IN THE SUPREME COURT OF THE STATE OF VERMONT
Docket No. 2018-342

Reed Doyle,
Appellant

v.

City of Burlington Police Department,
Appellee

Appeal from Vermont Superior Court, Civil Division, Washington Unit
Docket No. 15-1-18 Wncv

Reply Brief of Mr. Doyle

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STATEMENT OF THE ISSUE

Where the Public Records Act, 1 V.S.A. § 315 *et seq.*, provides record requestors the choice between inspecting a record or obtaining a copy of a record, and where 1 V.S.A. § 316(c) only authorizes public agencies to assess fees for staff time "associated with complying with a request for a copy of a public record," does § 316(c) also authorize fees for staff time associated with complying with a request to "inspect" a record?

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I. THE PUBLIC RECORDS ACT'S PLAIN LANGUAGE, CONTEXT, AND LEGISLATIVE HISTORY PROVIDE NO SUPPORT FOR ASSESSING STAFF TIME FEES IN RESPONSE TO A REQUEST TO INSPECT

The Public Records Act's ("PRA") purpose is to "provide for free and open examination of records" and "enable any person to review and criticize" the decisions of government officials, notwithstanding the "inconvenience" this causes the government. 1 V.S.A. § 315(a). The Act provides requestors with a threshold binary choice when seeking to access public records: "inspect *or* copy." *Id.* § 316(a) (emphasis added). By its terms, § 316(a) creates these two "separate and independent categories" of requests. *See Judicial Watch, Inc. v. State*, 2005 VT 108, ¶ 14, 179 Vt. 214, 892 A.2d 191 (explaining "rules of construction" applicable to statutes phrased in the disjunctive "or").

Section 316(c) authorizes assessing fees for agency staff time spent "complying with a request for a copy of a public record." The section contains two elements necessary to justify staff time fees: 1) that the agency is "complying" with a request, and (2) that the requestor makes a "request for a copy of a public record." Consequently, § 316(c)'s exclusive reference to "requests for a copy" triggers staff time fees only upon requestors making "a request *for a copy*." (emphasis added). Section 316(c) thus makes plain that requestors always have the ability to review not wholly-exempt public records, with the choice to incur costs by requesting a copy; the manner in which the agency processes the request is irrelevant.

The Act also envisions "a copy" or "copies" as items for "delivery" to the requestor. *See* § 316(c) ("The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies."). This Court interprets statutorily undefined words "in the context of the

surrounding words in the same and neighboring subsections." *Vt. Human Rights Comm'n v. State*, 2012 VT 45, ¶ 5, 191 Vt. 485, 49 A.3d 149. Black's Law Dictionary defines "delivery" as "the formal act of voluntarily transferring something." *Delivery*, (10th ed. 2014). Merriam-Webster defines "Delivery" as "the act or manner of delivering something," and the transitive verb "deliver" as "to set free," "to take and hand over to or leave for another," "hand over, surrender," and "to send, provide, or make accessible to someone electronically."[1] *Delivery*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/delivery; *id.*, *deliver*, https://www.merriam-webster.com/dictionary/delivering. Because this Court "presume[s] the Legislature 'chose its words advisedly,'" *Vt. Human Rights Comm'n*, 2012 VT 45, ¶ 7 (citation omitted), where § 316(c)'s second sentence views "copies" as duplicates to be delivered, it must interpret "a copy" in its first sentence in the same manner—as a duplicate to be sent or handed over. By definition, a request to inspect is a request to examine, not a request to be sent or given a duplicate. Thus, § 316(c)'s reference to "request for a copy" can only be exactly that. A careful review of the statute as a whole, read in light of its purpose,[2] and informed by extensive legislative history documenting legislative intent to only permit staff time costs when a requestor seeks to possess copies, reveals the lower court's error.

[1] Merriam-Webster's explanatory sentences make clear that its fourth definition of deliver ("to send, provide, or make accessible to someone electronically") always involves a transmission, i.e. "deliver an e-mail/text message." *Deliver*, Merriam-Webster Online Dictionary, 2c, https://www.merriam-webster.com/dictionary/delivering.

[2] Section 316(g) is among the various PRA provisions that distinguish inspection-only requests from requests for copies. The Act mandates absolute compliance with inspection-only requests, subject to the exemptions in § 317 and related provisions of § 318, which apply to both types of requests equally, and other miscellaneous provisions regulating the time and place for inspection, *e.g.*, § 316(a)(1)-(2). But with requests for copies, § 316(g) does not require an agency to make a copy if it lacks the equipment to do so. This permission to deny a request for a copy for lack of copying equipment has no analogue with respect to requests to inspect. This is one of several PRA provisions where there are, in fact, "two separate rights with a public records regime built around the distinction" between inspection and copying. PC 7. Moreover, this disparate treatment between types of requests is not inconsistent with the statute's core purpose of providing "free and open examination" of records. An absolute right to inspect non-exempt content in all records is necessary to carrying out the Act's purpose, while the ability to obtain a copy is a beneficial convenience.

As it relates to preexisting public records,[3] and despite the Legislature's meticulous permission to assess various charges for copies in other § 316 subsections, the Act does not provide for staff time charges aside from § 316(c)'s "request for a copy" trigger. Mr. Doyle requested to inspect public records. Section 316(c) conditions staff time fees on requestors making a "request for a copy." Appellee must permit Mr. Doyle to inspect the record without payment.

A. Even Assuming Mr. Doyle's Request to Inspect Requires Appellee to Make Copies, the Rules of Statutory Construction and Relevant Legislative History Prohibit Staff Time Fees

Appellee makes two statutory construction arguments, both based on implied meaning. First, reiterating the trial court's opinion, Appellee argues that § 316(c)'s "request for a copy" implicitly includes "requests to inspect records maintained electronically," allowing staff time fees in this case. Second, Appellee argues, using a convoluted non sequitur, that because § 318(e) requires agencies to "produce" redacted records in response to a request to inspect or copy and "produce" can only mean to "make a redacted copy available," the Legislature intended § 316(c)'s "requests for a copy" to implicitly also mean "requests to inspect records if the agency makes a redacted copy"—permitting staff time fees when a requestor seeks records that the agency redacts. Both arguments are incorrect.

The 1996 PRA amendments support a statutory construction that limits staff time fees to the plain understanding of a "request for a copy," regardless of the requested records' format. In § 316(c), the Legislature permitted staff time fees in complying with requests for copies of public records. *See* 1995 Acts & Resolves, No. 159 (Adj. Sess.), § 1. Act 159 does not support the lower court and Appellee's interpretation of its overarching legislative intent, to manage public

[3] The Act allows public agencies to collect staff time fees if they agree to create a record that does not already exist. § 316(c). The provision does not apply here.

records in the electronic age. Act 159 did three main things. First, it provided new authority for public agencies to charge standardized rates when transmitting copies to a requestor while giving requestors the option to obtain copies of electronic records in paper or electronic format. 1995 Acts & Resolves, No. 159 (Adj. Sess.), §§ 1, 4. Second, it ensured that government records are public regardless of their physical form and codified new exemptions. *Id*. §§ 2-3. Third, it required a survey of state and local agencies to "identify any issues relating to access, charges and administration that have arisen as a result of" Act 159. *Id*. § 5. Act 159 suggests a multifaceted intent to update the PRA, mostly related to authorizing new agency charges. Nothing in the record suggests that the Legislature's overarching purpose was to comport the PRA to the electronic age. Because the PRA intentionally makes no distinctions about inspecting records regardless of form and Act 159 did not include requests to inspect in new fee authority, the Court should interpret § 316(c) as written, only applying to requests for copies. *See* 1 V.S.A. § 317(b) ("Public record" "means any written or recorded information, regardless of physical form or characteristics . . . .").

Furthermore, the trial court's and Appellee's assertion that, because §§ 316(h) and (i) "refer exclusively to *copies* of electronic records and nowhere refer to the mere *inspection* of an electronic record" the Legislature "appear[ed] to contemplate that the production of an electronic record necessarily entails providing a 'copy,'" is illogical. Appellee's Br. 13-14; PC 5-6. Section 316(h)'s sole purpose is to define the standard format "for copies" of records maintained in paper and electronic form. Section 316(i) provides requestors a choice of format for copies when the requested records are maintained in electronic form. Inspection is irrelevant in these subsections because *inspection* of an agency's records would *necessarily* either be printable to paper or in the

standard electronic format in which they are maintained. The subsections do not mention inspection because, like § 316(c), they do not apply to requests to inspect.

Appellee's secondary argument, that § 318(e) allows agencies to charge requestors seeking to inspect records that contain some exempt information, should also be rejected because it assumes the Legislature implicitly equated producing redacted records for inspection with providing a requestor a duplicate of a public record to keep. It also assumes that the Legislature implicitly intended for requests to inspect records to automatically and without warning transform into "request[s] for a copy" if the agency performs redactions. This Court has cautioned lower courts against engaging in such methods of interpretation. *Sawyer v. Spaulding*, 2008 VT 63, ¶ 12, 184 Vt. 545, 955 A.2d 532 ("[T]his Court will not expand a statute by implication, that is, by reading into it something which is not there, unless it is *necessary* in order to make it effective.") (citations and internal quotation marks omitted).

Moreover, the PRA's express language and legislative history contradict the first link in Appellee's chain of implied intentions. Section 318 uses the word "produce" in four separate subdivisions, each time meaning or including "to provide for inspection." For example, § 318(a)[4] requires records custodians to "promptly *produce* the record *for inspection*." (emphasis added). Section 318(a)(2) requires records to be "be *produced for inspection* . . . within three business days." (emphasis added). Section 318(d) mandates that public agencies consult with requestors to assist "in facilitating *production* of the requested record *for inspection* or copying." (emphasis added). Although § 318(e) does not include the words "for inspection" or "for copying" after "produce," there is no reason to think the Legislature changed the definition of "produce" for this

[4] Effective July 1, 2018, the Legislature amended § 318(a) and (a)(2), which are now numbered § 318(b) and (b)(2). Although inconsequential for the issue at bar, like Appellee did in its briefing below, for purposes of this brief, Mr. Doyle refers to the PRA as it was when he made his public records request and filed his complaint.

one subsection, much less intended to link the term "produce" to the term "copy" for purposes of § 316(c)'s fee-charging authority. Section 318(e)'s use of "produce" clearly relates to providing records for the requestor's stated purpose (either to inspect or to take possession of duplicates).

Appellee's argument only works if the Legislature intended the word "produce" in § 318(e) to be defined, as it is in some dictionaries, as "to give birth or rise to," "to give being, form, or shape to," or "make" and "manufacture." Appellee's Br. 12. But Appellee cites the Merriam-Webster Dictionary's second and fifth definitions of "produce," conveniently skipping the very first definition: "to offer to view or notice." *Produce*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/produce. Unlike Appellee's cited definitions, this *first* definition is consistent with the manifest contextual usage throughout § 318. Appellee's amicus notes that "produce" has many definitions depending on context and concedes that "produce" can also mean "'show or provide'" VLCT Br. 10-11 (quoting English Oxford Living Online Dictionary). But even then, Appellee's amicus fails to quote the entire alternative definition, which is to "show or provide (something) for consideration, *inspection*, or use." *Produce*, English Oxford Living Online Dictionary, https://en.oxforddictionaries.com/definition/produce (emphasis added). Similarly, Black's defines the verb "produce" as "[t]o provide" in relation to documents in response to a request. *Produce*, Black's Law Dictionary (10th ed. 2014). In the same context, Black's defines "production" as "[t]he action of exhibiting or bringing forward a document or other piece of evidence." *Id*., *production*. These definitions of "produce" and "production" are consistent with the foregoing contextual analysis of "produce" as used throughout § 318. They also contradict

Appellee's claim that § 318(e)'s "produce" is *only* synonymous with the term "copy" for purposes of authorizing agency staff time fees.[5]

The 2011 legislative record regarding the enactment of § 318(e) shows that "produce" is meant to encompass both distinct methods of accessing public records. *See Dep't of Corrs. v. Human Rights Comm'n,* 2006 VT 134, ¶ 19, 181 Vt. 225, 917 A.2d 451 (court can rely on committee testimony and legislators' discussions when they convincingly reveal the intent underlying a statute). Section 318(e) was added to H. 73 (2011) during review by the House Committee on Government Operations. Hearings on H. 73, House Comm. on Gov't Operations, CD 11-070, 12:00—13:23 (March 10, 2011). Recorded committee hearings contain no discussions of § 318(e)'s impact on or relevance to § 316(c), despite lengthy discussions regarding changes to § 316(c). Similarly, there is no discussion of the specific meaning of the word "produce." However, § 318(e)'s language was drafted and supported by transparency advocates, including the ACLU of Vermont, for the purpose of stopping agencies' unlawful[6] practice of withholding entire records whenever they included some exempt content. Hearings on H. 73, House Comm. on Gov't Operations, CD 11-061, at 16:05—24:00 (Mar. 8, 2011). It is irrational to believe that the same advocates that argued against staff time fees for inspection would simultaneously propose § 318(e) language that permitted charging for inspection of redacted records. And, given the significant committee discussions regarding inspection-related fees and lack of discussion of § 316(c)'s relationship to § 318(e), "produce" cannot only be

[5] Though ultimately ruling in favor of Appellee, the trial court declined to adopt Appellee's reading of § 318(e). *Compare* Def.'s Mem. of Law, PC 40-41 (arguing that public agency actions taken under § 318(e) are within the scope of § 316(c)), *with* Decision on Pl.'s Mot. for Judgment, PC 3-7 (omitting any analysis of § 318(e) other than a mention in footnote 2 explaining that the provision was added 15 years after § 316(c)).

[6] Even before § 318(e) became law, this Court had held that trial courts must consider whether redaction and disclosure would be appropriate instead of wholesale withholding. *Norman v. Vt. Office of Court Adm'r*, 2004 VT 13, 176 Vt. 593, 844 A.2d 769. The Legislature strengthened and codified in statute what *Norman* established in caselaw. *See* 2011 Acts & Resolves, No. 59 (Adj. Sess.), § 4.

synonymous with "making" a redacted copy of a record for a requestor to possess. *Compare* Hearings on H. 73, House Comm. on Gov't Operations, CD 11-068, 07:15—20:00, 37:00—54:45 (March 10, 2011), *with* Hearings on H. 73, House Comm. on Gov't Operations, CD 11-070, 12:00—13:23 (March 10, 2011). "Produce" also means "showing or providing" a redacted record for a requestor to inspect.

Additionally, the Legislature is capable of crafting statutory language authorizing staff time fees for redacting in response to either type of request, but has repeatedly rejected adopting such language. *See Town of Milton Bd. of Health v. Brisson*, 2016 VT 56, ¶ 24, 202 Vt. 121, 147 A.3d 990 ("Where the Legislature has demonstrated that it knows how to provide explicitly for the requested action, we are reluctant to imply such an action without legislative authority." (internal quotation marks omitted)). As explained in Mr. Doyle's opening brief, in 2008 the Legislature introduced S. 229, in part proposing to amend § 316(c) to allow public agencies to assess staff time fees associated with "redacting a requested public record." App. 029-030; *see also* Appellant's Br. 28. Despite two Legislative Council studies recommending similar changes, the redaction fee provisions were removed from the bill before it left committee. Appellant's Br. 28. In 2011, in response to the same policy arguments advanced by Appellee here, the Legislature commissioned another study committee to determine "whether an agency should be authorized to charge for the staff time incurred in locating, reviewing, or redacting a public record."[7] 2011 Acts & Resolves, No. 59 (Adj. Sess.), § 11(c)(5). Since then, no bill has even been introduced seeking to grant such authority.

[7] Indeed, that the Legislature felt a study of the issue was necessary further belies the claim that the statute already encompassed that authority.

B. This Court's Precedent Does Not Support Appellee

Appellee attempts to further justify its flawed statutory construction by citing two inapposite Vermont Supreme Court decisions, *Norman v. Vermont Office of Court Administrator*, 2004 VT 13, 176 Vt. 593, 844 A.2d 769, and *Herald Ass'n v. Dean*, 174 Vt. 350, 816 A.2d 469 (2002). Neither case presented or addressed the question of whether agencies may charge for staff time associated with a request to inspect records, redacted or otherwise.[8] And, although Appellee claimed in its briefing to the trial court that these cases "use similar phrasing[9] that is not limited to a request for copies," PC 42, its cited cases each involved *copies* of public records. *Herald Ass'n*, 174 Vt. at 353 (noting that "plaintiffs sought copies of [Governor Dean's] schedule" and holding that plaintiff was entitled to the requested copies); *Norman*, 2004 VT 13, ¶ 2 ("Plaintiff alleged that both [defendants] had provided copies of some of the requested documents but had improperly withheld others."); *Sawyer v. Spaulding*, 2008 VT 63, ¶ 2, 184 Vt. 545, 955 A.2d 532 ("[P]laintiff sent a written request to the Treasurer for copies of 'fiscal records . . . .'"). These cases do not address or decide the issue before this Court. *See Vt. State Employees' Ass'n v. Vt. Agency of Natural Resources*, No. 517-7-10 Wncv, 2011 WL 121649 (Vt. Super. Ct. Jan. 6, 2011) [hereinafter *VSEA*] (reproduced at Add. 064) (noting that *Herald Ass'n* and other cases cited by Appellee "are little more than acknowledgments of a cost-recovery mechanism; they resolve no disputes about how it operates on any particular set of facts").

[8] *Herald Ass'n* required then-Governor Dean to produce copies of his calendar, noting that, under appropriate circumstances, agencies "may 'charge and collect the cost of staff time associated with complying with a *request for a copy* of a public record.'" 174 Vt. at 359 (quoting § 316(c)) (emphasis added). *Norman* required trial courts to consider whether redaction and disclosure would be appropriate instead of wholesale withholding, citing *Herald Ass'n*, 2004 VT 13, ¶ 7.

[9] The "similar phrasing" pertains to *Norman*'s parenthetical describing *Herald Ass'n*, citing the paragraph that quotes § 316(c)'s language about complying with requests for copies of records. *Norman*, 2004 VT 13, ¶ 7 (citing *Herald Ass'n*, 174 Vt. at 359).

To summarize, the PRA's authorization to charge fees for "staff time associated with complying with a request for a *copy* of a public record" does not include staff time associated with complying with a request to inspect public records, irrespective of a public agency's decision to review and/or redact records before inspection. The trial court's broad holding to the contrary conflicts with the clearly expressed legislative intent as evidenced by the statute's text and its history. Appellee's attempts to narrow the trial court's holding to situations involving only redacted records fares no better. Neither the text of § 316 and § 318, when read individually or together, nor the Act's legislative history, nor this Court's rules of statutory construction support Appellee's attempt to expand the meaning of § 316(c)'s "request for a copy" to implicitly include "requests to inspect if the agency reviews and/or redacts exempt information."

C. Appellee and Its Amicus Misstate the 2018 Legislative Record

In 2018,[10] the House and Senate Committees on Government Operations left § 316(c) unchanged despite knowledge of the potentially time-consuming work needed to make bodycam video available for inspection and the hypothetical menace of voluminous requests shutting down agencies. *E.g.*, Hearings on Draft Bill 18-0015, House Comm. on Gov't Operations, Testimony of South Burlington Police Chief Trevor Whipple, 1:28:15—1:36:00 (January 31, 2018), *available at* https://vermont.access.preservica.com/digitalFile_6b9b86d7-faed-4d8a-aa7b-1333ca93a866/.[11] Both committees also heard detailed testimony about the *VSEA* decision. *E.g.*, Hearings on Draft Bill 18-0015, House Comm. on Gov't Operations (February 27, 2018),

[10] H. 910, introduced on March 2, 2018, was developed as Draft Bill 18-0015 in January and February of 2018 by the House Committee on Government Operations. Neither chamber ever reviewed changes to § 316(c) because no such amendments were ever proposed in or for H. 910. Thus, Appellee's sole legislative history analysis relies on two committees deciding to take no action. Inaction by legislative committees should have no impact on a preexisting law's purpose, particularly when the full House or Senate were not involved but had previously adopted and removed amendments to the same law with a clear purpose. *See* Appellant's Br. 21-27 (reviewing H. 73 (2011) legislative history).

[11] Regarding potential voluminous requests, Chief Whipple notes that "we don't see it often" and "we have not seen significant numbers of large requests, but it's possible." *Id.*

1:15:50—1:21:00, *available at* https://vermont.access.preservica.com/digitalFile_3cf541a4-40b9-45d1-b14f-7c65de69d033/. Section 316(c) was reviewed by the Government Operations Committees because open government advocates showed that agencies routinely demanded fees for inspection requests notwithstanding the statutory language and caselaw. Therefore, they asked the Legislature to clarify that § 316(c) means what it says when it refers to a "request for a copy of a public record." Others advocated to change the law to allow charging for inspection of public records, relying on the same or similar policy arguments Appellee and its amicus make here. Nevertheless, after deliberation, both committees came to the same conclusion: they did not have time to properly vet changes to § 316(c) and would take no action. Hearings on H. 910, Senate Comm. on Gov't Operations (April 20, 2018), 46:00—47:00, *available at* https://vermont.access.preservica.com/digitalFile_eaafd8a6-b42f-4915-aa97-501a65546a20/ (Committee Chair Jeanette White: "I'm not sure that at this point that we are ready to change the other fee one, I mean the court has made the decision and it'll come up again in another case sometime. . . . I don't think we have time to really vet that the way we should."); Hearings on Draft Bill 18-0015, House Committee on Gov't Operations (February 27, 2018), 1:37:05—1:38:00, 2:27:00—2:28:00, 2:45:30 – 2:48:00, *available at* https://vermont.access.preservica.com/digitalFile_3cf541a4-40b9-45d1-b14f-7c65de69d033/ (Committee Chair Maida Townsend: "We're not done discussing, deliberating, trying to do something positive on this matter, but it's going to happen later."). When the Legislature left the status quo intact in 2018 over the complaints expressed by Appellee and its amicus, under the rules of statutory construction it further confirmed its comfort with the *VSEA* interpretation. This Court should similarly leave the Legislature's evidenced interpretation intact.

II. THE LEGISLATURE HAS ALREADY REJECTED APPELLEE'S POLICY ARGUMENTS

This Court has repeatedly recognized that, in matters of statutory interpretation, it does not have "license to substitute this Court's policy judgments for those of the Legislature." *Judicial Watch*, 2005 VT 108, ¶ 16; *see also State v. Suhr*, 2018 VT 49, ¶ 21 n.6, __ Vt. __, 189 A.3d 552 ("[W]e cannot re-order the Legislature's priorities."). Yet, Appellee and its amicus invite the Court to take such license when it comes to policy judgments the Legislature has made in favor of "free and open examination" of public records. They do so by raising the specter of extreme scenarios they fear would occur if the trial court is not upheld. Specifically, they speculate that a citizen could "weaponize" the PRA by filing voluminous requests that were either intended to or had the effect of preventing an agency from performing its other functions. VLCT Br. 20; Appellee's Br. 21. They argue that "[t]he ability to collect fees is necessary to limit burdensome public records requests," PC 43, and that "staff time fee recovery also places a reasonable restraint" on such requests, VLCT Br. 20. But, in 2011, the Legislature statutorily responded to agencies' concerns regarding "voluminous" requests by passing the current language of § 318(d). That section allows agencies "[i]n unusual circumstances . . . [to] request that a person seeking a voluminous amount of separate and distinct records narrow the scope of [their] public records request." *See* Recording of Vermont Senate, Disc 4, Track 1, 1:10—2:10 (Senator White explaining the purpose of § 318(d) as giving public agencies the ability to ask requestors to narrow voluminous requests and giving requestors the opportunity to disagree). In 2018, after many municipal and state officials rehashed arguments regarding the potential for voluminous requests, the Legislature again chose to leave the *VSEA* decision intact, taking no

action regarding § 316(c) or 318(d).[12] Hearings on Draft Bill 18-0015, House Comm. on Gov't Operations, 2:27:00—2:29:00 (February 27, 2018).

Regardless, the fears raised by Appellee and VLCT are unrelated to the facts of this case. As estimated by Appellee, the municipal burden is approximately 8-10 hours of staff time to review and redact the video. This is a reasonable amount of time to spend on a records request of alleged police misconduct and unreasonable force, especially when Appellee demanded "at least two weeks" to produce the redacted record for inspection. Appellee's and VLCT's imagined "potential" situation where a requestor "make[s] extremely burdensome, voluminous record requests, an unlimited amount of times," VLCT Br. 20, "greatly affect[ing] the functioning of a public agency," Appellee's Br. 22, is better addressed to the Legislature, which has repeatedly sought proof that such situations occur and has remained unmoved by the very policy arguments Appellee now brings to this Court.

This Court recently noted that "[t]he Legislature is tasked with enacting such laws as the people of Vermont think necessary. This Court is bound to apply the law in agreement with statute and this Court's own earlier decisions." *State v. Sawyer*, 2018 VT 43, ¶ 26, __ Vt. __, 187 A.3d 377. The statute's plain language and context, as illuminated by legislative history, require the Court to defer to the informed judgment of the Legislature on the policy question of whether public agencies should be authorized to assess fees for staff time expended in response to a request to inspect public records.

[12] Putting aside that § 318(d) specifically responded to these concerns, since the 1996 amendments, the Legislature has refused to change § 316(c) despite repeatedly hearing these same concerns from municipalities, state officials, and its own studies. Act 159 (1996), § 5; Act 158 (2003), § 5; Act 132 (2005), § 4; Act 59 (2011), §§ 11(c)(5), 14; Appellant's Br. 17, 29.

CONCLUSION

For the foregoing reasons, Mr. Doyle is entitled to judgment on the pleadings below on his third cause of action and an accompanying order enjoining Appellee from withholding the requested public records from inspection. This Court should reverse and remand to the trial court for entry of such appropriate orders.

Respectfully submitted this 4th day of March, 2019 by:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief totals 4,464 words, excluding the statement of the issue, table of contents, table of authorities, signature blocks, and this certificate as permitted by Vt. R. App. 32(a)(7)(C). I have relied upon the word processor used to produce this brief, Microsoft Word 2016, to calculate the word count.

I additionally certify that the electronic copy of this brief submitted to the Court via email was scanned for viruses, and that no viruses were detected.

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