

WILLIAM H. SORRELL
ATTORNEY GENERAL

SUSANNE R. YOUNG
DEPUTY ATTORNEY GENERAL

WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
GENERAL



TEL: (802) 828-3171
FAX: (802) 828-3187
TTY: (802) 828-3665

<http://www.atg.state.vt.us>

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

July 30, 2013

VIA U.S. MAIL

Valley News
Attn: Mark Davis
P.O. Box 877
White River Jct., VT 05001-0877

Re: Public Records Request received on July 16, 2013

Dear Mr. Davis:

I am writing in response to your request for records that was received by the Vermont Attorney General's Office on July 16, 2013.¹

Request

You request "all records pertaining to your investigation into Hartford police officers' encounter with Monica Therrien on *Sept. 20, 2010*." (Emphasis supplied). You also note that "[t]his investigation culminated in a report released by your office on Jan. 13, 2012."

Response to Request

An investigation into an incident that occurred on *September 10, 2010*, was conducted initially by the Hartford Police Department and, subsequently, by the Vermont State Police. The Vermont Attorney General's Office did not conduct a separate investigation into the incident. However, this Office did review the Hartford Police Department and Vermont State Police investigations to determine whether criminal prosecution was warranted.

¹ This Office received the request by email and fax on July 16, 2013. The faxed request was dated June 16, 2013.

This Office did not release a "report" regarding the investigation into the September 10, 2013, incident. On January 13, 2012, the Office issued a press release addressing this incident and another incident involving allegations against the Hartford Police Department.

This Office interprets your request to be a request for records of the investigation conducted by Hartford Police Department and the Vermont State Police into the September 10, 2013, incident and for records of the review of that investigation conducted by this Office.

The Vermont Attorney General's Office has identified records that fall within the scope of your request. I have separated the records into two categories.

1. Records available for inspection

The Attorney General's Office has identified and will produce 96 pages of records that are responsive to your request. These records include state and local police reports, transcripts and a list of physical evidence.

Some information within these records has been redacted pursuant to 1 V.S.A. §§ 317(c)(5)(D) and 318(e). The information is being redacted because disclosure could constitute an unwarranted invasion of personal privacy or would reveal the identity of a private citizen who is a victim or witness. 1 V.S.A. §§ 317(c)(5)(A)(iii) and (D)

Notwithstanding the provisions of 1 V.S.A. § 317(c)(5)(A)(iii) and (D), the Vermont Attorney General's Office is not redacting references to the identity of Monica Therrien or Denis Kucera from the records in its custody. The identities of these two persons and their involvement in this incident has already been publicized. Additionally, while federal courts interpreting the federal Freedom of Information Act have authorized the redaction of the names of investigating law enforcement officers, the Office is not redacting those names in this instance because the identities of those officers has been publicized and, under the particular circumstance presented, disclosure would not constitute an unwarranted invasion of the personal privacy of these officers.

The Office will also produce a Watchguard cruiser video from Officer O'Keefe's cruiser and make it available for inspection.

2. Records not subject to production or inspection

The Attorney General's Office has identified additional records in its possession that are responsive to your request but that are exempt from disclosure under Vermont's Public Records Act. These records consist of writings, photographs and video and audio recordings.

The writings are attorney files exempt pursuant to 1 V.S.A. § 317(c)(3) and (4). These exemptions protect records covered by statutory and common law privileges including the attorney-client privilege, the work product doctrine and the rule of confidentiality established by professional ethics.

The photographs, audio and video recordings are exempt pursuant to 1 V.S.A. §§ 317(c)(5)(A)(iii) and (D) because disclosure could constitute an unwarranted invasion of personal privacy or would reveal the identity of a private citizen who is a victim or witness, and § 317(c)(7) because the records may "reveal intimate details of a person's life, including any information that might subject the person to embarrassment, harassment, disgrace, or loss of employment or friends." *Kade v. Smith*, 2006 VT 44, ¶ 8, 180 Vt. 554, 904 A.2d 1080 (mem.).

The Office has inquired regarding the costs of creating redacted audio and video recordings. McBride Sound Design has indicated that the creation of audio recordings requires multiple hours per hour of recording. They bill at a rate of \$130.00 per hour. Video recordings take longer to redact than audio recordings and, thus, are more expensive. If you wish to purchase redacted recordings we will work with you to obtain more definite estimates of the cost.

Among the video recordings that are part of the investigation is a Watchguard cruiser video from Officer Adams' cruiser. This video was previously provided to you in response to a Public Records Act request, and we will produce it again if you wish.

In addition the Attorney General's Office produced 79 pages of records in response to your access to records request dated February 2, 2012. A list of the records produced at that time is attached. The Office will of course make these records available for further inspection if you would like to review them again.

Inspection and Copying

As noted above, the Office will produce many of the records that you requested. You are welcome to inspect these records during normal business hours at the Vermont Attorney General's Office, 109 State Street, Montpelier. Please do not hesitate to contact me to set up a time for you to inspect these records.

Should you desire copies of any or all of the materials that are subject to inspection this Office will provide copies at the rate set by the Secretary of State.

Right to Appeal

To the extent that this letter constitutes a denial of your request, you may appeal to the Deputy Attorney General. Any appeal should be in writing and addressed to:

Susanne Young
Deputy Attorney General
109 State Street
Montpelier, VT 05609-1001

Yours Sincerely,

A handwritten signature in black ink, appearing to read "John Treadwell", with a large, stylized flourish above the name.

John Treadwell
Assistant Attorney General

c: file

Documents provided in response to February 2, 2012, request for records:

1. September 27, 2010 Information by State's Attorney in Docket No. 1229-9-10 Wrcr;
2. September 27, 2010 Affidavit of Officer Michael Tkac in Docket No. 1229-9-10 Wrcr;
3. October 1, 2010 Statement of Ms. Therrien;
4. October 19, 2010 Transcript from Docket No. 1229-9-10 Wrcr;
5. November 1, 2010 Motion to Dismiss Pursuant to V.R.Cr.P. 12(d) in Docket No. 1229-9-10 Wrcr;
6. November 15, 2010 Supplemental Affidavit of Officer Christopher O'Keefe in Docket No. 1229-9-10 Wrcr;
7. November 17, 2010 State's Opposition to Defendant's Motion to Dismiss;
8. November 17, 2010 Supplemental Affidavit of Officer Christopher O'Keefe in Docket No. 1229-9-10 Wrcr;
9. November 24, 2010 Defendant's Reply to State's Opposition to Defendant's Motion to Dismiss in Docket No. 1229-9-10 Wrcr;
10. December 17, 2010 Motion for Review of Discovery Practice;
11. December 22, 2010 Order Regarding Secondary Dissemination of Discovery Materials in Docket No. 1229-9-10 Wrcr;
12. January 3, 2011 Defendant's Motion to Reconsider in Docket No. 1229-9-10 Wrcr;
13. March 23, 2011 Decision on Defendant's Motion for Reconsideration in Docket No. 1229-9-10 Wrcr; and
14. March 31, 2011 Notice of Dismissal in Docket No. 1229-9-10 Wrcr.

