

From: AGO - Info <AGO.Info@vermont.gov>
Sent: Wednesday, April 10, 2024 4:59 PM
To: Pietro Lynn <plynn@lynnlawvt.com>
Cc: Meagan Collins <mcollins@lynnlawvt.com>
Subject: Public Records Request

Dear Attorney Lynn:

This is a determination, pursuant to 1 V.S.A. § 318(c), on the appeal of a withholding determination related to a February 20, 2024 public records request from Meagan Collins, clarified on February 21, 2024, that sought “any documents which came into the AGO’s possession and control on September 25, 2023 or after as part of an investigation undertaken by Detective Hemond pertaining to the Howard Center’s care of Chriss Zuckerman.”

On February 23, 2024, Assistant Attorney General Zoe Newman responded with a withholding determination related to all responsive records. AAG Newman identified the following legal bases for such withholding: 1 V.S.A. § 317(c)(3), (c)(5)(A), (c)(7) and (c)(42).

On April 3, 2024, your firm (through Meagan Collins) submitted an appeal. I am denying the bulk of the appeal as explained further below.

Nonetheless, I have determined that nine sets of responsive records acquired on or after September 25, 2023 as part of this particular investigation may be produced to you, subject to further documentation being supplied with your request. Specifically, the sets of responsive records that may be produced are the following medical records:

[REDACTED]

[REDACTED]. Notwithstanding 1 V.S.A. § 317(c)(5)(A), I have deemed such records available for production in this limited circumstance, provided you supply a written (and notarized) release and consent from the executor/trix of the Estate of Chriss Zuckerman authorizing our release of such medical records to your firm. You may send the written (and notarized) release and consent from the executor/trix of the Estate of Chriss Zuckerman to Assistant Attorney General Zoe Newman at Zoe.Newman@vermont.gov

In addition, I have determined that certain other records acquired on or after September 25, 2023 as part of this particular investigation may be produced to you, to the extent they comprise public contracts for services or public grants, including any amendments, executed between State of Vermont governmental entities and the Howard Center. I will instruct MFRAU to produce such records without further documentation or request supplied by your firm.

For the remainder of the responsive records, I concur with the withholding determinations made by Assistant Attorney General Newman. Please see the below descriptions of the responsive records and the legal bases for withholding I have deemed applicable:

- September 26, 2023 e-mail string between Heather Bedell (Vermont Department of Mental Health) and Elaine Soto and Lisa Martiny (Howard Center) re: Chriss Zuckerman's death.

Withheld pursuant to 1 V.S.A. § 317(c)(5)(A)(i). 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 a criminal investigation, 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 investigation and any potential prosecution. *See* 1 V.S.A. § 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)).

Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(ii). Such records, if publicly disclosed, could also undermine the interests of potential criminal defendants at trial, which implicates ethical obligations of the prosecuting attorneys, as well as AGO employees generally, to limit extrajudicial public statements associated with this ongoing criminal investigation and any future potential criminal prosecution. *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”).

- September 26, 2023 e-mail from Alexandra Nerenburg (Vermont Department of Mental Health) to Elaine Soto and Lisa Martiny (Howard Center) re: death of Chriss Zuckerman. *Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.*
- November 1, 2023 e-mail from Karen Barber (General Counsel, Vermont Department of Mental Health) to Betsy Anderson (Assistant Attorney General, Director, MFRAU) and Zoe Newman (Assistant Attorney General, MFRAU) attaching October 31, 2023 memo from Emily Hawes (Commissioner, Vermont Department of Mental Health) to Betsy Anderson re: treatment and death of Chriss Zuckerman. *Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.*
- October 12, 2023 e-mail string between Alexandra Nerenburg (Vermont Department of Mental Health) and Elaine Soto (Howard Center) re: care and death of Chriss Zuckerman. *Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.*
- November 1-2, 2023 e-mail string between Betsy Anderson (Assistant Attorney General, Director, MFRAU) and Karen Barber (General Counsel, Vermont Department of Mental Health), cc'ing Zoe Newman (Assistant Attorney General, MFRAU), including MFRAU request for Vermont Department of Mental Health records and attaching such records re: treatment and death of Chriss Zuckerman. *Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.*
- October 11-20, 2023 e-mail string between Alison Krompf, Shannon Thompson, Alexandra Nerenburg (all Vermont Department of Mental Health), Karen Barber (General Counsel, Vermont Department of Mental Health), and Betsy Anderson (Assistant Attorney General, Director, MFRAU) re: production of Howard Center financials and Lakeview program case rates sought for MFRAU investigation of treatment and death of Chriss Zuckerman. *Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.*
- October 6, 2023 Certificate of Authenticity; Domestic Records completed by Jennifer Chafee (University of Vermont Medical Center) re: medical records of Chriss Zuckerman. *Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.*
- September 26, 2023 e-mail string between Carol Scott (Vermont Department of Disabilities Aging and Independent Living) and Michael Hemond (AGO MFRAU Detective) re: death of Chriss Zuckerman. *Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.*
- August 3, 2023 and October 18, 2023 Vermont Department of Disabilities, Aging and Independent Living, Division of Licensing and Protection Statements of Deficiencies and Plans of Correction documentation and associated e-mails re: Lakeview Community Care Home sought for MFRAU investigation of treatment and death of Chriss Zuckerman.

Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.

- October 23, 2023 e-mail from Karen Barber (General Counsel, Vermont Department of Mental Health) to Betsy Anderson (Assistant Attorney General, Director, MFRAU) and Zoe Newman (Assistant Attorney General, MFRAU), attaching records re: treatment and death of Chriss Zuckerman.

Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.

- Howard Center critical incident reports re: Chriss Zuckerman, involving various incidents 2019 to 2023.

Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.

- October 2, 2023, Vermont Agency of Human Services, Departments of Mental Health and of Disabilities, Aging, and Independent Living, Agency Designation Report re: Howard Center.

Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.

- December 15, 2021 e-mail from Kelly Perret (Vermont Department of Mental Health) to Brandi Littlefield (Howard Center) and Gaelen Tellefsen re: Chriss Zuckerman.

Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.

- June 10, 2022 Vermont Department of Mental Health, Clinical Care and Minimum Standards Review Report for Community Rehabilitation and Treatment Services (CRT) at Howard Center, including associated attachments and corrective action plan communications.

Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.

- April 4, 2023 e-mail from Matthew MacNeil (Howard Center) to Puja Senning (Vermont Department of Mental Health) re: Howard Center Redesignation Application, attaching redesignation documents.

Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.

- Adult Protective Services Intake Reports, involving various incidents 2019-2023, re: Chriss Zuckerman.

Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.

- Various text messages among Howard Center staff in 2022-2023 re: Chriss Zuckerman.

Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.

- Video of Shelburne Road capturing the September 25, 2023 accident involving Chriss Zuckerman provided by South Burlington PD Det. M. Maloney to AGO MFRAU.

Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.

- January 22, 2024 Vermont State Police Crash Report re: Chris Zuckerman accident on September 25, 2023.

Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.

- September 28, 2023 Vermont Noncertified Vermont Certificate of Death, Chriss Zuckerman.

Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.

- September 26, 2023 e-mail string between Carol Scott (Vermont Department of Disabilities Aging and Independent Living) and Virginia Merriman (AGO MFRAU, Detective) re: death of Chriss Zuckerman.

Withheld pursuant to 1 V.S.A. § 317(c)(3), (c)(5)(A)(i), (c)(5)(A)(ii). See above explanations.

I have also deemed all Vermont Probate Court records in the matter of In Re the Guardianship of Chriss Zuckerman, Docket No. P-101-97WnG obtained by MFRAU to fall outside the scope of your request, as the Vermont Superior Court would be the designated custodian of all such court records.

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

Thank you,

/s/ Robert McDougall
Robert McDougall
Deputy Attorney General

Vermont Attorney General's Office
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