

STATE OF VERMONT  
SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. \_-\_-

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VERMONT JOURNALISM TRUST, :  
  
Plaintiff, :  
  
v. :  
  
CITY OF RUTLAND, VERMONT, :  
  
Defendant. :  
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**COMPLAINT**

Rutland City Police Officer Jessica Ebbighausen was killed in the line of duty on July 7, 2023, when her police cruiser collided with a suspect’s truck during a police chase. Ebbighausen, of Ira, Vermont, was a 19-year-old rookie officer, having joined the force less than two months before the fatal crash. She was scheduled to begin training to become a full-time officer at the Vermont Police Academy in August.

The circumstances leading to Ebbighausen’s death, including the decisions by her superiors that led to an untrained rookie’s involvement in an ongoing police chase, remain unclear. To help the public understand how this tragedy occurred and the law enforcement practices that led to Ebbighausen’s involvement in the chase, Vermont Journalism Trust (“VTDigger”) made a request in accordance with Vermont’s Public Records Act (“PRA”) to the Rutland City Police Department that sought all audio and video from dash camera and body

camera recordings related to the crash. VTDigger seeks access to these recordings to inform the public about the law enforcement practices and decisions that led to Ebbighausen's involvement in the chase and, tragically, to her death in the line of duty.

The Rutland City Police Department has denied access to these records under the PRA's litigation exemption, 1 V.S.A. § 317(c)(14), ethics exemption, 1 V.S.A. § 317(c)(3), and fair trial exemption, 1 V.S.A. §317(c)(5)(A)(ii). VTDigger's appeal of this decision to the Mayor of the City of Rutland in accordance with 1 V.S.A. §318(c)(1) has been constructively denied under 1 V.S.A. § 318(a)(2). As a result, VTDigger must now bring this action, in accordance with 1 V.S.A. § 319.

### **Parties**

1. Vermont Journalism Trust LTD is a nationally recognized nonprofit charitable foundation dedicated to producing rigorous journalism that explains complex issues, holding the government accountable to the public, and engaging Vermonters in the democratic process. It is incorporated in Montpelier, Vermont. It operates VTDigger.org, one of Vermont's major news sources.

2. The City of Rutland, Vermont, is a municipal entity in Rutland County, Vermont. The Rutland City Police Department is the City of Rutland's municipal law enforcement agency.

### **Jurisdiction and Venue**

3. The Court's jurisdiction over this matter arises from 1 V.S.A. § 319. Venue in Washington County Superior Court is established by statute. *Id.*

## Factual Allegations

### *The Police Response Leading to Officer Jessica Ebbighausen's Death*

4. At around 2:35 p.m. on July 7, 2023, the Rutland City Police Department received a call about an attempted break-in at a home on East Washington Street in Rutland.<sup>1</sup>

5. Officer Jared Dumas arrived on the scene and observed the suspect's truck driving away. Dumas gave chase via East Washington Street and Stratton Road, joined by two other police cruisers driving east on Woodstock Avenue towards the ongoing chase.<sup>2</sup>

6. Officer Jessica Ebbighausen drove one of the police cruisers traveling on Woodstock Avenue, accompanied by her supervising officer Richard Carvaggio in the passenger seat. Officer Kelsey Parker drove the other police cruiser on Woodstock Avenue.<sup>3</sup>

7. Dumas had pursued the truck for less than two miles when the truck, after turning west onto Woodstock Avenue, crossed the center line into Woodstock Avenue's eastbound lanes and collided with Ebbighausen's cruiser at 2:53 p.m.<sup>4</sup>

8. Ebbighausen was pronounced dead at the scene.<sup>5</sup>

9. Ebbighausen, 19, began her brief career with the Rutland City Police Department less than two months before being killed on the job. Ebbighausen started as a part-time, Level 2-certified officer on May 23, 2023.<sup>6</sup> She was scheduled to begin training at the Vermont Police Academy in August, where she would earn her certification to be a full-time officer.<sup>7</sup>

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<sup>1</sup> Maggie Cassidy, *Man Charged in Crash That Killed 19-Year-Old Rutland Police Officer During Chase*, VTDIGGER (July 8, 2023), <https://vtdigger.org/2023/07/08/officer-who-died-in-rutland-police-chase-was-19-year-old-recruit/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Alan J. Keays, *'Always With A Smile On Her Face': Hundreds Turn Out To Remember Fallen Rutland City Officer*, VTDIGGER (July 18, 2023), <https://vtdigger.org/2023/07/18/always-with-a-smile-on-her-face-hundreds-turn-out-to-remember-fallen-rutland-city-officer/>.

<sup>7</sup> *Id.*

***Public Records Request and Constructive Denial***

10. On July 28, 2023, VTDigger reporter Alan Keays emailed a formal PRA request to Rutland Police Chief Brian Kilcullen seeking “any and all audio and dash and body camera video footage from the Rutland City Police Department to the crash on July 7 on Woodstock Avenue involving city police.” This request is attached as **Exhibit A** to this Complaint.

11. On August 4, 2023, Chief Brian Kilcullen denied the request, citing the PRA’s litigation exemption under 1 V.S.A. § 317(c)(14), professional ethics confidentiality exemption under 1 V.S.A. § 317(c)(3), and fair trial exemption under 1 V.S.A. §317(c)(5)(A)(ii). This denial is attached as **Exhibit B** to this Complaint.

12. On August 9, 2023, VTDigger appealed Chief Kilcullen’s denial to Rutland Mayor Michael Doenges. VTDigger did not receive a response.

13. On August 28, 2023, VTDigger sent a follow-up query to Mayor Doenges, again appealing Chief Kilcullen’s denial, and VTDigger again did not receive a response. VTDigger’s PRA appeal and subsequent follow-up query are attached as **Exhibit C** to this Complaint.

14. Because VTDigger did not receive a written determination of its appeal within five business days of receipt of either the August 9, 2023 appeal or the August 28, 2023 follow-up query, its request has been constructively denied under 1 V.S.A. § 318(a)(2).

15. Because city officials decline to come to the table, VTDigger must now resort to litigation to vindicate its right under the PRA to obtain the audio and dash camera and body camera video footage, both of which will answer key questions of public interest surrounding Ebbighausen’s death and inform the public on the life-or-death policies and practices of their local police.

### *Key Unanswered Questions*

16. Although the motive for a journalist's public records request is immaterial to whether the requested records must be produced, VTDigger's motive aligns with its mission to "produce rigorous journalism that explains complex issues, promotes public accountability and fosters democratic and civic engagement."<sup>8</sup>

17. After reviewing the requested recordings, VTDigger will use its editorial discretion in determining how to convey details from the events that led to the tragic death of Officer Ebbighausen, a part-time, newly hired, teenage police officer who had not even begun training with the Vermont Police Academy.

18. Specifically, the requested recordings may reveal dangerous decision-making or practices by supervising officers during the July 7, 2023, incident that led to Ebbighausen's death in the line of duty. The requested recordings could also reveal the opposite: sound decision-making by supervising officers and an explanation for Ebbighausen's death that does not implicate the practices of the Rutland City Police Department.

19. If the requested recordings reveal any internal policy or management deficiencies within the Rutland City Police Department that contributed to Ebbighausen's death, their release may bring to light ways in which the Rutland City Police Department can ameliorate their practices to improve the safety of all their law enforcement officers and the public at large.

20. Importantly, although it is again immaterial to the response to its records request, VTDigger does not seek these recordings with the aim of publishing them to drive online traffic onto its website related to any potentially graphic content. Rather, VTDigger intends to report the contents of the recordings to the extent that they provide important journalistic value in the public interest.

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<sup>8</sup> VTDigger About Page, <http://vtdigger.org/about/> (last visited Nov. 27, 2023).

### ***Public Records Act***

21. Article Six of the Vermont Constitution provides that, because power is “originally inherent in and co[n]sequently derived from the people,” all government officials are “at all times, in a legal way, accountable to them.”<sup>9</sup> The Vermont Public Records Act was created to allow the public to exercise its right to oversee and hold government officials accountable. The purpose of the Act, stated in 1 V.S.A. § 315, is as follows:

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the General Assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed to implement this policy, and the burden of proof shall be on the public agency to sustain its action.

22. The Vermont Supreme Court has repeatedly stated that the PRA must be construed liberally in favor of disclosure.<sup>10</sup> Exceptions to disclosure must be construed “strictly against the custodians of the records and any doubts should be resolved in favor of disclosure.”<sup>11</sup> This presumption is especially applicable in the area of law enforcement, where “[t]here is a strong public interest in disclosure of public records.”<sup>12</sup> The agency bears the burden of justifying withholding the requested records.<sup>13</sup>

23. One such exception, 1 V.S.A. § 317(c)(14), allows public officials to withhold records that are relevant to litigation to which the public agency is a party of record. A broad interpretation of this exemption severely harms the public’s right to review and criticize

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<sup>9</sup> Vt. Const. ch. 1, art. 6.

<sup>10</sup> See, e.g., *Price v. Town of Fairlee*, 190 Vt. 66, 72–73 (2011).

<sup>11</sup> *Caledonian-Record Publishing Co. v. Walton*, 154 Vt. 15, 20 (1990).

<sup>12</sup> *Bain v. Windham Cty. Sheriff Keith Clark*, 191 Vt. 190, 199 (2012).

<sup>13</sup> See *Price*, 26 A.3d at 31.

government officials by cutting off “valuable information not only to the parties to the litigation, but to all Vermonters[.]”<sup>14</sup> A municipal police department is not a party of record to a criminal case brought by a State’s attorney on behalf of the State of Vermont.<sup>15</sup> And even if it were, interpreting the litigation exemption to shield all records for the duration of criminal proceedings would result in an improper blanket ban on access to a wide swath of records.

24. Another such exception, 1 V.S.A. § 317(c)(3), permits a public official to withhold a record where its public release would violate professional ethics standards for confidentiality. Such a release only violates the ethics standards of the custodian’s profession where a defined privilege under the custodian’s rules of professional conduct prohibits their disclosure.<sup>16</sup> No such rule has been cited here or can be.

25. Finally, the exception under 1 V.S.A. § 317(c)(5)(A)(ii) allows public officials to withhold records only where their production would deny someone access to a fair trial and impartial adjudication. Importantly, records that “are the products of crime detection,” such as the footage at issue, “are subject to disclosure” because they “are not included within the detection and investigation exemption” under § 317(c)(5).<sup>17</sup>

## CLAIMS

### **Count I. Violation of Vermont Public Records Law, 1 V.S.A. §§ 315–320**

26. This section incorporates all the information set forth above.

27. The Rutland City Police Department has public records in its possession—“all audio and dash and body camera video footage from . . . the crash on July 7 on Woodstock

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<sup>14</sup> *Shlansky v. City of Burlington*, 188 Vt. 470, 479 (2010).

<sup>15</sup> 13 V.S.A. § 4638.

<sup>16</sup> See *Energy & Env’t Legal Inst. v. Att’y Gen. of Vt.*, 2017 WL 11676871, at \*2–3 (Super. Ct. of Vt. 2017).

<sup>17</sup> See *Oblak v. Univ. of Vt. Police Serv.*, 210 Vt. 550, 555–56 (2019).

Avenue involving city police”—that it could make accessible to the public by inspection or copying. Ex. A.

28. VTDigger has requested that the Rutland City Police Department provide access to these recordings.

29. In response, Rutland City Police Department has asserted exemptions under 1 V.S.A. §§ 317(c)(14), 317(c)(3), and 317(c)(5)(A)(ii) to prevent disclosure of these recordings.

30. The recordings are not relevant to any ongoing litigation within the meaning of 1 V.S.A. § 317(c)(14). To the extent that the recordings could be relevant to litigation, they are unlikely to be privileged or otherwise exempt from discovery.

31. The release of these recordings to VTDigger does not implicate or violate any professional ethics confidentiality standard within the relevant meaning of 1 V.S.A. § 317(c)(3) applicable to the officers or other employees of the Rutland City Police Department.

32. The release of these recordings will not affect any individual’s access to a fair trial or impartial adjudication, rendering 1 V.S.A. § 317(c)(5)(A)(ii) inapplicable.

33. VTDigger’s sole purpose for seeking the recordings is to fulfill the PRA’s purpose by reporting information contained in the recordings.

34. Withholding these recordings does not comport with any exemption under 1 V.S.A. § 317(c) and doing so directly violates the PRA’s purpose and policy under 1 V.S.A. § 315. Since the exemptions’ requirements are unmet and compelling reasons favor disclosure, the PRA favors the recordings’ release.

35. The public has a right to such recordings under the PRA. By denying the public access to these documents, Rutland City Police Department has violated 1 V.S.A. §§ 315–320.



36. VTDigger has exhausted its administrative remedies prior to filing the present lawsuit.

37. VTDigger, as a requesting party, is entitled to relief under 1 V.S.A. § 319, including the release of the documents sought and attorney's fees.

38. VTDigger is entitled to judgment in its favor.

### **Remedies**

Wherefore, Plaintiff Vermont Journalism Trust respectfully requests that the Court:

- A. Order the Rutland City Police Department to promptly provide copies or access to all the recordings responsive to VTDigger's request;
- B. Declare that, in denying its request, the Rutland City Police Department and City of Rutland violated VTDigger's rights under Vermont's Public Records Act, 1 V.S.A. §§ 315–320;
- C. Award VTDigger its attorney's fees and costs incurred in pursuing this action; and
- D. That the Court provide whatever other legal or equitable relief it deems appropriate.

Dated at Montpelier, Vermont this 4th day of December, 2023.

VERMONT JOURNALISM TRUST, LTD

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<sup>18</sup> Local Journalism Project interns Matthew Hornung and Johanna Li drafted portions of this Complaint. The Local Journalism Project and the Clinic are housed within Cornell Law School and Cornell University. Nothing in this Complaint should be construed to represent the views of these institutions, if any.

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