

STATE OF VERMONT  
SUPERIOR COURT  
CIVIL DIVISION

**Reed Doyle,**  
*Plaintiff*

v.

Washington Unit  
Docket No. \_\_\_\_\_ Wncv

**City of Burlington Police Department,**  
*Defendant.*

**COMPLAINT FOR ACCESS TO PUBLIC RECORDS**

In this action, a Burlington resident and concerned citizen, Reed Doyle (“Plaintiff”), seeks to compel the City of Burlington Police Department (“Defendant”) to produce public records for inspection in their entirety and without monetary charge. The Defendant has unlawfully refused to wholly produce public records showing its employees threatening and using force against minor children and arresting a minor child after the child protested the officers’ use of force. These records are plainly subject to full disclosure under Vermont’s Public Records Act, 1 V.S.A. §§ 315 et seq., and not subject to the Act’s exemptions. Moreover, a public agency cannot charge a requestor a monetary fee for staff time associated with complying with a request to *inspect* public records. *Vt. State Employees’ Ass’n v. Vt. Agency of Natural Res.*, No. 517-7-10 Wncv (Jan. 6, 2011). The Plaintiff respectfully asks this Court to enjoin the Defendant’s wholesale withholding of these public records and declare that inspection of public records shall be without monetary charge.

**PARTIES**

1. Plaintiff Reed Doyle is a resident and concerned citizen of the City of Burlington, Vermont.

2. The Defendant City of Burlington Police Department is a “public agency” within the meaning of 1 V.S.A. § 317(a)(2) insofar as it is the police department of the City of Burlington, a political subdivision of the State.
3. The Defendant is the custodian of certain public records to which Plaintiff has sought and been denied access.

### **JURISDICTION & VENUE**

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

### **FACTS**

5. On June 17, 2017, Plaintiff was walking his dog in the area of Roosevelt Park in the City of Burlington.
6. During his walk, he witnessed several of Defendant’s officers engaged in heated discussion with a group of children in the park, one of whom had been arrested by Defendant’s officers.
7. As the children protested the arrest, Plaintiff witnessed one of Defendant’s officers threaten to pepper spray the group if they did not retreat.
8. As one of the children was walking backwards away from the officers with his hands in the air, Plaintiff witnessed a police officer forcefully push the child with both arms.
9. Plaintiff then witnessed the boy, believed by Plaintiff to be between ages 11 and 13 years old, protest verbally and through gesticulation against the officer’s use of force.
10. Plaintiff then witnessed the Defendant’s officers huddle up for a discussion and subsequently arrest the boy.
11. Plaintiff approached the officers to protest the officer’s use of force and subsequent arrest of the boy.

12. Concerned by the events he had personally witnessed, Plaintiff emailed a formal complaint to the Defendant about this incident on June 25, 2017, believing the incident represented officer misconduct and unreasonable use of force.
13. During the following weeks, Plaintiff repeatedly sought information related to whether the appropriate officials were reviewing his complaint or meting out any disciplinary measures to the officer whom he witnessed using force against the boy.
14. On August 21, 2017, after five weeks of inconclusive and incomplete communication from the Defendant, Plaintiff wrote to Defendant's Community Liaison, Lacey-Ann Smith, requesting "to inspect any publicly available records (body cams, police reports, etc.) from an incident that took place on the evening of June 17, 2017 at approximately 7 PM in Roosevelt Park in the Old North End of Burlington, VT."
15. In his initial request Plaintiff stated, "[a]lthough I understand that there are exceptions to not being able to share certain public records due to an ongoing investigation and/or the involvement of a minor. However, because this did involve a minor, can the minor's face be redacted and any other info that is deemed sensitive, so the public information can be inspected?"
16. In response to Plaintiff's request, Defendant's Deputy Chief Janine Wright emailed Plaintiff on August 22, stating that "the video and police reports cannot be released at this time due to prosecution and the fact that one person has been sent to court diversion. That statute specifically states the information cannot be released."
17. On August 28, 2017, Plaintiff responded to Deputy Chief Wright, copying the language of 1 V.S.A. § 317(a)(5) and stating, "[h]ere is the relevant statutory language I believe you are referring to. Per the statute, I'm not very clear on the reason why it cannot be released,

especially if the identity of key individuals and/or info is redacted. Does the BPD believe this will interfere with enforcement proceedings? Again, I'm not clear on why this info cannot be released.”

18. Later that day, Deputy Chief Wright responded to Plaintiff via email, stating, “[b]ecause the case went to diversion, here is the correct statute . . .” and quoting the language of 3 V.S.A. § 164.

19. Plaintiff responded by email on September 5, 2017, asking, “[i]s it possible to block out faces in the video? I believe blocking out faces would maintain the confidentiality of the individuals involved while satisfying the clear public interest in police behavior.”

20. Later that day, Deputy Chief Wright responded, “[y]ou can block out faces but unfortunately, the only option we have is to block out the entire video and not just a small portion that would follow that person around.”

21. The correspondence continued over email through September 13 when Deputy Chief Wright crystallized the Defendant’s position on the request as follows: “The State’s Attorney has stated, because of the statute, I cannot release any information. In regards to our electronic program and software, it will only allow me to blacken out the video and not a specific face.”

22. Concerned by Defendant’s denial of his request, Plaintiff sought assistance and counsel from the American Civil Liberties Union of Vermont, which filed an administrative appeal on his behalf, pursuant to 1 V.S.A. § 316, with Burlington Police Chief Brandon del Pozo on November 30, 2017.

23. Defendant responded to Plaintiff’s appeal by letter dated December 7, 2017.

24. In the letter, Chief del Pozo recapitulated Plaintiff’s request as “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.” (Emphasis added).

25. Chief del Pozo’s letter then went on to state that “the incident involves 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.”
26. Chief del Pozo’s letter goes on to say, however, that he has “determined that the BPD can comply with state law covering the adult court diversion program and Vermont Public Records Act and produce records Mr. Doyle seeks with necessary redactions.”
27. Among the bases for redaction Defendant proposes to make are the following: “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)” and “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”
28. Chief del Pozo’s letter goes on to state that “[t]here 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.”
29. After explaining the process Defendant typically employs to redact the video and estimating the time it will take, Chief del Pozo’s letter then cites to the “State of Vermont’s Uniform Schedule of Public Records Charges for State Agencies” claiming that it “allows the City to

charge” various amounts for the “staff time” spent “reviewing and redacting the requested public records beyond the first thirty minutes.”

30. Chief del Pozo’s letter goes on to provide an estimate of charges that Plaintiff would incur— from \$220.50 to \$370.50—and states that “the City will require a payment of the lower end of that estimate (\$220.50) before beginning work on the redactions.”

*First Cause of Action – Failure to Produce for Inspection*

31. The allegations in paragraphs 1-30 are realleged and incorporated here by reference.
32. The police body camera video the Plaintiff requested to inspect is a public record and not exempt from disclosure or subject to redaction because it is a record relating to management and direction of a law enforcement agency and/or a record reflecting the initial arrest of a person within the meaning of 1 V.S.A. § 317(c)(5)(B).
33. By refusing to produce police body camera video for inspection without redaction, the Defendant violated Vermont’s Public Records Act.

*Second Cause of Action – Failure to Produce for Inspection*

34. The allegations in paragraphs 1-30 are realleged and incorporated here by reference.
35. The persons recorded on the police body camera video that Plaintiff requested to inspect were at all times and by their own free will or, in the case of the Defendant’s officers, as a routine part of their public employment, in plain sight of other private citizens who were lawfully present in a public place when they were recorded on the police officer body camera video.
36. Plaintiff personally, lawfully, and from an open public vantage point witnessed the events that occurred in plain sight and in a public place as recorded on the video Plaintiff requested to inspect.

37. On information and belief, Plaintiff is himself recorded on a portion of the video he requested to inspect.
38. Withholding or redacting the video Plaintiff requested to inspect is not justified by any expectation of privacy or confidentiality the individuals depicted may have arising from the actions they undertook in a public place within plain sight of others private citizens who were lawfully present, including the Plaintiff.
39. The video Plaintiff requested to inspect is not exempt from disclosure under 1 V.S.A. § 317(c)(5)(A)(iii) because the occurrences depicted on the video took place in plain sight of other private citizens, including Plaintiff, who were lawfully present in a public place and disclosure would not constitute an unwarranted invasion of personal privacy.
40. The video Plaintiff requested to inspect is not exempt from disclosure under 1 V.S.A. § 317(c)(7) because the occurrences depicted on the video took place in plain sight of other private citizens, including Plaintiff, who were lawfully present in a public place and disclosure would not reveal intimate details of a person's life.
41. By refusing to produce police body camera video for inspection without redaction, the Defendant violated Vermont's Public Records Act.

*Third Cause of Action – Failure to Permit Inspection of Public Records Without Cost*

42. The allegations in paragraphs 1-30 are realleged and incorporated here by reference.
43. At all times, Plaintiff requested to inspect the public records involved.
44. At no time did Plaintiff request to receive a copy of the public records involved.
45. Vermont's Public Records Act, 1 V.S.A. § 316, does not authorize Defendant to charge Plaintiff money for exercising his right to inspect public records.

46. By refusing to produce police body camera video for inspection unless the Plaintiff paid an initial deposit and any additional charges accrued after the deposit, the Defendant violated Vermont's Public Records Act and the limits of its statutory authority.

**RELIEF REQUESTED**

In light of the foregoing, Plaintiff hereby respectfully requests that this Court provide the following relief:

- A. Declare that the police body camera video in its unredacted form is a public record within the meaning of 1 V.S.A. § 317(c)(5)(B).
- B. Order Defendant to timely produce the requested police body camera video in its entirety for inspection by Plaintiff.
- C. In the alternative to paragraph A, declare that the police body camera video is not exempt from inspection or subject to redaction under 1 V.S.A. §§ 317(c)(5)(A)(iii) and 317(c)(7).
- D. Order Defendant to timely produce the requested police body camera video for inspection by Plaintiff without redactions made on the basis that the record contains content exempt under 1 V.S.A. §§ 317(c)(5)(A)(iii) and 317(c)(7).
- E. In the event that the Court rules that some portions of the requested records must be redacted prior to inspection by Plaintiff, enjoin Defendant from charging Plaintiff for the cost of Defendant's staff time associated with complying with Plaintiff's request to inspect.
- F. Award Plaintiff recovery of costs and reasonable attorneys' fees associated with bringing and prosecuting this action as provided for under 1 V.S.A. § 319(d).




- G. Order such additional relief for Plaintiff as the Court determines is necessary in the interests of justice.

*Counsel for Reed Doyle*

The American Civil Liberties Union Foundation of Vermont

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