

NORTH CAROLINA )  
09 OCT 15 PM 2: 24 )  
FORSYTH COUNTY )  
FORSYTH COUNTY, C.S.C.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
SPECIAL PROCEEDING  
09 SP 2403

BY AC

IN RE RELEASE OF THE SILK PLANT ) PETITION/MOTION  
FOREST CITIZEN REVIEW ) FOR DISCLOSURE  
COMMITTEE REPORT AND ) OF PERSONNEL  
APPENDICES ) INFORMATION  
 ) PURSUANT TO N.C.G.S.160A-168  
 ) (C ) (4) AND RECORDS OF CRIMINAL  
 ) INVESTIGATIONS PURSUANT TO  
 ) N.C.G.S. 132-1.4

NOW COMES, the City of Winston-Salem, by and through counsel, being duly sworn, and petitions/moves the court for an Order pursuant to N.C.G.S. Section 160A-168(c)(4) and N.C.G.S. Section 132-1.4 allowing full disclosure of confidential personnel information and records of criminal investigations, respectively and shows the court as follows:

1. On October 22, 2007, the City of Winston Salem City Council (hereinafter "City Council") adopted a resolution, pursuant to N.C.G.S. Section 160A-146 *et seq.*, creating a body, called the Silk Plant Forest Citizen Review Committee (hereinafter "Committee"), to review the Winston Salem Police Department's criminal investigation into the December 1995 assault of Jill Marker at the Silk Plant Forest store in Winston-Salem. The Resolution was subsequently amended on March 3, 2008. See **Exhibit A** attached hereto.

2. On July 30, 2009, the Committee submitted its final report, per protocol, to the Public Safety Committee of the City Council. On September 21, 2009 the report was presented to the full City Council during a regularly scheduled Council meeting.

3. The final report is comprehensive and supplemented by thirty-two (32) Appendices. These materials include more than five-thousand (5,000) pages of text, a collection of investigative notes, and numerous audio and video tapes.

4. **Exhibit B**, attached hereto, contains a numbered listing identifying all 32 Appendices. Of those items, the following appendices contain material which extensively incorporates confidential personnel information:

- Appendix 8 (Closed Session Minutes)
- Appendix 9 (Interviews with Current and Former City Employees)
- Appendix 12 (Claire McNaught's Documents)

Appendix 13 (Committee Emails)  
Appendix 14 (Transcript of D.R. Williams Subpoenaed Testimony)  
Appendix 32 (Interview Recordings and Closed Session Audio Recordings)

To assist the Court, **Exhibit C**, attached hereto, provides detailed summary of this listing of appendices. However, this exhibit contains confidential personnel information protected from public release under N.C.G.S. 160A-168.

5. The Committee was assisted in its work by two police investigators who as a part of their function made notes regarding actual and attempted contacts with witnesses and interview subjects. The investigators also created and maintained, in their working files, handwritten investigative notes and data on electronic media. These items, identified in Exhibit C, were not incorporated into an appendix, but were maintained separately.

6. On occasion, preexisting personnel/employment files were reviewed and discussed by the Committee; however, this petition/motion does not seek the release of said information, some of which may be protected from public disclosure by other state and federal laws.

7. The Committee's materials are of great interest to the citizenry. There have been a number of requests from both citizens and the media for all the Committee's materials to be publicly released. The City Council has determined that a full release of the Committee's report, its appendices, and related materials is necessary and essential to maintaining public confidence in the administration of city services.

8. Full release, however, is prohibited by N.C.G.S. Sections 160A-168 and 132-1.4 because the final report, its appendices and related materials contain confidential personnel information and records of criminal investigations.

9. Only the Court's order, requested in this petition, would, pursuant to N.C.G.S. Sections 160A-168(c) (4) and 132-1.4, permit the lawful release of these materials.

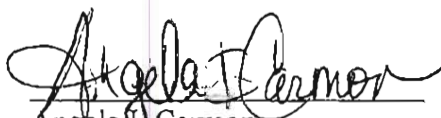
### **PRAYER FOR RELIEF**

**WHEREFORE**, counsel for the City petitions the court, pursuant to N.C.G.S. Section 160A-168 (c) (4) and N.C.G.S. Section 132-1.4, to:

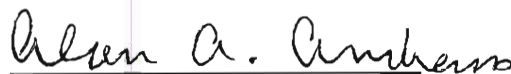
1. Grant a protective order over Exhibits C, which contains confidential personnel information, to prevent its disclosure until this Court's final order;
2. Conduct an *in camera* inspection, if review is necessary to the Court's ruling, of the materials identified in Paragraph 3 above;

3. Make an independent determination that the full disclosure is warranted and issue an order authorizing full disclosure of the materials identified in Paragraphs 3, 4, and 5 above.
4. Allow the Petitioner to withhold from release those materials described in Paragraph 6 above.

This the 16<sup>th</sup> day of October, 2009.



Angela J. Carmon  
City Attorney  
N.C. State Bar No. 14166



Alan A. Andrews  
Assistant City Attorney  
N.C. State Bar No. 17325

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P.O. Box 2511  
Winston-Salem, NC 27101  
(336) 727-2056

NORTH CAROLINA )  
 )  
FORSYTH COUNTY )

**VERIFICATION**

ALAN A. ANDREWS, Assistant City Attorney for the City of Winston Salem, being duly sworn deposes and says the contents of the foregoing **Petition/Motion for Disclosure of Personnel Information Pursuant to N.C.G.S. 160A-168 (c) (4) and Records of Criminal Investigations Pursuant to N.C.G.S. 132-1.4** is true to the best of his knowledge except as to the matters therein stated upon information and belief, and as those matters he believes them to be true.

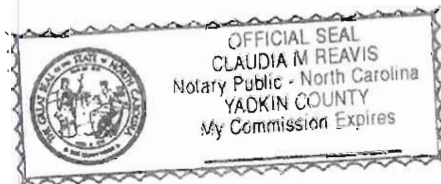
This the 16<sup>th</sup> day of October 2009

Alan A. Andrews  
Alan A. Andrews  
Assistant City Attorney  
City of Winston-Salem  
Attorney for Petitioner/Movant

Sworn and subscribed before me,  
this 16<sup>th</sup> day of October, 2009

Claudia M. Reavis  
Notary Public

My commission expires 4-18-2010



NORTH CAROLINA     )  
                                  )  
FORSYTH COUNTY     )

I, Melanie Johnson, Deputy City Secretary to the City Council of the City of Winston-Salem, North Carolina, do hereby certify the attached to be true and accurate copy of the following resolution of the Winston-Salem City Council:

Resolution of the Winston-Salem City Council Amending the  
Citizen Review Committee for the Silk Plant Forest Review”

Adopted by City Council on March 3, 2008.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said City, this the 16<sup>th</sup> day of October, 2009.

(SEAL)



Melanie Johnson  
Deputy City Secretary  
City Council



**RESOLUTION OF THE WINSTON-SALEM CITY COUNCIL  
AMENDING THE CITIZEN REVIEW COMMITTEE  
FOR THE SILK PLANT FOREST REVIEW**

**WHEREAS**, on October 22, 2007, the Winston-Salem City Council adopted a resolution establishing a citizen review committee for the Silk Plant Forest police investigation; and

**WHEREAS**, one of the most important functions of government of the City of Winston-Salem is to protect public safety; and

**WHEREAS**, the Winston-Salem Police Department's investigation of the Silk Plant Forest case (originating on December 9, 1995) has resulted in questions concerning whether police procedures were properly followed; and

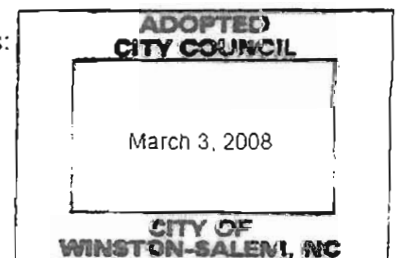
**WHEREAS**, prior to appointment of members to the review committee, concerned citizens asked the City Council to consider expanding the scope of the review; and

**WHEREAS**, it is in the interest of the city and its citizens to seek resolution to these questions by establishing an independent fact finding citizen committee for the Jill Marker – Silk Plant Forest police investigation; and

~~**WHEREAS**, the City Council has also discussed options for referring this case to the North Carolina Innocence Inquiry Commission.~~

~~**NOW, THEREFORE, BE IT RESOLVED**, upon the recommendation of the Public Safety Committee of the Winston-Salem City Council, that the Winston-Salem Police Chief will request that the North Carolina Innocence Inquiry Commission review this case.~~

~~**BE IT FURTHER RESOLVED**, upon the recommendation of the Public Safety Committee of the Winston-Salem City Council, that a local Silk Plant Forest citizen review committee that was approved by the City Council on October 22, 2007, be amended as follows:~~



**Section 1. Creation and purpose.**

There is hereby created an independent review committee whose purpose it shall be to conduct a comprehensive fact finding review the police department's investigation into the Jill Marker – Silk Plant Forest police investigation case and other cases that the committee determines plausibly may be related to the Silk Plant Forest case and to make appropriate recommendations to the City Council consistent with G.S. 160A-146, G.S. 160A-148, and other statutes that might apply. The committee will begin this review immediately and will not wait for the outcome of a possible inquiry by the North Carolina Innocence Inquiry Commission. The committee shall not make a finding or determination of the guilt or innocence of Calvin Smith or any other possible suspect and shall not supplant the courts, officers of the courts, other investigators, or law enforcement agencies.

**Section 2. Membership and appointment.**

The committee shall be composed of a maximum of nine (9) seven (7) members appointed by the City Council upon the recommendation of the Mayor. Such members shall not include Citizens who have had any past with prior connections with or involvement in with the Silk Plant Forest investigation and citizens who have opinions regarding the guilt or innocence of Calvin Smith (other than the opinion that all persons are innocent until proven guilty) are ineligible. At least two of the members of the committee shall have legal and/or criminal justice experience. No City staff shall be eligible to serve. Membership shall be representative of the reflect the ethnic diversity present in the Winston-Salem community and shall represent as fully as possible the geographic regions of the city. Residency in the city is not required.

**Section 3. Terms of office, vacancies, and compensation.**

It is the intent of the City Council that the review shall be thorough. Therefore, all

initial appointments shall be for a term that will expire when the review is completed. Any vacancy shall be filled only for the unexpired portion of the term. Members shall serve without compensation.

**Section 4. Officers.**

The chair and vice chair of the committee shall be ~~one of its members of the committee elected by the committee.~~ who shall be appointed by the City Council, upon the recommendation of the Mayor. The chair shall have considerable legal experience. The committee shall elect from its members a vice chair who shall serve in the absence of the chair.

**Section 5. Duties and responsibilities.**

The City Council has requested an independent complete comprehensive fact finding review of the Jill Marker – Silk Plant Forest ~~police investigation case and other cases that the committee determines plausibly may be related.~~ In conjunction with this review, the committee shall undertake the following actions:

- a) ~~Approve the scope of the administrative review; and~~
- b) ~~Approve the methodology and timetable for the administrative review; and~~
- c) Direct City staff in assisting with the review and, if needed, make requests to the City Council through the Public Safety and Finance Committees for funds to be used for retaining outside investigators, legal counsel, and administrative support;  
and
- d) Conduct interviews (or supervise interviews conducted on the committee's behalf by its investigators) with all individuals involved with the case (police personnel, witnesses, suspects, etc.); and



- e) Request that the City Council use its statutory subpoena power to compel testimony and/or documents as needed; and
- f) Ensure that any information uncovered that may have a bearing on the guilt or innocence of Calvin Smith is promptly forwarded to the District Attorney and Calvin Smith's defense attorneys in compliance with the law; and
- g) Complete an independent report without any interference or mandatory editing by any city or state office, agency, or attorney; and
- h) Approve a final report, with any recommendations the committee may have, and then forward a final report directly to the Public Safety Committee and to the City Council by December 15, 2008. ~~July 15 2008, or make an interim report by that date, stating the status of the committee's progress and specifying the additional time and/or resources required for the committee to fulfill its purpose.~~

To assist the committee with this review, the City Manager's Office and City Attorney shall undertake the following actions:

- a) Ensure complete cooperation from the Police Department; and
- b) Assign City staff as needed to assist the committee.

**Section 6. Meetings.**

The committee shall hold regular public meetings not less than once a month ~~quarter~~ provided, however, the information is not considered confidential pursuant to N.C.G.S. 160A-168 and not already subject to an existing court order.

**Section 7. Subpoena power.**

- a) Upon request from the committee, the City Council shall consider

## **EXHIBIT B**

### **APPENDIX DIRECTORY (Listing of Appendices)**

1. Resolution for the Creation of the Silk Plant Forest Citizen Review Committee
2. Timeline
3. Involved Persons List both Criminal Justice Personnel and Citizens
4. Silk Plant Forest Case File, Report # 9580102 (Including Original Report, Supplement Reports, Polygraph Reports, CrimeStoppers, Line-ups, and Miscellaneous Documents)
  - a. Statements both Transcribed and Written (In Alphabetical Order)
  - b. Property Reports (By Year)
5. Crime Scene Photographs from the Silk Plant Forest Case
6. The Winston-Salem Journal's Special Report from November of 2004 and Articles Related to the Silk Plant Forest.
7. Committee Minutes
  - a. February 25, 2008
  - b. March 25, 2008
    - i. Confidentiality Agreement
    - ii. Personnel Privacy Law
    - iii. Resolution Relating to Settling, Defending, and Paying Civil Claims
  - c. April 7, 2008
  - d. April 28, 2008
  - e. May 22, 2008
  - f. June 23, 2008
    - i. Polygraph Presentation
    - ii. Email from SBI Agent Williams Reference a Statement from a Witness
    - iii. Old and New General Order 4.8, Polygraphs
    - iiii. Documents Related to Polygraphs from the Silk Plant Forest Case File
  - g. July 28, 2008
    - i. Old and New General Order 4.1, Preliminary and Follow-up Investigations
    - ii. BLET Outline for Interviews: Field and In-Custody
    - iii. Two Letters and Supporting Document from Professor Coleman
  - h. August 25, 2008
    - i. Old and New General Order 4.14, Line-up Procedures
    - ii. Draft of Photographic Line-up Summary
  - i. September 22, 2008
    - i. Old and New Policy Manual 600 Section

- ii. Old and New Report Writing Section 8.01
  - iii. Old and New WSPD Rules of Conduct
- j. October 13, 2008
  - i. Partial Interview of Michael Barker
  - ii. Sergeant Byrom's Notes of Interest
  - iii. Draft of Polygraph Summary
- k. October 27, 2008
- l. November 24, 2008
- m. December 17, 2008
- n. December 22, 2008
  - i. Letter from Mayor Joines to Guy Blynn
  - ii. Letter from Thomas Keith to Guy Blynn
- o. January 26, 2009
- p. February 12, 2009
  - i. Mayor Pro Tempore Vivian Burke's Letter to Guy Blynn
  - ii. Guy Blynn's Letter to Mayor Pro Tempore Vivian Burke
  - iii. Winston-Salem Journal Legal Counsel's Letter to the Silk Plant Forest Citizen Review Committee
  - iiii. Professor Wayne Kirby's Report on Pamela Moore's Recorded Statement
- q. February 23, 2009
  - i. General Oder 1.12, Procedure for Official, Routine, & Personal Correspondence
  - ii. General Oder 4.01, Preliminary and Follow-Up Investigations, Revision Date: December 31, 2008
  - iii. Resolution Extending the Final Report Submission Date For The Silk Plant Forest Citizen Review Committee
  - iiii. Submission of a Document by Mr. Ferree Reference a Recommendation to Indicate Kalvin Smith was Wrongfully Convicted
- r. March 5, 2009
  - i. COP Memo 04-120, Preservation of Investigative Field Notes
  - ii. Updated Appendix
  - iii. Handout from Mr. Ferree, One Page Statement
  - iiii. Draft of Interview Summaries
- s. March 17, 2009
  - i. Officer Armita Miles' Letter to Aaron Marker
  - ii. Updated Appendix, March 17, 2009
  - iii. Draft of Committee Report
  - iiii. Handout from Jet Hollander on Milgram Experiment
- t. March 23, 2009
  - i. Draft of Committee Report
  - ii. Report Writing Manual, Section 8.32 Preliminary Prosecution Booklet
- u. April 27, 2009
  - i. Select Pages from the Motion to Suppress, November 24, 1997
  - ii. Draft of Interview Summaries by Ms. Mendezoff
  - iii. Draft of Statements from Valarie Williams by Ms. Cook

- iiii. Handwriting Analysis Report by Sandy Vuncannon
  - v. May 18, 2009
    - i. Draft of Interview Summaries of Ms. Mendezoff
    - ii. Updated Appendix, May 8, 2009
  - w. June 11, 2009
    - Is a Special Called Meeting of the Winston-Salem City Council for the purpose of interviewing retired detective Donald Ray Williams. The Open Minutes are in this section. To read the entire transcript of this meeting see APPENDIX 14.
  - x. June 22, 2009
  - y. July 16, 2009
    - i. Letter from Police Chief Scott Cunningham to Chairman Guy Blynn
    - ii. Handout from Jet Hollander to Silk Plant Forest Citizens' Review Committee
- 8. Committee Minutes of Closed Session
  - a. June 30, 2008
  - b. July 28, 2008
  - c. August 25, 2008
  - d. October 13, 2008
  - e. November 24, 2008
  - f. January 26, 2009
  - g. February 23, 2009
  - h. March 23, 2009
  - i. April 27, 2009
  - j. June 22, 2009
- 9. 2008-2009 Committee Investigators' Interviews/Contacts with City Employees and Citizens

**City Employees both Current and Former**

- a. Mike Barker (current)
- b. Ted Best (current)
- c. Todd Cook (former)
- d. Rob Cozart (current)
- e. John Grismer (current)
- f. Bryan Macy (current)
- g. Lonnie Maines (former)
  - i. August 26, 2008
  - ii. October 23, 2008
- h. Claire McNaught (former)
- i. Arnita Miles (former)
- j. Linda Nahay-Matheny (former)
- k. Randy Patterson (former)
- l. Mike Poe (current)

- m. Edward Roussel (former)
- n. Mike Rowe (current)
- o. Mike Sharpe (current)
- p. Randy Weavil (former)
- q. Donald Williams (former) SEE APPENDIX 14 for Transcript of Interview

**Citizens**

- a. Nancy Baxter
  - b. Christopher Brown
  - c. Myra Dixon
  - d. Paula Glover
  - e. Vonsa Graham
  - f. Ashley Hattaway
  - g. Julian Hattaway
  - h. Ivadine Hester
  - i. Walter Hoisington
  - j. Jerri
  - k. Ellen Lamoureux
  - l. Kenneth Lamoureux
  - m. Burgess Eugene Littlejohn
  - n. Christopher Matheny
  - o. Pamela Moore
  - p. Sandra Peterson
  - q. Todd Pebbles
  - r. Vince Rabil
  - s. Thomas Reich
  - t. Karen Rhodes
  - u. Jason Scales
  - v. Sabin Segers
  - w. Calvin Smith (Full Interview on DVD and CD)
  - x. Stacy Spainhour
  - y. Williams Speaks
    - i. November 4, 2008
    - ii. March 7, 2009
  - z. Valarie Williams
  - aa. Andra Wilson (Moore)
  - bb. Darrell Wilson
  - cc. Phoebe Zerwick
10. Lab Report for DNA Test of Aaron and Barron Marker
11. Report from Professor Wayne Kirby on Pamela Moore Audio Recording Interview
12. Claire McNaught's Documents
13. Silk Plant Forest Citizen Review Committee Emails

14. Transcript of D. R. Williams Testimony Pursuant to a Subpoena
  - a. Questions for D. R. Williams Testimony Pursuant to a Subpoena
  - b. Copy of Commendation for D. R. Williams
15. D. R. Williams' Reference Documents
16. Transcript of Calvin Smith Trial from December 1, 1997 including the Motion to Suppress from November. 24, 1997
17. Defendant Calvin Michael Smith's Second Motion for Appropriate Relief, Dated April 29, 2008
18. Answer and Brief In Support of the State's Answer To Second Motion For Appropriate Relief, Dated July 17, 2008
19. Defendant's Response to the State's Answer, Dated August 18, 2008
20. Hearing on Calvin Smith's Second Motion for Appropriate Relief, Dated September 29, 2008
21. Transcript of Calvin Smith's Second Motion for Appropriate Relief Hearing, Dated January 5-8, 2009
22. Winston-Salem Police Department's Administrative Review of the Silk Plant Forest Case Conducted in 2007, Including CD's A-H
23. Darrell Wilson's Investigate File
24. DVD of Jill Marker's Interview with Detectives Barker and Williams, October 31, 1996
25. Report from Sandy Vuncannon on Handwriting Analysis of Calvin Smith's written statements from January 24, 1997.
26. DVD of WXII Interview with Donald R. Williams
27. Miscellaneous Documents
28. Documents Received From the Public
29. Interview Summaries Prepared by Committee Member Lois Mendezoff (Including Findings and Recommendations)
30. Additional Court Proceedings from 2009

31. Draft of Court Order to Release Full Committee Report
32. Box containing recordings of Interviews that were conducted and recordings of the Closed meetings. Recordings of the Open meeting will be kept by the City Secretary.