IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Christopher Knecht, Plaintiff, vs. City of Cincinnati, Ohio, Defendant.	Case No. 1:12-CV-763 **Hon. Timothy Black** **Magistrate Stephanie Bowman**

MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT AND MEMORANDUM IN SUPPORT

TABLE OF CONTENTS[1]

Table of Contents

[1] *S.D. Ohio Civ. R 7.2 (a) (3).* Plaintiff is proceeding *pro se*, without the assistance of counsel, and can only argue from that perspective.

Table of Authorities
Cases

Statutes

Other Authorities

Come now the *pro se* Plaintiff, who moves the Court, pursuant to Rule 56, Federal Rules of Civil Procedure, to enter partial summary judgment against the Defendant. Specifically, Plaintiff seeks an order holding Defendant liable for its deliberate indifference to Plaintiff's procedural and substantive due process rights due to Defendant's custom and lack of policy with respect to 28 CFR § 20.20 *et seq*., as it was the moving force thereof.

MEMORANDUM

I. Introduction

On January 12, 1987, Plaintiff was arrested by the City of Forest Park, Ohio, Police Department ("*CFPD*"), and charged with two aggravated burglary and two felony theft offenses[2] after having admitted those crimes.[3] A plea deal was struck in early March, 1987, whereas Plaintiff would plead guilty to one count of aggravated burglary and one count of felony theft in exchange for the dismissal of the remaining aggravated burglary and felony theft counts, with Plaintiff being sentenced to five (5) years' conditional probation on or about March 31, 1987.[4]

In September, 1987, Plaintiff was found to have violated the terms of probation and a reduced suspended sentence was imposed upon him,[5] ultimately resulting in Plaintiff spending roughly 12 years in prison until his release on March 4, 1999.[6] Upon release, Plaintiff was required to report to the then Defendant Bureau of Identification (now called the Criminal

[2] *Doc. 82-1 at Exhibits S-11 through 14*
[3] *Pltf's Ex. A-6*
[4] *Pltf's Ex. A-7*
[5] *Pltf's Ex. A-8*
[6] *Knecht Affidavit, at ¶ 3*

Investigations Section of the Defendant's Police Department) to register as a convicted person on March 15, 1999.[7]

In October, 2003, Plaintiff successfully completed parole and was released from all judicial supervision.[8]

In June of 2012, Plaintiff was in the process of securing a criminal background check from the Hamilton County, Ohio, Sheriff's Office ("*HCSO*"), for use with his application to the Ohio Adult Parole Authority seeking a recommendation to the Ohio Governor for a pardon or clemency for his two felony convictions from 1987,[9] when he discovered that the criminal record ("*Blue Sheet*"[10]) indicated that he had been convicted of three felony offenses with one indicating that he had inflicted harm during the course of that felony offense.[11] Plaintiff has only been convicted of two felony offenses,[12] and noted that Defendant's Regional Crime Information Center ("*RCIC*") produced that Blue Sheet, leading Plaintiff to make an inquiry therewith.

Plaintiff emailed Defendant's Enterprise Technology Solutions ("*ETS,*" formerly known as the Regional Computer Center ("*RCC*")) on June 6, 2012, demanding that the inaccurate entry be removed.[13] Plaintiff never received a response to his email, so he called ETS and spoke with an individual who indicated a new Blue Sheet[14] was available at the HCSO free of charge upon Plaintiff returning the first Blue Sheet.[15] During this point of time, the inaccuracy contained on

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[7] *Id. at ¶ 4*
[8] *Pltf's Ex. A-9*
[9] *Knecht Affidavit, at ¶ 5*
[10] *Pltf's Exhibit A-1*
[11] *Id.*
[12] *Pltf's Ex. A-7*
[13] *Pltf's Ex. A-10*
[14] *Pltf's Ex. A-11*
[15] *Knecht Affidavit, at ¶6*

the first Blue Sheet triggered an epiphany within the Plaintiff as it related to past events in his life regarding employment, housing, social service assistance, and police interaction.[16]

Plaintiff eventually obtained the second Blue Sheet[17] which now indicated that Plaintiff had only been convicted of two felony offenses, with the name and logo of Defendant's RCIC division removed.[18] Plaintiff promptly brought this 42 U.S.C. § 1983 action.[19]

II. Statement of Facts

A. Criminal Justice Information Systems ("*CJIS*"); codified under 28 C.F.R. § 20.20 et seq., imposes a duty upon the Defendant to maintain accurate records.

CJIS systems are regulated by the Code of Federal Regulations ("*CFR*") under title 28 thereof, consisting of the rules and regulations issued by the United States Department of Justice regarding Judicial Administration, with the purpose of CJIS regulations "to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the accuracy, completeness, currency, integrity, and security of such information and to protect individual privacy,"[20] with the authority to issue those regulations, pursuant to "sections 501 and 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Public Law 93-83, 87 Stat. 197, 42 U.S.C. 3701, et seq. (Act), 28 U.S.C. 534, and Public Law 92-544, 86 Stat. 1115."[21]

28 C.F.R. § 20.20 (a) indicates that the regulations therein are applicable "to all State and local agencies and individuals collecting, storing, or disseminating criminal history record information processed by manual or automated operations where such collection, storage, or

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[16] *Id. at ¶ 7*
[17] *Pltf's Ex. A-11*
[18] *Id.*
[19] *See also, (Docs 4, 14)*
[20] *28 CFR § 20.1*
[21] *28 CFR § 20.2*

dissemination has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration subsequent to July 1, 1973, pursuant to title I of the Act." *Cf., Pruett v. Levi*, 622 F.2d 256, 257 (6th Cir. 1980).

Defendant applied for an OLEA Grant on or about December 21, 1966, and was awarded an Operational Development grant (#167), in or about March, 1967, which consisted in part of the "[d]evelopment of computer-based regional law enforcement information system (hardware and software) to integrate and serve information handling requirements of police, prosecution, and court agencies in Hamilton County and environs."[22] That Grant was extended under OLEA Grant #321, awarded in or about July, 1968, consisting of "[i]mplementation support for computer-based regional information system serving law enforcement agencies in Hamilton Cy. and environs – to involve installation of 'real time' files, officer activity analysis, and crime reporting capabilities."[23]

Defendant's 1993 CLEAR Manual[24] reflects such funding request and approval.

Defendant's response to Plaintiff's requests for admissions,[25] recently attached to his Memo Contra Defendant's Motion for Summary Judgment acknowledges that "28 C.F.R. 20.21(a)(2) places the onus on 'criminal justice agencies to institute a process of data collection, entry, storage, and systematic audit that will minimize the possibility of recording and storing inaccurate information and upon finding inaccurate information of a material nature, shall notify all criminal justice agencies known to have received such information,'" and that "Defendant's RCIC is a criminal justice agency, . . ."

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[22] *LEAA GRANTS AND CONTRACTS FISCAL 1966-1968, United States Office of Justice Programs, NCJ # 000360, pg. 36.*
[23] *Id.*
[24] *Doc. 79-1 at City Doc Production 00647; 1.2 HISTORY (12/2166, 4/4/67)*
[25] *Doc. 82-1 at Response #3*

Based on the above, it cannot be disputed that Defendant has a duty and responsibility under 28 CFR § 20.20 *et seq*.

One requirement of that duty is to insure "that criminal history record information is complete and accurate:"[26]

> *To be accurate means that no record containing criminal history record information shall contain erroneous information. To accomplish this end, criminal justice agencies shall institute a process of data collection, entry, storage, and systematic audit that will minimize the possibility of recording and storing inaccurate information and upon finding inaccurate information of a material nature, shall notify all criminal justice agencies known to have received such information.*[27]

B. Defendant's custom and lack of policy permitted inaccurate criminal statute identifiers to be inserted in its RCIC database software used by law enforcement agencies to input criminal information.

Defendant admits[28] that it is not responsible for "any error with [Plaintiff's] records," and that "[c]riminal records and the accuracy thereof are the responsibility of the arresting Law Enforcement Agency and the Clerk of Courts, not the [Defendant]"[29] (Brackets added).

In admitting such, a reasonable person could only conclude that Defendant would have no policy in place covering an area in which it maintains it has no duty to comply with based on its belief that it is not responsible for "criminal records and the accuracy thereof."[30] Why would

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[26] *28 CFR 20.20 (a)*
[27] *Id., at § 20.21 (a) (2)*
[28] Statements made by a party-opponent in pleadings may be used against him as admissions. *Shell v. Parrish*, 448 F.2d 528, at 535 (6th Cir. 1971) (anything said by the party-opponent in a pleading may be used against him as an admission); *Barnes v. City of Cincinnati* (in Title VII sex discrimination case, City admitted treating plaintiff differently in motion for summary judgment). See Doc.31: Pltf's Response in Opposition to Motion for Summary Judgment (Southern District Oh. Case no. 1:00-cv-00780). *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005)
[29] *Doc. 76 at pg. 1*
[30] *Id.*

the Defendant, for instance, have a policy on water distribution from the Phnom Penh Water Supply in Cambodia if Defendant has no duty or responsibility covering the distribution of fresh water to Cambodian residents?

However, 28 CFR § 20.20 (a) states in relevant part that Defendant "shall institute a process of data collection, entry, storage, and systematic audit that will minimize the possibility of recording and storing inaccurate information…" in which Defendant could have done had it simply included sub-disposition codes for the offense of aggravated burglary as it did with robbery, aggravated robbery, and burglary. Since it failed to do so, any entry in Defendant's system would reflect "INFLICT HARM" for *anyone* convicted of the offense of aggravated burglary despite saying otherwise at the point of origin.

Defendant's revised RCIC Reference Guide[31] and its 1993 CLEAR Manual[32] pertains to system usage of Defendant's RCIC system for the purposes of accessing NCIC or LEADS databases. It does not speak to accessing Defendant's RCIC database *per se*, as it relates to conducting background checks and disseminating that material upon request. As noted in the April, 2009, Report of the Hamilton County Criminal Justice Commission Data and Criminal Justice Information Systems Committee, "CLEAR contains information on arrested persons, wanted persons, stolen vehicles and property. The data is entered and maintained by each of the law enforcement agencies in Hamilton County. The CLEAR system *is interfaced with the State of Ohio and national crime databases* (including the Law Enforcement Automated Database Search [LEADS], the National Crime Information Center [NCIC], the Bureau of Motor Vehicles [BMV], and the International Justice and Public Safety Network [NLETS]). *Locally, data is exchanged with the Court Management System (CMS), the Jail Management System*

[31] *Doc. 79-2*
[32] *Doc. 79-1*

(JMS), and the Hamilton County and Cincinnati Police Communication Centers Computer Aided Dispatch (CAD) System."[33] (Emphasis added). It is the local database in which Plaintiff is addressing. Actually, Plaintiff would venture as far to state that it would not matter how many policies or regulations Defendant can whip up for review, the fact remains that its disposition coding is faulty resulting in an inaccurate description of a felony offense of material significance, contrary to its duty to maintain accurate records.

Since NCIC and LEADS authorization is not required to access Defendant's RCIC database[34] as it relates to locally exchanged data, the RCIC Guidelines and 1993 CLEAR Manual cannot be looked upon as being the "policy" as it relates to CJIS systems.

1. Disposition Codes

Defendant created disposition codes[35] which designate all aggravated burglary offenses as "0/0550/**" despite whether or not the perpetrator of such an offense inflicted violence, much less been convicted of inflicting, or attempting or threatening to inflict physical harm on another under the aggravated burglary statute:

2911-11A1/ORCN	AGG BURGLARY-INFLICT HARM**	0/0550/**
2911-11A2/ORCN	AGG BURGLARY-ARMED**	0/0550/**
2911-11A3/ORCN	AGG BURGLARY-OCCUPIED DWELLING**	0/0550/**
2911-12/ORCN	BURGLARY**	0/0551/**
2911-13A/ORCN	BREAKING AND ENTERING**	0/0552/**
2911-13B/ORCN	B AND E-COMMIT FELONY**	0/0552/**

The three aggravated burglary offenses listed above match the essential elements of culpability of the 1983 aggravated burglary statute in which Plaintiff was convicted, albeit only

[33] *Pltf's Ex. A-12*, available online: hamiltoncountyohio.gov/administrator/bsi/cjcDocuments/DataReport-Apr09.pdf (Accessed September 25, 2015)

[34] *Doc. 83 at Pltf's Ex. S-8*

[35] *Pltf's Ex. A-14*

with regards to the "OCCUPIED DWELLING" element, yet Defendant classifies all the elements under one single disposition code of "0550."

That code was purportedly used by the CFPD, according to the Defendant,[36] yet that would be impossible[37] considering that Plaintiff was charged by the CFPD with two (2) aggravated burglary offenses[38] and only one showing up[39] as "INFLICT HARM" while the other aggravated burglary has no notation next to it.

Even the case numbers listed in that exhibit do not match those of the CFPD; complaints;[40] did CFPD also incorrectly enter the wrong alphabetic description of the case numbers as well?

Moreover, that exhibit does not even include two felony theft offenses in which the CFPD also charged Plaintiff with[41] yet are displayed on the Blue Sheets[42] which Defendant disseminated through the HCSO. Did CFPD fail to include those offenses when it charged Plaintiff?

According to Captain Arns of the CFPD,[43] the theft offenses should have been entered into the Defendant's RCIC along with the aggravated burglary offenses that were entered and are displayed on Defendant's RCIC Response.[44] The disposition codes of the offense of aggravated robbery[45] show several different codes for each essential element of aggravated robbery

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[36] *Doc. 79-0 at ¶ 44; Doc. 76 at pg. 10, ¶ 4*
[37] It also is impossible because Plaintiff was only convicted of one single aggravated burglary offense yet Defendant's RCIC database has two convictions listed for aggravated burglary regardless of any notation attached or not.
[38] *Doc. 82-1 at Pltf's Exs. S-11 through S-14*
[39] *Pltf's Ex. A-17*
[40] *Id.*
[41] *Id.*
[42] *Pltf's Exs. A-1, 11*
[43] *Pltf's Ex. A-18*
[44] *Exhibit A-17*
[45] *Pltf's Ex. A-14*

("0/0303/00, 0/0304/00"). Likewise, the codes for robbery show several different sub-codes for each essential element of robbery.[46] But only one single code is used for the offense of aggravated burglary which has three separate elements[47], and again, distinct sub-codes for the offense of plain burglary.[48]

For instance, Plaintiff was convicted of aggravated burglary under Ohio Revised Code ("*ORC*") § 2911.11 (A)(3), enacted in 1983:

> "(A) No person, by force, stealth, or deception, shall trespass in an occupied structure, as defined in section 2909.01 of the Revised Code, or in a separately secured or separately occupied portion thereof, with purpose to commit therein any theft offense, as defined in section 2913.01 of the Revised Code, or any felony, when any of the following apply:
>
> "(1) The offender inflicts, or attempts or threatens to inflict physical harm on another;
>
> "(2) The offender has a deadly weapon or dangerous ordnance as defined in section 2923.11 of the Revised Code on or about his person or under his control;
>
> **"(3) The occupied structure involved is the permanent or temporary habitation of any person, in which at the time any person is present or likely to be present**." [49]

Plaintiff was not convicted of inflicting, attempting or threatening to inflict physical harm on another, nor was he convicted of possessing a deadly weapon or dangerous ordnance during the commission of aggravated burglary.[50] Plaintiff was convicted under the less serious element of aggravated burglary, which has since been revised to exclude that element and place it within the realm of plain burglary as demonstrated below:

Aggravated Burglary[51]:

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[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Ohio Revised Code § 2911.11(Effective 1983)*
[50] *Doc. 82-1 at Pltf's Exs. S-11 through S-14; Pltf's Exs. A-7 and A- 8*
[51] *O.R.C. § 2911.11 (Eff. 07-01-1996)*

"(A) No person, by force, stealth, or deception, shall trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense, if any of the following apply:

(1) The offender inflicts, or attempts or threatens to inflict physical harm on another;

(2) The offender has a deadly weapon or dangerous ordnance on or about the offender's person or under the offender's control."

Burglary[52]:

(A) No person, by force, stealth, or deception, shall do any of the following:

(1) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense;

(2) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure that is a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present, with purpose to commit in the habitation any criminal offense;

(3) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, with purpose to commit in the structure or separately secured or separately occupied portion of the structure any criminal offense.

(B) No person, by force, stealth, or deception, shall trespass in a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present.

[52] *O.R.C. § 2911.12 (Effective Date: 07-01-1996)*

Physical harm in Ohio's criminal law[53] is defined as "any injury, illness, or other physiological impairment, regardless of its gravity or duration." The inclusion of "INFLICT HARM" with the disposition code for aggravated burglary[54] is not only inaccurate, but according to the theory of the Defendant, such inclusion permits Law Enforcement Agencies to inaccurately enter criminal charges in Defendant's RCIC database using the disposition codes Defendant provides,[55] which in combination inaccurately reflects that Plaintiff was convicted of aggravated burglary, causing "injury, illness, or other physiological impairment" with the notation of "INFLICT HARM."

That notation obviously was never discovered by Defendant as being inaccurate despite its duty and responsibilities to insure the completeness and accuracy of the records it maintains as 28 CFR § 20.20 (a) mandates.

Defendant has different codes for the offense of aggravated robbery, robbery, and burglary, but uses one single code description for aggravated burglary despite that offense containing different degrees of culpability – until 1996, when aggravated burglary eliminated the element in which Plaintiff was convicted under and re-established it under the 1996 plain burglary statute of Ohio, with the revised aggravated burglary statute containing the infliction of harm requirement and/or weapons possession culpability requirements.

Perhaps Defendant uses one single code to describe all aggravated burglary offenses because its agent, Peggy O'Neill; who is not an attorney, claims that "back in 1987 breaking into a [*sic*] occupied dwelling implied that you intended to inflict harm on the resident. The ORC may have changed since then and I do not have a copy of the 1987 ORC. Forest Park entered the

[53] *O.R.C. § 2901.01(A) (3)*
[54] *Pltf's Ex. A-14*
[55] *Doc. 79 at ¶*

original arrest in Jan 1987, with the charge code of 550"[56]. The ORC definitely indeed changed tremendously since 1987[57] despite Defendant's agent, Peggy O'Neill, not realizing such as far as 2014, and aggravated burglary never implied all-inclusive, that an individual intended to inflict harm or inflicted harm "back in 1987" when "breaking into a [sic] occupied dwelling." Any person in the position of Defendant's agent, Peggy O'Neill, should know that the State of Ohio overhauled its criminal sentencing laws in 1996.

If Peggy O'Neill is the Information Technology Manager of the Regional Crime Information Center,[58] and has been since 2000,[59] with the "responsibilities . . . to manage and oversee [RCIC] data information systems"[60] (Material in bracket added by Plaintiff), yet doesn't even know whether or not the ORC has been updated since 1987, how would she know that aggravated burglary does NOT mean that "you intended to inflict harm on the resident?" It would appear as if the lack of a policy regarding Defendant's statutory duties under 28 CFR § 20.20 et seq. would be the moving force behind the deprivations Plaintiff alleges because without a policy, Defendant would not be capable of training its agents to recognize that aggravated burglary does not imply that the perpetrator inflicted harm upon the victim(s), and would have established a coding system much like it did with aggravated robbery, robbery, and burglary so that each element is addressed as it corresponds to the arresting charge(s).

The lack of a policy resulted in the unbridled discretion of Defendant's agents to alter, manipulate, revise, delete, or otherwise prepare criminal history records which are not accurate; the fact that one single code describes all aggravated burglary offenses as being "INFLICT

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[56] *Pltf's Ex. A-20*
[57] *S.B. 2 (121st O.G.A.)* was the major revision of the felony sentencing law that grew out of the Sentencing Commission's recommendations. It applies to offenses committed on and after July 1, 1996.
[58] *Doc. 79-0 at ¶ 1*
[59] *Id. at ¶ 5*
[60] *Id. at ¶ 9*

HARM" imputes that thousands of individuals are listed by Defendant as having inflicted harm during the commission of aggravated burglary. Defendant's lack of policy created a pattern and practice where individuals who are charged with the offense of aggravated burglary are classified as having "INFLICT HARM" during the commission of that offense whether or not the offender was charged and/or convicted of that element of aggravated burglary.

Plaintiff moves the Court to take judicial notice that Defendant has admitted that its disposition code for aggravated burglary contains the notation "INFLICT HARM" and that law enforcement agencies utilizing Defendant's RCIC to enter arrest charges against individuals since 1987 have been doing so according to Defendant's disposition code.

C. Defendant disseminated inaccurate criminal history information indicating Plaintiff had been convicted of an aggravated burglary offense.

Recall, Plaintiff was only convicted of two felony offenses; aggravated burglary and theft. Aside from the notation, "INFLICT HARM," where did that third felony conviction come from? If Plaintiff's criminal case is updated by HCCC through its Case Management System (CMS) which is linked to Defendant's RCIC database,[61] why doesn't Defendant's RCIC database reflect Plaintiff only being convicted of two felony offenses instead of the three reported by Defendant? Did CFPD do that as well?

The lack of a policy allows Defendant's agent, Peggy O'Neill, to pick and choose which disposition codes should be used and which should not be used,[62] and the lack of a policy allows for the dissemination of the personal information of individuals with criminal convictions, including birth dates and social security numbers,[63] and the inclusion of Defendant's name and

[61] *Doc. 79-0 at ¶ 14*
[62] *Pltf's Ex. A-21*
[63] *Id.*

RCIC logo on the Blue Sheet[64] only to be removed as soon as Plaintiff starts making inquiries[65] with the only explanation being that the "RCIC name and logo was placed erroneously by the Hamilton County Sheriff's Department onto the original [Blue Sheet]. By agreement of the City and the Sherriff's Department, the RCIC logo is no longer placed on requests for criminal conviction information,"[66] even though it appears Defendant was attempting to distance RCIC from liability.[67]

Defendant holds the authority to create policy and directives, as noted by § 1, Art. II, of its Charter. It has also admitted that it retains such authority ("*In its capacity as operator of the RCIC Database, **the City** has developed Guides and Manuals to assist LEA's and the Clerk on proper use of the RCIC/CLEAR system in accordance with state and federal guidelines"*[68])[69].

Hamilton County Auditor Dusty Rhodes said during an interview with the Cincinnati Business Courier in January, 2008; which was covering the 2007 Internal Audit of Defendant's RCIC (then known as Regional Computer Center ("*RCC*")),[70] that RCC has outlived its usefulness and should be dismantled, "They were a county agency that was run by the city where nobody takes responsibility for the bad stuff. They bought, I think, the last mainframe ever purchased, and they never were able to merge systems. The county was using the Unix system

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[64] *Pltf's Ex. A-1*
[65] *Pltf's Ex. A-11*
[66] *Pltf's Ex. A-23 at #14* (Material in bracket added)
[67] Plaintiff recently submitted a public records request to learn about the agreement to remove the RCIC name and logo in which Defendant claims was erroneously inserted by Hamilton County, Ohio.
[68] *Doc. 76 at pg. 7*
[69] Defendant had previously asserted that "RCIC is also sometimes referred to as County Law Enforcement Applied Regionally (CLEAR)," and assuming arguendo that such an assertion pushes responsibility upon Hamilton County, Ohio, "All CLEAR employees are City of Cincinnati employees" (Doc.79-0 at ¶8; see also, Pltf's Ex. A-25 pg. 2, *December 2007 Internal Audit Regional Computer Center*, City of Cincinnati, Ohio, Internal Audit Division, Office of the City Manager, Mark T. Ashworth, Internal Audit Manager. (Available online: http://www.cincinnati-oh.gov/ccia/cache/file/B748AC49-EDC3-43D8-AB1CFDD0F11EAFB4.pdf (Accessed September 24, 2015))).
[70] *Pltf's Ex. A-25*

and the city was on IBM. It's like having half your staff speak French and the other half speaking German"[71].

Without a policy, 28 CFR § 20.20 et seq. was never implemented, and it became the practice and custom of Defendant to describe all aggravated burglary offenses as “INFLICT HARM” when in fact, such as in Plaintiff’s case, there is no physical harm being committed during the course of committing that offense.

How a third aggravated burglary offense was listed – one could assume the aggravated burglary without the physical harm notation could be the bogus one, considering Defendant claims CFPD entered two aggravated burglary offenses into the Defendant’s RCIC database and only one reflects physical harm – has yet to be discovered, and Defendant is not pushing that issue.

Defendant’s entire position is that it is nothing more than a warehouse holding records that law enforcement agencies submit. “How is the City, which relies on another enforcement agency, supposed to know, when thousands and thousands and thousands and thousands of conviction records come in on a daily basis, how are they suppose to sift through that to know when there is one inaccuracy?”[72]

One such way would be to create a policy where competent agents would recognize that the ORC contains several different culpability elements as it relates to aggravated burglary and include those elements with its disposition code dealing with that criminal offense so that law enforcement agencies such as the CFPD can enter information without having to be drug through the dirt by the Defendant decades later for something it has no control over.

[71] *Pltf’s Ex. A-26*
[72] *Doc. 74 pg. 30-31*

Another method would be to write or have the database computer program written so that the elements of aggravated burglary are included with the disposition code for that offense so that reporting law enforcement agencies do not enter information into Defendant's RCIC database under an inaccurate disposition code. It's the year, 2015; Plaintiff is not all that tech savvy, but it's common knowledge that technology has advanced enough to permit Defendant to obtain software which would include proper disposition coding for criminal offenses.

Defendant claims it has no ability to alter records that are in the RCIC database[73] yet is silent as to whether it had or has the ability to have correct disposition codes inserted within its database computer program. Surely the program and information placed therein can be altered as demonstrated by the alterations Defendant's agent Peggy O'Neill engages in,[74] so why not include the sub-categories of aggravated burglary along with the disposition code for that offense?

D. Defendant disseminated inaccurate criminal history information indicating Plaintiff caused physical harm during the course of a criminal offense in which he had not been convicted of.

1. Registration of Convicted Persons Act

Defendant's RCIC Response[75] shows that 11 days after he was released from prison he registered with the Defendant as a convicted person. Why Plaintiff was required to register is unknown, considering that his criminal conviction did not meet any of those convictions listed under Defendant's Registration of Convicted Persons Act.[76] The transaction logs Defendant maintains (Doc. 79-3) in response to inquiries made regarding Plaintiff does not reflect the period of 1999 through 2003, nor from 1987 when Defendant claims CFPD entered two

[73] *Doc. 79-0 at ¶ 34*
[74] *Pltf's Ex. A-21*
[75] *Pltf's Ex. A-17*
[76] *C.M.C. § 717-1 et seq.*

aggravated burglary charges which magically only produced one notation of "INFLICT HARM." But C.M.C. § 717-1 et seq., as well as Defendant's Ordinance 291-1995 all clearly state that Plaintiff's criminal history information was open for dissemination.

2. Community/Neighbor Notification

According to Defendant's Ordinance 291-1995,[77] the registration of convicted persons was being pushed by Defendant because it "recognizes the need for the community to know a person convicted of a violent personal crime resides or temporarily is present within the community and the City; and … residents of the City of Cincinnati should have access to information which indicates the location of a person convicted of a violent personal crime whether the felon is paroled or on probation…"

3. Dissemination to Law Enforcement Agencies

That same RCIC Response shows that "INFLICT HARM" is noted, and "Approach with caution" is another notation entered,[78] presumably due to the "INFLICT HARM" notation, which supports Plaintiff's allegations that police interaction goes south as soon as police agents run Plaintiff's criminal background through their mobile data terminals accessing the Defendant's RCIC database. No "Approach with caution" notation appears next to Plaintiff's aggravated burglary conviction without the "INFLICT HARM" notation.[79]

If "INFLICT HARM" results in an "Approach with caution" flag, what did it result in when Plaintiff was sentence to three days in jail in 2003 in the case of *State of Ohio v. Christopher Knecht*, 03/TRC/24902; 03/CRB/23493 (Ham. Co. Mun. Stockdale, J.)?

[77] *Pltf's Ex. A-27*
[78] *Pltf's Ex. A-17*
[79] *Id.*

Defendant admits that law enforcement agencies use the RCIC database, maybe Judge Stockdale used it when he sentenced Plaintiff in that 2003 traffic-related case.

4. Dissemination to Employers, Housing Agents, Social Service Organizations, Hospitals, Educational Institutions

A. Housing/Social Service Assistance

Defendant disseminated inaccurate criminal history information about the Plaintiff when it prepared a criminal history report for dissemination through the HCSO,[80] and with its RCIC Response[81] and by way of CMC § 717-1 et seq, and the numerous police agents who ran queries of the Plaintiff.[82]

Michele Schroeder informed the Plaintiff that they were not going to rent an apartment located on Winton Road in Cincinnati, Ohio, because the property manager of the then Kings Court Apartments refused based on the belief that Plaintiff had been to prison for harming someone.[83] Plaintiff also spoke with the property manager who informed Plaintiff that him and his pregnant girlfriend were not going to be permitted to rent an apartment because a background check indicated that Plaintiff had been to prison for harming someone.[84]

Plaintiff paid $250.00 as a security deposit and background check application fee with the Kings Court Apartments whereas $25.00 was used to conduct a background check.[85] Plaintiff retrieved the remaining balance and again informed the property manager that he had not been to prison for harming any person to no avail.[86] Michele Schroeder had to call Cincinnati Bell to discontinue services established at the Kings Court Apartments where she and Plaintiff had been

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[80] *Pltf's Ex. A-1*
[81] *Pltf's Ex. A-17*
[82] *Doc. 79-3*
[83] *Schroeder affidavit at ¶ 4; Schroeder Depo. (Doc 75)*
[84] *Knecht affidavit, at ¶ 11; (Docs. 4, 14)*
[85] *Id.*
[86] *Id.*

pre-approved[87] prior to the property manager indicating that they would not be permitted housing.

Plaintiff sold hundreds of dollars of tools to be capable of paying for the hotel room his pregnant girlfriend and he stayed at while searching for housing in 2006[88]until he was given a job and had Michele Schroeder secure housing in his voluntary absence due to the events with the Kings Court Apartments.[89]

Plaintiff obtained housing after being denied at the Kings Court Apartments, by standing behind Michele Schroeder who would seek housing either indicating that Plaintiff worked out-of-town and would only be staying at the sought-after housing sporadically, thus not requiring Plaintiff to fill out a housing application,[90]as was done in 2006 at 412 Beech Street, Elmwood Place, Ohio, 4521 ; 8331 Anthony Wayne, Cincinnati, Ohio, 452 ; and with 4035 Cherry Street, Cincinnati, Ohio, 45223, all because Plaintiff was afraid that he would be denied housing due to the events with the Kings Court Apartments.[91] Any housing obtained otherwise was due to either the property owner having an association with Plaintiff through mutual associates (such as when Plaintiff rented an apartment located at 402 South Wayne, Lockland, Ohio 45215 from Gerald Wethington, who informed Plaintiff that if not for his infant daughter he would not rent to Plaintiff, or by simply acting as if he did not exist so that Michele Schroeder could secure an apartment with him stepping into the picture later and securing his place within the rental legally

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[87] The property manager was informed about Plaintiff's criminal background which resulted in a pre-approval for the apartment until the background check was completed. Knecht affidavit, at ¶ 22, so any claims/defenses by Defendant that the property manager would have refused housing based on Plaintiff's criminal record per se is wholly baseless. Plaintiff addressed this very issue in his affidavit attached to his Memo Contra (Doc. 82).

[88] *Knecht Affidavit at ¶ 23*

[89] *Id., see also, Schroeder Affidavit at ¶10*

[90] *Knecht and Schroeder affidavits.*

[91] *Id.*

by paying the landlord like he did at 4236 Chambers Street, Cincinnati, Ohio 45223),[92] and again at 4126 Chambers Street, Cincinnati, Ohio 45223.[93]

Plaintiff even attempted to secure housing through a social service agency located in Kentucky who, upon obtaining Plaintiff's personal information, indicated that they would not be capable of helping the Plaintiff and his pregnant girlfriend due to Plaintiff's violent criminal background.[94]

B. Employment

Plaintiff currently works as a temporary employee for Randstad. He is assigned as a Data Entry Operator processing IRS documents, and obtained such employment in January, 2015, after U.S. Bank (which is the contractor for the IRS as it relates to the documents Plaintiff processes) conducted a federal background check upon the Plaintiff and approved his employment.[95] Prior to that employment, Plaintiff was last employed in 2008 when the company he was working for closed. Plaintiff filled out hundreds of job applications in 2008 through 2011 and simply stopped looking for employment because not a single employer sought to hire him after submitting applications.[96] Plaintiff would support himself by doing odd jobs or working on automobiles as a 'back-yard' mechanic, or his girlfriend would obtain employment[97] in the alternative.

In fact, every single job Plaintiff has had since his release from prison in 1999 was due to either knowing someone who got Plaintiff a job,[98] or because the employer did not conduct a

[92] *Id.*
[93] *Id.*
[94] *Knecht affidavit at ¶7*
[95] *Id.at ¶15*
[96] *Id. at ¶16*
[97] *Id.at ¶18*
[98] *Id. at ¶ 19*

background check, such as with Jake Sweeney's Automotive Body Shop.[99] Plaintiff once obtained a job with the Florida Highway Patrol Chapter of the Police Benevolent Association by lying on the employment application regarding criminal convictions.[100]

C. Hospitals

The University Hospital even conducted a background check upon the Plaintiff, utilizing Defendant's RCIC database,[101] while he was there awaiting the arrival of his newborn child; what "criminal justice" activities does the University Hospital need to know in regards to Plaintiff being at the hospital during the birth of his child?

D. Educational Institutions

Colleges and universities use the State of Ohio's "WebCheck" to have criminal backgrounds checked on those seeking admission. Plaintiff contacted the Ohio Bureau of Criminal Investigation and was told that WebCheck would produce results from any information obtained by a law enforcement agency, such as Defendant's RCIC division.[102]

III. Argument

A. Standard for Summary Judgment.

Summary judgment as to the liability of Defendant is appropriate in this case because the pleadings, affidavits, exhibits, and discovery documents – in conjunction with the argument herein – show that there is no genuine dispute as to the liability of the Defendant, and Plaintiff is entitled to judgment as a matter of law, pursuant to Rule 56(a), Fed. R. Civ. Pro. The party

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[99] *Id.*
[100] *Id.*
[101] *Doc. 79-3 at pg. 2*
[102] *Knecht Affidavit at ¶¶ 19-20.* It should be noted that Plaintiff attended college in Cincinnati in 2006, 2012, and from 2014 to present, in a field that does not prohibit someone with a criminal record – even inaccurate – from being admitted. However, other programs would prohibit Plaintiff's admission, such as the Health and Public Safety division at Cincinnati State Technical and Community College, according to the information Plaintiff received during a conversation with officials at that college.

moving for summary judgment bears the burden of showing conclusively that no genuine issue of material fact exists. *CenTra, Inc. v. Estrin*, 538 F.3d 402, 412 (6th Cir. 2008). Once the moving party has met its burden of production, the nonmoving party must present "significant probative evidence" of a genuine dispute to defeat a motion for summary judgment. *Id*. at 424.

A. Defendant was deliberately indifferent to Plaintiff's constitutional rights when its custom, practice, and lack of policy was the moving force behind the deprivations in which Plaintiff suffered

Municipalities may be liable for constitutional violations caused by "a policy statement, ordinance, regulation or decision officially adapted and promulgated by that body's officers." *Monell v. Department of Soc. Svcs*., 436 U.S. 658, 690 (1978). Municipalities may also be liable for the lack of adequate policies if their absence amounts to deliberate indifference. *Blackmore v. Kalamazoo County*, 390 F.3d 890, 900 (6th Cir. 2004) (lack of a written policy on dealing with prisoner illnesses could support municipal liability); Policies need not be formal to support municipal liability. Cities and counties may be liable for constitutional violations caused by a "custom or usage" that is "so permanent and well settled" as to have "the force of law." *Monell, supra*., 436 U.S. at 690-91. A practice may constitute such a custom or usage if it is "persistent and widespread," *St. Louis v. Praprotnik*, 485 US 112, 127 (1988) (plurality opinion); *Garretson v. City of Madison Heights*, 407 F.3d 789 (6th Cir. 2005); *Doe v. Claiborne County*, 103 F.3d 495, 507 (6th Cir. 1996). Written policies prohibiting misconduct are of no moment in the face of evidence that such policies are neither followed nor enforced. *Cf. Praprotnik, supra*., 485 U.S. at 131 ("Refusals to carry out stated policies could obviously help to show that a municipality's actual policies were different from the ones that had been announced.").

Defendant's guidelines and manual are inadequate to prevent predictable constitutional violations. *See, e.g., Watson v. McGee* 527 F.Supp 234, 242 (S.D. OH 1981) (Inadequate fire

safety procedures in jail), when it is the custom of the Defendant to allow its agents to determine what disposition codes apply to criminal offenses without the benefit of regulations to assist them in the proper and adequate performance of their duties as required by federal authority. See, e.g., *Rymer v. Davis*, 754 F. 2d 198 (6th Cir.) (Plaintiff proved that the City had a custom of allowing its police officers to determine when and how to arrest without the benefit of supervisory regulations. The City gave its officers carte blanche authority to do as they wished during an arrest), *vacated*, 105 S. Ct. 3517 (1985), *reaffirmed*, *Rymer v. Davis*, 775 F. 2d 756 (6th Cir. 1985); *See Williams v. Butler*, 746 F.2d 431 (8th Cir.1984) (city had custom of giving judges carte blanche authority in making personnel decisions and is liable for constitutional injuries arising therefrom).

For deliberate indifference to exist, the causal connection between the deprivation of a federal right and the municipal decision must be such that the deprivation was a "plainly obvious consequence" of the decision. *Board of the County Comm'rs v. Brown*, 117 S. Ct. 1382, 1392 (1997). In Ohio, prosecutors are required by law to prove each and every element of a criminal charge in which an individual has been indicted for, unless the suspect pleads guilty which waives that requirement. That's common knowledge between the parties in this case, the Court, and counsel for the Defendant. It would be stinging clear that if Defendant labelled all aggravated burglary offenses under one single disposition code indicating the individual caused physical harm without the individual pleading guilty or being convicted thereof, would produce a negative consequence upon the individual as Plaintiff has been arguing for nearly three years now.

Since Defendant maintains a single disposition code for aggravated burglary and there are many individuals since 1987 being charged and convicted for aggravated burglary offenses in

Hamilton County, Ohio, it would pretty much safe to assume that numerous individuals have inaccuracies displayed on the criminal records in which Defendant disseminates. How many of those individuals are suffering or have suffered the consequences of such actions and inactions of the Defendant yet are clueless that Defendant is in the criminal record business? Defendant's official website does not spell out that they maintain criminal records and disseminate them to law enforcement agencies, hospitals, educational institutions, or anyone who seeks to obtain such whether through the approval of the individual being scrutinized or otherwise, so short of actually obtaining a Blue Sheet and noting Defendant's brand attached to the top,[103] they might assume as Plaintiff did that background checks came from the HCSO with Defendant haven't nothing to do with that. Of course, now that Defendant scrubbed its RCIC name and logo, the unsuspecting will continue to be so.

In fact, the responses to Plaintiff's interrogatories demonstrate that Defendant avoids its tie to the HCSO as it relates to disseminating criminal history information to HCSO upon query of the Defendant's RCIC database.[104]

B. Defendant denied Plaintiff procedural and substantive due process rights.

"The doctrine that governmental deprivations of life, liberty or property are subject to limitations regardless of the adequacy of the procedures employed has come to be known as substantive due process." *Bowers v. City of Flint*, 325 F.3d 758, 763 (6th Cir. 2003) (quoting *Pearson v. City of Grand Blanc*, 961 F.2d 1211, 1216 (6th Cir. 1992) (citation omitted)). These limitations are meant to provide "heightened protection against government interference with certain fundamental rights and liberty interests." *Seal v. Morgan*, 229 F.3d 567, 574 (6th Cir. 2000) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)). As a result, "Government

[103] *Ex. A-1*
[104] *Pltf's Ex. A-22*

actions that burden the exercise of those fundamental rights or liberty interests are subject to strict scrutiny, and will be upheld only when they are narrowly tailored to a compelling governmental interest." *Id.* at 574 (citing *United States v. Brandon*, 158 F.3d 947, 956 (6th Cir. 1998)); *see also, Blau v. Fort Thomas Pub. Sch. Dist*., 401 F.3d 381, 393 (6th Cir. 2005).

On the flip side, procedural due process challenges the constitutional adequacy of state law procedural protections accompanying an alleged deprivation of a constitutionally protected interest in life, liberty, or property. It is not the deprivation itself that is actionable, but only the deprivation without the requisite process.

A court encountering a procedural due process claim must first determine whether the plaintiff has been deprived of a life, liberty, or property interest that is constitutionally protected as a matter of substantive law. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985)

Stigma/Reputation Test

In *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123 (1951), the U.S. Atty. Gen., operating under authority of an Executive Order issued at the height of the McCarthy era, had registered certain entities as "communist" organizations on a list provided to the Civil Service Commission. *Id.*, 341 U.S. at 125. The organizations included on the list had not been afforded an opportunity to contest their inclusion. *Id*., at 126. The Supreme Court ruled in the favor of the plaintiff organizations, though not on the ground of a deprivation of constitutional due process but instead, the Court held more narrowly that the Atty. Gen. had failed to comply with the terms of the Executive Order. *Id.*

Nonetheless, the seeds of a due process reputational harm doctrine were planted in several of the concurring opinions, including that of Justice Frankfurter, who wrote that

government labeling of groups without prior notice or an opportunity to respond "is so devoid of fundamental fairness as to offend the Due Process Clause of the Fifth Amendment." *Id.* at 161 (Frankfurter, J., concurring).

Plaintiff would never had known in 1995 that Defendant would enact an Ordinance calling for the dissemination of criminal history information to numerous entities and individuals under its Registration of Convicted Persons Act, because he had been in prison for 8 years at that time, and would not be released for another 4 years where he was required to register under that Act, and if for some unknown reason he did know, Defendant provided no method in which Plaintiff could respond or contest his inclusion therewith, as demonstrated by C.M.C. §§ 717-1 and 717-2 *et seq.*

In a Cincinnati Enquirer article appearing on April 23, 2007, Jessica Brown and Jane Prendergast reported that "[four] community organizers and government officials claimed Sunday that they have compiled a list of the '1500 most dangerous criminals' in Cincinnati and Hamilton County – those with the propensity to commit murder and other acts of violence" and that the group "plan to give the list to police, probation officials, community groups and others[105]."

Likewise, Plaintiff never knew that Defendant was in the criminal records business, especially since its official website (which has changed since June, 2012) offers up no information on the topic other than its services to law enforcement agencies, especially when it is generally understood that the HCSO is where a person obtains a criminal record request from.

[105] **Brown**, Jessica; **Prendergast**, Jane. *Group offers 'likely killers' list*, (Cincinnati Enquirer) (April 23, 2007), available online at: www.cincinnati.com/apps/pbcs.dll/article?AID=/20070423/NEWS01/704230397

Even aside from Defendant's Registration of Convicted Persons Act, the evidence presented herewith demonstrates that Defendant disseminated criminal history information about the Plaintiff to his detriment.

Paul v. Davis, 424 U. S. 693 (1976), holds that injury to reputation, standing alone, is not enough to demonstrate deprivation of a liberty interest. *Id.*, 424 U.S. at 712. *Paul* also establishes, however, that injury to reputation does deprive a person of a liberty interest when the injury is combined with the impairment of "some more tangible" government benefit. *Id.*, at 701.

It is enough, for example, if the Plaintiff shows that the reputational injury causes the "loss of government employment," *id.*, at 706, or the imposition of a legal disability, such as the loss of "the right to purchase or obtain liquor in common with the rest of the citizenry," *id.*, at 708 (citing *Wisconsin v. Constantineau*, 400 U. S. 433 (1971)).

This standard is met here because the injury to Plaintiff's reputation caused him to lose the benefit of eligibility for past employment, housing, social service assistance, and has been delaying his ability to file for a pardon or clemency on his aggravated burglary offense.

The Supreme Court has repeatedly recognized that an individual suffers the loss of a protected liberty interest "`where government action has operated to bestow a badge of disloyalty or infamy, with an attendant foreclosure from other employment opportunity.'" *Paul v. Davis*, *supra*, at 705, *quoting Cafeteria Workers v. McElroy*, 367 U. S. 886, 898 (1961) (emphasis supplied by *Paul v. Davis* Court)[106].

Plaintiff has two felony convictions when he was a teenager and multiple misdemeanor convictions as well. Plaintiff has never stated that a red carpet should be rolled out for him

[106] The Supreme Court also recognizes that a liberty interest would be deprived where "the State … imposed on [the plaintiff] a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 573 (1972); *Accord*, *Paul*, *supra*, at 709-10 (quoting *Roth*).

despite those convictions based on the bogus conviction Defendant invented, as well as the disposition code attesting to Plaintiff being a violent criminal. Plaintiff has always accepted "responsibility" for his crime, and has worked for years in the area of criminal justice reform, such as participating in Governor Kasich's workshops on collateral consequences of criminal convictions where members of Ohio's General Assembly were influenced by his and others' testimony to pass several bills[107] later enacted by the Governor to create opportunities for employment when considering an applicant with a criminal history.

Imagine, as Plaintiff does, when he submits an application seeking employment, listing his two felony convictions, only to possibly have an employer run a background check and find out that not only does Plaintiff have three felony convictions, but he physically harmed someone during one of them; tends to make Plaintiff look like a violent person and a liar. Who hires people like that?

1. Evidence

Plaintiff once informed this Court that he had personally hand-delivered two pleadings to the Clerk's Office for filing in this case only to return at a later date on another matter and while there, made an inquiry about those two pleadings to hear that no such pleadings exist[108]. Plaintiff personally handed those pleadings to an assistant in front of another assistant, yet during the following return, was informed by another clerk that the pleadings were not within the Clerk's Office or the jacket of this action. If Plaintiff complained to this Court, the Court possibly would order an investigation and come up with the same conclusion as the Clerk's Office. Unless Plaintiff submitted a letter from a prisoner confined to the Southern Ohio Correctional Facility indicating that the pleadings he had enclosed with the letter to the Plaintiff were sent to him from

[107] *Sub. H.B. 86 129th Ohio General Assembly; Am. Sub. H. B. No. 524 129th Ohio General Assembly*
[108] *Doc. 52*

the Clerk's Office. Those pleadings were file stamped by the Clerk's Office, yet never included in the record much less retained at the Clerk's Office[109].

Surely the Clerk's Office has policies and procedures in which it follows so that an issue like this would not exist. Case numbering system, files, captioning of cases; these identifiers probably assists the Clerk's Office in maintaining an adequate filing system. Yet something happened, maybe the assistant clerk thought *pro se* filings are placed with other *pro se* filings and was mixed up with a prisoner's file, even though Plaintiff is not in prison.

Maybe the chain of command; from accepting the pleading from the Plaintiff, to file stamping it, and placing it within a pile for proper insertion within the record – maybe after electronically scanning it to P.A.C.E.R., became broken at some point.

While this is a single incident, it demonstrates that even a system where a policy or procedure exists can too fall victim to err. So, what would a system that lacks a policy of enforcing a statutory duty, and has a custom of maintaining inaccurate descriptions pertaining to the offense of aggravated burglary as it relates to any number of convicted individuals who have had their charges/dispositions ran through Defendant's RCIC, demonstrate?

According to Defendant, Plaintiff has had an inaccurate criminal offense placed against him since 1987, and used against him since his release from prison after registering as a convicted person on March 15, 1999, only to discovery such in 2012. How does Plaintiff prove from 1987 up to 2012 that the dissemination of that information has reached employers, social service agencies, police, housing agents, community leaders or neighbors?

Quite frankly, Plaintiff draws reasonable inferences from the facts provided in this case which plausibly point to Defendant perpetrating the deprivations Plaintiff claims[110].

[109] *Id.*

In fact, this very Court ruled that:

> "[T]he Court is convinced that Plaintiff has pleaded a plausible theory that Defendants' dissemination of false information violated his liberty interests in seeking employment, housing, and social services. He has alleged that he had difficulties in pursuing such liberty interests, and it is entirely plausible that the City's dissemination of the false information that his more than twenty-five-year old conviction involved infliction of harm played a part in such difficulties. Citizens should be entitled to second-chances, and government authorities should not make re-entry to society as a convicted felon more difficult than it already is. Plaintiff alleges one property manager would not rent to him due to the false belief that Plaintiff had been in prison for harming someone. As such, the Court finds Defendants' dissemination of information was more than a mere "inaccuracy," but rather, due to the alleged amount of time involved, such action arose to a violation of liberty interests. A citizen should be able to expect that government entities will not disseminate false information about him to the detriment of his employment and housing opportunities.

(Doc. 40) (Citation omitted).

Plaintiff has conducted discovery; albeit stagnated by the lack of and/or misleading responses, or diverted responses, until Plaintiff somehow comes up with the financial means to hire a court reporter so that depositions can be taken as counsel for the Defendant indicated,[111] which demonstrates that Defendant disseminated inaccurate criminal history information about the Plaintiff in which a reasonable person would conclude deprived Plaintiff of housing, employment, social service assistance, filing of his pardon/clemency application, and other entitlements/rights in which Plaintiff will never know to have been denied due to the secrecy of

[110] *See, Doc. 82* (All reasonable inferences drawn in the nonmovant's favor), *Cf., White v. Baxter Healthcare Corp.*, 533 F.3d 381, 390 (6th Cir. 2008)
[111] *Pltf's Ex. A-22 at Responses #3, #4, #8, #9*

Defendant's RCIC database as it relates to disseminating criminal history information Defendant audaciously claims it does not do, and the amount of time which has passed.

Plaintiff is not a saint, nor is he a violent offender who physically harms people during the course of criminal activities. Defendant painted Plaintiff as the latter which is materially significant. Plaintiff's two, real felony convictions already places him in second class citizenship status. The third felony offense with a notation that he had physically harmed someone places him even lower on the rung of shame and ill-repute. Plaintiff can accept and has always accepted full responsibilities for his criminal conduct, but he is not going to accept a bogus charge being hung on him with a notation claiming he physically harmed someone during a crime he committed. That changes the entire nature of Plaintiff's felony charges and reasonable inferences can be drawn that if such is disseminated as Plaintiff has demonstrated, and then surely such is detrimental to Plaintiff's ability to function in society when housing is denied as well as employment opportunities and assistance from agencies when those doors have been shut. The odds were stacked against Plaintiff 11 days after he stepped out of prison. If not for his ability to think critically, he would have already been back to prison several years ago.

IV. Conclusion

Defendant is liable. It is liable because it is the "person" who establishes the policies and procedures covering its RCIC database and/or Project CLEAR, which it has indicated is regulated by both State and federal law, yet failed to implement a policy or procedure to ensure that the records it maintains are accurate mandated by 28 CFR § 20.20 et seq.

As a result, Defendant's agents had the unbridled discretion which appears to be the custom of the Defendant that allowed its agents to create one, single disposition code for a multi-element criminal offense, despite doing so with three other comparable criminal offenses,

causing Plaintiff's criminal history information maintained by Defendant to reflect him as having been convicted of an aggravated burglary offense where he had inflicted physical harm on a victim during the course of that offense.

That information was then later disseminated by way of RCIC Responses, queries within its database, back ground checks as provided to Plaintiff, or even through Defendant's Registration of Convicted Persons Act.

Plaintiff claims the dissemination of that information was used by employers, housing agents, social service assistance organizations, law enforcement agencies, community leaders, and neighbors, as illustrated above and throughout the pleadings submitted by Plaintiff.

A jury should decide the damages in this case while the Court issues declaratory and injunctive relief as it relates to the liability of Defendant whereas there is no genuine issue of material fact in dispute regarding such, and Plaintiff is entitled to judgment as a matter of law.

Respectfully submitted,

Christopher Knecht
[redacted]
Plaintiff in Pro Se

APPENDIX