

BY CERTIFIED MAIL

Hon. Phil Scott
Governor of Vermont
109 State Street, Pavilion
Montpelier, VT 05609

June 20, 2018

Re: *Public Records Request Regarding Governor's Social Media Policy and Censoring of Facebook Commenters*



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Vermont

PO Box 277
Montpelier, VT 05601
(802) 223-6304
acluvt.org

Julie Kalish
President

James Lyall
Executive Director

Dear Governor Scott:

In accordance with 1 V.S.A. §§ 315 *et seq.*, the ACLU Foundation of Vermont respectfully requests copies of the following information, in either electronic or paper format:

1. Any and all records¹ related to the Governor Scott's "Social Media Policy," as written on Governor Scott's official verified Facebook page² or any other iteration of such policy;
2. Any and all records related to Facebook user accounts that have been or are currently blocked from commenting on, "liking," viewing, or participating in post conversations on Governor Scott's official verified Facebook page;
3. Any and all records related to Facebook user comments that have been or remain deleted from Governor Scott's official verified Facebook page;
4. Any and all records related to Twitter accounts that have been or are currently blocked in any manner by Governor Scott's official verified Twitter account (@GovPhilScott)³;
5. Any and all records related to reply tweets to @GovPhilScott's tweets on Twitter that have been or remain deleted;

¹ For the purpose of this letter, "records" includes but is not limited to all records or communications preserved in electronic or written form, including but not limited to: text communications between phones or other electronic devices (including but not limited to communications sent via SMS or other text, Blackberry Messenger, iMessage, WhatsApp, Facebook, Signal, Gchat, Twitter direct message, or similar form of communication), including those sent through personal devices or accounts; e-mails (including those in personal accounts); images, video, and audio, including that recorded on cell phones; voicemail messages; social-media posts; minutes or notes of meetings and phone calls; faxes; documents; data; correspondence; letters; messages; files; forms; logs; investigations; reports; directives; instructions; or other communications.

² See Governor Phil Scott, Facebook, <https://www.facebook.com/GovPhilScott/>.

³ See Governor Phil Scott, Twitter, <https://twitter.com/GovPhilScott/>.

6. Any and all records related to Instagram accounts that have been or are currently blocked in any manner by Governor Scott's Instagram account (@philscottvt)⁴;
7. Any and all records related to comments on @philscottvt photo-posts on Instagram that have been or remain deleted.

Because the public records act governs “any written or recorded information, regardless of physical form or characteristics,” *id.* § 317(b), your search for responsive data should include electronic as well as tangible sources.

We have addressed this request to you in the belief that you are the custodian of such records. If you are not, please forward this request to the proper custodian of such documents.

We request that the copies be provided without charge. The ACLU Foundation of Vermont 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. Should you decline to waive the charges and expenses, the ACLU Foundation of Vermont is prepared to pay reasonable costs for copies of the above-specified records upon delivery, provided that the total does not exceed \$100. Any records are welcome to be sent in electronic format to jdiaz@aclvt.org. If the total cost of producing the records would exceed \$100, please contact us before incurring the expense, as we may wish to inspect the records without charge instead of receiving copies. *See Vt. State Employees' Ass'n v. Vt. Agency of Natural Res.*, No. 517-7-10 Wncv (Vt. Super. Ct. Jan. 6, 2011).

If you believe that the ACLU of Vermont is not entitled to some of these records, you are required to inform us of your decision within three business days, listing each record or portion of a record withheld and the specific exemption that you believe applies to each. 1 V.S.A. § 318(a)(2). If you are unable to locate any records responsive to this request, you must certify that in writing to us. *Id.* § 318(a)(4).

If an otherwise public record has a portion that is exempt from disclosure, you must redact the exempt portion and release a copy of the rest of the record together with a notation identifying the specific exemption that you believe applies to the portion withheld. *Id.* § 318(e); *Herald Ass'n v. Dean*, 174 Vt. 350, 358-359 (2002).

If some or all of our request is denied, please notify us of the title and name of the person responsible for the denial, and the appeal procedures available to

⁴ *See* Phil Scott, Instagram, <https://www.instagram.com/philscottvt/?hl=en>.

us, including the name of the person to whom appeal may be made.

If you have questions about this request, please feel free to contact me at (802) 223-6304 ext. 113 or jdiaz@aclvt.org.

We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Diaz", written over a horizontal line.

Jay Diaz
Staff Attorney
ACLU of Vermont

Cc: Jaye Pershing-Johnson, Governor's legal counsel (via email to jaye.johnson@vermont.gov); Jason Gibbs, Governor's chief of staff (via email to jason.gibbs@vermont.gov)