



POLICE DEPARTMENT
CITY OF BURLINGTON

December 7, 2017

Anthony Iarrapino
Wilschek Irapino Law Office, PLLC
16 State Street, Suite 2
Montpelier, VT 05602
anthony@ilovt.net

Jay Diaz
ACLU of Vermont
137 Elm Street
Montpelier, VT 05601
jdiaz@aclvt.org

Dear Anthony and Jay,

I have received and considered your appeal, brought on behalf of Reed Doyle, of the denial of his request to inspect redacted public records in the custody of the Burlington Police Department (BPD). Specifically, Mr. Doyle seeks to inspect redacted body camera video and "other police records." I take this to mean that Mr. Doyle is seeking to inspect (1) body camera video and (2) the incident report and related prosecution documents in the BPD's custody from a June 17, 2017 incident that took place at approximately 7:00 p.m. in the vicinity of Roosevelt Park. These are the records Mr. Doyle requested in his August 21, 2017 electronic mail message to Community Liaison Lacey-Ann Smith.

As Mr. Doyle knows, and you note in your appeal letter, this incident involved numerous individuals including witnesses, victims and arrestees, some of whom were juveniles on June 17, 2017. The identities of victims and witnesses are usually exempt from public inspection and copying, and while the BPD would typically release records reflecting the charge or arrest of an individual, the age of the arrestees and the nature of the prosecution stemming from this incident may prohibit such release.

Here, the records Mr. Doyle seeks pertain to juveniles, and one or more adults who have been accepted into the adult court diversion program. Under the adult court diversion program files held by the BPD related to the charges against individuals in the program must, in the ordinary course, remain confidential pursuant to 3 V.S.A. § 164(e)(1). The statutes covering the adult court diversion program and the juvenile court diversion project acknowledge that certain "research and reports that do not require or establish the identity of individual participants" may be released pursuant to 3 V.S.A. §§ 163(c)(5) and 164(e)(5). Further, records of juvenile judicial proceedings are also confidential and "shall not be open to public inspection nor their contents disclosed to the public by any person." 33 V.S.A. § 5117(a).

However, and as you point out in your appeal letter, Vermont's Public Records Act requires an agency such as the BPD to redact the information it considers to be exempt and produce the remainder of any requested public records. I have determined that the BPD can comply with state law covering the adult court diversion program and Vermont's Public Records Act and produce the records Mr. Doyle seeks with necessary redactions. The BPD is prepared to release body camera video from the incident and the incident report and associated prosecution documents with the following redactions:

- The faces and identifying features of all witnesses and victims contained in body camera video pursuant to 1 V.S.A. §§ 317(c)(5)(A)(iii) and 317(c)(7);
- The faces and identifying features of all juvenile arrestees or adult arrestees accepted into the adult court diversion program, for this incident, pursuant to 1 V.S.A. §§ 317(c)(1) and 317(c)(2), 3 V.S.A. § 164, and 33 V.S.A. § 5117;
- All names and identifying information regarding witnesses and victims pursuant to 1 V.S.A. §§ 317(c)(5)(A)(iii) and 317(c)(7);
- All names and identifying information regarding juvenile arrestees or adult arrestees accepted into the adult court diversion program, for this incident, pursuant to 1 V.S.A. §§ 317(c)(1) and 317(c)(2), 3 V.S.A. § 164, and 33 V.S.A. § 5117; and
- All information identifying the nature of a charge brought against a juvenile or adult accepted into the adult court diversion program pursuant to 1 V.S.A. §§ 317(c)(1) and 317(c)(2), 3 V.S.A. § 164, and 33 V.S.A. § 5117.

The BPD has not begun the review and redaction process and if we determine, based on a closer review, that other redactions are warranted we are obligated under state law to make them.

There is approximately one hour of police body camera video related to this incident that will need to be reviewed and redacted prior to being made available for inspection. There are also approximately 40 pages comprising the incident report and BPD documents associated with the prosecution of arrestees that will need to be reviewed and redacted prior to being made available for inspection.

Based on the BPD's past experiences, it takes approximately eight to ten hours to review and redact one hour of body camera video. This is a highly time consuming process because a trained employee of the BPD needs to watch each recording and carefully note when a redaction (audio or image) needs to be made. That individual then needs to go back through and manually make each redaction, before processing and rendering the video, and then re-reviewing the video to make sure all necessary redactions have been made. The eight to ten hour estimate does not include time spent by City employees conferring and determining if a particular redaction is necessary in light of statutory exemptions. Based on the BPD's past experiences it takes, on average, one to two minutes to review and redact a page of records. Accordingly, we estimate that it will take between eight hours and forty minutes and eleven hours and twenty minutes to complete the necessary review and redactions.

The State of Vermont's Uniform Schedule of Public Records Charges for State Agencies (CVR 04-000-002) allows the City to charge \$0.45 per minute for non-senior level staff time and

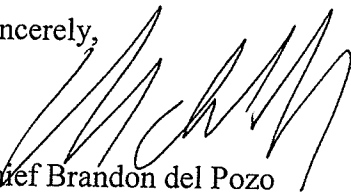
\$0.57 per minute for senior-level staff for time spent reviewing and redacting requested public records beyond the first thirty minutes.

The BPD estimates that it will cost between \$220.50 and \$370.50 to complete the necessary review and redactions. This estimate factors in the 30 minutes of free redaction time on both the low and high ends of the estimate range. While this is just an estimate, the City will require a payment of the lower end of that estimate (\$220.50) before beginning work on the redactions. Upon completion of the review and redaction of responsive video and other public records the City will provide you with a statement of time and any overage refunded or underage billed. The BPD will also need at least two weeks to complete this request and will not commence review and redaction until you indicate that you wish to move forward and provide the City with payment of \$220.50.

As your request is for redacted public records, my decision to produce the requested records with redactions is a granting of your appeal. If you do not wish to proffer the estimated fee, the City Attorney's Office would be glad to work with you to focus more specifically on the records you want.

The Burlington Police Department appreciates the ACLU engaging with us in our efforts to maintain a welcoming and accountable municipal government and I hope we can continue to work together to those ends.

Sincerely,



Chief Brandon del Pozo
Burlington Police Department