

STATE OF VERMONT
SUPERIOR COURT
CIVIL DIVISION

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VERMONT,
Plaintiff

Washington Unit
Docket No. _____

v.

ESSEX COUNTY SHERIFF'S
DEPARTMENT,
Defendant

Complaint for Access to Public Records

Introduction

In this action, Plaintiff the American Civil Liberties Union Foundation of Vermont (ACLU) seeks an order compelling Defendant Essex County Sheriff's Department (ECSD) to produce to the ACLU electronic copies of public records in its possession and to cease its practice of requiring that records requestors travel to its office in Guildhall, Vermont, to inspect responsive records. The ECSD has already compiled, reviewed, and redacted records responsive to the ACLU's public records request—but, consistent with its stated policy, insists that the ACLU inspect the records in person before it will produce copies of those records to the ACLU. However, in keeping with its mandate to “provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution,” 1 V.S.A. § 315(a), Vermont's Public Records Act (PRA) leaves to the requestor, not the public agency, the choice of whether to inspect records or, instead, to receive copies of them.

The ACLU respectfully asks this court to (1) declare that the ECSD's refusal to produce electronic copies of these records violated the PRA; (2) enjoin the ECSD from

withholding copies of these public records and order their production; (3) declare that the ECSD's policy or practice of requiring requestors to first inspect records before it will produce copies of them violates the PRA; (4) enjoin the ECSD's policy or practice of requiring requestors to first inspect records before it will produce copies of them; and (5) award the ACLU reasonable costs and attorneys' fees associated with bringing and prosecuting this action as provided for under 1 V.S.A. § 319(d).

Parties

1. Plaintiff American Civil Liberties Union Foundation of Vermont (ACLU) is a non-profit 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases and educates the public about civil rights and civil liberties issues across Vermont. Government transparency, accountability, and responsiveness to the people are central to this mission. The ACLU is headquartered in Montpelier, Vermont.
2. Defendant Essex County Sheriff's Department (ECSD) is a "public agency" within the meaning of 1 V.S.A. § 317(a)(2) insofar as it is the law enforcement agency for Essex County, a political subdivision of the State. The ECSD's office is located in Guildhall, Vermont.
3. ECSD is the custodian of certain public records that the ACLU has sought copies of and been denied.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this matter and is an appropriate venue under 1 V.S.A. § 319(a).

Factual Allegations

5. On December 15, 2023, the *Barre-Montpelier Times Argus* republished an article from the *Community News Service* regarding the Vermont Criminal Justice Council’s consideration of proposals to amend its Fair and Impartial Policing Policy (FIPP). *See* Ex. A.
6. The purpose of the FIPP is “to require that all [agency or department] [*sic*] conduct policing in a fair and impartial manner, to clarify the circumstances in which officers can consider personal characteristics, or immigration status, when making law enforcement decisions and to reinforce processes and procedures that enable us to provide services and enforce laws in an equitable and impartial way.” Ex. B at PURPOSE.¹ All Vermont law enforcement agencies are required to adopt “each component” of the FIPP into their own fair and impartial policing policies. 20 V.S.A. § 2366(a)(1).
7. As relevant here, the FIPP prohibits state and local law enforcement from sharing information about an individual other than their citizenship or immigration status with federal immigration authorities “unless there is justification on the grounds of (i) public safety, (ii) officer safety, or (iii) law enforcement needs that are not related to the enforcement of federal civil immigration law.” *See* Ex. B at XI.a.
8. The *Community News Service* article attributed to Essex County Sheriff Trevor Colby statements that gave the ACLU concern that the ECSD either did not

¹ The FIPP has since been amended, effective April 23, 2024, *see* Vermont Criminal Justice Council, Model Fair and Impartial Policing Policy (Apr. 23, 2024), *available at* <https://vcjc.vermont.gov/content/model-fair-and-impartial-policing-policy>, but Exhibit B is the version that was in effect at all times relevant to this lawsuit.

understand or was willfully not complying with the FIPP. *See* Ex. A at 4 (“[Colby] emphasized that his priority is to keep residents within his jurisdiction safe, and people in his relatively remote part of the state get shaken up when they see unfamiliar folks. Up there, he said, everyone basically knows everyone. Colby said he would likely call immigration authorities after a traffic stop if he thought the people in the car were undocumented.”); *id.* (“[Colby] estimate[ed] his department had relayed about 20 cases to immigration authorities in the last year, not a particularly high figure in his mind.”).

9. To better understand the ECSD’s practices with respect to sharing information with federal immigration authorities, Lia Ernst, Legal Director of the ACLU, filed a public records request on behalf of the ACLU on January 5, 2024, requesting “copies of the following records, in either electronic or paper format:
 1. All records relating to or referencing Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), or Customs and Border Protection (CBP a.k.a. Border Patrol), as well as their employees, created or acquired from January 1, 2022, through the present.
 2. All records related to communications, in any format and by any means, between Essex County Sheriff’s Department (“ECSD”) employees and federal officials regarding or referring to immigration enforcement created or acquired from January 1, 2022, through the present.
 3. All records related to the estimated 20 cases referred by the ECSD to immigration authorities in 2023, as cited in [reporting from the Times Argus](#), including but not limited to officer notes, radio logs, arrest reports, and internal departmental communication related to decisions to refer cases to external agencies.”

Ex. C at 1 (footnotes omitted).

10. In its request, the ACLU asked that the ECSD waive any fees or charges associated with complying with the request because the ACLU “is a not-for-profit charitable and educational organization dedicated to the protection of civil

liberties and government accountability, and waiving fees is in the public interest.” *Id.* at 1–2.

11. The ACLU further noted that, in the event the ECSD declined to waive charges and fees, it was prepared to pay reasonable costs up to \$50 and, if the cost would exceed \$50, requested to be contacted before incurring the expense. *Id.* at 2.
12. The ACLU also requested “that any records that can be sent electronically at a lower cost be sent to lernst@aclvt.org in a generally used electronic format such as a doc or pdf file.” *Id.*
13. After several exchanges about the scope of the request and the ECSD’s progress on fulfilling it, *see* Ex. D at 7–12, on April 5, 2024, Sheriff Colby advised that the records were “available for review” and requested that the ACLU “let [him] know when you will be coming to inspect the records,” *id.* at 7. He also advised that the ECSD “will make copies for you based upon the documents you select.” *Id.*
14. On April 9, the ACLU responded that it “would be interested in having copies of all of them, so could you please either (ideally) send them electronically or drop them in the mail?” *Id.* The ACLU also inquired, “[a]pproximately how many records are we talking about here?” *Id.*
15. Sheriff Colby responded that “[i]t has been our consistent process to allow viewing at our office during regular business hours as allowed by statute” and that there were “almost 50 pages” of responsive documents. *Id.* at 6–7.
16. On April 12, the ACLU repeated its request that ECSD produce copies of the records, this time explicitly requesting them electronically due to the ongoing mail delays with the Montpelier post office remaining closed. *Id.* at 6. (“The PRA gives requestors the choice of whether to inspect records in person or instead

receive copies of them—and, in the case of records stored electronically, whether to receive paper or electronic copies. In our records request, we elected to receive copies—so could you please send copies to me at this email address? With Montpelier still lacking a post office, mail is extremely delayed and unreliable (I’m still waiting for something that was sent in late February, for example.)”).

17. That same day, Sheriff Colby reiterated his refusal to produce copies, stating: “I am sorry but I don’t see anywhere that our agency is required to mail or email records. It has been our practice to offer the requestor the opportunity to come and inspect as required. Can you provide me with the statute or case law?” *Id.*
18. Still on April 12, the ACLU responded with a detailed analysis of the relevant statutory language and caselaw, as well as practical reasons why the PRA gives the requestor, not the agency, the choice between inspecting and receiving copies of documents. *Id.* at 4–6.
19. In this response, the ACLU asked that Sheriff Colby “reconsider your requirement that we travel to your office to inspect in person records responsive to our January 4 public records request for copies of certain records.” *Id.* at 4. The ACLU again requested “that you please send responsive records in electronic format to [Ms. Ernst] at this email address.” *Id.* at 5.
20. Having received no response from the ECSD by April 26, 2024—well beyond the three business days permitted by the PRA, 1 V.S.A. § 318(a)(1), (b)—the ACLU appealed the constructive denial of its “request to receive by email electronic copies of the records you have already gathered and reviewed pursuant to [its] records request of January 9 [sic], 2024,” *Id.* at 3–4; see § 318(a)(2).

21. Once again having received no response from the ECSD, on May 23, 2024, the ACLU attempted one more time to avoid litigation, notifying Sheriff Colby that, unless the ACLU received the records by email no later than May 31, 2024, it would commence this lawsuit. Ex. C at 2–3.
22. On May 28, 2024, Sheriff Colby emailed Ms. Ernst, noting that he would be traveling to Burlington, Vermont, that Friday in an off-duty capacity and asked if she had time to meet. *Id.* at 2. He further stated, “I don’t agree with your interpretation but I also don’t want conflict over something small.” *Id.*
23. The next day, Ms. Ernst replied to this email, noting that she was not available on Friday, but “would be happy to jump on the phone tomorrow if there’s anything you’d like to discuss. My day is pretty open before noon.” *Id.*
24. As of the filing of this lawsuit, Sheriff Colby neither called Ms. Ernst nor replied to her May 29 email.
25. Pursuant to ECSD’s “consistent process,” *supra* ¶ 15, and “practice,” *supra* ¶ 17, of requiring requestors to travel to its office to inspect records before it will produce copies of them, the ECSD has not produced to the ACLU electronic copies of the requested records.

Cause of Action

Failure to produce copies of public records 1 V.S.A. §§ 315 *et seq.*

26. The PRA provides that “[a]ny person may inspect or copy any public record of a public agency.” 1 V.S.A. § 316(a).
27. To effectuate that right, the PRA further provides that, “[u]pon request, the custodian of a public record shall promptly produce the record for inspection or

a copy of the record,” except in circumstances not presented here. 1 V.S.A. § 318(b).

28. In its public records request, the ACLU requested “copies” of certain public records.
29. The ECSD has compiled, reviewed, and redacted the relevant records, which amount to under fifty pages.
30. Despite multiple follow-up requests that the ECSD send the ACLU electronic copies of the records by email, the ECSD refuses to do so, insisting instead that the ACLU first travel to the ECSD’s office in Guildhall, Vermont, to inspect the records before it will make copies of those records for it.
31. The ECSD’s refusal to produce copies of records in response to the ACLU’s request violated the PRA.
32. The ECSD’s stated policy or practice of requiring requestors to inspect records in person before it will produce copies of them violates the PRA.

Prayer for Relief

In light of the foregoing, the ACLU respectfully requests that this Court issue the following relief:

33. Issue a declaratory judgment that the ECSD’s refusal to produce electronic copies of the records requested by the ACLU violated the PRA;
34. Enjoin the ECSD from continuing to withhold electronic copies of the records that the ACLU requested and order their prompt production to the ACLU;
35. Issue a declaratory judgment that the ECSD’s policy or practice of requiring requestors to first inspect records in person before it will produce copies of them

violates the PRA and that the PRA requires agencies to produce copies of records to requestors who request copies and permit inspection of records for requestors who request to inspect records;

36. Enjoin the ECSD's policy or practice of requiring requestors to inspect records in person before it will produce copies of them;
37. Award the ACLU reasonable costs and attorneys' fees associated with bringing and prosecuting this action as provided for under 1 V.S.A. § 319(d); and
38. Order such additional relief as the Court determines is necessary in the interests of justice.

Respectfully submitted,

/s/ Lia Ernst
Harrison Stark
Hillary Rich
ACLU Foundation of Vermont
PO Box 277
Montpelier, VT 05601
(802) 223-6304
lernst@acluvt.org
hstark@acluvt.org
hrich@acluvt.org

*Counsel for the American Civil Liberties
Union Foundation of Vermont*

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