

From: [Mishaan, Jessica](#)
To: [Liam Connors](#)
Subject: response to records request appeal
Date: Thursday, February 22, 2024 11:34:40 AM
Attachments: [2024-02-22 McDougall PRA Appeal Response.pdf](#)

Hello Liam,

Please find the attached letter on behalf of Robert McDougall, Deputy Attorney General.

Best,

Jessica Mishaan | Paralegal (she/her)
Office of the Attorney General
General Counsel and Administrative Law Division, Appellate Unit
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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
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February 22, 2024

Via email to: lconnors@vpr.org

Re: Public Records Request

Dear Liam:

This is a determination, pursuant to 1 V.S.A. § 318(c), on the appeal of a previous withholding decision related to your 2/12/2024 public records request. Your request sought “access to and copies of all records of the following: body camera footage from the arrest of Eva Vekos on 01/25/2024.” As you know, AGO Chief of Staff Lauren Jandl responded to your request by e-mail on 2/14/2024 informing you that the requested records were withheld as exempt from public inspection and copying pursuant to 1 V.S.A. § 317(c)(3) and (5)(A).

I conclude that the requested records were properly withheld pursuant to the Vermont Public Records Act (PRA). *See* 1 V.S.A. § 317(c)(3) (exempts “[r]ecords that, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the State”); *id.* § 317(c)(5)(A)(i), (ii) (exempts “[r]ecords dealing with the detection and investigation of crime, but only to the extent that the production of such records: (i) could reasonably be expected to interfere with enforcement proceedings” or “(ii) would deprive a person of a right to a fair trial or an impartial adjudication”); *id.* § 317(c)(14) (exempts “[r]ecords that are relevant to litigation to which the public agency is a party of record, provided all such matters shall be available to the public after ruled discoverable by the court before which the litigation is pending, but in any event upon final termination of the litigation”).

Specifically, a criminal case against Eva Vekos is active and pending in State court. Public disclosure of the requested records at this time would have the potential to affect statements or testimony of one or more material witness relevant to the prosecution who were in contact with this criminal defendant during the evening in question, which in turn would reasonably be expected to interfere with the enforcement proceeding itself. Such potential for interference not only currently exists but also will persist throughout the prosecution. *See id.* § 317(c)(5)(C) (“It is the intent of the General Assembly that in construing subdivision (A) of this subdivision (5), the courts of this State will be guided by the construction of similar terms contained in 5 U.S.C. § 552(b)(7) (Freedom of Information Act) by the courts of the United States”); *see also Lazardis v. Dep't of State*, 934 F. Supp. 2d 21, 37 (D.D.C. 2013) (“Under [FOIA] exemption 7(A) the

government is not required to make a specific factual showing with respect to each withheld document that disclosure would actually interfere with a particular enforcement proceeding. . . [r]ather, federal courts may make generic determinations that [disclosure of certain kind of records] would generally interfere with enforcement proceedings” (internal citation and quotation omitted)).

Further, these records, if publicly disclosed, could also undermine the interests of this criminal defendant at trial, *see* 1 V.S.A. § 317(c)(3), (5)(A)(ii), *supra*, which implicates ethical obligations of the prosecuting attorneys, as well as AGO employees generally, to limit extrajudicial public statements associated with this pending criminal matter. *See* Vt. R. Prof. Cond. 3.6(a) (“A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter”); *id.* at 3.6(d) (“No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a)”); *see also id.* at 3.8(f) (“The prosecutor in a criminal case shall. . . except for statements that are necessary to inform the public of the nature and extent of the prosecutor’s action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case who are in the employment or under the control of the prosecutor from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this rule”); *id.* at 3.8, Reporter’s Comment 5 (“In the context of a criminal prosecution, a prosecutor’s extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused”).

Lastly, the responsive records are likewise exempt from public inspection and copying under 1 V.S.A. § 317(c)(14) because they are relevant to pending litigation in which the State is a party.

That said, all such above-cited PRA exemptions to disclosure are temporary in nature, meaning that you may submit a new request for such records upon the conclusion of the criminal prosecution, including appeals (if any), subject to the AGO’s right to cite any other appropriate PRA exemptions that may then apply.

Please be advised that any person aggrieved by the denial of a request for public records may appeal to the Vermont Superior Court, Civil Division, pursuant to 1 V.S.A. § 319(a).

Sincerely,

/s/ Robert McDougall

Robert F. McDougall
Deputy Attorney General