

# Kirkpatrick & Goldsborough, PLLC

Attorneys-at-Law  
Lakewood Commons

1233 Shelburne Road, Suite E-1  
South Burlington, Vermont 05403

Mary G. Kirkpatrick  
Richard R. Goldsborough

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802-651-0960 (telephone)  
802-651-0964 (facsimile)  
www.vtlawfirm.com  
gweimer@vtlawfirm.com

Gregory A. Weimer (Of Counsel)

June 1, 2022

Via E-mail: [joshua.diamond@vermont.gov](mailto:joshua.diamond@vermont.gov)

Joshua Diamond  
Deputy Attorney General  
Vermont Attorney General's Office  
109 State Street, 3<sup>rd</sup> Floor  
Montpelier, Vermont 05609

Dear Mr. Diamond:

Please accept this letter as an appeal of Assistant Attorney General Steven Monde's denial of a public records request dated May 25, 2022. A copy of that denial is enclosed for ease of reference. Our original request under the Vermont Public Records Law, 1 V.S.A. §315 et seq., sought copies of public records and/or reports that relate to the drowning death of Scott Fleurrey on April 28, 2019 on property located at 3378 Elmore Road, Morristown, Vermont.

The burden of showing that a record falls within an exception is on the agency seeking to avoid disclosure. The agency can meet that burden by making a specific factual showing and not merely by averring conclusory claims. *Springfield Terminal Railway Co. v. Agency of Transportation*, 174 Vt. 341, 816 A.2d 448, 2002 Vt. LEXIS 315 (2002). AAG Monde's denial contained only one factual assertion, namely that the "Fleurrey [matter] remains an on-going investigation." Without further factual information, it is difficult, if not impossible to determine the applicability of the exceptions Mr. Monde relies upon. Four of the exceptions he cites seem to be privacy/confidentiality related, e.g., §317(c)(1);(2);(3); and §317(c)(5)(A)(iii). To the extent privacy concerns are an issue, our office represents the Estate of Scott Fleurrey and the Administrator, Tina Fleurrey in a wrongful death action currently pending in the civil division of the Lamoille County Superior Court. If it would help resolve any privacy concerns, we can provide a release from the Administrator of the Estate.

Moreover, the public records law must be "liberally construed with the view towards carrying out" its legislative purpose of allowing "free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution." 1 V.S.A. § 315; see also Vt. Const., ch. I, art. 6 (recognizing that government officials are legally accountable to the people). *Bain v. Clark*, 2012 VT 14, P17, 191 Vt. 190, 199, 44 A.3d 170, 176, 2012 Vt. LEXIS 14, \*13-14. To the extent that any portions of the records or report here do not bear directly on an investigation of crime, perhaps portions of the report or records could be produced in redacted form along with an explanation for the denial of the redacted information. See, 1 V.S.A. § 318 (e).

**Kirkpatrick & Goldsborough, PLLC**

June 1, 2022

Page 2

Lastly, to the extent AAG Monde claimed the records/report deal with the detection and investigation of crime, such claims should be viewed with extreme skepticism. This exception, exempting from public disclosure certain records dealing with the detection and investigation of crime, should be construed strictly against the custodians of the records and any doubts should be resolved in favor of disclosure. *Caledonian-Record Publishing Co. v. Walton*, 154 Vt. 15, 573 A.2d 296, 1990 Vt. LEXIS 15 (1990). With such a determination a reviewing court cannot assume, consistent with the purpose of the Access to Public Records Act, that simply because the records at issue were generated by a law enforcement agency, they necessarily are records “dealing with the detection and investigation of crime.” Such a reading would allow for a potentially limitless exemption. *Bain v. Clark*, 2012 VT 14, 191 Vt. 190, 44 A.3d 170, 2012 Vt. LEXIS 14 (2012).

We look forward to receiving your response.

Very truly,

/s/ Gregory A. Weimer

Gregory A. Weimer

Cc: [David.Boyd@vermont.gov](mailto:David.Boyd@vermont.gov)