

VERMONT HUMAN RIGHTS COMMISSION
14-16 Baldwin Street
Montpelier, VT 05633-6301

ADMINISTRATIVE COMPLAINT

COMPLAINANTS

Cassandra Keating, Joel Fowler
c/o Jay Diaz and Lia Ernst
ACLU Foundation of Vermont
PO Box 277
Montpelier, VT 05601

Cassandra Keating and Joel Fowler are the parents of a daughter and former residents of Bennington, Vermont. Mr. Fowler is a Black man and Ms. Keating is a white woman. They experienced racially motivated targeting, harassment, surveillance, and vilification by Bennington Police Department officers. As a result, Mr. Fowler and Ms. Keating filed verbal and written complaints about at least eight separate incidents with the Bennington Police Department. The Department conducted cursory investigations and found no wrongdoing. The Bennington Select Board privately and publicly reviewed parts of the complaints and the Department's investigation. After concluding its review in secret, the Bennington Select Board unlawfully retaliated against Ms. Keating and Mr. Fowler by revealing and publishing their identities and status as complainants, other detailed personal information, selected internal investigation documents, and unredacted videos of the couple—during a publicly available, recorded, and livestreamed Select Board meeting.

The Select Board publicized their identities and private personal information despite knowing that individuals in a nearby area may have been attempting to locate and harm Mr. Fowler and Ms. Keating. The Select Board's publication of Mr. Fowler's and Ms. Keating's identities also violated Vermont law, which prevents revealing the identifying information of complainants who allege unlawful or abusive government actions. *See* 1 V.S.A. § 317(c)(42). And, despite knowing that their actions would likely chill Ms. Keating, Mr. Fowler, and others from making future complaints against the Bennington Police, the Select Board refused to change its policy of identity disclosure, perpetuating the specific and systemic racism inherent in disclosing the identities of those who complain about police misconduct. Due to the Select Board's actions, Mr. Fowler and Ms. Keating were forced to relocate from Bennington out of fear of the police, local government, and those who sought to harm them—the very outcome they believe Bennington public officials sought from the start.

COMPLAINANTS' COUNSEL

James M. Diaz
Lia Ernst
ACLU Foundation of Vermont
PO Box 277

Montpelier, VT 05601
(802) 223-6304
jdiaz@acluvt.org
lernst@acluvt.org

RECIPIENT

Town of Bennington o/b/o the Bennington Select Board
205 South Street
Bennington, VT 05201

PRELIMINARY STATEMENT

1. This complaint is filed pursuant to the Vermont Public Accommodations Act, 9 V.S.A. § 4502 et seq. (“VPAA”), which prohibits discrimination in places of public accommodation on the basis of race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity. The VPAA also prohibits retaliation against any person exercising or attempting to exercise their rights under the VPAA.
2. As detailed in the Factual and Legal Allegations below, the Town of Bennington, through the Bennington Select Board, retaliated against Ms. Keating and Mr. Fowler by publishing their personal identifying information, their status as complainants of discrimination by Bennington police officers, and unredacted videos of them after they submitted formal complaints about the Bennington Police Department’s discriminatory targeting of their family. In addition, Ms. Keating and Mr. Fowler allege that the Select Board’s unwritten policy of complainant identity disclosure is unlawfully discriminatory because it disparately impacts and prevents Black people from filing complaints of police misconduct.
3. In order to address the discriminatory acts and policy, Mr. Fowler and Ms. Keating request that the Vermont Human Rights Commission investigate the Town of Bennington and Bennington Select Board to determine (1) whether the entities unlawfully retaliated against Ms. Keating and Mr. Fowler, and (2) whether the entities’ unwritten policy of publishing all personal information of complainants without redactions is discriminatory and unlawful.

JURISDICTION

4. The Vermont Human Rights Commission has jurisdiction to investigate and enforce complaints of discrimination in places of public accommodation in Vermont. 9 V.S.A. § 4552(b)(1).
5. This complaint is timely. On July 22, 2020, the Bennington Select Board retaliated against Ms. Keating and Mr. Fowler for their complaints of discrimination by publicizing their personal information and their status as complainants, as per the Select Board’s policy.
6. Ms. Keating and Mr. Fowler file this complaint on April 7, 2021, less than one year from the violations.

COMPLAINANTS

Cassandra Keating and Joel Fowler Are Former Residents of Bennington, Vermont and Were in an Interracial Relationship

7. Cassandra Keating was born in Vermont and has lived in the Bennington area intermittently over many years.
8. Mr. Fowler moved to Vermont with Ms. Keating and their daughter in April 2020.
9. At all times relevant to this Complaint, Ms. Keating and Mr. Fowler were in a romantic relationship.
10. Mr. Fowler fled Bennington in the summer of 2020, shortly after the Bennington Select Board revealed his identity and other personal information at a public meeting.
11. Ms. Keating fled Bennington shortly thereafter, in late August of 2020.
12. Beginning shortly after they moved to Bennington, the couple repeatedly saw Bennington Police officers surveilling them at various locations. Mr. Fowler was repeatedly stopped by Bennington police. Mr. Fowler experienced this as racial profiling.
13. Ms. Keating also experienced the surveillance and targeting by Bennington police officers and feared that the police were attempting to run her family out of town because Mr. Fowler is a Black man.
14. Mr. Fowler has justifiable reasons to fear police. He has previously been falsely accused of a crime, and in 2007 was wrongfully convicted of murder. After spending more than seven years imprisoned, in 2015, the conviction was vacated on request of the Brooklyn District Attorney's Conviction Review Unit and Mr. Fowler was freed. The chief of the Conviction Review Unit told the reviewing judge that Mr. Fowler had "nothing to do with the matter and was nowhere near the incident." Colleen Wright, *Another Exoneration in Brooklyn Brings Total Since Last Year to 14*, NY Times (Aug. 4, 2015), available at <https://www.nytimes.com/2015/08/05/nyregion/another-exoneration-in-brooklyn-brings-total-since-last-year-to-14.html>.
15. Mr. Fowler's experience of being wrongfully convicted and imprisoned for a crime he did not commit has caused him to have less trust and faith in police and the criminal justice system.

RECIPIENTS

16. The Bennington Select Board is the elected governing body for the Town of Bennington, Vermont.
17. The Town of Bennington is a public accommodation.

18. The Bennington Select Board is a public accommodation.
19. For many years, the Town of Bennington has been the subject of public scrutiny regarding its police department's racially discriminatory practices and statements, and the unceasing support of that department by town officials.
20. For example, in 2020, Bennington, the Bennington Police Department's Chief, and two Bennington police officers settled a federal lawsuit brought by Shamel Alexander in 2016. See Ellie French, VTDigger, *Man settles with Bennington police for \$30,000 in racial bias case*, June 24, 2020, available at <https://vtdigger.org/2020/06/24/man-settles-with-bennington-police-for-30000-in-racial-bias-case-%EF%BB%BF/> <https://vtdigger.org/2020/06/24/man-settles-with-bennington-police-for-30000-in-racial-bias-case-%EF%BB%BF/>.
21. The lawsuit arose from a 2013 traffic stop in Bennington. As a result of the stop, Mr. Alexander was initially convicted of a drug offense, only to have his conviction vacated by a unanimous decision of the Vermont Supreme Court. The Court found that the officers violated Mr. Alexander's Fourth Amendment rights by expanding the traffic stop into a drug investigation absent reasonable suspicion to believe that he was engaged in any criminal activity. *State v. Alexander*, 2016 VT 19.
22. In response to the Court ruling that the officers violated Mr. Alexander's rights, Bennington Police Chief Paul Doucette told the news media that, "I don't see us making any changes here," and argued that the officers' actions were appropriate.
23. Mr. Alexander subsequently filed a civil rights lawsuit, alleging that the stop violated not only his Fourth Amendment right to freedom from unreasonable search and seizure, but also his Fourteenth amendment right to equal protection under the law and his Title VI right to be free from race-based discrimination. He further alleged that these violations were not simply the result of the individual officers' conduct, but instead were the products of unconstitutional policies, practices, or customs of, and insufficient training and supervision by, the Chief of the BPD and the Town of Bennington.
24. In denying defendants' motion to dismiss, the court found it reasonable to infer that, "had Bennington appropriately trained or supervised its police officers with respect to racial disparities in stops and searches, Alexander would not have been stopped or searched and his equal protection rights would not have been violated."
25. In 2019, public pressure and scrutiny from the Vermont Attorney General forced the Town of Bennington to contract with third-party entities to review the policies and procedures of the Bennington Police Department.
26. In April 2020, the International Association of Chiefs of Police (IACP) delivered its report, finding that Bennington's law enforcement practices "have sown deep mistrust between parts of the community and the department" and "contribute to a pattern of fear of retaliation for

certain segments of the community.” Specifically, the IACP noted that some “[c]ommunity members across sectors . . . expressed a fear of retaliation for raising concerns to the department.” “Heightened fear of retaliation” even prevented some from engaging in the IACP’s factfinding process. International Association of Chiefs of Police, *Assessment of the Bennington Police Department Policy and Procedures 22* (2020), available at https://benningtonvt.org/wp-content/uploads/2020/04/BPD_Policy_and_Procedures_Final_Report.pdf.

27. The IACP report included twenty-five recommendations, including a recommendation that the Town of Bennington develop a civilian review and oversight board to investigate complaints against the Bennington Police Department.
28. Instead of developing a meaningful civilian review and oversight board that “include[d] representation from diverse populations of the Bennington community,” the Select Board made itself the de facto civilian review board.
29. Members of the Select Board engaged in the citizen review process have never received training on how to conduct police oversight or accountability.

FACTS

A. Background: Mr. Fowler and Ms. Keating Experienced Being Racially Targeted, Harassed, Surveilled, and Vilified by the Bennington Police Department.

30. Mr. Fowler, Ms. Keating, and their daughter moved to Bennington on or around April 1, 2020, with the intent to stay permanently and to seek safety and a new start after being the victims of unknown persons firing a gun at their former home in nearby New York.
31. Between April 1 and June 1, 2020, Bennington Police officers surveilled, followed, stopped, questioned, and ticketed Mr. Fowler and Ms. Keating on numerous occasions.
32. Ms. Keating and Mr. Fowler suspected they were being followed by Bennington police officers on a near-daily basis during May 2020.
33. Bennington police officers told the couple’s acquaintances and landlord that the couple was involved with drugs, gangs, and criminality.
34. The couple denies all such allegations and mischaracterizations.
35. Bennington police officers’ communications to the couple’s landlord were an attempt to pressure the landlord to evict Ms. Keating and Mr. Fowler.
36. Bennington police officers took surveillance photos of Mr. Fowler and Ms. Keating.

37. On May 6, 2020, a Bennington police officer approached Mr. Fowler's vehicle and told Mr. Fowler that unknown people wanted to hurt him, all while Mr. Fowler's three-year-old daughter was in the backseat and listening to the conversation.
38. The officer refused to provide Mr. Fowler with more information about the origin of the threats or any additional information.
39. Mr. Fowler and Ms. Keating believe the Bennington Police Department's targeting, harassing, surveilling, and vilifying of them was due to their race and interracial relationship.
40. Mr. Fowler and Ms. Keating believe the Bennington Police Department's actions were designed to scare them and force them to permanently move out of Bennington.
41. Ms. Keating and Mr. Fowler experienced constant stress and hyper-vigilance caused by the Police Department's close surveillance of their daily life.
42. Ms. Keating and Mr. Fowler experienced the continuous threat that they would be targeted by immediate police action for even the smallest of infractions.
43. Ms. Keating's and Mr. Fowler's relationships with members of their community were eroded by police officers telling others that they were bad people.
44. Ms. Keating and Mr. Fowler feared for their lives daily because a Bennington police officer informed them that someone had threatened to harm them, without ever providing additional information.

B. Background: Mr. Fowler Filed an In-Person Complaint of Systematic Racial Discrimination, Targeting, and Profiling. It Was Ignored.

45. After a May 9, 2020 encounter with a Bennington police officer, Mr. Fowler visited the Bennington Police Department headquarters to submit a formal complaint.
46. Mr. Fowler submitted a verbal complaint to a Bennington Police representative regarding ongoing and repeated racial discrimination and profiling, including a May 9 incident.
47. The Bennington Police representative initially denied Mr. Fowler the opportunity to submit a complaint, allegedly because a supervisor was not available.
48. Upon Mr. Fowler's insistence, the representative telephoned a superior and then advised Mr. Fowler that an evening shift supervisor would contact Mr. Fowler to take his complaint.
49. Mr. Fowler and Ms. Keating were never contacted by any representative of the Bennington Police Department about Mr. Fowler's complaint.

50. Bennington Police Sergeant Roscoe Harrington reviewed Mr. Fowler's complaint, but only investigated the May 9 incident and ignored Mr. Fowler's complaints of broader discrimination.
51. Sergeant Harrington ended his investigation into the May 9, 2020 incident after speaking to the involved officer and viewing his body camera footage.
52. Sergeant Harrington submitted a report of his internal affairs investigation that same day, May 9, 2020.
53. Sergeant Harrington's investigation report acknowledges that Mr. Fowler believes he "is being harassed by Bennington Police," but did not investigate his complaint beyond the May 9, 2020 incident.
54. After receiving no follow up for two weeks, on May 27, 2020, Ms. Keating submitted a written complaint to the Bennington Police Department regarding the racially motivated targeting, harassment, surveillance, and vilification of her family. Ms. Keating's complaint described eight separate incidents. *See* Exhibit 8.

C. The Bennington Select Board Reviewed Ms. Keating's Complaint about the Bennington Police Department

55. On July 2 and July 6, the Bennington Select Board met in executive session to review and discuss the Department's investigations of Mr. Fowler's and Ms. Keating's complaints. Exhibit 6.
56. On July 22, the Select Board held a public meeting to share the results of its review. *See* Exhibit 1. The meeting was broadcast in its entirety via Zoom and Facebook Live, and posted to YouTube and Facebook.
57. The Select Board based its review entirely on Bennington Police Department documents and findings.
58. For the review, no representatives of the Bennington Police Department, Bennington Select Board, or Town of Bennington spoke to Ms. Keating or Mr. Fowler about their complaints and experiences.
59. Neither Ms. Keating nor Mr. Fowler were invited to the meetings or to present their perspectives.
60. Neither the Select Board nor any law enforcement official spoke to any of Ms. Keating's or Mr. Fowler's friends or family members or other bystanders or witnesses to the complained-of events.

61. The Select Board did not conduct interviews with Bennington Police Department officers to investigate whether officers had targeted or followed Ms. Keating and Mr. Fowler due to their race or interracial relationship.
62. During the July 22 meeting, the Select Board voted unanimously that six of the incidents described in Ms. Keating's complaint did not violate Department policy.
63. The Select Board did not investigate the other two incidents.
64. The Select Board expressed "concern" about an officer speaking to Mr. Fowler about threats to his family's safety while his three-year-old daughter was seated directly behind him, but it took no meaningful corrective action. *See Exhibit 1 at 2:53-65.*
65. The Select Board expressed "concern" regarding the Bennington Police Department's practice of contacting landlords to provide them information about tenants' alleged criminality and background and of pressuring landlords to evict certain tenants disfavored by Bennington police officers, but it took no meaningful action to prevent such practices in the future. *See Exhibit 1 at 2:53-65.*
66. The Select Board declined to investigate whether Bennington police officers' concerning actions were part of a larger campaign of discrimination against Mr. Fowler and Ms. Keating. *See Exhibit 1.*

D. The Bennington Select Board Retaliated Against Ms. Keating and Mr. Fowler by Publishing the Couple's Personal Identifying Information and Videos of Them, Without Redaction

67. During and after the July 22 meeting, the Select Board published the so-called Report on the Evaluation of Public Officers (hereinafter "Report").
68. The Select Board published the Report despite acknowledging that "specific allegations of misconduct by a police officer must be treated as confidential." Exhibit 1 at 1:25-26.
69. This Report included emails, police reports, police narratives, body-worn camera recordings, investigative notes, and investigative findings.
70. The Report included a large amount of personally identifying information about Ms. Keating and Mr. Fowler. The published information included: full names; aliases; birthdates; past and current phone numbers; past and current addresses; physical descriptions; descriptions of their vehicles; license plate numbers; driver's license numbers; criminal histories; suspected criminal activity; probation status; various names, birthdates, addresses, criminal histories, and vehicle descriptions of their friends and family members; copies and descriptions of their complaints; and the name and identifying information of Ms. Keating's current landlord.
71. The Select Board published all documents without redaction. *See Exhibit 1 at 1:51-52.*

72. During the July 22 public meeting, the Select Board viewed and transmitted for public view multiple clips of Bennington police body-worn camera and dashboard camera footage of unredacted video and audio of Ms. Keating and Mr. Fowler interacting with law enforcement officers. *See* Exhibit 1 at 2:66-75.

E. The Publication of Ms. Keating's and Mr. Fowler's Personally Identifying Information, Their Status as Complainants, and Recordings of Them Violated Bennington's As-Written Policy Because it Violated Vermont Law.

73. Prior to July 22, 2020, the Bennington Select Board created the Interim Citizen Advisory Committee Protocol ("Interim Protocol"). *See* Exhibit 1 at 1:29-2:40. The protocol outlined the process and policies the Select Board would use for interim civilian review of complaints against Bennington Police. *See* Exhibit 3. This draft was summarized during a Select Board meeting on July 27, 2020, and was published in written form on August 10, 2020. *See* Exhibit 2 at 7:239-242; exhibit 4.

74. The Select Board reviewed Ms. Keating's and Mr. Fowler's complaints according to the Interim Protocol. *See* Exhibit 1 at 1:21-2:40.

75. The Interim Protocol states that when the Select Board finds complaints to be unfounded or finds further proceedings unnecessary, "the investigatory report and findings, together with any comments by the Advisory Committee, shall thereafter be made public, *subject to any specific redactions required under 1 V.S.A. § 317(c).*" *See* Exhibit 4 (emphasis added).

76. The Select Board did not redact Ms. Keating's or Mr. Fowler's personally identifying information, their status as complainants, or videos of them as is required by 1 V.S.A. § 317(c)(42). Instead, apparently without research, seeking legal advice, or soliciting public opinion, the Select Board determined that 1 V.S.A. § 317(c) required it to release all complainant information, thereby adopting an unwritten policy in direct conflict with the written policy's and Vermont law's redaction requirement.

77. 1 V.S.A. § 317(c)(42) explicitly prevents Vermont's state and local governments from disclosing, unless a contrary law applies:

“[I]nformation that could be used to identify a complainant who alleges that a public agency, a public employee or official . . . has engaged in a violation of law, or in waste, fraud, or abuse of authority, or in an act creating a threat to health or safety, unless the complainant consents to disclosure of his or her identity.”

78. No representative of the Bennington Select Board or Town of Bennington contacted Ms. Keating or Mr. Fowler seeking their consent to publish their personally identifying information, their status as complainants, or recordings of them.

79. Neither Ms. Keating nor Mr. Fowler gave consent for the Select Board or the Bennington Police Department to share their personally identifying information, their status as complainants, or recordings of them with the public.

80. Despite expressing concern about the Bennington Police Department actions related to speaking ill of community members to others and discussing danger to Mr. Fowler's family with his daughter directly behind him, the Select Board nevertheless published and aired Ms. Keating's and Mr. Fowler's personal information to the entire world—knowingly endangering them in the process.
81. The Select Board violated its own written policy to abide by the exemptions of 1 V.S.A. § 317(c), enshrined in its Interim Protocol, by revealing Mr. Fowler's and Ms. Keating's identities, their status as complainants, recordings of them, and other internal investigation documents related to them, without redaction.
82. Furthermore, as opposed to Bennington's policy, Vermont's 2017 law enforcement decertification statute makes only limited information public unless and until an allegation is substantiated. When a report of potential misconduct is forwarded to the Vermont Criminal Justice Council, the Council makes public "the date and the nature of the complaint, but not including the identity of the law enforcement officer," and a summary of the law enforcement agency's investigation. 20 V.S.A. § 2409(c)(1). If the complaint results in discipline or charges, however, the Council makes public the officer's identity and details of the allegations and investigation. § 2409(c)(2).
83. This structure for making certain information about allegations public while keeping other such information confidential is intended "both to protect the reputation of law enforcement officers from public disclosure of unwarranted complaints against them and to fulfill the public's right to know of any action taken against a law enforcement officer when that action is based on a determination of unprofessional conduct." § 2409(a). The apparent logic is that officers' privacy interest in not being publicly tainted by unfounded allegations outweighs the public interest in those unfounded allegations, but, once an officer is found to have committed misconduct, the public interest in that information outweighs any privacy interest in not having that misconduct made public.
84. Even when the information is made publicly available under § 2409(c)(2), the complainant's personally identifying information is required to be kept confidential. § 2409(d).
85. Bennington's policy turns this structure on its head: it keeps confidential information in which there is great public interest—an officer's actual misconduct—and makes public information about which there are heightened privacy interests—a complainant's identity and unfounded allegations against officers. This policy appears designed precisely to shame and potentially result in harm to those who file complaints and to thereby chill future complaints and complainants.

F. The Select Board Is Aware That Publishing the Personal Information of Ms. Keating and Mr. Fowler, and Its Unwritten Policy Requiring It to Do So to Future Complainants, Causes Harm and Chills Future Complaints

86. Despite the IACP report findings, public outcry, and discussion among Select Board members regarding the ethical problems of complainant identity disclosure, the Town of Bennington and the Bennington Select Board refused to change the disclosure policy.
87. Bennington officials should know that 1 V.S.A. § 317(c)(42) explicitly prevents state and local governments from disclosing complainant identities and personal information.
88. Bennington officials have discussed the well-known fact, as noted by many commentators in addition to the IACP, such as the U.S. Department of Justice, that members of the public, especially people of color, are less likely to make complaints to the police if their personal information will be revealed publicly because they have significant fear of retaliation. *See* Department of Justice, Investigation of the Chicago Police Department, United States Department of Justice Civil Rights Division and United States Attorney's Office for the Northern District of Illinois, January 13, 2017, 50-52 ("Experts in law enforcement investigations noted that disclosure of the complainant's identity during the investigation has the potential to chill misconduct reporting without providing discernible benefit.").
89. The Department of Justice has called for the elimination of identity disclosure in police complaint review procedures in order to encourage more complainants to come forward without fear of retaliation. *Id.* at 52.
90. At the August 10 Select Board meeting, the Board discussed negative feedback it received from members of the public related to publicizing Mr. Fowler's and Ms. Keating's personal information. *See* Exhibit 7 at 6:214-220.
91. During the August 10 meeting, Select Board member Sarah Perrin expressed her concern that the Board's publication of the Mr. Fowler's and Ms. Keating's personal information violated their privacy and could subject them to physical harm and retribution. *See id.*
92. At the August 10 meeting, Selectwoman Perrin also raised her concerns that personally identifying information about complainants is exempt from being shared publicly under 1 V.S.A. § 317(c). *See* <https://www.youtube.com/watch?v=91567-LwG3o&list=PLdXvmfaqL6tgGAh8DsxqzWQ7OWrfh1nPt&index=19> at 2:35:47.
93. Several Board members dismissed Selectwoman Perrin's concerns about the Vermont Public Records Act and the Board refused to change its unwritten policy of complainant identity disclosure. *See id.*
 - G. *Mr. Fowler and Ms. Keating Suffered Harm as a Result of the Select Board's Publication of Their Personal Information, Their Status as Complainants, and Audio/Visual Records of Them*
94. The Select Board's publication of their personal information, their status as complainants, and audio/visual recordings of them, with the knowledge that unknown individuals may have wanted to harm Mr. Fowler and his family, caused Mr. Fowler and Ms. Keating to fear that Bennington's local government was trying to put their family in danger.

95. The Select Board's publication of their personal information, their status as complainants, and audio/visual recordings of them also eviscerated their faith in local government to protect them from discrimination.
96. When the Bennington Select Board published Ms. Keating and Mr. Fowler's personal information, their status as complainants, and audio/visual recordings of them, it put them in potential danger of harm, subjected them to public ridicule, and chilled their desire to file future complaints.
97. As a result of their fear of Bennington's police, other public officials, and individuals who sought to harm them, both Mr. Fowler and Ms. Keating fled Bennington with almost nothing, leaving behind their furniture, clothes, and other personal effects.

LEGAL ALLEGATIONS

COUNT I: RETALIATION

98. The Vermont Public Accommodations Act states that any person who is aggrieved by discrimination in a place of public accommodation may file a complaint with the Human Rights Commission or they may bring an action in the Superior Court. 9 V.S.A. § 4506(a).
99. The VPAA also prohibits retaliation against anyone who has filed a complaint or who has otherwise opposed discriminatory action:

“(e) Retaliation prohibited. A person shall not coerce, threaten, interfere, or otherwise discriminate against any individual:

- (1) who has opposed any act or practice that is prohibited under section 4502 or 4503 of this title;
- (2) who has lodged a complaint or has testified, assisted, or participated in any manner with the Human Rights Commission in an investigation of acts or practices prohibited by this chapter;
- (3) who is known by the person to be about to lodge a complaint, testify, assist, or participate in any manner in an investigation of acts or practices prohibited by this chapter;
- (4) who is exercising or enjoying a right granted or protected by this chapter; or
- (5) who is believed by the person to have acted as described in subdivisions (1) through (4) of this subsection.”

9 V.S.A. § 4506(e)

100. Vermont courts have not yet directly addressed how to establish a claim of retaliation in public accommodations under § 4506(e). However, if Vermont courts followed the approach of the Second Circuit, a public accommodations retaliation claim would use the same elements as an employment retaliation claim. *See Lizardo v. Denny's Inc.*, 270 F.3d 94, 105-06 (2d Cir. 2001).

101. In order to show a prima facie case of retaliation in Vermont employment law, the plaintiff must show that: (1) they were engaged in a protected activity, (2) the defendant was aware of that activity, (3) the plaintiff suffered adverse action, and (4) there was a causal connection between the protected activity and the adverse action. *Gallipo v. City of Rutland*, 163 Vt. 83, 92 (1994).
102. Ms. Keating and Mr. Fowler have established all four elements of a retaliation claim.
- A. Complainants' participation in a protected activity
103. By filing formal complaints of discrimination and by making informal protests against the Bennington Police Department's racially motivated targeting, harassment, surveillance, and vilification, Ms. Keating and Mr. Fowler took part in protected activities under the anti-discrimination statute. See *Beckmann v. Edson Hill Manor, Inc.*, 171 Vt. 607, 608 (2000).
- B. Recipient was aware of Complainants' participation in a protected activity
104. The Town of Bennington, through the Bennington Select Board, was aware of the complaints because it conducted a formal review of the Bennington Police Department internal investigations.
- C. Recipient took adverse action against the Complainants
105. The Bennington Select Board publicly shared Ms. Keating's and Mr. Fowler's personally identifying information without their consent.
106. As stated above, the publication of personal information placed Ms. Keating and Mr. Fowler in immediate danger of harm, damaged their reputation in the community, subjected them to public ridicule, chilled their desire to file future complaints and engage politically in Bennington to address its local government's discriminatory policies and practices, forced them to flee Bennington out of fear of the local police and city government, and violated the Vermont Public Records Act.
107. The Town of Bennington, through the Bennington Select Board, demonstrated discriminatory retaliation by:
- a. Once again, supporting racially motivated policing;
 - b. Violating Vermont law and policy, and its own written policy, related to the confidentiality of complainant information;
 - c. Reviewing police misconduct complaints without any training in performing effective and unbiased police oversight; and,
 - d. Publishing Ms. Keating's and Mr. Fowler's personal information, their status as complainants, and audio/visual recordings of them without redaction and without their consent, despite awareness of potential threats to their safety, the IACP's findings, and Vermont law.

D. A causal connection between Complainants' protected activity and the adverse action

108. The Bennington Select Board publicized Ms. Keating's and Mr. Fowler's personal information as a direct result of their complaints of systematic and racially motivated targeting, harassment, surveillance, and vilification by the Bennington Police Department.

COUNT II: DISPARATE IMPACT

109. In addition, the Bennington Select Board's unwritten official policy of disclosing complainants' identities is also unlawfully discriminatory under the VPAA because it will have a disparate impact on Black individuals' ability to submit complaints of police misconduct.
110. To make a prima facie case of disparate impact under Title VI, "a plaintiff must show by a preponderance of the evidence that a facially neutral practice has a racially disproportionate effect." *Ga. State Conf. of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985).
111. Similarly, to establish a prima facie case of disparate impact in Vermont employment law, the plaintiff need only show "that the [] practice has a discriminatory impact on a protected class." *Lavalley v. E.B. & A.C. Whiting Co.*, 692 A.2d 367, 371-72 (Vt. 1997).
112. Under a Title VI disparate impact standard, the Select Board's unwritten official policy of disclosing complainants' identities is facially neutral.
113. Bennington police stop and search Black individuals at a vastly disproportionate rate. *See, e.g.,* Stephanie Seguino, Nancy Brooks, & Pat Autilio, *Trends in Racial Disparities in Traffic Stops, 2014-2019* (2021), available at https://www.uvm.edu/sites/default/files/Department-of-Economics/seguino%20studies/Seguino_Brooks_Autilio_Final_Merged.pdf.
114. Black drivers stopped by the Bennington police are less likely to be ticketed or arrested. *Id.*
115. Black drivers stopped by the Bennington police are more likely to be searched, but less likely to be found with contraband. *Id.*
116. Black individuals in Bennington are, therefore, more likely to have reasons to complain about police conduct and/or submit complaints about police conduct.
117. As documented in the IACP report, Black Benningtonians fear reprisal from Bennington police, officials, and community members should their complaints about police misconduct be published and identities disclosed.
118. Black Benningtonians' reasonable fear is based upon multiple contemporary and historical justifications, some of which are described *supra*.

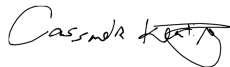
119. Town officials know this fear of retaliation for submitting complaints about police conduct exists, especially among Black Benningtonians. *See supra* ¶ 26, IACP Report, 16-17.
120. Town officials know Bennington police stop data shows vastly disproportionate contact with Black individuals, and the data described *supra*.
121. Even if Town officials did not intentionally enact the unwritten official policy to prevent more Black individuals from making police misconduct complaints, it will undoubtedly have that effect.

RELIEF REQUESTED

122. Ms. Keating and Mr. Fowler respectfully request that the Human Rights Commission:
- a. Declare that the Town of Bennington through its Select Board unlawfully retaliated against Ms. Keating and Mr. Fowler by publishing their personal information, their status as complainants, and audio/visual materials of them without redaction or consent;
 - b. Declare Bennington's unwritten policy of revealing complainants' personal information, their status as complainants, and audio/visual recordings of them without redaction to be unlawfully discriminatory;
 - c. Demand just compensation and other relief as appropriate for Ms. Keating and Mr. Fowler; and
 - d. Demand that Defendants reimburse Mr. Fowler and Ms. Keating for their reasonably incurred costs and attorney fees in filing and pursuing this complaint.

s/Joel fowler

Joel Fowler



Cassandra Keating

James M. Diaz
Lia Ernst
ACLU Foundation of Vermont
PO Box 277
Montpelier, VT 05601
(802) 223-6304
jdiaz@acluvt.org
lernst@acluvt.org
Counsel for Joel Fowler and Cassandra Keating

Date: April 7, 2021