

**IN THE SUPREME COURT OF OHIO**

**THE STATE OF OHIO EX REL.**

**MARY JANE HORTON,**  
5750 Chestnut Road  
Independence, OH 44131

*Relator,*

v.

**MICHAEL KILBANE**  
6800 Brecksville Road  
Independence, OH 44131

and

**CITY OF INDEPENDENCE**  
6800 Brecksville Road  
Independence, OH 44131

*Respondents.*

**VERIFIED PETITION FOR WRIT OF MANDAMUS**

Relator Mary Jane Horton alleges as follows:

**PARTIES**

1. Relator Mary Jane Horton resides in the City of Independence.
2. Respondent Michael Kilbane is the police chief of the City of Independence and a “person responsible” for the police department’s records within the meaning of Ohio Public Records Act, R.C. 149.43 (“the Act”).
3. Respondent City of Independence is a political subdivision of the State of Ohio located in Cuyahoga County and a “public office” within the meaning of the Act and as that term is defined by R.C. 149.011(A).
4. As the person and public office responsible for the public records that they hold, Respondents are obligated under the Act to promptly prepare such records and make them available for inspection and copying upon request under R.C. 149.43(B).

## JURISDICTION & VENUE

5. This Court has jurisdiction based on Section 2 of Article IV, Ohio Constitution, which establishes original jurisdiction over petitions for writs of mandamus; Supreme Court Rule 17, which governs original actions in the Ohio Supreme Court; R.C. 2731.02, *et seq.*, which are the code sections governing mandamus actions; and R.C. 149.43, which is the statute establishing the public's right to public documents.

6. Venue is appropriate in this Court under R.C. 2731.02 and R.C. 149.43(C).

## FACTS

7. Relator is an engaged and concerned citizen and voter who has been active in her community for many years. She follows civic affairs and attends meeting of her local government. She is interested in doing her part to ensure that her community is operating within the law and that her local public officials are making good decisions. She does her best to stay informed about what the City of Independence is doing. See Affidavit of Mary Jane Horton at ¶ 2 (attached to this complaint as Ex. 1).

8. On January 14, 2019, Relator watched a local news broadcast about the City of Independence imposing a traffic-ticket quota on its police officers. *Id.* at ¶ 3 and Affidavit Ex. A (Fox 8 news story).

9. According to the news broadcast, the City was requiring its officers to “meet or exceed 10 traffic citations/month” and to complete “at least 2–3 traffic enforcement actions per shift.” There were documents displayed on the screen during the report that quoted this specific language. *Id.* at ¶ 4.

10. Also during the broadcast, the reporter referenced—but did not display—a written warning given to a police officer who did not write enough tickets. *Id.* at ¶ 5.

11. The written story (attached as Affidavit Ex. A) also reported that the officer given the warning had filed a grievance. *Id.* at ¶ 6.

12. On January 16, 2019, Relator electronically submitted a public-records request to the police department's Office Coordinator Mary Cox at [cox@independenceohio.org](mailto:cox@independenceohio.org).

Relator asked for the following records:

- 1) The police memo that shows a "...Productivity Standard...Patrol Officers shall meet or exceed 10 traffic citations/month."
- 2) The memo that refers to "...at least 2-3 traffic enforcement actions per shift." Those can include warnings or crash investigation and more, not just tickets.
- 3) A copy of the written warning given to the police officer who did not write enough tickets.
- 4) A copy of the grievance that was filed by the police officer in this case.

*Id.* at ¶ 7, Affidavit Ex. B (Relator's public-records request).

13. On January 17, 2019, Respondent Kilbane responded to Relator's emailed request with the following message:

Mrs. Horton:

In response to your records request:

- Item 1: email from Lt. Mazzola to the patrol officers regarding performance standards
- Item 2: We have no records responsive to this request. If you have a specific date, sender, receiver, or any other identifying information to more specifically identify the record we can attempt to locate it
- Item 3: Written reprimand for failure to adhere to performance standards
- Item 4: We have no records responsive to this request. Per the terms of the collective bargaining agreement the grievance was denied by the Chief and returned to the union. The union subsequently withdrew their grievance and it is in the possession of the union, not the city. The union is not a public entity and as such they are not required to release any of their records to the public.

There are a total of three pages in response to your records request and you may obtain copie[s] from the police department records division Monday through Friday between 8:00 A.M. and 4:00 P.M. at a cost of ten cents per page.

*Id.* at ¶ 8, Affidavit Ex. C (Kilbane response to public-records request).

14. Relator went to the police department and paid \$.30 for the three copies. *Id.* at ¶ 9, Affidavit Ex. D (receipt for three copies).
15. Respondents provided three pages of responsive records. *Id.* at ¶ 9, Affidavit Ex. E (documents provided in response to public-records request).
16. Two of the pages Respondents provided were an email dated September 25, 2018 from Leonard Mazzola to “Police” and “Dispatchers” copied to “Data Entry” with the subject line “Performance Standard.” It provided that, effective October 1, 2018, patrol officers would have to “meet or exceed 10 traffic citations/month.” It further provided that performance would be tracked on a quarterly basis beginning with the October–December 2018 time frame. *Id.*
17. The remaining page of the Respondents’ three-page public-records response was a January 7, 2019 memo to Ptl. Brian Dalton from Lt. Len Mazzola copied to Chief Michael Kilbane with the subject line “Performance Standard 10/01/18–12/31/18.” It provides as follows:

Ptl. Dalton,

I have completed calculating the numbers for the 10/01/18–12/31/18 Performance Standard reporting period. During this period you wrote 20 citations. The Performance Standard outlined via email delivered to all Patrol, stated that each officer would be responsible to have a minimum of 10 citations per month, thus a total of 30 for each quarterly reporting period.

You have failed to comply with this directive issued. Per Chief Kilbane, this letter serves as a written reprimand to document this situation. Failure to meet acceptable Performance Standard numbers going forward will result in progressively more severe discipline. All other members of the Patrol division have met the Performance Standard for this reporting period.

*Id.*

18. Of the four public records that Relator requested on January 16, 2019, Respondents produced only one in its complete and accurate form. *Id.*

19. Respondents did not provide Relator with the full written reprimand to Ptl. Dalton. The actual written reprimand to Ptl. Dalton (Item 3) was altered before it was provided to Relator. In the altered version Respondent Kilbane provided to Relator, a significant portion of text is missing from the middle of the page, including where Ptl. Dalton wrote “REFUSED NO JUST CAUSE!” I HAVE [sic] THREATENED AND AM SIGNING THIS UNDER DURESS!” There is also typewritten language missing asking Dalton to sign the document to acknowledge receipt, the line for him to do so, and the typed signature of the author. *Id.* at ¶ 10.

20. The Act requires that, for any redaction or denial, the person responsible for the record must provide written legal authority. Not only did Respondent Kilbane did not provide written legal authority for the redaction, he failed to even inform Relator that he was providing an altered or redacted version of the write up. *Id.* at ¶¶ 10–11.

21. There is no exemption under the Act that would justify withholding any portion of the January 7, 2019 Dalton write up.

22. Regarding Item 2 in Relator’s January 16, 2019 request— for a document that referenced officers having to complete “...at least 2–3 traffic enforcement actions per shift”—Respondent Kilbane falsely asserted that there were no such records. That document exists and Respondent Kilbane received a copy on August 8, 2018. *Id.* at ¶ 10.

23. As for Item 4, Respondent Kilbane admitted that Ptl. Dalton filed a grievance, and that Respondent Kilbane took action on it by denying it. Those facts make the document a public record because it documents the activities of the public office. Once a document is a public record, it remains a public record. Respondent Kilbane provided no written legal authority for his contention that Ptl. Dalton’s grievance was no longer a public record because he withdrew it. *Id.* at ¶¶ 10, 12.

24. Respondents have failed to comply with their obligations under the Act in responding to the second, third, and fourth requests Relator submitted on January 16, 2019.

#### **VIOLATIONS OF THE OHIO PUBLIC RECORDS ACT**

25. Under R.C. 149.43(B)(1), a public office or person responsible for public records shall make copies of requested public records available to the requester within a reasonable period of time.

26. Relator requested copies of four records. Respondents provided only one of those four records in its complete form. Respondents did not otherwise meet their obligation to provide records within a reasonable period of time. Instead, Respondents did the following:

- a. affirmatively denied that one of the records existed—the record citing “2–3 enforcement actions per shift”—when it does exist;
- b. produced an altered version of another—the written reprimand—without informing the Relator of the redaction or any legal authority for the redaction; and
- c. pretended that a third record—the union grievance—was no longer a public record, citing no authority to support that contention.

No reasonable public official would do any of those things.

27. A well-informed public official would not reasonably believe that falsely denying the existence of public records was well-founded or consistent with public policy.

28. A well-informed public official would not reasonably believe that secretly redacting a public record was well-founded or consistent with public policy.

29. A well-informed public official would not reasonably believe that claiming that giving a public record to a non-public entity made it no longer a public record was well-founded or consistent with public policy.

30. The City's own written policy regarding public records guarantees that "[i]f information has been redacted the requestor will be able to determine all of the places where information was redacted." The City of Independence Personnel Policy Manual, Public Records Policy, Section 1.6(D)(3). Respondent Kilbane's response to Relator's public-records request violated not only Ohio law but also the City's own policies and procedures regarding providing public records.

31. 419 days have passed between Relator's request and the date of this petition.

32. 419 days is not a reasonable delay to provide records.

33. A writ of mandamus would serve the public interest. And the public benefit of exposing corruption and malfeasance in local government far outweighs any personal benefit to Relator, who is simply a concerned citizen committed to ensuring that her government operates openly and with integrity.

34. If this Court finds that its decision process would be aided by oral argument, or finds itself hesitant to grant the relief requested, Relator respectfully requests such argument to address any of the Court's concerns.

#### **PRAYER FOR RELIEF**

Relator therefore requests that the Court:

- Issue a peremptory writ of mandamus directing Respondents to make responsive public records available promptly and without improper redactions;
- Award statutory damages, attorneys' fees, and costs; and
- Order any other relief available under R.C. 149.43 or R.C. 2731.01 *et seq.*, and any other relief as is appropriate.

Dated: March 9, 2020

Respectfully submitted,

THE CHANDRA LAW FIRM LLC

/s/ Ashlie Case Sletvold

Ashlie Case Sletvold (Ohio Bar No. 0079477)

Subodh Chandra (Ohio Bar No. 0069233)

Brian Bardwell (Ohio Bar No. 0098423)

The Chandra Law Building

1265 West 6th Street, Suite 400

Cleveland, Ohio 44113

Phone: (216) 578-1700

Fax: (216) 578-1800

Ashlie.Sletvold@ChandraLaw.com

Subodh.Chandra@ChandraLaw.com

Brian.Bardwell@ChandraLaw.com

*Attorneys for Relator Mary Jane Horton*

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<p>AFFIDAVIT OF MARY JANE HORTON</p>	

I, Mary Jane Horton, having been duly sworn, state as follows:

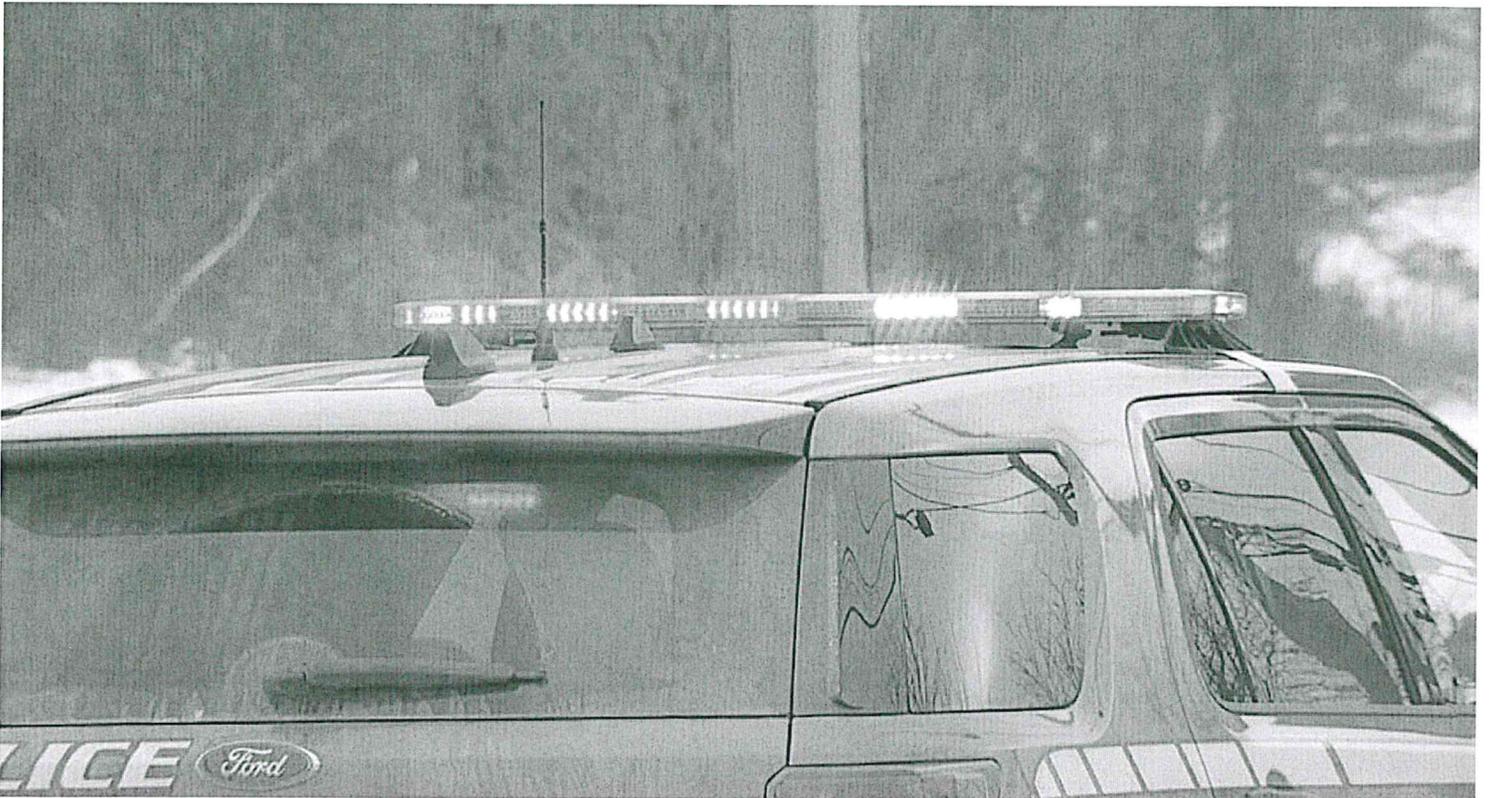
1. I am over the age of 18 and competent to testify to the facts below based on personal knowledge.
2. I am an engaged and concerned citizen and voter who has been active in my community for many years. I follow civic affairs and attend meetings of local government. I am interested in doing my part to ensure that my community is operating within the law and that my local public officials are making good decisions. I do my best to stay informed about what the City of Independence is doing.
3. On January 14, 2019, I watched a local news broadcast about the City of Independence imposing a traffic-ticket quota on its police officers. An authentic copy of the online version of the story is attached as Exhibit A. The video of the story is not available for download but is available at this link: <https://fox8.com/news/i-team-counting-traffic-tickets-in-busy-northeast-ohio-suburb/> (last visited Mar. 6, 2020).
4. According to the news broadcast, the City was requiring its officers to “meet or exceed 10 traffic citations/month” and to complete “at least 2–3 traffic enforcement actions per shift.” There were documents displayed on the screen during the report that quoted this specific language.
5. Also during the broadcast, the reporter referenced—but did not display—a written warning given to a police officer who did not write enough tickets.
6. The written story also reported that the officer given the warning had filed a grievance.
7. On January 16, 2019, I electronically submitted a public-records request to Mary Cox at [cox@independenceohio.org](mailto:cox@independenceohio.org). Ms. Cox is the Office Coordinator for the police department. An authentic copy of my emailed public-records request is attached as Exhibit B.
8. On January 17, 2019, Police Chief Michael Kilbane responded to my emailed request. An authentic copy of his email is attached as Exhibit C.



WATCH NOW / FOX 8 News in The Morning

NEWS

## I-Team: Counting traffic tickets in busy Northeast Ohio suburb



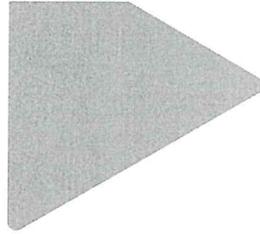
by: Ed Gallek

Posted: Jan 14, 2019 / 06:33 PM EST / Updated: Jan 14, 2019 / 06:33 PM EST

*This is an archived article and the information in the article may be outdated. Please look at the time stamp on the story to see when it was last updated.*

### I-Team: Are some officers pressured to wri...





INDEPENDENCE, Ohio - The FOX 8 I-Team is investigating if some police officers are feeling pressured to write more traffic tickets in a suburb many of you pass through every day.

We're asking questions about what we found in Independence.

A police memo shows a "...Productivity Standard...Patrol Officers shall meet or exceed 10 traffic citations/month."

Another memo refers to "...at least 2-3 traffic enforcement actions per shift." Those can include warnings or crash investigation and more, not just tickets.

Drivers such as Yolanda Hamilton reacted, saying, "It is troublesome because then it puts pressure on the officers that they feel obligated that they have to pull people over."

The I-Team went to Independence Police Chief Michael Kilbane. He argues, officers do not face random quotas. He says more traffic enforcement means more safety, and he wants patrol officers held to an equal standard.

We asked about one officer given a written warning.

Chief Kilbane said, "For not performing to the standards that we expect of our officers. It means all of the other officers are carrying an unfair share of the burden.

So, what led to this? The I-Team has learned talk about it began in the police department months ago. Documents show the chief said he had been questioned by the mayor about why the number of traffic tickets had gone down by hundreds.

We also asked the chief, if the mayor is saying numbers are down, and you're telling officers to step it up, is that more about safety or numbers? He responded, "If you pick that number and cherry-pick 'em, you can make that argument."

Maclane Nugent, another driver, said, "I don't think there should be quota for something like that."

The Independence mayor did not return a message.

We've learned the officer given a warning has filed a grievance, an appeal. We've requested a copy of that, and we're watching to see how that gets handled.

However you see the ticket totals, maybe it's best to take the approach of another driver we met, Elizabeth Martin. She said, "So as long as you're driving carefully, it should be no problem."

From: **Mary Jane Horton** <[maryjane.horton@gmail.com](mailto:maryjane.horton@gmail.com)>  
Date: Wed, Jan 16, 2019 at 10:43 AM  
Subject: Records request - Traffic Ticket Quota  
To: Mary Cox <[cox@independenceohio.org](mailto:cox@independenceohio.org)>

Dear Ms. Cox,

I am making a records request for the following items referenced in the 1/14/19 new article from Fox 8 news and online. I have included the print article below that gave rise to my request.

Please send these to me electronically or advise via email when ready for pick up.

Thank you in advance for your help.

Mary Jane Horton  
5750 Chestnut Road

1) The police memo that shows a “...Productivity Standard...Patrol Officers shall meet or exceed 10 traffic citations/month.”

2) The memo that refers to “...at least 2-3 traffic enforcement actions per shift.” Those can include warnings or crash investigation and more, not just tickets.

3) A copy of the written warning given to the police officer who did not write enough tickets.

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We asked about one officer given a written warning.

Chief Kilbane said, "For not performing to the standards that we expect of our officers. It means all of the other officers are carrying an unfair share of the burden. You're getting paid to do a job. It's reasonable to expect a certain performance level for that pay.'

So, what led to this? The I-Team has learned talk about it began in the police department months ago. Documents show the chief said he had been questioned by the mayor about why the number of traffic tickets had gone down by hundreds.

We also asked the chief, if the mayor is saying numbers are down, and you're telling officers to step it up, is that more about safety or numbers? He responded, "If you pick that number and cherry-pick 'em, you can make that argument."

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The Independence mayor did not return a message.

We've learned the officer given a warning has filed a grievance, an appeal. We've requested a copy of that, and we're watching to see how that gets handled.

However you see the ticket totals, maybe it's best to take the approach of another driver we met, Elizabeth Martin. She said, "So as long as you're driving carefully, it should be no problem."

From: **Michael Kilbane** <[kilbanem@independenceohio.org](mailto:kilbanem@independenceohio.org)>  
Date: Thu, Jan 17, 2019 at 9:19 AM  
Subject: records request  
To: [maryjane.horton@gmail.com](mailto:maryjane.horton@gmail.com) <[maryjane.horton@gmail.com](mailto:maryjane.horton@gmail.com)>

Mrs. Horton:

In response to your records request:

- Item 1: email from Lt. Mazzola to the patrol officers regarding performance standards
- Item 2: We have no records responsive to this request. If you have a specific date, sender, receiver or any other identifying information to more specifically identify a record we can attempt to locate it.
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There are a total of three pages in response to your records request and you may obtain copied from the police department records division Monday through Friday between 8:00 A.M. and 4:00 P.M. at a cost of ten cents per page.

Chief Kilbane





CITY OF INDEPENDENCE, OHIO  
POLICE DEPARTMENT  
6800 Brecksville Road  
Independence, Ohio 44131

23077

DATE 30<sup>th</sup>

RECEIVED FROM Mary Jane Herbert

thirty cents Dollars \$ 30<sup>¢</sup>

CASH   
CHECK

No. \_\_\_\_\_

INDEPENDENCE POLICE DEPARTMENT

[Signature]

EXHIBIT  
D

# City of Independence, Ohio

"THE HEART OF CUYAHOGA COUNTY"

6800 BRECKSVILLE ROAD

INDEPENDENCE, OHIO 44131

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## Police Department

(216) 524-1234

FAX (216) 328-0110

**To:** Ptl. Brian Dalton  
**From:** Lt. Len Mazzola  
**CC:** Chief Michael Kilbane  
**Date:** 01/07/2019  
**Re:** Performance Standard 10/01/18-12/31/18

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Ptl. Dalton,

I have completed calculating the numbers for the 10/01/18-12/31/18 Performance Standard reporting period. During this period you wrote 20 citations. The Performance Standard outlined via email delivered to all Patrol, stated that each officer would be responsible to have a minimum of 10 citations per month, thus a total of 30 for each quarterly reporting period.

You have failed to comply with this directive issued. Per Chief Kilbane, this letter serves as a written reprimand to document the situation. Failure to meet acceptable Performance Standard numbers going forward will result in progressively more severe discipline. All other members of the Patrol division have met the Performance Standard for this reporting period.



## Michael Kilbane

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**From:** Leonard Mazzola  
**Sent:** Tuesday, September 25, 2018 04:11 PM  
**To:** Police; Dispatchers  
**Cc:** Data Entry  
**Subject:** Performance Standard

COPY

Patrol,

Effective 10/01/2018,

Over the last month, I have had multiple conversations with Chief Kilbane, concerning Patrol Productivity, discussed at length was traffic citations totals.

After much discussion, it has been decided by the Chief of Police, that I now implement, monitor and manage a Performance Standard for all the officers in the Patrol Division. This Performance Standard will include everything from effective policing to performance and productivity.

The Patrol Sergeants will have a significant role in monitoring their individual shifts' compliance with the Performance Standard.

Chief Kilbane has set a minimum Performance Standard of approximately 3000 traffic citations/year for Patrol as a whole, this figure includes Overtime Traffic Details. To obtain this goal, approximately 2000 tickets need to be written on shift, and approximately 1000 tickets need to be written on Overtime Traffic Details.

We have a total of 18 Full Time Patrolman in our Patrol Division, Monthly breakdown is  $2000/18/12 = 9.26$ ;

To meet this Productivity Standard, Patrol Officers shall meet or exceed 10 traffic citations/month.

This Productivity Standard is independent of time off, special assignment, and OIC assignment.

To ensure this Performance Standard is met, I will be running quarterly reports on officers to ensure compliance, this way an officer with extended time off or assignment will have sufficient time to meet the Productivity Standard without unreasonable demand. The first reporting period will be the last quarter of 2018, Oct18-Dec18.

It is also understood that each Patrol Shift is different in the amount and types of traffic they may encounter daily and that your first responsibility is to protect and serve the public; however this does include traffic enforcement. We will not in any way reduce our level of service, professionalism, or officer safety to meet our Performance Standard.

Please keep in mind that the Performance Standard set by the Chief is not unattainable and can be met.

I have been directed to report any Officer failing to meet their Performance Standard to their Sergeant & Chief Kilbane.

This is a new procedure for us, so no doubt there will be items to work out, I understand, and will do the best I can to operate Patrol as efficiently as possible.

With our transition to Chagrin Valley Dispatch, Officers **MUST log into Sundance on vehicle computers! Dispatchers & Sergeants need to coordinate info to ensure ALL officers are logged in!**

Officers failing to comply with this computer procedure will be subject to discipline. This email will be considered and reviewed in any discipline process. If your computer is not functioning, please report the problem to IT and/or Lt. Kroeger immediately.

Officers assigned to camera cars **MUST use cameras within accordance to our policy!** Officers failing to comply with this camera procedure will be subject to discipline. This email will be considered and reviewed in any discipline process. If your camera is not functioning, please report the problem to Ptl. Pacl and/or Lt. Kroeger immediately.

Lt. Mazzola

Patrol Commander

COPY