

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. 24-CV-02289

VERMONT JOURNALISM TRUST,)
Plaintiff,)
))
v.)
))
VERMONT DEPARTMENT OF)
PUBLIC SAFETY,)
Defendant.)
)

DEFENDANT’S REPLY IN FURTHER SUPPORT OF ITS MOTION TO DISMISS

Based only on speculation of what may be in the footage, Plaintiff asks the Court and the Department to take a grave risk – a risk that cannot be justified and that contravenes the Public Records Act. That risk is that witness testimony in a pending trial may be forever tainted by broadcasting a video of all interactions between Vermont State Police and a criminal defendant – here a public figure – on public channels for everyone to view. This risk is not balanced by the need for transparency. This risk is balanced by waiting until the footage is properly used as evidence at trial. Only then will the public obtain access without risk to the integrity of the prosecution or prejudice to the criminal defendant. Plaintiff does not allege that the needs of transparency must be served urgently, or that it would somehow harm the public to wait until the trial is underway to broadcast this footage all over the internet. Courts must balance equities, and here that balance falls in favor of waiting, preserving the integrity of the enforcement proceedings, and the integrity of witness’ recollections.

1. Two things can be true at once: the requested footage reflects an arrest, and deals with the detection and investigation of a crime.

Plaintiff argues that the requested records do not deal with the detection and investigation of a crime, and instead that they only “reflect an initial arrest of a person”. Opposition at 4. It is

possible that records can reflect an arrest and also deal with the detection and investigation of a crime, which is exactly the circumstance here: The requested footage includes records dealing with the detection and investigation of a crime. *See* Department’s February 23, 2024 Appeal Denial Letter, Exhibit D to Complaint at 2, (“Here, as part of its criminal investigation of Ms. Vekos, the Vermont State Police produced audio and video recordings of their interactions with and investigation of Ms. Vekos. These video and audio records were submitted as evidence in the criminal investigation.”). If Plaintiff wants to request only the brief clip of footage showing Ms. Vekos’s actual arrest – the moment she was taken into custody and read her rights – then maybe its logic could stand, but that is not that the case. Plaintiff requests all footage of Vermont State Police interactions with Ms. Vekos from the duration of the night of the arrest. That request was properly denied by the Department.

Galloway v. Town of Hartford is distinguishable and inapplicable because in *Galloway* there were no criminal charges and therefore no criminal investigation or enforcement proceedings in which the footage was expected to be evidence, as is the case here. 2012 VT 61. In *Galloway*, the requested footage was of officers detaining a man they mistakenly believed to be a burglar, and later realized was the homeowner having a medical event, and no charges were brought at any time. *Id.* at ¶ 4. The *Galloway* Court even acknowledges that “in some cases involving police functions there is an overriding public interest in preserving secrecy (*e.g.*, in the investigation of pending or proposed criminal charges).” *Galloway v. Town of Hartford*, 2012 VT 61, ¶ 15, 192 Vt. 171, 178, 57 A.3d 684, 689 (2012) quoting *Caledonian-Record Publishing Co. v. Walton*, 154 Vt. 15 (1990).

2. Defendant has established that premature release of the footage will interfere with enforcement proceedings.

Plaintiff argues that “because Ms. Vekos was present at her arrest and knows the identity of the witnesses”, the premature release of the footage will not interfere with the criminal proceedings against her. This ignores the Department’s stated concerns – which is that the witnesses will watch the footage once publicly released, and it will alter witness testimony. *See* Ex. D to Complaint, at 2, citing *Swan v. SEC*, 96 F.3d 498, 499 (D.C. Cir. 1996) (noting risk of causing individuals “to tailor their testimony”). Ms. Vekos knowing the identity of witnesses is irrelevant.

3. The concern that the release of the footage will infringe on Ms. Vekos’ right to a fair trial warrants withholding the footage and was cited by the Department in its response to VTDigger’s appeal.

Plaintiff argues that Defendant cannot cite Ms. Vekos’ right to a fair trial as a reason that the footage should be released at this time because they did not raise the argument in its original denial. However, in the Department’s denial letter, Commissioner Morrison noted that “disclosure of these records could undermine the interests of the criminal defendant at trial[.]” Ex. D. to Complaint at 2.

Plaintiff argues that the Department engages in “speculation about potential publicity and its effect on a future jury” to support its argument that premature release of the footage will be unfair to Ms. Vekos. Plaintiff misstates the Department’s argument to fit in with their caselaw. Instead, the Department argued in its Motion that the premature release of footage will impact the testimony of witnesses at Ms. Vekos’ trial. Ms. Vekos’ right to a fair trial will be infringed if witness testimony is altered by public release of the requested footage, a concern that is recognized as a valid reason to apply the exemption for records dealing with the investigation of a crime. *See* 1 V.S.A. § 317(c)(5)(A) and *Swan*, 96 F.3d at 499.

CONCLUSION

Plaintiff's allegations fail to state a claim for a violation of the Public Records Act. Accordingly, Defendant Vermont Department of Public Safety respectfully requests that this Court dismiss Plaintiff's Complaint pursuant to V.R.C.P. 12(b)(6) for failure to state a claim upon which relief may be granted.

DATED at Montpelier, Vermont, this 14th day of October 2024.

STATE OF VERMONT

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