

as those of the arresting officers, on January 25, 2024, Vermont Journalism Trust (“VTDigger”) made a request in accordance with Vermont’s Public Records Act (“PRA”) to Vermont’s Department of Public Safety (“DPS”). This request sought all audio and video footage related to Ms. Vekos’s arrest. VTDigger seeks these records to share them with the public, Ms. Vekos’s constituents, and maintain the coverage’s ongoing accuracy as the fallout from Ms. Vekos’s arrest continues to unfold.

DPS has twice denied VTDigger access to these records, first citing the PRA’s criminal investigation exemption, 1 V.S.A. §317(c)(5)(A)(i), and further citing on appeal the ethics and litigation exemptions, 1 V.S.A. §§ 317(c)(3) and 317(c)(14). 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 State of Vermont’s Department of Public Safety is a state agency headquartered in Waterbury, Vermont.

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

State's Attorney Eva Vekos's Arrest for Driving Under the Influence

4. On January 25, 2024, the Vermont State Police responded to a report of a suspicious death at a home on Swinton Road in Bridport.¹

5. At around 8:50 p.m., Addison County State's Attorney Eva Vekos arrived on scene to assist with the ongoing investigation.²

6. Upon arrival, state police troopers on scene observed indicators that Ms. Vekos was impaired, including the odor of intoxicants and slurred speech.³

7. At around 9:20 p.m., state police detective Ryan Anthony and trooper Kelsey Dobson approached Ms. Vekos, who was seated in the driver's seat of her car.⁴ According to a state police affidavit, Ms. Vekos stated in response to questioning by Mr. Anthony that she had consumed "one gin and tonic with dinner[.]"⁵

8. When Mr. Anthony asked Ms. Vekos to complete a field sobriety test, she refused, according to the affidavit, replying, "Are you serious Ryan, can't you just have a friend come and get me[?]"⁶ After Mr. Anthony reiterated his request, according to the affidavit, Ms. Vekos

¹ *Police Investigate Suspicious Death in Bridport*, VTDIGGER (Jan. 25, 2024), <https://vtdigger.org/2024/01/25/police-investigate-suspicious-death-in-bridport/>.

² Alan J. Keays, *Addison County State's Attorney Charged with DUI After Allegedly Showing Up Impaired at Crime Scene Investigation*, VTDIGGER (Jan. 26, 2024), <https://vtdigger.org/2024/01/26/addison-county-states-attorney-charged-with-dui-after-allegedly-showing-up-impaired-at-crime-scene-investigation/>.

³ *Id.*

⁴ Alan J. Keays, *'Can't You Just Have a Friend Come and Get Me,' Prosecutor Asked Trooper During DUI Probe, Documents Reveal*, VTDIGGER (Feb. 7, 2024), <https://vtdigger.org/2024/02/07/cant-you-just-have-a-friend-come-and-get-me-prosecutor-asked-trooper-during-dui-probe-documents-reveal/>.

⁵ *Id.*

⁶ *Id.*

replied, “It doesn’t matter if I do the tests or not, however I perform, you’re going to take me under arrest.”⁷

9. Anthony subsequently arrested Ms. Vekos for driving under the influence.⁸

10. At least from 9:20 p.m. on, Mr. Dobson recorded his and Mr. Anthony’s interactions with Ms. Vekos using his body camera.⁹

Ms. Vekos’s Subsequent Conduct as State’s Attorney

11. Shortly after her arrest, Ms. Vekos explicitly refused to meet with law enforcement officers in person in relation to her responsibilities as State’s Attorney, asserting in an email to senior officials from three different law enforcement agencies that she “no longer feel[s] safe around law enforcement.”¹⁰ In the same email, Ms. Vekos added that she “would have loved to teach grammar skills to bring police up to the elementary school level, at least[,]” and that she “found a really great illustrated book to use. It has pictures of dragons and stuff.”¹¹

12. Beginning February 9, 2024, Ms. Vekos took paid medical leave, and cases assigned to her were reassigned to other prosecutors.¹² On her behalf, Ms. Vekos’s attorney stated that her absence was “a public interest” and necessary “to get everybody to a place where the

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Alan J. Keays, ‘I No Longer Feel Safe Around Law Enforcement,’ *Prosecutor Says in Email a Week After Her DUI Arrest*, VTDIGGER (Jan. 31, 2024), <https://vtdigger.org/2024/01/31/i-no-longer-feel-safe-around-law-enforcement-prosecutor-says-in-email-a-week-after-her-dui-arrest/>.

¹¹ *Id.*

¹² Alan J. Keays, *Facing DUI Charge, Addison County State’s Attorney Plans to Return to Job Once ‘Fully Grounded,’* VTDIGGER (Feb. 14, 2024), <https://vtdigger.org/2024/02/14/facing-dui-charge-addison-county-states-attorney-plans-to-return-to-job-once-fully-grounded/>.

fervor dies down and people can try to remedy and restore relationships.”¹³ She remained on leave for three weeks.¹⁴

13. On February 29, 2024, disciplinary counsel for the Vermont Professional Responsibility Board filed a petition to suspend Ms. Vekos’s law license after she refused to cooperate with an investigation into her reasons for taking paid medical leave.¹⁵ On March 27, 2024, the Vermont Supreme Court ruled unanimously to suspend it.¹⁶ Roughly three weeks later, the Vermont Supreme Court reinstated her license given her cooperation with the investigation regarding her paid medical leave.¹⁷

Public Records Request and Denial

14. On January 26, 2024, VTDigger reporter Alan Keays submitted a formal PRA request to the Vermont Department of Public Safety seeking “all audio and video footage of Vermont State Police interactions with Eva Vekos on Jan. 25, (2024).” This request is attached as **Exhibit A** to this Complaint.

15. On February 1, 2024, DPS Public Records Act Specialist Sam Weaver denied the request, citing the PRA’s detection and investigation of crime exemption under 1 V.S.A. §317(c)(5)(A)(i). This denial is attached as **Exhibit B** to this Complaint.

¹³ *Id.*

¹⁴ Alan J. Keays, *Vermont Supreme Court Suspends Law License of Addison County’s Top Prosecutor*, VTDIGGER (Mar. 27, 2024), <https://vtdigger.org/2024/03/27/vermont-supreme-court-suspends-law-license-of-addison-countys-top-prosecutor-eva-vekos/>.

¹⁵ Alan J. Keays, *Addison County State’s Attorney Eva Vekos Faces Possible Suspension of Law License*, VTDIGGER (Mar. 12, 2024), <https://vtdigger.org/2024/03/12/addison-county-states-attorney-eva-vekos-faces-possible-suspension-of-law-license/>.

¹⁶ Keays, *supra* note 14.

¹⁷ Alan J. Keays, *Vermont Supreme Court reinstates law license of Addison County’s top prosecutor*, VTDIGGER (Apr. 19, 2024), <https://vtdigger.org/2024/04/19/vermont-supreme-court-reinstates-law-license-of-addison-countys-top-prosecutor/>.

16. On February 15, 2024, Mr. Keays appealed Mr. Weaver’s denial to DPS Commissioner Jennifer Morrison. This appeal is attached as **Exhibit C** to this Complaint.

17. On February 23, 2024, Commissioner Morrison denied Mr. Keays’s appeal, reiterating the same exemptions as Mr. Weaver and added the professional ethics confidentiality exemption under 1 V.S.A. § 317(c)(3) and the litigation exemption under 1 V.S.A. § 317(c)(14). This response is attached as **Exhibit D** to this Complaint.

18. Because state officials continue to obstruct its access, VTDigger must now resort to litigation to vindicate its right under the PRA to obtain the audio and video footage, both of which will answer key questions of public interest surrounding Ms. Vekos’s arrest and inform the public on the conduct of an elected prosecutor.

Key Unanswered Questions

19. Although the motive for a journalist’s public records request is immaterial to whether the requested records must be produced, VTDigger’s reasons for seeking these recordings directly implement its mission to “produce rigorous journalism that explains complex issues, promotes public accountability and fosters democratic and civic engagement.”¹⁸

20. Specifically, the contents of these recordings will enable the public to determine how Ms. Vekos, an elected county official, performed her prosecutorial responsibilities on the public’s behalf that evening, including whether she attempted to leverage her position as a prosecutor to avoid arrest and criminal charges. It will also allow the public to assess the degree of professionalism that the state troopers displayed in handling this sensitive incident.

21. The public’s interest in these recordings is especially strong in light of the actions that Ms. Vekos took since her arrest, including refusing to work collaboratively in person with

¹⁸ *About*, VTDIGGER, <http://vtdigger.org/about/> (last visited Nov. 27, 2023).

law enforcement officials, key partners to the State’s Attorneys Offices; criticizing the employees of those partners’ agencies; taking medical leave for three weeks without explanation for her absence; and then continuing to act as Addison County State’s Attorney despite having been temporarily stripped of her license to prosecute that office’s cases. The public deserves to fully understand the events that triggered this behavior at the helm of a state prosecutor’s office.

Public Records Act

22. 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.”¹⁹ 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.

23. The Vermont Supreme Court has repeatedly stated that the PRA must be construed liberally in favor of disclosure.²⁰ Exemptions from disclosure must be construed “strictly against the custodians of the records and any doubts should be resolved in favor of disclosure.”²¹ This presumption is especially applicable in the area of law enforcement, where

¹⁹ Vt. Const. ch. 1, art. 6.

²⁰ See, e.g., *Price v. Town of Fairlee*, 190 Vt. 66, 72–73 (2011).

²¹ *Caledonian-Record Publishing Co. v. Walton*, 154 Vt. 15, 20 (1990).

“[t]here is a strong public interest in disclosure of public records.”²² The agency bears the burden of justifying the withholding of requested records.²³

24. One such exemption, 1 V.S.A. § 317(c)(5)(A)(i), allows public officials to withhold records only where their production would be reasonably expected to interfere with enforcement proceedings. 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).²⁴

25. Another exemption under 1 V.S.A. § 317(c)(3) permits a public official to withhold records only where their 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.²⁵ No such rule has been properly cited here nor can one be.

26. Finally, the exemption under 1 V.S.A. § 317(c)(14) allows public officials to withhold records that are relevant to litigation if the public agency is a party of record. A broad interpretation of this exemption severely harms the public’s right to review and criticize government officials by cutting off “valuable information not only to the parties to the litigation, but to all Vermonters[.]”²⁶ The Department of Public Safety is not a party of record to criminal cases brought by a State’s Attorney on behalf of the State of Vermont.²⁷ And even if it were, interpreting the litigation exemption to shield all records relevant to a criminal proceeding for the

²² *Bain v. Windham Cty. Sheriff Keith Clark*, 191 Vt. 190, 199 (2012).

²³ *See Price*, 26 A.3d at 31.

²⁴ *See Oblak v. Univ. of Vt. Police Serv.*, 210 Vt. 550, 555–56 (2019).

²⁵ *See Energy & Env’t Legal Inst. v. Att’y Gen. of Vt.*, 2017 WL 11676871, at *2–3 (Super. Ct. of Vt. 2017).

²⁶ *Shlansky v. City of Burlington*, 188 Vt. 470, 479 (2010).

²⁷ 13 V.S.A. § 4638.

proceedings' duration would result in an improper blanket ban on access to a wide swath of critical public information.

CLAIMS

Count I. Violation of Vermont Public Records Law, 1 V.S.A. §§ 315–20

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

28. The Department of Public Safety has public records in its possession—“[a]udio and video footage of Vermont State Police interactions with Eva Vekos on Jan. 25, (2024)”—that it could make accessible to the public by inspection or copying.

29. VTDigger has requested that the Department of Public Safety provide access to these recordings.

30. In response, the Department of Public Safety has asserted exemptions under 1 V.S.A. §§ 317(c)(5)(A)(i), 317(c)(3), and 317(c)(14) to prevent disclosure of these recordings.

31. These recordings are products of crime detection and accordingly will not interfere with any future enforcement proceeding, rendering 1 V.S.A. § 317(c)(5)(A)(i) inapplicable.

32. 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 Department of Public Safety.

33. 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.

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

35. 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.

36. The public has a right to such recordings under the PRA. By denying the public access to these documents, the Department of Public Safety has violated 1 V.S.A. §§ 315–20.

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

38. 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.

39. VTDigger is entitled to judgment in its favor.

Remedies

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

- A. Order the Vermont Department of Public Safety to promptly provide copies or access to all the recordings responsive to VTDigger's request;
- B. Declare that, in denying its request, the Vermont Department of Public Safety violated VTDigger's rights under Vermont's Public Records Act, 1 V.S.A. §§ 315–20;
- 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 10th day of June, 2024.

VERMONT JOURNALISM TRUST, LTD.

By: /s/ Jared K. Carter
Heather E. Murray, Esq. (*pro hac vice* forthcoming)
Jared K. Carter, Esq.

Cornell Law School First Amendment Clinic²⁸
Myron Taylor Hall
Ithaca, New York 14853
hem58@cornell.edu
jc2537@cornell.edu
(607) 255-8518

²⁸ Clinic student Matthew Hornung 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.