

From: "Thompson, Julio" <julio.thompson@vermont.gov>
Date: October 21, 2019 at 5:36:25 PM EDT
To: "Caroline Earle (cse@caroline-law.com)" <cse@caroline-law.com>
Cc: "Adams, Emily" <Emily.Adams@vermont.gov>
Subject: CRU Response to October 16 PRA Request

Caroline:

Our initial PRA response is attached. We will follow up as indicated. I'm also copying Emily, who will assist in the response effort.

Thanks again for your time this morning. I hope we can speak later in the week.
Julio

Julio A. Thompson
Assistant Attorney General
Director, Civil Rights Unit
Office of the Vermont Attorney General
109 State Street
Montpelier, Vermont 05609
802.828.5519

THOMAS J. DONOVAN
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON
CHIEF ASST. ATTORNEY GENERAL



TEL: (802) 828-3171
FAX: (802) 828-2154

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

October 21, 2019

Caroline S. Earle, Esq.
Law Offices of Caroline S. Earle, PLC
P.O. Box 1385
107 State Street, 3rd Floor
Montpelier, Vermont 05601-1385

VIA REGULAR MAIL AND E-MAIL— cse@caroline-law.com

Re: October 16, 2019 Public Records Request

Dear Caroline:

Thank you for meeting with me this morning to talk about enforcement of sexual harassment claims in Vermont and about the Public Records Act (PRA) request you sent us October 16, 2019. Thank you as well for the brief call this afternoon to touch base again about the PRA requests.

I'm writing here to address three aspects of those requests: (1) to confirm the partial response to one of your PRA requests; (2) to memorialize certain clarifications to one of your PRA requests and a new PRA request you made this morning; and (3) to request an extension of time under the PRA (specifically, 1 V.S.A. § 318(a)(5)(B)) so that we can locate and compile the information you requested.

Title 21 Litigation. This morning I answered your first PRA request at least partially. During the time period you specified, the Civil Rights Unit (CRU) has not litigated claims arising under Title 21 of the Vermont Statutes— although it has on occasion filed an assurance of discontinuance (AOD) in connection with settlement of a CRU investigation. (As indicated on page two below, we will need an extension of time to locate and report on any responsive AODs.)

As I mentioned this morning, a variety of factors play into the Title 21 litigation picture. For example, CRU often tries to resolve disputes as early as possible by a variety of means, including its free mediation program. (Sometimes CRU manages to resolve disputes without the need to serve the employer with a charge of discrimination.) We also find that, as a CRU

investigation progresses, an investigator may identify evidence of discrimination that motivates a previously disinterested employer to pursue settlement discussions. In other instances, we may learn that a CRU “cause” finding assists the complainant in engaging legal counsel who may seek to pursue additional, common law claims outside of CRU enforcement authority, such as breach of contract or defamation. (In such circumstances, CRU might nonetheless obtain targeted equitable relief, such as changes in employer policies or approved employee training. In still other cases, complainants may inform CRU they are unwilling to participate in litigation for a variety of personal or professional reasons.

There are still other variations of the above, but the general point is that many complainants seek resolution by means other than CRU litigation. Even so, I hope you and I will have the chance to talk more about enforcement opportunities in the future.

As I noted this morning, CRU’s court-related work has been focused on broad, systemic protections, ranging from LGBTQ rights (*e.g.*, marriage equality, protections in work and at school) to protection of the refugee and immigrant population. Though those cases have national import, they also directly affect Vermonters — including those who are beyond CRU’s traditional Title 21 jurisdiction. Still, we welcome opportunities to broaden our impact.

Request for Data Regarding CRU “Cause” Determinations and Pre-Determination Resolutions. While briefly discussing your public records request this morning, I mentioned that, owing to confidentiality laws, we would not be able to provide you the names of parties subject to a CRU investigation that did not result in a court filing. (*See, e.g.*, 9 VSA § 2460, whose confidentiality provisions apply to our enforcement statute, 21 V.S.A. § 495b). You said you understood this and just wanted the underlying numbers without any associated names. I appreciate the clarification, which you reiterated in this afternoon’s phone call.

As we were adjourning this morning, you also said that you wanted data regarding to the number of resolved (*i.e.*, settled) cases for the same time period (2010-2019). This request is broader than the original October 16 request because it includes pre-determination settlements — *i.e.*, cases that settled prior to CRU issuing a “cause” determination identifying one or more legal violations. We will treat this as a new request made today. You confirmed this afternoon that you are requesting that data as well.

Request for Extension of Time. Your October 16 request (and today’s request for pre-determination settlement data) will require an extension of time to conduct a review of what the Public Records Act calls “a voluminous amount of separate and distinct records demanded in a single request.” (1 V.S.A. § 318(a)(5)(B)). We expect to provide the information on or before October 30, 2019.

Sincerely,

/s/

Julio A. Thompson
Director, Civil Rights Unit