

From: [Paul Cuno-Booth](#)
To: [AGO - Info](#)
Subject: Appeal of public-records denial
Date: Monday, July 6, 2020 2:19:11 PM
Attachments: [CunoBooth_Appeal_of_25June2020_Triolo_denial.pdf](#)
[01_SimonsAffidavit.pdf](#)
[02_AGO_Statement_30_Aug_2018.pdf](#)
[03_AGO_response_25_June_2020.pdf](#)
[04_AGO_response_31_Jan_2019.pdf](#)
[05_Sentinel_request_22_June_2020.pdf](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi,

Attached is my appeal of a June 25 public-records request denial, along with supporting documents I reference in the appeal. Please make sure this gets to Deputy AG Diamond. I look forward to the office's response.

Thanks,

--

Paul Cuno-Booth
Assistant Local News Editor/Senior Reporter
Keene Sentinel
217-418-4298 (c)
[@PCunoBoothKS](#)

Paul Cuno-Booth
The Keene Sentinel
60 West St.
Keene, N.H. 03431

July 6, 2020

Deputy Attorney General Josh Diamond
109 State St.
Montpelier, Vt. 05609

Dear Mr. Diamond,

I am a reporter with The Keene Sentinel, a daily newspaper in Keene, N.H. I'm writing to appeal the Vermont Office of the Attorney General's denial of my request for records related to the May 4, 2018 officer-involved shooting of Mark Triolo in Brattleboro.

Between May 1 and May 4, 2018, armed robberies were reported at stores in Vergennes, Weathersfield and Westminster, Vermont. Law enforcement identified the suspect as Mark Triolo, then 46, of Texas, who at the time was on parole in his home state and suspected of a recent robbery in Queensbury, New York.¹

On the evening of May 4, police officers at a Brattleboro gas station spotted Triolo, who fled and was later located on Black Mountain Road. "Officers began to give verbal commands to Triolo ordering him to stop and show his hands. Triolo did not respond to those commands and subsequently officers fired multiple rounds striking him." Triolo survived the shooting. A black pellet gun resembling a semi-automatic handgun was later found in Triolo's vehicle.²

Triolo was charged with robbery in federal district court in Vermont.

On Aug. 30, 2018, Attorney General T.J. Donovan announced that his office, as well as the Windham County State's Attorney's Office, had decided not to prosecute Brattleboro officers Sean Wilson, Michael Cable and Steven Stanley and Vermont State Police Trooper Jason Lengfellner for the shooting.³

The Aug. 30 statement said Triolo was facing "criminal charges for allegations closely related to this incident" and, therefore, the offices would not "comment further on the specific findings of their reviews" at that time. The statement said the offices "may release additional information related to their decisions if and when the criminal charges pending against Mr. Triolo are resolved."⁴

¹ Affidavit of FBI Agent Colin Simons, May 6, 2018.

² Ibid.

³ Aug. 30, 2018, press release from Vermont Office of the Attorney General and Windham County State's Attorney's Office.

⁴ Ibid.

On Jan. 24, 2019, Triolo pleaded guilty to three counts of robbery in U.S. District Court in Vermont. On Feb. 11, 2020, Judge Christina Reiss sentenced him to 75 months' imprisonment. The federal courts' online information system lists the Vermont case as closed as of Feb. 12, 2020.⁵

Separately, a federal grand jury in Kansas has indicted Triolo on one count of bank robbery alleging that, on April 26, 2018, he attempted to take cash from a bank in Topeka, Kansas, by means of force, violence and intimidation. There has been little action in that case since the May 30, 2018, indictment and it remains open as of June 26, 2020.⁶

Triolo is also the subject of an active arrest warrant out of New York for the alleged Queensbury robbery on April 30, 2018, and has a pending parole-violation allegation in Texas for allegedly "absconding" from the state five days earlier.⁷

In 2019, The Keene Sentinel requested from the attorney general's office records related to the Triolo shooting. The request was denied for reasons related to "the pending federal case."⁸

The Sentinel partially renewed a version of that request on June 22 of this year. The request asked for "[a]ny report, memo, narrative or similar document summarizing the Vermont Office of the Attorney General's review of the [May 4, 2018] shooting and/or the reasons for resolving the matter without charges."⁹

On June 25, 2020, Assistant Attorney General John D.G. Waszak responded that the office had located a responsive record. The exact nature of that record was not specified.¹⁰

Waszak wrote that the record was exempt from disclosure under two provisions: 1 V.S.A. § 317(c)(4), because "said document contains the legal research, mental impressions, legal theories, conclusions, and opinions of the Attorney General's Office, and would therefore be exempt from disclosure as attorney work-product"; and 1 V.S.A. § 317(c)(5)(A), because of pending allegations in New York, Kansas and Texas that are "intricately related to the officer involved shooting and the now closed federal prosecution in Vermont."¹¹

The Sentinel disputes the grounds for both exemptions, as follows.

1. The "work-product" exemption.

1 V.S.A. § 317(c)(4) protects the government from having to hand over information that, if disclosed, "would cause the custodian to violate any statutory or common law privilege." In this case, the state is claiming its record about the Triolo shooting is protected as "attorney work-product" because it contains "the legal research, mental impressions, legal theories, conclusions, and opinions of the Attorney General's Office."¹²

⁵ PACER Docket for 2:18-mj-00055-jmc, District of Vermont, US v. Triolo, accessed June 26, 2020.

⁶ Indictment and docket in 5:18-cr-40051-HLT-1, District of Kansas, US v. Triolo, accessed June 26, 2020.

⁷ Vermont Office of the Attorney General, response to The Sentinel, June 25, 2020.

⁸ Vermont Office of the Attorney General, response to The Sentinel, Jan. 31, 2019.

⁹ Records request from The Sentinel to Vermont Office of the Attorney General, June 22, 2020.

¹⁰ June 25, 2020, response.

¹¹ Ibid.

¹² Ibid.

In support, the state cited *Killington, Ltd. v. Lash*, 153 Vt. 628, 641-48 (1990) about the application of the attorney work-product privilege to public-records requests.

But *Killington* and other sources indicate that the definition of “attorney work-product” has a direct relationship with litigation. It is unclear how this would cover a government’s determination of whether its agents were justified in using deadly force.

Black’s Law Dictionary defines “opinion” or “core” work product — the type at issue here — as “[a] lawyer’s opinions, mental impressions, conclusions, or legal theories *regarding a client’s case*” (emphasis added).¹³

The relevant portion of the Vermont Rules of Civil Procedure describes this as “trial preparation materials” — specifically, “documents and tangible things ... *prepared in anticipation of litigation or for trial* by or for another party or by or for that other party's representative.” In establishing an absolute protection for core work product, it describes such material as “the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party *concerning the litigation*” (emphasis added in both).¹⁴

The Federal Rules of Civil Procedure contain the same language nearly verbatim.¹⁵

Moreover, the *Killington* opinion cited by the state in its denial expressly states that the work-product exemption is not a broad one:

We must emphasize that the work-product exemption is a narrow one, both under Hickman principles and the civil rules. The litigation which serves as the basis for the claim must be in esse and not merely threatened. ... Moreover the exemption applies only to "those documents, and only those documents, normally privileged in the civil discovery context." ... Rule 26 clearly contemplates that materials not "prepared in anticipation of litigation or for trial" and which are otherwise subject to discovery are discoverable without a showing of substantial need, even though in the hands of an attorney. ... The materials supporting the assertion of a privilege must pertain to the lawsuit. ... The rule also contemplates that "mental impressions, conclusions, opinions, or legal theories of an attorney" are absolutely protected from discovery irrespective of any assertion of need, so long as these are part of the trial preparation product.¹⁶

Again, this underscores that the work-product exemption is not a broad protection for any thoughts an attorney puts to paper, but requires a connection to litigation or trial prep.

The state’s response to The Sentinel made no assertion that the document it withheld related to litigation or contained trial strategy. It mentioned no pending or contemplated legal proceeding that the attorney general’s office is working on. Rather, the response simply claimed it as exempt because it contains some degree of “legal research, mental impressions, legal theories, conclusions, and opinions.”

¹³ *Black’s Law Dictionary*. 11th ed. Thomson Reuters, 2019. Pg. 1926.

¹⁴ Vermont Rules of Civil Procedure, 26(b)(4).

¹⁵ Federal Rules of Civil Procedure, 26(b)(3).

¹⁶ *Killington, Ltd. v. Lash*, 153 Vt. 628, 641, 647.

The circularity of this logic creates a sweeping restriction on the public's right to know. The attorney general's review of a police shooting is of public interest *precisely because* it includes reasoning about the legality of those actions. In other words, because it contains "conclusions" and "opinions." But the existence of such conclusions and opinions is, apparently, the very thing that makes it exempt from disclosure.

It is hard to see how the public can understand how its government reviews uses of deadly force if the Office of the Attorney General refuses to release its "conclusions" and "opinions" from such reviews. Is the review process adequate? Has the state adopted reasonable "legal theories" to justify deadly shootings? Is the standard for using deadly force itself flawed – a matter of current debate? Those are questions Vermonters cannot ask in an informed way if "opinions" and "conclusions" about police shootings are categorically hidden from view, especially two years after the fact.

The importance of transparency is underlined by recent reporting from Vermont Public Radio on the case of St. Albans Police Cpl. Joel Daugreihl, who allegedly pepper-sprayed a handcuffed man. According to Vermont Public Radio, the Attorney General's Office in 2018 declined to prosecute — but reopened its investigation after VPR requested records related to the case.¹⁷ On June 29, the Office of the Attorney General announced Daugreihl was being charged with simple assault.¹⁸

Moreover, nondisclosure of closed investigations into police uses of force appears to be at odds with Attorney General Donovan's stated position on transparency. As phrased in a June 11 statement on the office's website: "I support making all investigations into police conduct more transparent and open to the public, consistent with due process rights, and I support releasing all video footage of police encounters including loss of life and police brutality after criminal investigations are completed."¹⁹

2. The "detection and investigation of crime" exemption

1 V.S.A. § 317(c)(5)(A) exempts from disclosure "[r]ecords dealing with the detection and investigation of crime" if they meet one of six criteria. In this case, the Office of the Attorney General cited three of those six prongs, which relate to records whose disclosure "(i) could reasonably be expected to interfere with enforcement proceedings; (ii) would deprive a person of a right to a fair trial or an impartial adjudication; [or] (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy." The office offered no specific explanation of how the requested record meets those criteria.

The third prong, related to "unwarranted invasion[s] of personal privacy," is easiest to dismiss.

The state has already publicly identified Mr. Triolo and the four officers involved in this shooting, and has described the incident in general terms. It is doubtful that armed agents of the state have a

¹⁷ "AG Reopens Investigation Into St. Albans Cop Who Allegedly Pepper Sprayed Handcuffed Man," Vermont Public Radio, Jan. 13, 2020, <https://www.vpr.org/post/ag-reopens-investigation-st-albans-cop-who-allegedly-pepper-sprayed-handcuffed-man>

¹⁸ "Former St. Albans Police Officer Cited for Simple Assault," posted to Vermont Office of the Attorney General blog June 30, 2020, <https://ago.vermont.gov/blog/2020/06/30/former-st-albans-police-officer-cited-for-simple-assault/>

¹⁹ Attorney General Donovan's Statement on Senate Government Operations Committee's Suggestions for Law Enforcement, June 11, 2020, <https://ago.vermont.gov/blog/2020/06/11/attorney-general-donovans-statement-on-senate-government-operations-committees-suggestions-for-law-enforcement/>

privacy interest in an official record documenting an official act, particularly one of the magnitude of a decision to use deadly force. And it is similarly unclear how Mr. Triolo's privacy would be violated by an evaluation of the facts leading up to him being shot — especially as his name and the allegations that led to his arrest have long since been public.²⁰

The second criterion involves disclosures that “would deprive a person of a right to a fair trial.”

Vermont's legislature has directed state courts to look to the federal courts' FOIA jurisprudence in interpreting the law-enforcement exemptions of Vermont's public-records law.²¹

In *Washington Post Co. v. U.S. Department of Justice*, the U.S. Circuit Court for the District of Columbia notes that “FOIA is to be interpreted with a presumption favoring disclosure and exemptions are to be construed narrowly. . . . That burden cannot be met by mere conclusory statements; the agency must show how release of the particular material would have the adverse consequence that the Act seeks to guard against.”²²

With regard to FOIA's fair-trial exemption, the circuit court held that the government bears the burden of showing, first, that a trial or proceeding “is pending or truly imminent”; and, second, “that it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings.”²³

It is hard to see how the Office of the Attorney General can meet that second prong. The office's response claims the pending Kansas, New York and Texas prosecutions center on “alleged criminal acts intricately related to the officer involved shooting” in Vermont. But the police shooting came *after* Mr. Triolo allegedly fled Texas and robbed establishments in Kansas, New York and Vermont and does not bear directly on his conduct in those other states. Indeed, the government has already released information that is probably more prejudicial to Mr. Triolo than a review of that shooting — including a relatively detailed account of the Vermont robberies in Agent Simons' affidavit.

Again, the state must meet a high bar here — it must be “more probable than not” that disclosure would “seriously interfere” with a trial's fairness. The state seems to be claiming that a Kansas jury weighing whether Mr. Triolo robbed a Topeka bank would be so swayed by an inquiry into the conduct of the police officers who shot him days later in Vermont that it could not fairly consider the evidence in the Kansas matter. That claim is not credible.

As for the first prong, “interfere[nce] with enforcement proceedings”: To the extent the enforcement proceedings in question are the pending court cases in New York, Kansas and Texas, I would refer to the above discussion of the “fair trial” prong.

To the extent this references ongoing law enforcement investigations underlying those criminal prosecutions, federal courts have said it is not enough for the government to simply assert that the material is connected to a pending investigation. Rather, it must articulate with reasonable specificity the harm that would result from disclosure. See, e.g., *Sussman v. U.S. Marshals*, 494 F.3d 1106, 1114

²⁰ See, e.g., affidavit of Agent Simon.

²¹ 1 V.S.A. § 317(c)(5)(C)

²² *Washington Post Co. v. U.S. Dept. of Justice*, 863 F.2d 96, 101 (D.C. Cir. 1988), accessed at <https://casetext.com/case/washington-post-co-v-us-dept-of-justice>

²³ *Ibid.* at 102.

(D.C. Cir. 2007) (“it is not sufficient for an agency merely to state that disclosure would reveal the focus of an investigation; it must rather demonstrate how disclosure would reveal that focus. ... Even in *Boyd v. Criminal Division of the U.S. DOJ*, which the Marshals Service cites as setting a low threshold for Exemption 7(A) supporting documents, we required specific information about the impact of the disclosures.” Internal citations omitted.); see also *Curran v. Department of Justice*, 813 F.2d 473, 476 (1st Cir. 1987), finding that a government official’s explanation of a FOIA denial was sufficiently detailed (“Corke carefully explained to the district court how the release of documents from these various categories would ‘interfere’ with enforcement proceedings.”)

In its response to The Sentinel, the office described no particular harm that would result from disclosure. It simply referenced the pending matters in New York, Kansas and Texas. That is not sufficient to deny access to a record under 1 V.S.A. § 317(c)(5)(A)(i).

Moreover, it is hard to imagine what harm could result. Those jurisdictions have had more than two years to investigate Mr. Triolo’s alleged crimes, making it unlikely that disclosure at this point would interfere with them collecting evidence, interviewing witnesses or carrying out other steps. And besides, those investigations involve alleged crimes outside of Vermont that happened days before the shooting — in other words, different sets of facts than what the Office of the Attorney General reviewed.

For the above reasons, I respectfully request that the Office of the Attorney General reverse its denial of this request and provide the responsive record. If the office upholds the denial, I would ask that it describe the nature of the record with more specificity and provide a substantive explanation for how each exemption applies to it, addressing the points I raise above.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Cuno-Booth". The signature is fluid and cursive, with the first name being the most prominent.

Paul Cuno-Booth
Assistant Local News Editor
pbooth@keenesentinel.com
217-418-4298

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

2018 MAY -7 AM 10: 07

for the
District of Vermont

CLERK

BY JB
DEPUTY CLERK

United States of America
v.

Case No. 2:18-MJ-55

MARK TRIOLO

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of May 1, 2018 in the county of Addison in the
District of Vermont, the defendant(s) violated:

Code Section

Offense Description

18 U.S.C. § 1951(a)

Obstructing, delaying or affecting commerce or the movement of any article
or commodity in commerce, by robbery.

This criminal complaint is based on these facts:

See attached Affidavit.

Continued on the attached sheet.

Complainant's signature

SA Colin Simons, FBI

Printed name and title

Sworn to before me and signed in my presence.

Date: 05/06/2018

Judge's signature

City and state: South Burlington, Vermont

Hon. John M. Conroy, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT

I, Colin Simons, being duly sworn, depose and state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) currently assigned to the Burlington, Vermont Resident Agency of the Albany, New York Division. I have been a Special Agent for over 14 years. I am responsible for working a variety of criminal violations, to include violent crimes and gangs. I have also been the affiant to numerous federal complaints and search warrants pertaining to violent crime and drugs. As a Special Agent, I am authorized to investigate violations of laws of the United States and to execute warrants issued under the authority of the United States.

2. I submit this affidavit in support of a finding of probable cause to believe that Mark Triolo obstructed, delayed or affected commerce or the movement of any article or commodity in commerce, by robbery, in violation of 18 U.S.C. § 1951(a).

3. This affidavit is based upon my training and experience, and the investigation of other law enforcement officers. More specifically, I know the information contained within this affidavit from multiple conversations and communications with various law enforcement officers to include Vergennes, Vermont Police Department (VPD) Det. Jason Ouellette. I have also reviewed reports written by Det. Ouellette, as well as Vermont State Police (VSP) Det. Sgt. Tyson Kinney. Because this affidavit is submitted for the limited purpose of establishing probable cause, I have not set forth each and every fact learned by law enforcement during the course of the investigation. Where I describe a statement, it is described in substance, not verbatim.

4. On May 1, 2018, at approximately 2100 hours, a white male approximately 5'11" and 195-215 lbs, with a tattoo on the right side of his neck, wearing blue jeans, a red and blue

sweater, tan work boots, and a tan hat with a red and white logo, entered the Small City Market store located at 2 South Water Street in Vergennes, Vermont. The male pointed a firearm at the head of the store clerk and demanded money. The cashier complied and provided the male with approximately \$6,115. Still photographs from the robbery were captured on the store's security camera footage. This footage shows the vehicle driven by male as a small black SUV. This footage was shared with the public via social media.

5. After the robbery, VPD officers interviewed a witness who was standing outside when the male exited the store. The witness advised he/she saw a white male enter a vehicle bearing a Texas license plate. The witness was unable to remember the whole license plate but provided a partial plate number of "TXJ59" to police.

6. On May 2, 2018, VPD Officer Adam O'Neill received a phone call from the Warren County Sheriff's Department in New York who advised they saw the photos of the suspect involved in the robbery at the Small City Market on social media. The Sheriff's Department advised Officer O'Neill that the images of the suspect from the Small City Market robbery matched the description of a subject involved in an armed robbery on April 30, 2018, in Queensbury, NY.

7. On May 2, 2018, VPD was contacted by VSP Trooper Christopher Hein. Trooper Hein advised he responded to Kampersville, a campground in Salisbury, Vermont, after the owner contacted VSP indicating that the robbery suspect was staying at Kampersville. Trooper Hein advised he went to the suspect's campsite and found an empty vodka container and nothing else.

8. Det. Ouellette contacted the campground owner via phone and the owner said that he/she saw the security camera stills from the Small City Market robbery on social media. The

owner advised that the suspect in the Small City Market robbery photos was the same male camping at Kampersville. The owner said the male purchased a campsite for two days and was scheduled to leave the campsite on May 3, 2018. The owner said he/she had security footage of the subject and his vehicle.

9. VPD officers responded to Kampersville to review its the security camera footage. VPD officers concluded the male in the Kampersville security footage was the same male in the Small City Market footage: the physical description of the male was the same and the male at Kampersville and Small City Market was also wearing the same hat. VPD officers also learned from the Warren County Sheriffs that the male wore the same hat during the armed robbery in Queensbury, NY.

10. The Kampersville security footage also captured the vehicle operated by the male. That vehicle was a black SUV with Texas license plate DH5L669. Officers queried law enforcement databases and learned that the vehicle was a 2007 black KIA Sorento, registered to Connie Greenfield of Lewisville, Texas. They also learned that the vehicle was stolen from Lewisville, Texas.

11. Det. Ouellette contacted the Lewisville Police Department and spoke with Det. Christopher Seaman. Det. Seaman advised that the owner of the vehicle, Deborah Greenfield, is Mark Triolo's girlfriend and the stolen KIA is owned by Greenfield's ^{mother's} daughter. Triolo was on state parole for armed robbery when he stole the KIA and he removed a GPS bracelet installed by his parole officer. Det. Seaman also said that Triolo was in contact with the Greenfields by phone and on May 2, 2018, Triolo had sent a text message to the Greenfields which read:

By now the feds have contacted you about me, sorry about that. I've robbed too many banks in the last few days for this to end well. Just put the kua on a car hauler should be there in ten days look in the door panel of the drivers door its stuffed with cash keep your mouth

shut about it and no one will know. Sorry I know I ducked up love you guys. Don't try and text me back ditching the phone so I can't be tracked.

12. The Vermont Criminal Intelligence Center provided Det. Ouellette with a Texas Department of Motor Vehicles (DMV) photo of Triolo. Det. Ouellette reviewed the Texas DMV photo and compared it to the images captured by surveillance cameras at the Small City Market and Kampersville. Det. Ouellette concluded that the person^{in e.} those surveillance photos was Mark Triolo.

13. On the evening of May 4, 2018, law enforcement was notified of an armed robbery at the Ascutney Sunoco Gas station in Weathersfield and a second armed robbery at the Allen Brothers Farm Market in Westminster, Vermont, shortly thereafter. According to an affidavit authored by VSP Det. Sgt. Kinney, officers were advised that a lone male subject robbed the store in Weathersfield and fled the area in a black vehicle with Texas registration. Officers were also advised a white male robbed a store the Westminster and fled the scene in a black SUV. Based on this and other information, officers believed that the male involved in the robberies was likely Mark Triolo.

14. On May 4, 2018, at approximately 2041 hours, officers with the Brattleboro Police Department (BPD) observed the black KIA with Texas registration DH5L669 parked at the Exit 3 Mobil gas station. The observing officer did not immediately approach the vehicle, however, he radioed for backup and maintained a visual on the suspect.

15. While at the Exit 3 Mobil Station, Triolo exited the vehicle and purchased three Mikes Hard Lemonades inside the Mobil Station, before returning to the vehicle. As Triolo returned to the vehicle, he was approached by BPD officers who attempted to take him into custody. Triolo fled the parking lot in the vehicle at a high rate of speed.

16. At approximately 2050 hours, a resident on Black Mountain Road in Brattleboro, Vermont contacted law enforcement advising that a suspicious vehicle had pulled into their driveway and turned the vehicle lights off. Law enforcement responded to the scene and found the black KIA. Triolo was not in the vehicle and thus law enforcement began to search for him.

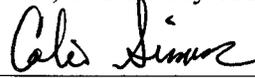
17. At approximately 2104 hours, Triolo was located a short distance from the vehicle hiding in a wood line. Officers began to give verbal commands to Triolo ordering him to stop and show his hands. Triolo did not respond to those commands and subsequently officers fired multiple rounds striking him.

18. Triolo was taken into custody and officers began to render medical aid until the arrival of rescue personnel. Once in custody, Triolo advised law enforcement he had a BB gun, which was later located inside the black KIA. This pellet gun looks very similar to an actual semi-automatic pistol and is similar to the weapon used in the Small City robbery. A large amount of cash was also located on Triolo's person.

19. Triolo was transported to the Brattleboro Memorial Hospital and later to the Dartmouth Hitchcock Medical Center. After receiving medical attention, Triolo confirmed his identity as Mark Triolo.

20. The Small City Market is a small grocery store which sells a variety of groceries and other products. Given the nature of this business, I am aware that many items within the store traveled in interstate commerce to reach the store. Thus, the robbery of the Small City Market obstructed, delayed or affected commerce of the movement of articles or commodities in commerce, in violation of 18 U.S.C. § 1951(a).

Dated at Burlington, in the District of Vermont, this 6th day of May, 2018.



Colin M. Simons
FBI Special Agent

Sworn and subscribed before me this 6th day of May, 2018.


John M. Conroy
United States Magistrate Judge

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

FOR IMMEDIATE RELEASE:

August 30, 2018

CONTACTS:

Charity Clark
Chief of Staff, AGO
(802) 917-1993

Tracy Shriver
Windham County State's Attorney
(802) 257-2860

**BRATTLEBORO POLICE OFFICERS AND VERMONT STATE POLICE TROOPER
WILL NOT BE PROSECUTED FOR MAY 4, 2018 SHOOTING**

Attorney General T.J. Donovan announced today that his Office has reviewed the officer-involved shooting incident that occurred on May 4, 2018, in Brattleboro, Vermont. The Office is declining to prosecute Brattleboro Police Department police officers Sergeant Steven Stanley, Officer Sean Wilson, and Officer Michael Cable, and Vermont State Police Trooper Jason Lengfellner for charges related to the shooting of Matthew Triolo. In reaching this decision, the Office reviewed all the materials provided by the Vermont State Police, who conducted the investigation. Given that there are pending criminal charges against Mr. Triolo related to this incident, the office is restricted from releasing more information at this time.

Windham County State's Attorney Tracy Shriver has also conducted an independent review and has declined to file criminal charges against Sgt. Stanley, Ofc. Wilson, Ofc. Cable and Tpr. Jason Lengfellner.

Matthew Triolo is currently facing criminal charges for allegations closely related to this incident. In accordance with the Vermont Rules of Professional Conduct, neither the Attorney General's Office nor the Windham County State's Attorney's Office will, at this time, comment further on the specific findings of their reviews. The Offices may release additional information

related to their decisions if and when the criminal charges pending against Mr. Triolo are resolved.

###

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON
CHIEF ASST. ATTORNEY GENERAL



TEL: (802) 828-3171

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

June 25, 2020

Paul Cuno-Booth, Reporter
Keene Sentinel
60 West St.
Keene, NH 03431
pbooth@keenesentinel.com

Re: Public Records Request Regarding Mark Triolo

Dear Mr. Booth:

I am writing in response to your emailed request for records that was received on June 22, 2020, wherein you request the following:

Any report, memo, narrative or similar document summarizing the Vermont Office of the Attorney General's review of the shooting and/or the reasons for resolving the matter without charges.

The Attorney General's Office has located a record that is responsive to your request, however said document contains the legal research, mental impressions, legal theories, conclusions, and opinions of the Attorney General's Office, and would therefore be exempt from disclosure as attorney work-product. *See* 1 V.S.A. § 317(c)(4) (exempting documents "that, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to the General Assembly and the Executive Branch agencies of the state of Vermont."); *see also*, *Killington, Ltd. v. Lash*, 153 Vt. 628, 641-48 (1990) (recognizing that the attorney work-product privilege applies to public records requests).

Additionally, while you note that Mark Triolo has recently been sentenced in his federal case in the District of Vermont, please note that Mark Triolo is still being prosecuted in other jurisdictions for alleged criminal acts intricately related to the officer involved shooting and the now closed federal prosecution in Vermont. In the District of Kansas, Mark Triolo is being federally prosecuted for an allegation of Bank Robbery under

criminal docket number 5:18-CR-40051-HLT-1, alleged to have occurred on or about April 26, 2018. Additionally, Mark Triolo is the subject of an active arrest warrant issued by the Town Court of Queensbury, New York for an alleged First Degree Robbery occurring on or about April 30, 2018. Moreover, Mark Triolo is still pending resolution of a parole violation issued after allegedly absconding from Texas on or about April 25, 2018. As such, disclosure is further exempt pursuant to 1 V.S.A. § 317(c)(5)(A), which exempts from production records dealing with the investigation of a crime that “(i) could reasonably be expected to interfere with enforcement proceedings; (ii) would deprive a person of a right to a fair or an impartial adjudication; (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy.”

To the extent you feel records have been wrongfully withheld, you may appeal to Deputy Attorney General Josh Diamond.

Sincerely,

/s/

John D.G. Waszak
Assistant Attorney General

Electronically Transmitted

From: Kranichfeld, Bram
Sent: Thursday, January 31, 2019 3:31 PM
To: 'pbooth@keenesentinel.com' <pbooth@keenesentinel.com>
Subject: FW: Attached Image

Mr. Cuno-Booth,

Attached is our response to your January 28, 2019 records request.

Sincerely,

Bram Kranichfeld
Assistant Attorney General
Office of the Attorney General
Division Chief, Criminal Division
109 State Street
Montpelier, VT 05609
(802) 828-5517 (phone)
bram.kranichfeld@vermont.gov

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

January 31, 2019

Paul Cuno-Booth
Reporter, Keene Sentinel
pbooth@keenesentinel.com
603-355-8566
60 West St.
Keene, NH 03431

Re: Public Records Request of January 28, 2019

Dear Mr. Booth:

Thank you for your public records request regarding the May 4, 2018 shooting of Mark Triolo, received by our office on January 28, 2019, wherein you requested the following:

1. Any memo, report, email, letter or other document summarizing the Vermont Office of the Attorney General's review of the shooting and/or the reasons for resolving the matter without charges.
2. The materials received from Vermont State Police related to the shooting and used in the Office of the Attorney General's investigation. Such materials were referenced in an Aug. 30, 2018 statement from the Office of the Attorney General and the Windham County State's Attorney.

We have determined the responsive records in our possession are presently exempt from disclosure under the following statutory exemptions:

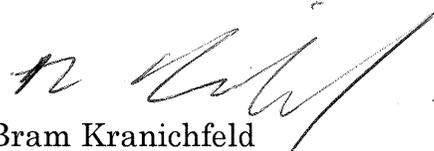
1. 1 V.S.A. § 317(c)(3), which applies to records "which, if made public...would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the State," (Rules of Professional Conduct 3.6 and 3.8 apply given the pending federal case); and

2. 1 V.S.A. § 317(c)(5)(A), which provides that records dealing with the investigation of a crime are exempt from production where production “(i) could reasonably be expected to interfere with enforcement proceedings; (ii) would deprive a person of a right to a fair or an impartial adjudication; (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy”.

To the extent that this constitutes a denial of your request, you can submit a written appeal of this decision to:

Joshua Diamond
Deputy Attorney General
109 State Street
Montpelier, VT 05609.

Sincerely,



Bram Kranichfeld
Assistant Attorney General

Electronically Transmitted

Vermont Office of the Attorney General
Public Records Act Request
109 State Street
Montpelier, VT 05609

June 22, 2020

To whom it may concern:

Pursuant Vermont's Public Records Act, I am requesting access to the following records related to the investigation into the May 4, 2018 officer-involved shooting of Mark Triolo in Brattleboro:

1. Any report, memo, narrative or similar document summarizing the Vermont Office of the Attorney General's review of the shooting and/or the reasons for resolving the matter without charges.

In response to a similar request I submitted in January 2020, the Attorney General's Office said it deemed those records "presently exempt" due to two statutory exemptions related to the fact that Mr. Triolo's criminal case was still pending in U.S. District Court in Vermont.

Mr. Triolo pleaded guilty in U.S. District Court in Burlington on Jan. 24, 2019, to three counts of interference with commerce by threat or violence. On Feb. 12, 2020, he was sentenced to 75 months' imprisonment by District Court Judge Christina Reiss. The PACER docket page for that case indicates it was considered closed as of Feb. 12, 2020. With the resolution of that case, the office's previously stated reasons for nondisclosure no longer apply.

If you expect there to be any fees associated with this request, please provide an estimate before proceeding. However, as the public has a strong interest in viewing these records and I am submitting this request in my capacity as a professional journalist, I would ask that any fees be waived.

Please let me know if you have any questions.

Regards,

Paul Cuno-Booth
Assistant Local News Editor
The Keene (N.H.) Sentinel
pbooth@keenesentinel.com
217-418-4298