was public and carried on local TV. Personnel at the Police Station viewed the meeting. At that time, the Department was staffed by one dispatcher, [redacted], and two police officers. The two police officers assigned to the shift were [redacted] and [redacted]. The evidence indicates that [redacted] was on patrol, leaving [redacted] in the station. The evidence available to us indicates that [redacted] instructed [redacted] to run a Board of Probation query on the individual being appointed. In my subsequent conversations with Chief Eaton, it was disclosed that the [redacted] was "upset" with the appointment of the individual, that the police officer felt that an inadequate background check had been done on the individual, and that he, as a [redacted], had the right to conduct his own background investigation. The Town was unaware that the query had been run.

[redacted] ran a subsequent BOP query in connection with this matter on October 11, 2016. From your correspondence, I assume that you have been given a [redacted] later generated by [redacted] with respect to the Board of Probation activity on October 11, 2016. While the investigation remains incomplete due to the Chief's unavailability, I believe that the evidence will show that the computer run on October 11, 2016 was not conducted for a proper police purpose.

On October 11, 2016, [redacted] the Board of Probation record for [redacted]'s partner. At that time, he also [redacted] was, according to the Chief, [redacted]

Sometime between October 11, 2016 and October 27, 2016, Chief Eaton [redacted] of the Board of Probation [redacted]. At that time, Chief Eaton knew or should have known that a Board of Probation query was run on [redacted]'s partner for no legitimate police purpose, but rather to have [redacted] employment with the Town be terminated. I am not able to find any evidence as of this point in time that Chief Eaton took any action with your agency regarding an apparent violation of State Law.

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James F. Slater, III, Commissioner/

FBI CJIS Systems Officer

February 16, 2017

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Rather, on or about October 27, 2016, Chief Eaton arranged to meet with [REDACTED]. At that time, the confidential CJIS information was disclosed to [REDACTED] purportedly for the purpose of having the Board revoke the hiring of [REDACTED] contacted Town Counsel. I advised that the [REDACTED] was contrary to State Law and that an inquiry must be made.

My reading of your report indicates to me that you were not informed that the October 10, 2016 CJIS inquiry was done to discredit a Town employee. I am advised that protected information concerning the employee has been referenced in social media.

At the end of November, [REDACTED] was requested to prepare a report regarding Board of Probation inquiries conducted on [REDACTED] and [REDACTED] partner. At that time, [REDACTED] invoked his Fifth Amendment rights. Shortly thereafter, under circumstances that remain uncertain, [REDACTED] i [REDACTED] which you have. [REDACTED] fails to mention his participation in the query run on September 27, 2016 and as a preliminary conclusion, does not accurately report the circumstances surrounding the October 11, 2016 inquiry of [REDACTED] and [REDACTED] partner.

On December 22, 2016, [REDACTED] entered into an Agreement resigning his position with the Townsend Police Department.

Since that time, interviews have been conducted of the officers who had run CJIS inquiries on [REDACTED] and [REDACTED] partner. As I understand it, [REDACTED] were not disclosed to you by the Chief.

In addition to this sequence of events, there are other matters that have caused concern in the Town regarding the Department's oversight of its CJIS System. The Town has recently learned that a former employee was found in possession of confidential CJIS information at his workplace at the Essex County House of Correction. A copy of that internal report is attached for your review, and I would refer you to pages 4 to 6. Chief Eaton had been repeatedly requested for an update of the status of that matter. I am informed that the Chief indicated to Town officials that there was no update. The information we have received is that the Chief has received the confidential information, never disclosing to the Town or your agency that the information had been compromised.

Within the last several weeks, we have been advised that a CJIS inquiry was made on [REDACTED] on July 5, 2016. We have since interviewed the officer involved in that inquiry who has stated that the CJIS inquiry of [REDACTED] was triggered "automatically" by the officer's having updated [REDACTED]'s "Master Card." We are currently trying to ascertain the veracity of

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James F. Slater, III, Commissioner/
FBI CJIS Systems Officer
February 16, 2017
Page 4

that statement. I have been told by my police contacts that the creation of a "Master Card" does not cause an automatic CJIS inquiry. Is that correct?

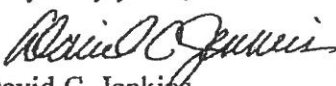
As I stated initially, the consequence of the issuance of your February 8, 2017 report has resulted in the Chief's release of his memorandum. That memorandum states: "With this being said, pursuant to a recently ruling that I received on Wednesday, February 8, 2017, from the Commonwealth of Massachusetts Department of Criminal Justice Information Services (DCJIS), this report unequivocally exonerates all three police officers who were wrongfully accused from any wrongdoing." The statement is inaccurate in that information form which your agency would have concluded that [redacted] was responsible for the Board of Probation inquiry run on September 27, 2016 was withheld from you by the Police Chief.

The purpose of this correspondence is to alert you to the facts above and to request that you reconsider the issuance of your letter of February 8, 2017, and deferring your final decision on this matter until a proper investigation is completed.

The Town remains committed to complying with our legal responsibilities regarding the management of their confidential information.

If you would like to discuss this matter further, please do not hesitate to contact me.

Very truly yours,


David C. Jenkins

DCJ/lem
Enc.
cc: Board of Selectmen
General Counsel
575789/TOWN/0049

Exhibit 2

PRESS RELEASE

FILE

**TOWN OF TOWNSEND, MA
POLICE CHIEF "RESIGNATION"
NOVEMBER 23, 2016**

CONTACT: David Jenkins, Esquire
Townsend Labor Counsel
KP Law
617.654.1761

It is with a great deal of regret that we announce that we have learned through social media that associates of Chief Robert Eaton have announced that the Chief has tendered his resignation as of last evening.

In the short six months that Chief Eaton has been with us he has accomplished many very important initiatives and for that we are grateful.

Over the past week, however, the Chief had been directed by Town Counsel to provide certain information related to an ongoing investigation within the police department regarding unlawful background checks on private civilians being conducted by department personnel. The Chief gathered the requested information but refused to provide it to counsel as directed even after being provided three time extensions.

Just late yesterday afternoon Counsel ordered him to immediately provide the information that he had. The Chief did not do so and then hours later, while meeting with the Board of Selectmen, the Chief removed his badge and hat, placed them on the table and left the room. The Chief has not been in communication with the town since.

The news of the Chief's resignation was posted on social media minutes after he left the town hall and while the Board was still convened and conducting other business.

Counsel is proceeding with the investigation in spite of the fact that the Chief failed to provide the information prior to leaving.

We are working today to assure an appropriate transition of authority.

-----END-----

Exhibit 3

FILE

PRESS RELEASE**"Ongoing Investigation Into Unlawful Access to Confidential Information Related to Private Citizens"****December 27, 2016****Contact: Attorney David Jenkins- KP Law 617.654.1761**

In the matter of the ongoing investigation into police department personnel unlawfully accessing and using confidential and protected background information relating to citizens of Townsend the Board offers the following update:

1. Of four involved employees, to date, two employees have made admissions to serious violation of Townsend Police and Commonwealth of Massachusetts rules and regulations related to their unlawful use of confidential background records of Townsend citizens. These employees have cooperated with the town in this investigation and have received a level of discipline commensurate with their offenses. The town can say no more as these are now personnel matters and part of ongoing investigations.
2. One employee has been placed out on administrative leave pending the conclusion of the investigation.
3. And lastly, one employee, after having first invoked his right to not self-incriminate, has since resigned from the Townsend Police Department. The Board has accepted his resignation conditioned upon his cooperation with ongoing investigations.

All of the above described actions have been supported by unanimous votes of the Board of Selectmen.

-----END-----

Exhibit 4

David C. Jenkins

From: David C. Jenkins
Sent: Tuesday, January 31, 2017 9:47 AM
To: reaton@townsendpd.org
Subject: FW: BOP Investigation
Attachments: Recent Appeals Court Decision; FW: recent cori case

Chief;

Thank you for the response. I want to once again advise you that the Board of selectmen acting under the authority of G.L.c 41 section 23B and Section 3-2 (e) of the Charter of the Town of Townsend directed me to investigate the matter of Board of Probation checks being run by officers under your supervision of a town employee for no legitimate police purpose. The BOS initiated this investigation because of the Departments apparent condonation of the practice.

As As
you are aware we first discussed the subject matter of the potential misuse of Townsend police department computers to conduct unauthorized and unlawful Board of Probation (BOP) checks on Thursday November 17, 2016. At that time you knew that a member of your department had run a BOP check on a town employee and left the results of that run under your door. Rather than dealing with an apparent violation of state regulations you passed the information along to a member of the BOS. During that conversation you initially did not disclose that BOPs were run on a town employee and her partner and after acknowledging that such checks were made you contended that the checks were appropriate. When I advised you that BOP checks that were run for no lawful police purposes you stated that you believed that individual police officers had the right to run BOP checks in order to conduct "background investigations" of the employee. You stated that police officers could run these checks and that "the ends justified the means" because the police officers believed that an inadequate background was conducted by the Town Administrator. I advised you that police officers were not authorized to conduct BOP runs on that basis.

I then advised you that you should double check your understanding of the law with another local chief who may have more experience in these matters. You declined. I then suggested that you consult with the counsel for the Massachusetts Chiefs of Police Association to inquire as to whether police officers had the legal authority to conduct BOP as part of a private background investigation. . You declined.

I have attached to this email a recent decision of the Appeals Court as well as a communication from the Mass Police Chiefs Association which outline the seriousness of the misuse of the CJIS process.

Without repeating the intervening comments made by you during our phone call I advised you the BOS had instructed me to investigate the matter of BOP checks being run on a town employee and her partner. I advised you to have an audit of the runs conducted and I advised you that I needed the audit results by the close of business on the next Friday. That deadline was extended to Monday and then to Tuesday. On Tuesday I receive the an which did not provide the information requested. I then requested that you supplement your report by providing the requested information. I am informed that after your receipt of the second email that you appeared before the BOS placed your hat and badge before them and left. I am informed that your "resignation" was then announced on social media.

In our subsequent telephone conversation I have emphasized to you that this investigation was being conducted by me upon the vote of the BOS.

Since that time I have attempted to comply with the BOS instruction to investigate this matter. I learned through the interview of Officer Rochette that you are apparently conducting a concurrent investigation and that you advised the officer before the investigation that he was to be cleared by your investigation. By this email I am advising you to

discontinue your separate investigation and to immediately turn over to me any information that you have derived from this investigation which has not been previously given to me. You are not to take any further action which could interfere with the investigation being conducted.

It is my hope to bring this matter to a prompt and fair conclusion.

David

David C. Jenkins, Esq.

KP | LAW

101 Arch Street, 11th Floor

Boston, MA 02110

O: (617) 654 1761

F: (617) 654 1735

C: (617) 257 9584

djenkins@k-plaw.com

www.k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and attachments thereto, if any, and destroy any hard copies you may have created and notify me immediately.

From: Robert Eaton [<mailto:REaton@townsendpd.org>]

Sent: Monday, January 30, 2017 2:58 PM

To: David C. Jenkins

Subject: RE: BOP Investigation

The officer's response was truthful.

Robert M. Eaton, Jr.

Chief of Police

Townsend Police Department

70 Brookline Road

Townsend, MA 01469

(978) 597-6214 Ext. 101

(978) 597-1718 Fax



Go Green.
Print only if necessary.

CONFIDENTIALITY NOTICE: This message contains information which may be privileged or confidential, or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or

Exhibit 5



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY

Department of Criminal Justice Information Services

200 Arlington Street, Suite 2200, Chelsea, Massachusetts 02150, MASS.GOV/CJIS
TEL: 617-660-4600 • TTY: 617-660-4606 • FAX: 617-660-4613

Charles D. Baker
Governor

Karen F. Polito
Lieutenant Governor

Daniel Berken
Secretary of Public Safety and Security

James F. Salem III
Commissioner

February 8, 2017

Chief Robert M. Eaton, Jr.
Townsend Police Department
70 Brookline Road
Townsend, MA 01469

Dear Chief Eaton:

Reference is made to your request for a review of Criminal Justice Information System (CJIS) transactions conducted by certain members of the Townsend Police Department between May 1, 2016 and November 17, 2016.

The Department of Criminal Justice Information Services (DCJIS), the state agency responsible for the management and operation of the CJIS, conducted a review of all CJIS transactions conducted by the following four (4) members of the Townsend Police Department:

Sgt. Randy Girard
Officer Jeffrey Giles
Officer Thaddeus Rochette
Dispatcher Erin Considine

All of the transactions were conducted between the dates noted above, inclusive. The CJIS transactions of all other members of the Townsend Police Department for this same time period were also reviewed. Finally, we reviewed the transactions of several of the other police departments surrounding Townsend over the same period.

In addition to the review of transactions obtained from the CJIS audit logs, the DCJIS also reviewed the copy of the investigative reports that you have created to date. These reports included statements from the four employees listed above, as well as notes that you had taken of various interactions with individuals both within and outside your agency. Additionally, we reviewed the follow up information you provided in response to our request for further information. Lastly, we reviewed a copy of your Department's policies and procedures as they relate to the acquisition and dissemination of Criminal Offender Record Information (CORI).

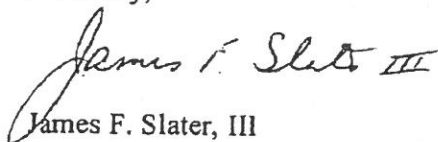
As a result, the DCJIS finds that, with one exception, all of the transactions conducted by the employees identified appear to have been conducted for authorized criminal justice purposes and are in compliance with all DCJIS and FBI policies. The one exception involves the query performed by Dispatcher Considine on 9/27/2016. On that occasion, Ms. Considine noted that she and other Townsend PD employees were watching the proceedings of the local town meeting on television. During that meeting, there was a discussion about Ms. Kelly Merrill being hired as an administrative assistant for the Town Manager. It was at that time that someone at the station (Ms. Considine states that she cannot remember who it was) instructed Dispatcher Considine to run a query on Ms. Merrill, which the Dispatcher did. As part of that query, a search of the Board of Probation files was initiated. The DCJIS finds that this inquiry was initiated for no official criminal justice purpose. Finally, your current CORI Policy includes some outdated information. General Counsel Agapi Koulouris will contact you directly to identify specific areas that require updates.

We would like to point out for the record that the Townsend Police Department utilizes the CJIS Web application on its mobile data computers. The significance of this is that CJIS Web takes full advantage of a feature known as "robo query". In short, this feature takes a single piece of information, such as a license plate number, and generates up to seven separate CJIS transactions automatically. The purpose of this feature is to reduce the time and effort necessary to conduct several individual CJIS transactions which, in turn, increases the safety of both the officer and the public.

In consideration of the improper transaction noted above, I believe it would be in the Department's best interests to undergo refresher CJIS and CORI training. Please contact Mr. Daniel Hutchinson, Supervisor of the CJIS Support Services Unit, to identify a date and time during which DCJIS staff will conduct this training. More than one date can be arranged if that will be more convenient given the coverage needs of your agency, and the training can be conducted either at the Townsend Police Department or in the DCJIS Training Lab in Chelsea. Dan can be reached directly at daniel.hutchinson@state.ma.us or at 617.660.4738.

Should you have any questions about these findings, or if we can be of any further assistance, please do not hesitate to contact me directly via email at james.slater@state.ma.us or via telephone at 617.660.4761.

Sincerely,



James F. Slater, III
Commissioner/ FBI CJIS Systems Officer

Exhibit 6



ROBERT M. EATON, JR.
CHIEF OF POLICE

TOWNSEND POLICE DEPARTMENT

70 BROOKLINE STREET • TOWNSEND, MASSACHUSETTS 01469

TEL. 978-597-2242 FAX 978-597-1718

FILE

MEMORANDUM

To: Townsend Board of Selectmen
James M. Kreidler, Jr. – Town Administrator

From: Robert M. Eaton, Jr. - Chief of Police

Date: Friday, February 10, 2017

Re: DCJIS Investigation

Dear Board of Selectmen and Mr. Kriedler,

I am writing this Memorandum of Record to you today in reference to the DCJIS investigation. This being stated, I would be remiss if I did not conduct my own internal investigation into allegations of misconduct and/or criminal activity by my officers. I am obligated to enforce and comply with Massachusetts General Laws (M.G.L.), Townsend Police Department Internal Policies and Procedures, my job description and contract while serving the Town of Townsend as their Chief of Police and further, to the Commonwealth of Massachusetts as a sworn law enforcement officer.

There have been multiple and unsubstantiated inquiries into the daily operations of the police department both past and present. It is clear that the investigation being conducted by the Town of Townsend Board of Selectmen/Town Administrator is a strategic assassination of the department, the police officers reputations and their character. The ordering of your investigation is a calculated and orchestrated maneuver to disparage and dismantle the entire department. As the Chief of Police, I cannot allow that to happen. It would be considered neglectful towards ethical principles and my integrity. As a chief law enforcement officer, it is my lawful obligation to release credible and factual information that clears anyone from being wrongly accused. With this being said, pursuant to a recent ruling that I received on Wednesday, February 8, 2017, from the Commonwealth of Massachusetts Department of Criminal Justice Information Services (DCJIS), this report unequivocally exonerates all 3 police officers who were wrongfully accused from any wrongdoing. During your investigation, I have fully complied with all requests from David Jenkins Esq. As such, the DCJIS review has been forwarded to Attorney Jenkins as well as my legal counsel

FILE

Based on the facts presented in the DCJIS review, my internal investigation, reports from officers and other pertinent evidence, I am requesting immediate action which is listed below from the Board of Selectmen which shall reinforce the trust and integrity of this department and me as the Chief of Police for the Town of Townsend.

During your investigation, Sergeant Randy Girard was forced to resign under duress as he was subjected to threats of criminal charges, administrative discipline up to and including termination. A leak from your office to the news media resulted in his name and reputation as a 28 year veteran officer and citizen being slandered. Based on the factual evidence presented in the investigation and the DCJIS review clearing Sergeant Randy Girard, he shall be reinstated and made whole by giving him his rank, time in grade and compensated for all time lost.

It is further requested that a public statement be made by you and your office by today, Friday, February 10, 2017 at 5:00PM EST exonerating all 3 Town of Townsend Police Officers and me as the Chief of Police pursuant to the DCJIS and internal investigations. Failure to do so will result in a public statement by me as the Chief of Police in the form of a written press release.



Robert M. Eaton Jr.
Chief of Police

Exhibit 7

PRESS RELEASE

TOWN OF TOWNSEND, MA

POLICE CHIEF

February 10, 2017

CONTACT: David Jenkins, Esquire
Townsend Labor Counsel
KP Law
617.654.1761

The Town of Townsend announced this evening that it has placed Police Chief Robert E. Eaton on administrative leave with pay pending completion of an investigation into the improper use of the CJIS computer system by members of the police department. The board ordered an investigation into this matter in November when it learned that records containing criminal history of two individuals who were not under police investigation were delivered to the police chief. The records on their face showed that the CJIS system had not been used for a proper police purpose, a determination that has since been confirmed by the state administrators of the CJIS system.

Rather than investigate the improper use of the CJIS system the Chief initially condoned the improper use of the system. The initial response of the chief was to not disclose that BOPs were run on the two individuals and after acknowledging that such checks were made the Chief contended that the checks were appropriate.

When the Chief was advised that BOP checks were run for no lawful police purposes the Chief stated that he believed that individual police officers had the right to run BOP checks in order to conduct "background investigations" of the individuals. The Chief stated that police officers could run these checks and that "the ends justified the means" because the police officers believed that an inadequate background was conducted by the Town Administrator. The Chief was advised that police officers were not authorized to conduct BOP runs on that basis and was counselled to seek independent legal advice regarding the proper function of the CJIS system. He declined that advice.

After November 27, 2016 the Police Chief was told orally and in writing that the investigation was under the jurisdiction of Town Counsel and that he should take no action in the matter.

On January 31, 2017 the Chief was advised by town counsel : " By this email I am advising you to discontinue your separate investigation and to immediately turn over to me any information that

FILE

you have derived from this investigation which has not been preciously given to me. You are not to take any further action which could interfere with the investigation being conducted."

On February 9, 2017 the Chief was advised by Town Counsel: "I want to emphasize that this investigation is ongoing and until it is completed all the documents associated with this matter continue to be confidential. Neither the CJIS report nor the substance of the report should be released to anyone at his point in time. You should not take any action in connection with the investigation.

The Chief is scheduled to provide a recorded interview under oath to Town Counsel on February 15, 2017 regarding his knowledge of and/or participation in department response to the misuse of the CJIS system. On February 10 the Chief in disregard of the instructions to him released the results of an incomplete, erroneous and unauthorized investigation in contradiction of the direct orders he had received and as a result has been placed on administrative leave.

The town will proceed with the interview of the chief as scheduled and will bring this matter to a conclusion.

-----END-----

Exhibit 8



Office of the
BOARD OF SELECTMEN
272 Main Street
Townsend, Massachusetts 01469

Gordon Clark, Chairman

Cindy King, Vice-Chairman

Carolyn Smart, Clerk

Office (978) 597-1701
Fax (978) 597-1719

April 6, 2017

BY EMAIL, CERTIFIED MAIL, FIRST CLASS MAIL and CONSTABLE

Chief Robert Eaton
70 Brookline Street
Townsend, MA

Re: Notice of Disciplinary Hearing Opportunity

Dear Chief Eaton:

Please accept this correspondence as notice pursuant to the provisions of Section 15 of the contract between you and the Town of the intention of the Board of Selectmen to impose discipline up to and including termination upon you. Pursuant to the contract you have ten (10) business days to request a hearing on this matter. If you so advise we have scheduled April 21, 2017 for such a hearing.

As grounds for this action the Board asserts that:

1. Between October 27, 2016 and February 10, 2017, inclusive, you exhibited a failure to administer and manage the Police Department in an efficient and responsible manner and you exhibited a failure after written warning to carry out the duties and responsibilities of Chief-
 - i. You unlawfully disseminated confidential and protected CJIS information outside of law enforcement and in violation of CJIS rules and regulation, and
 - ii. You failed to address the improper use of CJIS information in your department and in fact you failed to recognize that the actions of your staff, and you yourself, were matters of concern at all, and

- iii. You were insubordinate to the Board of Selectmen in having continued an investigation after having been ordered to discontinue your involvement, and
- iv. You were insubordinate in your dealings with town counsel in withholding witness statements taken during your investigation, and
- v. You were insubordinate to the Board of Selectmen in having issued an unprofessional and wholly inappropriate ultimatum that the Board take a certain action within a two hour period of time, and
- vi. You were untruthful and incomplete in the information you shared with CJIS related to the unlawful access and dissemination of confidential and protected CJIS information in your efforts at eliciting a response from them, and
- vii. You were untruthful in your disseminated press release related to the investigation of the unlawful access and dissemination of confidential and protected CJIS information wherein you mischaracterized CJIS's findings and wherein you erroneously asserted that you had fully complied with all requests from town counsel, and
- viii. You continued an investigation after having been ordered to discontinue your involvement.

If proven, the above actions constitute just cause for the imposition of discipline pursuant to the terms of your employment agreement with the town.

If proven, the actions above may constitute violations of the following department rules and regulations and/or policies and procedures:

4.0 - PROFESSIONAL CONDUCT AND RESPONSIBILITIES

The police are the most visible and most readily accessible representatives of local government. They respond to calls for assistance of a diversified nature and are expected to resolve a wide variety of community problems as they occur. Police officers are professionals, and, as such, are expected to maintain exceptionally high standards in the performance of their duty while conducting themselves at all times, both on and off duty, in such a manner as to reflect favorably upon themselves and the department.

5.0 - NEGLECT OF DUTY

Officers are required to be attentive to and not neglect their sworn duty. Officers must not absent themselves from their assigned duty without leave. They must not leave their post or assignment without being properly relieved; likewise, they must take suitable and appropriate police action when any crime, public disorder or other incident requires police attention or service. Examples of neglect of duty include but are not limited to: failure to take appropriate action on the occasion of a crime, medical emergency, public disorder or other act or condition deserving attention; failure to render medical assistance consistent with one's training; absence without leave; failure to report to duty at the time and place designated; unnecessary absence from one's assignment during a tour of duty; failure to

perform duties or comply with any job description, rule or regulation, general, special or other order; or failure to conform to department policies and procedures.

RULE 6.1 – INCOMPETENCE

Officers shall maintain sufficient competency to perform their duty and to assume the responsibilities of their position. Incompetence may be demonstrated by, but is not limited to, the following:

- a. a lack of knowledge of the application of laws required to be enforced;
- b. an unwillingness or inability to perform assigned tasks;
- c. the failure to conform to work standards established for the officer's rank, grade, or position;
- d. repeated poor evaluations or repeated infractions of the rules and regulations, job descriptions, or policies and procedures.

RULE 7.5 – DISSEMINATION OF OFFICIAL INFORMATION

Officers shall treat as confidential that information which is confided to them personally in the course of their official duties. They shall disclose such information only as required in the proper performance of their duties.

Officers shall neither disclose nor use for their personal interest any confidential information acquired by them in the course of their official duties. Officers shall treat as confidential all matters relating to investigations, internal affairs, and personnel. Officers shall treat the official business of the police department as confidential and shall conform to the following guidelines:

- a. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established departmental procedures.

RULE 7.7 – TRUTHFULNESS

Officers shall speak the truth at all times when on duty or when discussing a matter arising out of or related to the officers duties or the operation, organization or business of the department

RULE 10.10 – COOPERATION WITH INVESTIGATIONS

Officers shall answer questions truthfully, respond to lawful orders, and render material and relevant statements, in an internal department investigation when such orders, questions and statements are directly related to job responsibilities or fitness for duty.

13.0 – REPORTS

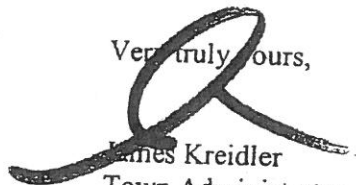
Officers are required to promptly and accurately complete all required reports and forms. Failure to complete a required report or falsification of a police report or record, by submitting false written or oral information, may result in disciplinary action against the officer. Police reports and records include such things as

affidavits, incident reports, time sheets, condition of the officer's health, doctor's slips, IAD investigation reports, and citations. Report filing requirements are an essential duty of a police officer. Additionally, credibility is an essential characteristic of every officer, due to the nature of police work where public interaction and testimony at judicial proceedings are required.

RULE 13.2 – FALSIFYING RECORDS

Officers shall not knowingly enter or cause to be entered upon a police report or police record any inaccurate, false or improper information.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'James Kreidler', is written over the printed name.

James Kreidler
Town Administrator
Per Vote of the Board of Selectmen

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Kelly Merrill and Adam Cotty

DEFENDANTS

Town of Townsend, Chief Robert M. Eaton, in his official and individual capacity, and Sergeant Randy Girard, in his official and individual capacity.

(b) County of Residence of First Listed Plaintiff Middlesex
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Middlesex
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Timothy M. Burke, Law Offices of Timothy M. Burke
160 Gould Street, Suite 100, Needham, MA 02494
(781) 455-0707

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. § 1331 and 42 U.S.C. § 1983

Brief description of cause:

Illegal access to and dissemination of CORI and CJIS information

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
500,000.00

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
06/07/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Kelly Merrill v. Town of Townsend

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 110, 130, 140, 160, 190, 196, 230, 240, 290, 320, 362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.
- ☐ III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☒ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

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