

**From:** [Mishaan, Jessica](#)  
**To:** [Hirschfeld, Peter](#)  
**Subject:** response to public records request  
**Date:** Thursday, January 31, 2019 2:23:35 PM  
**Attachments:** [2019-01-31\\_Scherr\\_response\\_to\\_Hirschfeld.pdf](#)

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Peter,

Please find the attached response to your public records request.

Thank you,

**Jessica Mishaan** | Paralegal

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

January 31, 2019

Peter Hirschfeld  
Vermont Public Radio  
365 Troy Avenue  
Colchester, VT 05446

Re: Public Records Request – Vermont State Police Fair and Impartial Policing Policy

Dear Mr. Hirschfeld,

In response to your public records request dated January 29, 2019, attached is the responsive record. We are also attaching the recently updated Vermont State Police Victim's Assistance Policy, which contains relevant language.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Scherr".

David Scherr

Assistant Attorney General



## VSP-DIR-301

### Fair and Impartial Policing

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#### 1.0 Purpose

- 1.1 The intent of this policy is to reaffirm the Vermont State Police commitment to unbiased policing, to clarify the circumstances in which members can consider race, ethnicity, gender or other potentially improper criteria when making law enforcement decisions, and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable and impartial way.

#### 2.0 Policy

- 2.1 It is the policy of the Vermont State Police that the department shall not condone the use of any bias based policing in the services our employees provide to the community in connection with our law enforcement activities.

#### 3.0 Definitions

- 3.1 "Personal Criteria" may include, but are not limited to, race, ethnicity, immigration status, national origin, color, gender, sexual orientation, gender identity, marital status, mental or physical disability, religion, and socio-economic level.
- 3.2 "Suspicious activity" is defined as "Observed behavior reasonably indicative of pre- operational planning related to terrorism or other criminal activity." As with investigations of civil violations, if a member needs to identify an individual and that individual does not have identification, the member may use whatever tools, including federal databases, are reasonably necessary to identify the individual under the circumstances.

#### 4.0 Procedure

- 4.1 Fair and Impartial Policing: General Principles
  - A. As required by statutes, Chapter I, Article 11 of the Vermont Constitution and Amendment IV of the United States Constitution, all enforcement actions by law enforcement officers, such as investigative detentions,

traffic stops, arrests, searches and seizures, etc., must be based on reasonable suspicion, probable cause, or other required standards.

1. Members must be able to articulate specific facts, circumstances, and conclusions which support the required standard for enforcement actions.
2. Members may take into account the reported race, ethnicity or other personal criteria of suspects based on credible, reliable, locally-relevant information that links persons of specific description criteria to particular criminal incidents. See VSP-DIR-425 for policy on providing qualified interpreter services.
3. Except as provided in 4.1(A)(2) above:
  - a. Members will not consider race, ethnicity, or other personal criteria in establishing either reasonable suspicion or probable cause.
  - b. Members will not single out or otherwise treat persons differently because of their race, ethnicity, or other personal criteria. Law enforcement officers may allow for special accommodations to be made for individuals with disabilities.
  - c. Members will not engage in biased based profiling tactics in traffic contacts, field contacts, asset seizure/forfeiture processes, or any other law enforcement function.

#### 4.2 Preventing Perceptions of Biased Policing

- A. In an effort to prevent any misperceptions of biased law enforcement, each member shall do the following when conducting pedestrian and vehicle stops:
  1. Be courteous and professional;
  2. Identify himself/herself to the individual (providing name and agency) and state the reason for the stop as soon as practical, unless providing this information will compromise the member's or public safety;
  3. Ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense, and that the individual understands the purpose of reasonable delays;

4. Answer any questions the individual may have;
5. Provide the member's name and duty assignment verbally, when requested. Members may also provide the information in writing or on a business card.
6. Explain if the member determines that the reasonable suspicion was unfounded (e.g., after an investigatory stop).

#### 4.3 Responding to Bias-Based Reports:

- A. If any member of the agency receives a call for service, whose only foundation has to do with an individual's race, ethnicity, gender, age, perceived or known mental illness, sexual orientation, gender identity, marital status, religion, disability, socioeconomic level, immigration status, or other potentially improper personal criteria, the employee will attempt to explore if there are any specific behaviors that either constitute reasonable suspicion or probable cause or otherwise call for police response. If no specific behavior is identified, the caller's contact information will be obtained and he/she will be advised that the member in charge of the shift will contact him/her.
- B. The member will contact the shift supervisor and provide the circumstances of the call. The shift supervisor will contact the caller and explain that we do not respond to calls for service that are based solely on a person's race, ethnicity, gender, age, perceived or known mental illness, sexual orientation, gender identity, marital status, religion, disability, socioeconomic level, immigration status or other potentially improper personal criteria.
- C. The shift supervisor should attempt to educate the caller on our fair and impartial policing policy and philosophy. He/she should also explain that we respond to behaviors/actions of individuals that appear suspicious, threatening, illegal, etc. and not to situations based solely on a person's characteristics/attributes as defined above. The shift supervisor will document this interaction via an RMS report. In the case of a call for service that is based solely on a caller's suspicion that an individual present in Vermont is an undocumented foreign national, the supervisor shall inform the caller that federal authorities are primarily responsible for enforcing federal immigration law.

- D. See VSP-DIR-521 for policy on receipt of report of a potentially biased or hate-motivated incident.

#### 4.4 Matters Relating to Immigration and Citizenship Status

##### A. General Policies:

1. An individual's presence in the United States without proper documentation or authority, standing alone, when that individual has not been previously removed, is not a criminal violation. Therefore, members may not initiate an investigation based solely on information or suspicion that an individual is in the United States without authorization and proper documentation. Detecting or apprehending such individuals is not a law enforcement priority for the Vermont State Police.
2. Accordingly, except as noted below, members should not use agency resources, equipment or personnel for the purpose of detecting or apprehending individuals whose only violation of law is that they are present in the United States without authorization and proper documentation.
3. Members shall not stop, investigate, detain or question an individual solely for the purpose of determining whether the individual is in the United States without authorization and proper documentation.

##### B. Inquiries Concerning Citizenship and Immigration Status

1. Members should not ask an individual about his or her immigration status when investigating a civil violation. If a member needs to identify an individual and that individual does not have identification, the member may use whatever tools, including federal databases, are reasonably necessary to identify the individual under the circumstances. Identification methods may include a foreign passport, consular identification, or other government-issued documents that are reasonably reliable, subject to the same reasonable scrutiny and follow-up for authentication as any other forms of identification.
2. Members may ask an individual about his or her immigration status under the following circumstances:
  - a. If the member is conducting a criminal investigation or an investigation of suspicious activity based on reasonable suspicion

AND the immigration status of the suspect is relevant to the investigation, provided that the investigation is initiated for a reason or reasons independent of information or suspicion that an individual is (or individuals are) in the United States without proper authorization in violation of the civil provisions of federal immigration law; or

- b. After a suspect has been arrested for a criminal violation and inquiry into the suspect's immigration status is necessary to the ongoing criminal investigation or the arrest.

This directive does not apply to communications governed by 8 U.S.C. §§ 1373 and 1644.

### C. Additional Considerations

1. Members who have reason to believe that an illegal border crossing has occurred may ask a suspect about his or her immigration status consistent with 2(a) or 2(b) above;
2. Members operating near the Canadian border may solicit the support of federal law enforcement in connection with state law matters if reasonably necessary to protect officer and/or public safety; and
3. Members operating near the Canadian border may make inquiries consistent with sections (A) and (B) above.

D. Members shall not arrest or detain any individual based on an immigration "administrative warrant" or "immigration detainer." These documents have not been issued or reviewed by a neutral magistrate and do not have the authority of a judicial warrant. In addition, these documents do not meet the probable cause requirements of the Fourth Amendment and Article 11 of the Vermont Constitution.

E. Members shall not hold for, or transfer people to, federal immigration agents unless the federal agents provide a judicial warrant for arrest. As stated above, an immigration detainer is not a warrant and is not reviewed by a judge, and therefore is not a lawful basis to arrest or detain an individual. Valid criminal warrants of arrest, regardless of crime, shall not be confused with immigration detainers. This provision does not affect the proper handling of arrests and detentions associated with judicially-issued criminal arrest warrants.

- F. Members shall not initiate or prolong stops for the purpose of enforcing civil immigration matters, such as suspicion of undocumented status, nor shall member prolong stops for the purpose of allowing federal immigration authorities to conduct such investigation.
- G. In assessing whether to seek continued custody under Vermont Rules of Criminal Procedure 3, members shall not presume that undocumented individuals necessarily present a risk of flight. Instead, such judgments shall be made on the facts presented in each case, rather than made simply on the basis of immigration status. In addition, personal criteria shall not impact the decision on whether to seek continued custody under Rule 3 of Vermont's Rules of Criminal Procedure.
- H. This policy is not intended to impair relationships with federal authorities, compromise officer safety, or hinder local, state or federal law enforcement priorities. It is not intended to change the Vermont State Police's cooperation and coordination with federal authorities to enhance border security.

#### 4.5 Collaboration with Federal Immigration Officers

Members are not obligated to communicate with federal immigration authorities regarding the immigration or citizenship status of any individual. Two federal statutes, 8 U.S.C. §§ 1373 and 1644, provide that local and state agencies and officials may not prevent or restrict their employees from communicating with other government officials such as ICE or CBP regarding an individual's citizenship or immigration status. Members shall apply this policy in a manner consistent with the lawful operation of these two statutes.

Information about an individual that falls within the scope of 8 U.S.C. §§ 1373 and 1644 may be shared with federal immigration authorities. Information outside the scope of 8 U.S.C. §§ 1373 and 1644 may be shared with federal immigration authorities if sharing such information is justified on the grounds of: (1) public safety, (2) officer safety, or (3) law enforcement needs that are not related to the enforcement of federal civil immigration law.

Sweeps intended solely to locate and detain undocumented immigrants without reasonable suspicion or probable cause of a crime shall not be conducted unless acting in partnership with a federal agency as part of a formal agreement entered into by the governor.



Members are not permitted to accept requests by ICE or other agencies to support or assist in operations that are primarily for civil immigration enforcement. This directive does not apply to communications governed by 8 U.S.C. §§ 1373 and 1644.

#### 4.6 Compliance

- A. The Vermont State Police are committed to providing periodic cultural training for its members. Fair and Impartial Policing training will be conducted annually for all members. It is the goal of this Department to ensure that all employees are sensitive to, and aware of, cultural diversity issues and what constitutes biased policing.
- B. The Vermont State Police is committed to the vigorous investigation of complaints of this nature and violations of this policy shall result in disciplinary action.
- C. Additionally, the Vermont State Police has in place committees to review all video tapes on reported use of force, pursuit, and vehicle searches. The opinions and recommendations of each respective committee are forwarded to the Vermont State Police Office of Professional Development for review.

#### 4.7 Supervision and Accountability

- A. Supervisors shall ensure that all members in their command are familiar with the content of this policy and are operating in compliance with it. Supervisors should randomly review records such as reports or video/audio recordings, or otherwise monitor the conduct of the members in their command for the purpose of ensuring compliance with this policy and to identify training issues.
- B. Upon the request from a member of the public, members will explain how a person should make a complaint regarding an officer's conduct. Reasonable efforts should be made to accommodate language barriers in compliance with VSP-DIR-425.
- C. All members are required to report allegations, complaints, or knowledge of a suspected violation of this policy in accordance with VSP-GEN-205, of the Department's Rules and Regulations.

- D. The Department shall investigate alleged violations of this policy in accordance with the provisions of VSP-GEN-205, of the Department's Rules and Regulations.
- E. Members are required to annually review the Office of Professional Development training segment related to Fair and Impartial Policing.

#### 4.8 Annual Review

The Vermont State Police Fair and Impartial Policing Committee will convene annually to review current policies, practices, and citizen concerns regarding fair and impartial policing.

#### 4.9 Savings Clause

Pursuant to 8 U.S.C §§ 1373 and 1644, Vermont State Police may not prohibit, or in any way restrict, any government agent or official from sending to, or receiving from, federal immigration authorities' information regarding the citizenship or immigration status, lawful or unlawful, of any individual. Vermont State Police also may not prohibit, or in any way restrict, the sending, receiving, maintaining, or exchanging information regarding the immigration status of any individuals. Nothing in this policy is intended to violate 8 U.S.C §§ 1373 and 1644.

Effective December 10, 2003

Revised May 15, 2009

Revised July 15, 2011

Revised November 4, 2011

Revised June 18, 2014

Revised January 30, 2019

The Vermont State Police Manual provides only internal Vermont State Police guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any civil, criminal, or administrative matter. It is not intended to and does not apply in any criminal or civil proceeding outside of internal Department proceedings. No policy included in this publication should be construed as creating a higher legal standard of safety or care in an evidentiary sense with respect to third party claims.



## VSP-DIR-305

### Victim's Assistance

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#### 1.0 Purpose

- 1.1 This agency recognizes that law enforcement is dependent upon the aid of crime victims and witnesses in order to hold criminals accountable for their actions. It is desirable to gain the cooperation of victims and witnesses, thereby enhancing the agency's ability to make arrests that will result in criminal prosecution.

#### 2.0 Policy

- 2.1 To provide sensitive, fair, and high quality services to crime victims and witnesses.

#### 3.0 Procedure

##### 3.1 Victim and Witness Contact

- A. All victims and witnesses shall be treated with courtesy, sensitivity, and respect.
- B. Members shall make reasonable efforts to inform victims of crime of available services. Victims and witnesses will be offered a safe and friendly location for providing statements or other investigatory processes. Members shall ensure continued safety by reviewing safety planning with victims/witnesses when appropriate.

##### 3.2 Analysis of Needs and Available Services

- A. All Vermont State Police members are charged with providing high quality assistance to victims and witnesses consistent with section 3.1 of this policy.
- B. The Vermont Victim Assistance Program provides each county with a Victim Advocate Service that is available to all crime victims and witnesses. The Victim Advocate is engaged in an ongoing evaluation of the needs of crime victims and available services.

- C. The Vermont State Police shall maintain a close working relationship with all victim service agencies and their respective advocates.

### 3.3 Procedures for Victim/Witness Assistance

- A. The Vermont State Police will ensure the confidentiality of victims and witnesses, and their role in case development, to the extent allowed by law.
- B. Victim/Witness assistance information shall be available to the public 24 hours a day through the department's Public Safety Answering Points (PSAPs). Dispatchers shall provide callers with appropriate referrals from a list of resources available by county, such as those suggested in the list below:
  - 1. Medical Attention - an ambulance or referral to one of the local hospitals.
  - 2. Counseling/Advocacy Services - The community based victim services agency in the area.
  - 3. Emergency Financial Assistance - Referral to the Department of Social Welfare or the Victim/Witness Advocate of the State's Attorney Office, or the Vermont Center for Crime Victim Services (Victim Compensation).
  - 4. Legal - Referrals will be made when appropriate to individuals needing assistance in civil restraining orders to appropriate community based agencies. Immigration related referrals shall be made to the appropriate assistance program.
  - 5. For other requests, the dispatcher shall attempt to provide an appropriate referral from the resource lists maintained within each PSAP, including a referral to the 211 service.

### 3.4 Assisting Immigrant Victims/Witnesses

- A. To effectively serve immigrant communities and to ensure trust and cooperation of all victims/witnesses, members will not ask about, or investigate immigration status of crime victims/witnesses, unless information regarding immigration status is an essential element of a crime or immigration status is necessary to the criminal investigation or

arrest. If a victim/witness is also a suspect, members should follow the provisions in VSP-DIR-301 4.4(B), Inquiries Concerning Citizen Status. Federal law does not require law enforcement officers to ask about or investigate the immigration status of crime victims/witness. Although communication with federal immigration authorities regarding victim/witness immigration status is permitted, it is not required under 8 U.S.C. §§ 1373 and 1644.

- B. Members will ensure that individual immigrants and immigrant communities understand that victim services referrals are available to documented and undocumented victims/witnesses.
- C. Members may, in appropriate situations, advise an individual that if they are undocumented they may be eligible for a temporary visa. For example, an individual may qualify for a U, S, or T visa if they are a victim or material witness to certain serious crimes.
- D. Members should communicate that they are here to provide assistance and to ensure safety, not to deport or facilitate the deportation of victims/witnesses, and that members do not ask victims/witnesses about their immigration status unless obtaining information regarding immigration status is necessary to the criminal investigation or arrest (for example, in human trafficking investigations). In instances where the victim/witness is also a suspect, please refer to VSP-DIR-301 4.4(B), Inquiries Concerning Citizenship Status.
- E. Nothing in this policy is intended to violate 8 U.S.C. § § 1373 and 1644.

### 3.5 Assistance During Preliminary Investigation

- A. In addition to investigating alleged criminal incidents, members should seek to provide assistance to the victims of crime and the persons who witness criminal behavior. During the preliminary investigation of any incident, the investigating member shall seek to:
  - 1. Ensure victim/witness safety and to create a safety plan when appropriate.
  - 2. Provide the victim with a method for determining when or whether a suspect is released from jail on bail, or other release status.
  - 3. Provide the victim/witness information regarding available services. Depending on the nature of the incident, the following referrals may

be appropriate: counseling, medical attention, emergency shelter, victim advocacy, or compensation programs.

4. Provide the victim/witness with the case number and information regarding subsequent steps, if any, in the processing of the case.
  5. Provide the victim/witness with the appropriate number to call to report additional information or to receive information about the status of the case.
  6. Remind the victim/witness to immediately report any further threats or intimidation from the suspect or the suspect's friends or family.
  7. Victims/Witnesses who express specific reasons for fearing future intimidation or victimization should be referred to either Family Court for a Relief from Abuse Order or the State's Attorney Office for Conditions of Release.
- B. When appropriate, any reports received of further victimization or intimidation of victims/witnesses should be investigated as a separate incident.

### 3.6 Assistance During Follow-Up Investigation

- A. After an arrest of a suspect(s), primary victim assistance will be the responsibility of the State's Attorney Office Victim Advocate. This should be made clear to the crime victim. The Victim Advocate maintains contact with victims until final case disposition to inform them of all court hearings and, if necessary, to provide transportation for the victim to attend. Other services available include, but are not limited to, arranging for daycare so the victim can attend court hearings, arranging for counseling, and assisting with shelter.
- B. The Victim Advocate is mandated by state law to explain to all victims and witnesses the procedures involved in the prosecution of their case and their role in this procedure.
- C. The investigating member shall schedule necessary lineups and additional interviews with the victim or witness. If needed, transportation can be arranged through the Victim Advocate.
- D. Property taken as evidence from a victim or witness shall be returned as promptly as possible. The Victim Advocate frequently fields requests for

return of property and is available to explain to victims and witnesses the evidentiary value of their property if it is necessary to hold the item for trial.

### 3.7 Notification of Victim Upon Arrest or Change in Custody

- A. When a suspect is arrested for any crime, the arresting member should complete the form provided by the Victim Advocate with the victim's name, address, and phone number.
- B. Ensure that the victim's information is provided to Corrections so that the victim can be notified should the suspect make bail before arraignment.

Effective October 1, 1987

Revised July 1, 1990

Revised December 1, 1997

Revised April 15, 2009

Revised September 5, 2014

Revised July 7, 2017

Revised January 30, 2019

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