
From: Trautman, Tracey (OJP) <Tracey.Trautman@usdoj.gov>
Sent: Wednesday, November 15, 2017 3:09 PM
To: Anderson, Thomas
Cc: DPS - GrantNotification; Casto, Chris (OJP)
Subject: 1373 Compliance Letter
Attachments: StateofVermontLetter_11-15-17.pdf

Good afternoon:

Enclosed please find a letter related to the status of your compliance with 8 U.S.C. § 1373 as it relates to your FY16 Byrne Justice Assistance Grant (JAG) award, and your FY17 Byrne JAG award, should you receive one.

By December 8, 2017, please submit a response to this letter that addresses whether your jurisdiction has laws, policies, or practices that violate section 1373, including those discussed in the attached letter. In addition to your compliance in FY 2016, please address whether you would comply with section 1373 throughout the award period, should you receive an FY 2017 Byrne JAG grant award.

All responses should be submitted to me at this email address, with a cc: to Chris Casto at Chris.Casto@usdoj.gov

Thank you—

Tracey Trautman
Acting Director
Bureau of Justice Assistance
U.S. Department of Justice
(202) 305-1491 (desk)
[REDACTED]
Tracey.Trautman@usdoj.gov



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

November 15, 2017

Thomas Anderson
Commissioner
Vermont Department of Public Safety
45 State Drive
Waterbury, VT 05671

Dear Commissioner Anderson,

Your FY 2016 Byrne JAG grant award required you to comply with 8 U.S.C. § 1373. Section 1373 compliance is an ongoing requirement that the Department of Justice monitors. The Department is concerned that the following Vermont laws, policies, or practices may violate section 1373:

- Vermont Model Fair and Impartial Policing Policy.¹ Part 8.1.3 requires officers to “communicate” that they will not “report immigrants or the immigration status of victims/witnesses to the Department of Homeland Security.” The Department is concerned that this policy appears to restrict the sending of information regarding immigration status, in violation of section 1373(a). It is not the Department of Justice’s nor the Department of Homeland Security’s policy or practice to request information from state and local jurisdictions regarding the immigration status of victims or witnesses. There are, however, instances where requesting this information could be appropriate, such as where a person is both a perpetrator and a victim/witness.

¹ While this is only a model policy, the State of Vermont’s official website states the following with respect to this model policy: “Agencies and constables have until July 1, 2016, to either adopt the model policy in its entirety or ensure that its current policy contains the essential elements as identified by the Council. I should note that if an agency makes no movement at all by July 1, it will have been deemed to have adopted, and be bound by, the Council’s Model Policy.” <http://vcjtc.vermont.gov/content/model-fair-and-impartial-policing-policy>; see also 20 V.S.A. § 2366(a) (“[o]n or before July 1, 2016, every State, local, county, and municipal law enforcement agency and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title shall adopt a fair and impartial policing policy that includes, at a minimum, the elements of the Criminal Justice Training Council model policy”). The provisions relied on in this letter are identified as “essential elements” of the policy.

- Vermont Model Fair and Impartial Policing Policy. Part 8.3.2 provides that officers “shall utilize federal databases in attempts to establish an individual’s identity [sic] only when all other attempts to identify the person have failed.” It also provides that “contact with federal authorities made to determine an individual’s identity is restricted to the purpose of determining his or her identity.” The Department is concerned that this policy appears to restrict the sending or requesting of information regarding immigration status, in violation of section 1373(a) and (b). The Department further notes that the use of federal databases to obtain information about arrestees is a primary method for providing information to Immigration and Customs Enforcement.²

By December 8, 2017, please submit a response to this letter that addresses whether Vermont has laws, policies, or practices that violate section 1373, including those discussed above. In addition to your compliance in FY 2016, please address whether you would comply with section 1373 throughout the award period, should you receive an FY 2017 Byrne JAG grant award. To the extent Vermont laws or policies contain so called “savings clauses,” please explain in your submission the way these savings clauses are interpreted and applied, and whether these interpretations are communicated to Vermont officers or employees.

The Department has not made a final determination regarding Vermont’s compliance with section 1373. This letter does not constitute final agency action and nothing in this letter creates any right or benefit enforceable at law against the United States.

Sincerely,



Alan Hanson
Acting Assistant Attorney General

² The Department also takes note of the State of Vermont’s suggestion, in its Guidance to Vermont Cities & Towns Regarding Immigration Enforcement, that section 1373 “may not constitutionally prohibit state and local governments from maintaining confidentiality policies directly serving sovereign state interests—even if immigration status is included in the class of protected information.”

From: Anderson, Thomas
Sent: Saturday, November 18, 2017 9:01 AM
To: Trautman, Tracey (OJP)
Cc: Chris.Casto@usdoj.gov
Subject: RE: 1373 Compliance Letter

Good morning Director Trautman:

I am requesting a one week extension of time until December 15 to respond to the issues raised in Acting AAG Hanson's letter dated November 15. The basis for my request is that the Vermont Criminal Justice Training Council (VCJTC) is meeting on December 10 and will be voting on revisions to the Vermont Model Fair and Impartial Policy referenced in Acting AAG Hanson's letter. These revisions will have a direct bearing on the issues raised in AAG Hanson's letter and will be germane to DOJ's concerns regarding that policy.

Thank you and I look forward to hearing from you.

Thomas D. Anderson

Thomas D. Anderson
Commissioner
Department of Public Safety
45 State Dr.
Waterbury, VT 05671
802-244-8718
Thomas.Anderson@vermont.gov

From: Trautman, Tracey (OJP) [mailto:Tracey.Trautman@usdoj.gov]
Sent: Wednesday, November 15, 2017 3:09 PM
To: Anderson, Thomas <Thomas.Anderson@vermont.gov>
Cc: DPS - GrantNotification <GrantNotification@listserv.dps.state.vt.us>; Casto, Chris (OJP) <Chris.Casto@usdoj.gov>
Subject: 1373 Compliance Letter

Good afternoon:

Enclosed please find a letter related to the status of your compliance with 8 U.S.C. § 1373 as it relates to your FY16 Byrne Justice Assistance Grant (JAG) award, and your FY17 Byrne JAG award, should you receive one.

By December 8, 2017, please submit a response to this letter that addresses whether your jurisdiction has laws, policies, or practices that violate section 1373, including those discussed in the attached letter. In addition to your compliance in FY 2016, please address whether you would comply with section 1373 throughout the award period, should you receive an FY 2017 Byrne JAG grant award.

All responses should be submitted to me at this email address, with a cc: to Chris Casto at Chris.Casto@usdoj.gov

Thank you—

From: Trautman, Tracey (OJP) <Tracey.Trautman@usdoj.gov>
Sent: Monday, November 20, 2017 10:04 AM
To: Anderson, Thomas
Cc: Casto, Chris (OJP)
Subject: RE: 1373 Compliance Letter

Good morning Commissioner Anderson:

Based on your justification below, Acting AAG Hanson has granted your request for an extension until December 15, 2017.

Thanks

Tracey

Tracey Trautman

Acting Director

Bureau of Justice Assistance

U.S. Department of Justice

(202) 305-1491 (desk)

Tracey.Trautman@usdoj.gov

From: Anderson, Thomas [mailto:Thomas.Anderson@vermont.gov]

Sent: Saturday, November 18, 2017 9:01 AM

To: Trautman, Tracey (OJP) <Tracey.Trautman@ojp.usdoj.gov>

Cc: Casto, Chris (OJP) <Chris.Casto@ojp.usdoj.gov>

Subject: RE: 1373 Compliance Letter

Good morning Director Trautman:

I am requesting a one week extension of time until December 15 to respond to the issues raised in Acting AAG Hanson's letter dated November 15. The basis for my request is that the Vermont Criminal Justice Training Council (VCJTC) is meeting on December 10 and will be voting on revisions to the Vermont Model Fair and Impartial Policy referenced in Acting AAG Hanson's letter. These revisions will have a direct bearing on the issues raised in AAG Hanson's letter and will be germane to DOJ's concerns regarding that policy.

Thank you and I look forward to hearing from you.

Thomas D. Anderson

Thomas D. Anderson

Commissioner

Department of Public Safety

45 State Dr.

Waterbury, VT 05671

802-244-8718

Thomas.Anderson@vermont.gov

From: Trautman, Tracey (OJP) [mailto:Tracey.Trautman@usdoj.gov]

Sent: Wednesday, November 15, 2017 3:09 PM

To: Anderson, Thomas <Thomas.Anderson@vermont.gov>

Cc: DPS - GrantNotification <GrantNotification@listserv.dps.state.vt.us>; Casto, Chris (OJP) <Chris.Casto@usdoj.gov>

Subject: 1373 Compliance Letter

Good afternoon:

Enclosed please find a letter related to the status of your compliance with 8 U.S.C. § 1373 as it relates to your FY16 Byrne Justice Assistance Grant (JAG) award, and your FY17 Byrne JAG award, should you receive one.

By December 8, 2017, please submit a response to this letter that addresses whether your jurisdiction has laws, policies, or practices that violate section 1373, including those discussed in the attached letter. In addition to your

compliance in FY 2016, please address whether you would comply with section 1373 throughout the award period, should you receive an FY 2017 Byrne JAG grant award.

All responses should be submitted to me at this email address, with a cc: to Chris Casto at Chris.Casto@usdoj.gov

Thank you—

Tracey Trautman

Acting Director

Bureau of Justice Assistance

U.S. Department of Justice

(202) 305-1491 (desk)


Tracey.Trautman@usdoj.gov

From: Carr, Karen
Sent: Wednesday, January 24, 2018 11:04 AM
To: Anderson, Thomas
Subject: FW: Vermont's - 1373 Compliance Letter
Attachments: 12-15-17 Response to DOJ.PDF

From: Carr, Karen
Sent: Friday, December 15, 2017 4:00 PM
To: 'tracey.trautman@usdoj.gov' <tracey.trautman@usdoj.gov>
Cc: 'chris.casto@usdoj.gov' <chris.casto@usdoj.gov>
Subject: Vermont's - 1373 Compliance Letter

Good Afternoon,

Please find attached Commissioner Thomas D. Anderson's response to Acting Assistant Attorney General Hanson's letter dated November 15, 2017, in which the Department of Justice requests that he address whether Vermont has laws, policies, or practices that violate 8 U.S.C § 1373.

Thanks,

Karen

Karen Carr | Executive Staff Assistant | Vermont Department of Public Safety
45 State Drive | Waterbury, VT 05671 | Main: 802-244-8718 | Fax: 802-241-5551



State of Vermont
Department of Public Safety
45 State Drive
Waterbury, Vermont 05671-1300
(802) 244-8718
<http://dps.vermont.gov/>

December 15, 2017

Alan R. Hanson
Acting Assistant Attorney General
U.S. Department of Justice
Office of Justice Programs
Washington, D.C. 20531

Dear Acting Assistant Attorney General Hanson:

I am writing in response to your letter dated November 15, 2017 (the "DOJ Letter"), in which the Department of Justice ("DOJ") requests that I address whether Vermont has laws, policies, or practices that violate 8 U.S.C. § 1373. As set forth more fully below, the State's laws, policies, and practices do not violate section 1373.

I. Background

The Vermont Department of Public Safety and the Vermont State Police ("VSP") have historically enjoyed an outstanding and collaborative working relationship with our federal law enforcement colleagues, including the U.S. Border Patrol and the Immigration and Customs Enforcement. This close working relationship continues to this day and plays an integral and essential role in keeping Vermont safe.

In Vermont, the Vermont Criminal Justice Training Council ("VCJTC") is a statutorily created, independent council whose duties include establishing rules and policies with respect to training and certification of law enforcement officers in Vermont. 20 V.S.A. § 2355. Vermont statute requires that the VCJTC create a model fair and impartial policing policy ("Model Policy") for Vermont law enforcement, and also requires that each law enforcement agency adopt its own fair and impartial policing policy.¹ In 2003, VSP, a division of the Department of Public Safety and the Byrne JAG grantee, created and implemented a fair and impartial policing policy.

During the 2017 legislative session, the Vermont General Assembly passed two acts into law, both of which required Vermont law enforcement to fully comply with 8 U.S.C. § 1373. One of these acts further required that the VCJTC Model Policy also comply with this federal statute.

As set forth more fully below, this letter addresses the following issues in response to the DOJ Letter: (1) recent Vermont statutory changes and subsequent revisions to the VCJTC Model Policy, all of which ensure compliance with section 1373; (2) relevant provisions of the VSP policy, which also comply with federal immigration law; and (3) the unambiguous interpretation and application of "savings clauses" in Vermont.

¹ Those law enforcement agencies that fail to adopt adequate fair and impartial policing policies are deemed to have adopted the VCJTC Model Policy. 20 V.S.A. § 2366(a), (b).

II. Vermont Statutes Mandate Compliance with Federal Law and Abolish Noncompliant Policies and Practices as a Matter of Law

The DOJ Letter expresses concern that two sections of the VCJTC Model Fair and Impartial Policing Policy together with certain provisions of 20 V.S.A. § 2366 violate 8 U.S.C. § 1373(a) and (b).² However, because recent changes to Vermont law now mandate that policies and practices in this State comply with the lawful requirements of section 1373, DOJ's concerns are unfounded.

During the 2017 Vermont legislative session, the Vermont General Assembly passed two acts requiring compliance with section 1373's lawful requirements: Act 5 and Act 54. Section 2 of Act 5, which was signed into law on March 28, 2017 and is codified in Title 20, states:

Nothing in this section is intended to prohibit or impede any public agency from complying with the lawful requirements of 8 U.S.C. §§ 1373 and 1644. To the extent any State or local law enforcement policy or practice conflicts with the lawful requirements of 8 U.S.C. §§ 1373 and 1644, said policy or practice is, to the extent of such conflict, abolished.

20 V.S.A. § 4651(d). Accordingly, as of March 2017, any and all law enforcement policies and/or practices which violated the lawful requirements of section 1373 were abolished as a matter of law.

Similarly, Act 54, which governs law enforcement practices and policies relating to fair and impartial policing, also amended Vermont law to ensure such policies and practices comply with section 1373. In this regard, Act 54 amended 20 V.S.A. § 2366 to add a provision essentially identical to that quoted above, abolishing any noncompliant practice or policy in existence in Vermont at that time.³ Of particular importance, Act 54 also mandated review of the VCJTC Model Policy to ensure compliance with federal law:

[T]he Criminal Justice Training Council, in consultation with the Attorney General, shall review and modify the model fair and impartial policing policy to the extent necessary to bring the policy into compliance with 8 U.S.C. §§ 1373 and 1644.

As will be further discussed in the next section, the VCJTC Model Policy's review-and-modification process has since been completed, and the language the DOJ Letter deems problematic is no longer part of the VCJTC Model Policy or has otherwise been amended to ensure the policy complies with federal law.

Lastly, Act 54 further amended 20 V.S.A. § 2366(a)—a statutory subsection referenced in your letter—to guarantee that law enforcement agencies adopt the VCJTC Model Policy or policies of their own that reflect each component of the Model Policy. If an agency adopts an inadequate policy or, presumably, fails to adopt a policy, an agency is considered to have adopted the Model Policy in full. *Id.* Since the VCJTC Model Policy is statutorily mandated to comply with section 1373, no Vermont law enforcement agency policy can be at odds with section 1373.

² Under subsection (a), a Vermont government entity or official may not restrict or prohibit a governmental entity or officer from sending to or receiving from federal immigration authorities "information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373(a). Also, with respect to information concerning immigration status, an agency or person may not prohibit or restrict the following: "(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service, (2) Maintaining such information, (3) Exchanging such information with any other Federal, State, or local government entity." *Id.* § 1373(b)(1)–(3).

³ Subsection 2366(f), which became effective May 31, 2017, now states: "Nothing in this section is intended to prohibit or impede any public agency from complying with the lawful requirements of 8 U.S.C. §§ 1373 and 1644. To the extent any State or local law enforcement policy or practice conflicts with the lawful requirements of 8 U.S.C. §§ 1373 and 1644, that policy or practice is, to the extent of the conflict, abolished." 20 V.S.A. § 2366(f).

Thus, by legislative mandate, Vermont has abolished any practice or policy in conflict with section 1373's lawful requirements. And under the same mandate, the VCJTC Model Policy, upon which law enforcement agency policies will be based, must also comply with section 1373. As presented below, that Model Policy does in fact comply:

III. The VCJTC Model Policy Complies with Section 1373

The DOJ Letter expresses concern that specific parts and language in the VCJTC Model Policy violate section 1373. However, the language quoted in the DOJ Letter reflects an earlier version of the Model Policy that is no longer in effect. Based on interim and final revisions to the Model Policy, which were effective on November 20, 2017 and December 12, 2017, respectively, the VCJTC Model Policy fully complies with section 1373.⁴

With respect to DOJ's concern that Part 8.1.3 of the VCJTC Model Policy potentially restricts the sending of information regarding immigration status of victim and witnesses to the Department of Homeland Security ("DHS"), this language was removed from both the interim and final versions of the Model Policy. Thus, even assuming DOJ's interpretation of this provision is correct, removal of this language should allay DOJ's concerns. Additionally, both the interim and final Model Policies clarify that any restriction on communications regarding the immigration status of any individual, including victims/witnesses, does not apply to communications with government agencies about citizenship or immigration status that are governed by 8 U.S.C. §§ 1373 and 1644. *See* Model Fair and Impartial Policing Policy, Part VIII(A)(b) (effective Nov. 20, 2017) and Model Fair and Impartial Policing Policy, Parts VII(d), X(d), and Savings Clause (effective Dec. 12, 2017).

DOJ also expresses concern that Part 8.3.2 of the Model Policy, which addressed the utilization of federal databases to establish an individual's identity, unduly restricts the sending or requesting of information regarding immigration status. This language was similarly removed from both the interim and final Model Policies. Moreover, the Model Policy clarifies that any restriction on contact with federal officials, for the purpose of identifying an individual, "does not prohibit any communication governed by [section 1373]." *See* Model Fair and Impartial Policing Policy, Part VII(d) (effective Dec. 12, 2017). Accordingly, DOJ's articulated concerns with respect to Part 8.3.2 can no longer be justified.

Additionally, the final Model Policy repeatedly clarifies that its provisions do not apply to any communications governed by section 1373. *See id.* Parts VIII, IX, XI. And lastly, the policy concludes with a "Savings Clause," which again reiterates that an agency adopting the Model Policy shall not violate section 1373. *See id.* (Savings Clause). Thus, in accordance with legislative mandates, the abovementioned revisions to the Model Policy ensure compliance with section 1373.⁵

⁴ The interim Model Policy was issued by the VCJTC in direct response to and to address the concerns raised in the DOJ Letter.

⁵ Your November 15, 2017 letter notes concerns with a suggestion in a guidance document that 8 U.S.C. § 1373 "may not constitutionally prohibit state and local governments from maintaining confidentiality policies directly serving sovereign state interests." *See* Guidance to Vermont Cities & Towns Regarding Immigration Enforcement, Vermont Attorney General (March 2017). This guidance is not legally binding, cannot trump Vermont law, and, to the extent it is in conflict with Vermont law, any policy or practice based on such guidance is no longer valid or of consequence. *See* 20 V.S.A. § 2366(f) (effective May 31, 2017); *see also* 20 V.S.A. § 4651(d) (effective March 28, 2017).

Moreover, the guidance correctly notes "8 U.S.C. § 1373 prohibits state and local governments from restricting the ability of state and local officials to share certain information with federal immigration authorities." *See* Guidance to Vermont Cities & Towns Regarding Immigration Enforcement at 3; *see also id.* at 8. The above-cited sentence, when read in context, recognizes that unanswered questions remain with respect to the full scope of section 1373. *Id.* at 9–10 (quoting *City of New York v. United States*, 179 F.3d 29 (2d Cir. 1999)).

IV. Vermont State Police Policies Do Not Restrict Communication with Federal Immigration Agencies About Immigration Status and Citizenship

The Vermont State Police (“VSP”), which falls under the Department of Public Safety, adopted a Fair and Impartial Policing policy several years ago.⁶ This policy, VSP-DIR-301, fully complies with federal law, including 8 U.S.C. § 1373. Specifically, VSP’s policy neither prohibits nor in any way restricts the maintenance or intergovernmental exchange of information regarding the immigration status of private individuals. Of note, VSP-DIR-301 specifically requires communication with other government entities regarding immigration status in certain circumstances. VSP policy directs members to communicate with other governmental entities: “[i]f a member needs to identify an individual and that individual does not have identification, the member may use whatever tools, including federal databases, are reasonably necessary to identify the individual under the circumstances.” *Id.* Thus, VSP policy not only complies with section 1373 by the absence of prohibitions on the exchange of information, but its policy exceeds mere compliance by encouraging communication with federal governmental agencies in appropriate circumstances.

VSP policy also specifically addresses immigration along Vermont’s border and the need for collaboration and cooperation with our federal partners. In this regard, VSP members “operating near the Canadian border who have reason to believe that an illegal border crossing has immediately occurred may ask a suspect about his or her immigration status.” *See* VSP-DIR-301, 4.4(3). Additionally, “members operating near the Canadian border may solicit the support of federal law enforcement in connection with state law matters if reasonably necessary to protect officer and/or public safety; and . . . members operating near the Canadian border may make inquiries consistent with [other sections of VSP policy].” *Id.*

Finally, VSP’s Fair and Impartial Policing policy VSP-DIR-301, section 4.4(4), clarifies that the intent of the policy is not to impair relationships with federal authorities or hinder federal law enforcement priorities, and “is not intended to change the Vermont State Police’s cooperation and coordination with federal authorities to enhance border security.” *See* VSP-DIR-301, 4.4(4). Because VSP policy explicitly authorizes certain communication between members and other individuals, and encourages the solicitation of support of federal law enforcement when appropriate, there is no basis to conclude that VSP policy violates section 1373.

Likewise, VSP policy on assistance to immigrant victims and witnesses complies with federal law. This policy, VSP-DIR-305, does not prohibit VSP members from sharing citizenship or immigration information with federal authorities as may be required by section 1373.⁷ In fact, Vermont law, in conjunction with VSP policy, encourages law enforcement cooperation with the federal government when assisting immigrant victims. For example, Vermont law enforcement officers investigating human trafficking likely will share immigration and citizenship information with DHS in their efforts to assist such victims or potential victims. *See* 13 V.S.A. § 2663(b) (process for law enforcement assistance in the completion and execution of appropriate United States Citizenship and Immigration Service forms); 22 U.S.C. § 7105. Accordingly, VSP policies relating to immigration not only comply with section 1373 but also encourage lawful cooperation and coordination with federal agencies.

V. Savings Clauses are Unambiguous and Communicated through Agency Policies

The DOJ Letter also requests that I address the interpretation and application of “savings clauses” in Vermont. I assume that the reference to “savings clauses” encompasses provisions such as the final “Savings Clause” in the Model Policy (referenced above in section III), and 20 V.S.A. § 2366(f) and 20 V.S.A. § 4651(d), all of which mandate compliance with section 1373 and abolish practices or policies in conflict with section 1373. Such clauses as they exist in Vermont—both in statute and in policy—are unambiguous in

⁶ The Vermont State Police Fair and Impartial Policing Policy, VSP-DIR-301, is attached as Attachment A.

⁷ VSP-DIR-305 is attached as Attachment B.

interpretation and application. These clauses make it clear that adopted policies and practices do not prohibit local and state law enforcement officers from sharing citizenship or immigration status with federal authorities. Vermont's adoption of laws and policies containing "savings clauses" therefore removes any doubt that Vermont prohibits or in any way restricts the exchange of information covered by 8 U.S.C. § 1373.

The requirements of the Model Policy are communicated to Vermont law enforcement officers and employees through agency policy and through training and instruction. As part of its basic course of instruction for police cadets, the VCJTC includes a block of instruction on fair and impartial policing practices which encompasses Model Policy requirements. The VCJTC also periodically provides such instruction to veteran officers as part of its certification process. Similarly, the VSP requires each officer to certify that he/she has read and understands the VSP Fair and Impartial Policing Policy. The VSP also has designated a senior level uniform position as the Director of fair and impartial policing. This individual provides instruction on these issues and is available to answer questions which may arise in connection with the policy, including compliance with section 1373.

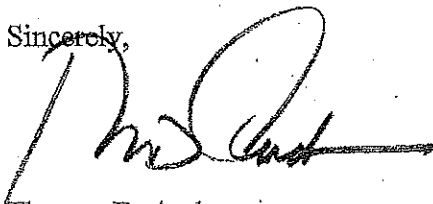
VI. Compliance with Section 1373 in FY2017

Finally, per your request, I assure that the Vermont Department of Public Safety ("DPS") is currently in compliance with section 1373, and DPS will continue to comply with section 1373 for FY2016 award funds. Additionally, should the Department of Justice grant an award to DPS for FY2017, DPS will comply with section 1373 throughout the period of such award.

To reiterate, the Vermont Department of Public Safety, the Vermont State Police and Vermont law enforcement will continue to comply with their lawful obligations under federal law. At the same time, Vermont law enforcement will continue to reflect the values and priorities of Vermonters, including seeking the cooperation of immigrant communities in solving crimes and ensuring the safety of all those residing in Vermont, while preserving Vermont's rights under the United States Constitution, including the Tenth Amendment.

Please let me know if I can provide additional information in response to your request.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Anderson", written over a horizontal line.

Thomas D. Anderson
Commissioner of Public Safety



VSP-DIR-301

Fair and Impartial Policing

1.0 PURPOSE

1.1 The intent of this policy is to reaffirm the Vermont State Police commitment to unbiased policing, to clarify the circumstances in which members can consider race, ethnicity, gender or other potentially improper criteria when making law enforcement decisions, and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable and impartial way.

2.0 POLICY

2.1 It is the policy of the Vermont State Police that the department shall not condone the use of any bias based policing in the services our employees provide to the community in connection with our law enforcement activities.

3.0 DEFINITIONS

(1) "Personal Criteria" may include, but are not limited to, race, ethnicity, immigration status, national origin, color, gender, sexual orientation, gender identity, marital status, mental or physical disability, religion, and socio-economic level.

(2) "Suspicious activity" is defined as "Observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity." As with investigations of civil violations, if a member needs to identify an individual and that individual does not have identification, the member may use whatever tools, including federal databases, are reasonably necessary to identify the individual under the circumstances.

4.0 PROCEDURE

4.1 Fair and Impartial Policing: General Principles

(1) As required by statutes, Chapter I, Article 11 of the Vermont Constitution and Amendment IV of the United States Constitution, all enforcement actions by law enforcement officers, such as investigative detentions, traffic stops, arrests, searches and seizures, etc., must be based on reasonable suspicion, probable cause, or other required standards.

(A) Members must be able to articulate specific facts, circumstances, and conclusions which support the required standard for enforcement actions.

(B) Members may take into account the reported race, ethnicity or other personal criteria of suspects based on credible, reliable, locally-relevant information that links persons of specific description criteria to particular criminal incidents.

(2) Except as provided in 4.1(1)(B) above:

(A) Members will not consider race, ethnicity, or other personal criteria in establishing either reasonable suspicion or probable cause.

(B) Members will not single out or otherwise treat persons differently because of their race, ethnicity, or other personal criteria. Law enforcement officers may allow for special accommodations to be made for individuals with disabilities.

(C) Members will not engage in biased based profiling tactics in traffic contacts, field contacts, asset seizure/forfeiture processes, or any other law enforcement function.

4.2 Preventing Perceptions of Biased Policing

In an effort to prevent any misperceptions of biased law enforcement, each member shall do the following when conducting pedestrian and vehicle stops:

(1) be courteous and professional;

(2) identify himself/herself to the individual (providing name and agency) and state the reason for the stop as soon as practical, unless providing this information will compromise the member's or public safety;

(3) ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense, and that the individual understands the purpose of reasonable delays;

(4) answer any questions the individual may have;

(5) Provide the member's name and duty assignment verbally, when requested. Members may also provide the information in writing or on a business card.

(6) Explain if the member determines that the reasonable suspicion was unfounded (e.g., after an investigatory stop).

4.3 Responding to Bias-Based Reports:

(1) If any member of the agency receives a call for service, whose only foundation has to do with an individual's race, ethnicity, gender, age, perceived or known mental illness, sexual orientation, gender identity, marital status, religion, disability, socioeconomic level, immigration status, or other potentially improper personal criteria, the employee will attempt to explore if there are any specific behaviors that call for police response. If no specific behavior is identified, the caller's contact information will be

obtained and he/she will be advised that the member in charge of the shift will contact him/her.

(2) The member will contact the shift supervisor and provide the circumstances of the call. The shift supervisor will contact the caller and explain that we do not respond to calls for service that are based solely on a person's race, ethnicity, gender, age, perceived or known mental illness, sexual orientation, gender identity, marital status, religion, disability, socioeconomic level, immigration status or other potentially improper personal criteria.

(3) The shift supervisor should attempt to educate the caller on our fair and impartial policing policy and philosophy. He/she should also explain that we respond to behaviors/actions of individuals that appear suspicious, threatening, illegal, etc. and not to situations based solely on a person's characteristics/attributes as defined above. The shift supervisor will document this interaction via an RMS report. In the case of a call for service that is based solely on a caller's suspicion that an individual present in Vermont is an undocumented foreign national, the supervisor shall inform the caller that federal authorities are primarily responsible for enforcing federal immigration law.

4.4 Matters Relating to Immigration and Citizenship Status

(1) General Policies:

(A) Detecting or apprehending individuals whose only violation of law is that they are foreign citizens present in the United States without authorization and proper documentation is not a law enforcement priority for the Vermont State Police. Accordingly, except as noted below, members should not use agency resources, equipment or personnel for the purpose of detecting or apprehending individuals whose only violation of law is that they are present in the United States without authorization and proper documentation.

(B) Members shall not stop, investigate, detain or question an individual solely for the purpose of determining whether the individual is in the United States without authorization and proper documentation.

(C) An individual's presence in the United States without proper documentation or authority, standing alone, when that individual has not been previously removed, is not a criminal violation. Therefore, members may not initiate an investigation based solely on information or suspicion that an individual is in the United States without authorization and proper documentation.

(2) Inquiries Concerning Citizenship Status

(A) Members should not ask an individual about his or her immigration status when investigating a civil violation. If a member needs to identify an individual and that individual does not have

identification, the member may use whatever tools, including federal databases, are reasonably necessary to identify the individual under the circumstances. Identification methods may include a foreign passport, consular identification, or other government-issued documents that are reasonably reliable, subject to the same reasonable scrutiny and follow-up for authentication as any other forms of identification.

(B) With regard to investigations involving criminal offenses or suspicious activity, a member may ask an individual about his or her immigration status under the following circumstances:

i) If the member is conducting a criminal investigation or an investigation of suspicious activity based on reasonable suspicion AND the immigration status of the suspect is relevant to the investigation, provided that the investigation is initiated for a reason or reasons independent of information or suspicion that an individual is (or individuals are) in the United States without proper authorization in violation of the civil provisions of federal immigration law; or

ii) After a suspect has been arrested for a criminal violation.

(3) Notwithstanding the provisions in sections 1 and 2, above,

(A) members operating near the Canadian border who have reason to believe that an illegal border crossing has immediately occurred may ask a suspect about his or her immigration status;

(B) members operating near the Canadian border may solicit the support of federal law enforcement in connection with state law matters if reasonably necessary to protect officer and/or public safety; and

(C) members operating near the Canadian border may make inquiries consistent with sections (1) and (2) above.

(4) This policy is not intended to impair relationships with federal authorities, compromise officer safety, or hinder local, state or federal law enforcement priorities. It is not intended to change the Vermont State Police's cooperation and coordination with federal authorities to enhance border security.

4.5 Compliance

(1) The Vermont State Police are committed to providing periodic cultural training for its members. Fair and Impartial Policing training will be conducted annually for all members. It is the goal of this Department to ensure that all employees are sensitive to, and aware of, cultural diversity issues and what constitutes biased policing.

(2) The Vermont State Police is committed to the vigorous investigation of complaints of this nature and violations of this policy shall result in disciplinary action.

(3) Additionally, the Vermont State Police has in place committees to review all video tapes on reported use of force, pursuit, and vehicle searches. The opinions and recommendations of each respective committee are forwarded to the Vermont State Police Office of Professional Development for review.

4.6 Supervision and Accountability

(1) Supervisors shall ensure that all members in their command are familiar with the content of this policy and are operating in compliance with it. Supervisors should randomly review records such as reports or video/audio recordings, or otherwise monitor the conduct of the members in their command for the purpose of ensuring compliance with this policy and to identify training issues.

(2) Upon the request from a member of the public, members will explain how a person should make a complaint regarding an officer's conduct.

(3) All members are required to report allegations, complaints, or knowledge of a suspected violation of this policy in accordance with VSP-GEN-205, of the Department's Rules and Regulations.

(4) The Department shall investigate alleged violations of this policy in accordance with the provisions of VSP-GEN-205, of the Department's Rules and Regulations.

(5) Members are required to annually review the Office of Professional Development training segment related to Fair and Impartial Policing.

4.7 Annual Review

(1) The Vermont State Police Fair and Impartial Policing Committee will convene annually to review current policies, practices, and citizen concerns regarding fair and impartial policing.

Effective December 10, 2003

Revised May 15, 2009

Revised July 15, 2011

Revised November 4, 2011

Revised June 18, 2014

The Vermont State Police Manual is not intended to apply in any criminal or civil proceeding outside of internal Department proceedings. No policy included in this publication should be construed as creating a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.



VSP-DIR-305

Victim's Assistance

1.0 Purpose

- 1.1 This agency recognizes that law enforcement is dependent upon the aid of crime victims and witnesses in order to hold criminals accountable for their actions. It is desirable to gain the cooperation of victims and witnesses, thereby enhancing the agency's ability to make arrests that will result in criminal prosecution.

2.0 Policy

- 2.1 To provide sensitive, fair, and high quality services to crime victims and witnesses.

3.0 Procedure

3.1 Victim and Witness Contact

- A. All victims and witnesses shall be treated with courtesy, sensitivity, and respect.
- B. Members shall make reasonable efforts to inform victims of crime of available services. Victims and witnesses will be offered a safe and friendly location for providing statements or other investigatory processes. Members shall ensure continued safety by reviewing safety planning with victims/witnesses when appropriate.

3.2 Analysis of Needs and Available Services

- A. All Vermont State Police members are charged with providing high quality assistance to victims and witnesses consistent with section 3.1 of this policy.
- B. The Vermont Victim Assistance Program provides each county with a Victim Advocate Service that is available to all crime victims and witnesses. The Victim Advocate is engaged in an ongoing evaluation of the needs of crime victims and available services.

- C. The Vermont State Police shall maintain a close working relationship with all victim service agencies and their respective advocates.

3.3 Procedures for Victim/Witness Assistance

- A. The Vermont State Police will ensure the confidentiality of victims and witnesses, and their role in case development, to the extent allowed by law.
- B. Victim/Witness assistance information shall be available to the public 24 hours a day through the department's Public Safety Answering Points (PSAPs). Dispatchers shall provide callers with appropriate referrals from the list below:
 - 1. Medical Attention - an ambulance or referral to one of the local hospitals.
 - 2. Counseling - Women's Rape Crisis Center, Women Helping Battered Women (WHBW), Crisis, or other agencies.
 - 3. Emergency Financial Assistance - Referral to the Department of Social Welfare or the Victim/Witness Advocate of the State's Attorney Office, or the Vermont Center for Crime Victim Services (Victim Compensation).
 - 4. Legal - Referrals will be made when appropriate to individuals needing assistance in civil restraining orders to appropriate community based agencies. Immigration related referrals shall be made to the Vermont Refugee Assistance Program.
 - 5. For all other requests, the dispatcher shall attempt to provide an appropriate referral from the telephone lists maintained within each PSAP, including a referral to the 211 service.

3.4 Assisting Immigrant Victims/Witnesses

- A. To effectively service immigrant communities and to ensure trust and cooperation of all victims/witnesses, members will not ask about, or investigate immigration status of crime victims/witnesses. Federal law does not require law enforcement officers to ask about the immigration status of crime victims/witness. Although communication with federal

immigration authorities regarding victim/witness immigration status is permitted, it is not required under 8 U.S.C. §§ 1373 and 1644.

B. Members will ensure that individual immigrants and immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses.

C. Members should communicate that they are here to provide assistance and to ensure safety, not to deport victims/witnesses, and that members do not ask victims/witnesses about their immigration status unless obtaining information regarding immigration status is relevant to the criminal investigation (for example, in human trafficking investigations). In instances where the victim/witness is also a suspect, please refer to VSP-DIR-301 4.4.2, Inquiries Concerning Citizen Status.

3.5 Assistance During Preliminary Investigation

A. In addition to investigating alleged criminal incidents, members should seek to provide assistance to the victims of crime and the persons who witness criminal behavior. During the preliminary investigation of any incident, the investigating member shall seek to:

1. Ensure victim/witness safety and to create a safety plan when appropriate.
2. Provide the victim/witness information regarding available services. Depending on the nature of the incident, the following referrals may be appropriate: counseling, medical attention, emergency shelter, victim advocacy, or compensation programs.
3. Provide the victim/witness with the case number and information regarding subsequent steps, if any, in the processing of the case.
4. Provide the victim/witness with the appropriate number to call to report additional information or to receive information about the status of the case.
5. Remind the victim/witness to immediately report any further threats or intimidation from the suspect or the suspect's friends or family.
6. Victims/Witnesses who express specific reasons for fearing future intimidation or victimization should be referred to either Family

Court for a Relief from Abuse Order or the State's Attorney Office for Conditions of Release.

- B. When appropriate, any reports received of further victimization or intimidation of victims/witnesses should be investigated as a separate incident.

3.6 Assistance During Follow-Up Investigation

- A. During the follow up investigation, most of the victim assistance will be the responsibility of the State's Attorney Office Victim Advocate. The Victim Advocate maintains contact with victims until final case disposition to inform them of all court hearings and, if necessary, to provide transportation for the victim to attend. Other services available include, but are not limited to, arranging for daycare so the victim can attend court hearings, arranging for counseling, and assisting with shelter.
- B. The Victim Advocate is mandated by state law to explain to all victims and witnesses the procedures involved in the prosecution of their case and their role in this procedure.
- C. The investigating member shall schedule necessary lineups and additional interviews with the victim or witness. If needed, transportation can be arranged through the Victim Advocate.
- D. Property taken as evidence from a victim or witness shall be returned as promptly as possible. The Victim Advocate frequently fields requests for return of property and is available to explain to victims and witnesses the evidentiary value of their property if it is necessary to hold the item for trial.

3.7 Notification of Victim Upon Arrest or Change in Custody

- A. When a suspect is arrested for any crime, the arresting member should attempt to determine if the victim wants to be notified of any subsequent change in custody status. If the victim indicates he/she would like to be notified, members should complete the form provided by the Victim Advocate with the victim's name, address, and phone number.
- B. If the suspect is bailed out prior to arraignment, the booking officer at Corrections is responsible for notifying the victim listed on the sheet.

- C. If the suspect's custody status changes at arraignment, the Victim Advocate is responsible for notifying the victim. If, at any time after incarceration, the custody status of the suspect changes (escape, furlough, etc.), the Department of Corrections is responsible for notifying the victim.

4.0 Resources

4.1 Assisting Immigrant Victims of Domestic Violence – Law Enforcement Guide (pdf).

Effective October 1, 1987

Revised July 1, 1990

Revised December 1, 1997

Revised April 15, 2009

Revised September 5, 2014

Revised July 7, 2017

The Vermont State Police Manual is not intended to apply in any criminal or civil proceeding outside of internal Department proceedings. No policy included in this publication should be construed as creating a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

From: Trautman, Tracey (OJP) <Tracey.Trautman@usdoj.gov>
Sent: Thursday, April 12, 2018 6:54 PM
To: Anderson, Thomas
Cc: Casto, Chris (OJP); Carr, Karen
Subject: 1373 Document Request
Attachments: Vermont Document Request Cover Letter_041218.pdf; Vermont 1373 document request instructions.pdf

Good afternoon Commissioner Anderson:

Enclosed please find a document request related to compliance with 8 USC, Section 1373.

Please return the requested information to myself and Chris Casto via email by Monday, May 14, 2018.

Should you have any questions, please email or call me at the contact numbers noted below.

Thank you—

Tracey Trautman

Tracey Trautman
Deputy Director
Bureau of Justice Assistance
U.S. Department of Justice
(202) 305-1491 (desk)
[REDACTED]

Tracey.Trautman@usdoj.gov



Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

April 12, 2018

Thomas Anderson
Commissioner
Vermont Department of Public Safety
45 State Drive
Waterbury, VT 05671

RE: Document request for Grant Award Number 2016-DJ-BX-0406, Vermont Department of Public Safety

Dear Commissioner Anderson:

Thank you for your response to our November 15, 2017, letter regarding your jurisdiction's compliance with 8 U.S.C. § 1373, a federal law with which your jurisdiction must comply as an eligibility requirement for receiving Byrne Justice Assistance Grant (Byrne JAG) funding from the Department of Justice (Department or DOJ). After reviewing your response, the Department remains concerned that your jurisdiction's laws, policies, or practices may violate section 1373, or, at a minimum, that they may be interpreted or applied in a manner inconsistent with section 1373.

In light of these concerns, the Department is requesting certain documents as described below. This request is made consistent with 2 CFR § 200.336, as adopted by Department regulation 2 CFR § 2800.101. In your FY 2016 Byrne JAG award, you agreed to the following (listed as special condition #23):

[The recipient agrees to] cooperate with [the Bureau of Justice Assistance ("BJA")] and [Office of the Chief Financial Officer ("OCFO")] on all grant monitoring requests.... The recipient [also] agrees to provide to BJA and OCFO all documentation necessary to complete monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by BJA and OCFO for providing the requested documents. Failure to cooperate with BJA's/OCFO's grant monitoring activities may result in sanctions affecting the recipient's DOJ awards, including but not limited to withholdings and/or other restrictions on the recipient's access to grant funds; referral to the Office of the Inspector General for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).

Please respond to the below request by providing to Chris Casto, BJA, at Chris.Casto@usdoj.gov by no later than May 14, 2018, all responsive documents, consistent with the attached instructions.

Documents Requested:

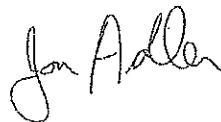
All documents reflecting any orders, directives, instructions, or guidance to your law enforcement employees (including, but not limited to, police officers, correctional officers, and contract employees), whether formal or informal, that were distributed, produced, and/or in effect during the relevant timeframe, regarding whether and how these employees may, or may not, communicate with the Department of Justice, the Department of Homeland Security, and/or Immigration and Customs Enforcement, or their agents, whether directly or indirectly.

BJA will review your submissions and seek additional information, if necessary. The Department fully anticipates your complete cooperation in this matter. Should you fail to respond in a complete and timely manner, the Department will subpoena these documents in accordance with 34 U.S.C. §§ 10225, 10221, 10230, 10151 – 10158, 10102(a)(6), 10110, and 10110 note.

These materials are critical to our ongoing review. Should the Department determine your jurisdiction is out of compliance with section 1373, the Department may, as detailed in your award documents, seek return of your FY 2016 grant funds, require additional conditions for receipt of any FY 2017 Byrne JAG funding for which you have applied, and/or deem you ineligible for FY 2017 Byrne JAG funds.

Thank you for your prompt attention to this request. We look forward to working through this matter with you. Any specific questions concerning this request can be sent to directly to Tracey Trautman, BJA Deputy Director, at Tracey.Trautman@usdoj.gov or call (202) 305-1491.

Sincerely,



Jon Adler
Director
Bureau of Justice Assistance

From: Trautman, Tracey (OJP) <Tracey.Trautman@usdoj.gov>
Sent: Tuesday, May 1, 2018 1:25 PM
To: Anderson, Thomas
Cc: Casto, Chris (OJP); Carr, Karen; Johnson, Jaye
Subject: RE: 1373 Document Request

Good afternoon Commissioner Anderson:
Our General Counsel has requested that you still provide the documents requested on April 12, 2018.

Thanks

Tracey

Tracey Trautman
Deputy Director
Bureau of Justice Assistance
U.S. Department of Justice
(202) 305-1491 (desk)


Tracey.Trautman@usdoj.gov

From: Anderson, Thomas [mailto:Thomas.Anderson@vermont.gov]
Sent: Sunday, April 29, 2018 11:16 AM
To: Trautman, Tracey (OJP) <Tracey.Trautman@ojp.usdoj.gov>
Cc: Casto, Chris (OJP) <Chris.Casto@ojp.usdoj.gov>; Carr, Karen <Karen.Carr@vermont.gov>; Johnson, Jaye <Jaye.Johnson@vermont.gov>
Subject: RE: 1373 Document Request

Ms. Trautman: Thank you for your email. While I fully recognize the 7th Circuit decision specifically dealt with the notice and access conditions, the rationale for the Court's holding foreclosing the Attorney General's ability to condition the Byrne JAG grants on Notice and Access compliance applies with equal force to any condition the Attorney General might seek to impose, including the 1373 compliance condition. There is nothing in the 7th Circuit's decision to suggest otherwise. Therefore, the response provided by your GC does not fully respond to or attempts to sidestep my question. Specifically, it does not address the Department's legal authority to request documents to determine whether Vermont is in compliance with a DOJ imposed Byrne JAG condition so that DOJ can determine whether to withhold/deny such funding when the unambiguous holding in *City of Chicago v. Sessions* is that Congress has not delegated such authority to the AG. I would also note that DOJ is not winning on the Section 1373 proof of compliance issue at the district court level: *See City of Philadelphia v. Sessions*, No. 2:17-cv-03894-MMB (E.D. Pa.).

Please advise how Vermont should proceed with DOJ's document request of April 12.

Thank you.

Thomas D. Anderson

From: Trautman, Tracey (OJP) [mailto:Tracey.Trautman@usdoj.gov]
Sent: Friday, April 27, 2018 11:16 AM
To: Anderson, Thomas <Thomas.Anderson@vermont.gov>
Cc: Casto, Chris (OJP) <Chris.Casto@usdoj.gov>; Carr, Karen <Karen.Carr@vermont.gov>; Johnson, Jaye <Jaye.Johnson@vermont.gov>
Subject: RE: 1373 Document Request

Importance: High

Good morning Commissioner Anderson:

I just realized that yesterday I inadvertently sent you a *draft* version, rather than the *final* message that was intended, which is the following:

"The 7th Circuit opinion states expressly as follows:

"Specifically, the Attorney General imposed "notice," "access," and "compliance" conditions, on Byrne JAG grant recipients, only the first two of which are at issue in this appeal.

"The partial dissent described the case as follows:

"Specifically, the Attorney General wants Byrne JAG recipients to provide federal immigration agents with notice of the release dates of certain aliens in their custody (the "Notice" condition); provide immigration agents with access to facilities to conduct interviews with certain detainees (the "Access" condition); and provide a certification of compliance with 8 U.S.C. § 1373, which bars governments from prohibiting their officials "from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual" (the "Compliance" condition).

"The case is before us on appeal from a grant of a preliminary injunction forbidding the Attorney General from enforcing the Notice and Access conditions. The Compliance condition is not at issue in this appeal."

I regret any confusion this inadvertence may have caused.

Tracey

Tracey Trautman
Deputy Director
Bureau of Justice Assistance
U.S. Department of Justice
(202) 305-1491 (desk)

Tracey.Trautman@usdoj.gov

From: Trautman, Tracey (OJP)

Sent: Thursday, April 26, 2018 12:54 PM

To: Anderson, Thomas <Thomas.Anderson@vermont.gov>

Cc: Casto, Chris (OJP) <Chris.Casto@ojp.usdoj.gov>; Carr, Karen <Karen.Carr@vermont.gov>; Johnson, Jaye <Jaye.Johnson@vermont.gov>

Subject: RE: 1373 Document Request

Good afternoon Commissioner Anderson:

Our General Counsel has provided the following information per your request below:

The 7th Circuit opinion states expressly as follows:

"Specifically, the Attorney General wants Byrne JAG recipients to provide federal immigration agents with notice of the release dates of certain aliens in their custody (the "Notice" condition); provide immigration agents with access to facilities to conduct interviews with certain detainees (the "Access" condition); and provide a certification of compliance with 8 U.S.C. § 1373, which bars governments from prohibiting their officials "from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual" (the "Compliance" condition).

"The case is before us on appeal from a grant of a preliminary injunction forbidding the Attorney General from enforcing the Notice and Access conditions. The Compliance condition is not at issue in this appeal."

Thank you—

Tracey Trautman

From: Anderson, Thomas [<mailto:Thomas.Anderson@vermont.gov>]

Sent: Friday, April 20, 2018 5:07 PM

To: Trautman, Tracey (OJP) <Tracey.Trautman@ojp.usdoj.gov>

Cc: Casto, Chris (OJP) <Chris.Casto@ojp.usdoj.gov>; Carr, Karen <Karen.Carr@vermont.gov>; Johnson, Jaye

<Jaye.Johnson@vermont.gov>

Subject: RE: 1373 Document Request

Ms. Trautman:

In light of the 7th Circuit's decision in *City of Chicago v. Sessions*, No. 17-2991 (7th Cir. April 19, 2018), I am requesting that the Department of Justice (DOJ) reconsider its request for additional documents from the Vermont Department of Public Safety, which are being sought to demonstrate compliance with DOJ eligibility requirements. A United States Circuit Court has now squarely held that Congress has not delegated to the Attorney General the authority to withhold Byrne JAG grants through the imposition of DOJ conditions on receipt of those funds and has upheld a nationwide preliminary injunction on imposition of such conditions. *See id.*, Slip Opinion at 22 ("[T]he [JAG] statute precisely describes the formula through which funds should be distributed to states and local governments, and imposes precise limits on the extent to which the Attorney General can deviate from that distribution. Against that backdrop, it is inconceivable that Congress would have anticipated that the Assistant Attorney General could abrogate the entire distribution scheme and deny all funds to states and localities that would qualify under the Byrne JAG statutory provisions, based on the Assistant Attorney General's decision to impose his or her own conditions"). Therefore, DOJ's request for additional documents from the Vermont Department of Public Safety in order to show compliance with a DOJ condition for receipt of the grant appears unnecessary and possibly without legal authority. In addition, it will necessitate the expenditure of state funds in order to comply with the request. Moreover, as compellingly set forth in my letter of December 15, 2018, the State of Vermont is in full compliance with 8 U.S.C. § 1373. If DOJ is not willing to withdraw its request, please provide the legal authority for the request in light of the 7th Circuit's decision.

Thank you.

Thomas D. Anderson

Thomas D. Anderson

Commissioner

Department of Public Safety

45 State Dr.

Waterbury, VT 05671

802-244-8718

Thomas.Anderson@vermont.gov

From: Trautman, Tracey (OJP) <Tracey.Trautman@usdoj.gov>

Sent: Thursday, April 12, 2018 6:54 PM

To: Anderson, Thomas <Thomas.Anderson@vermont.gov>

Cc: Casto, Chris (OJP) <Chris.Casto@usdoj.gov>; Carr, Karen <Karen.Carr@vermont.gov>

Subject: 1373 Document Request

Good afternoon Commissioner Anderson:

Enclosed please find a document request related to compliance with 8 USC, Section 1373.

Please return the requested information to myself and Chris Casto via email by Monday, May 14, 2018.

Should you have any questions, please email or call me at the contact numbers noted below.

Thank you—

Tracey Trautman

Tracey Trautman

Deputy Director

Bureau of Justice Assistance

U.S. Department of Justice

(202) 305-1491 (desk)

Tracey.Trautman@usdoj.gov



State of Vermont
Department of Public Safety
45 State Drive
Waterbury, Vermont 05671-1300
<http://dps.vermont.gov/>

May 10, 2018

Via Email through Chris Casto and Tracey Trautman

Jon Adler
Director
Bureau of Justice Assistance
Office of Justice Programs
Washington, D.C. 20531

Dear Director Adler:

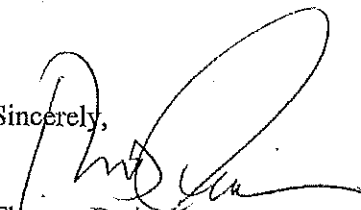
As outlined in my earlier correspondence with your office, although I have serious concerns regarding the Department of Justice's legal authority to request documents as set forth in your letter dated April 12, 2018, because the Vermont Department of Public Safety (DPS) fully complies with all of its obligations under federal law and because it values its partnership with the Department of Justice, enclosed please find the following DPS records responsive to your request.

- Vermont State Police "Fair and Impartial Policing" policy, VSP-DIR-301, effective June 18, 2014;
- Vermont State Police "Fair and Impartial Policing" training bulletin, VSP-TRAIN-1131;
- Vermont State Police "Victims Assistance" policy, VSP-DIR-305, revised September 5, 2014 and in effect until subsequent revision (see below);
- Vermont State Police "Victims Assistance" policy, VSP-DIR-305, effective July 7, 2017;
- Transmittal email dated July 6, 2017 to "DPS - vsp0sworn" listserv, notifying Vermont State Police of revised VSP-DIR-305 policy¹;
- Second transmittal email dated July 7, 2017 to "DPS - vsp0sworn" listserv, notifying Vermont State Police of same revised VSP-DIR-305 policy, with corrected effective date for the policy;
- Email from Vermont State Police Lieutenant Anthony French dated April 8, 2017; and
- Email from Vermont State Police Captain Michael Manley dated April 5, 2017.

Please be advised that by producing these documents, DPS does not waive any rights it may have to challenge or seek legal review of this or any other document request the Department of Justice may make in connection with Byrne JAG funding.

Thank you.

Sincerely,



Thomas D. Anderson
Commissioner of Public Safety

¹ Supervisors periodically follow up with members who have not read and signed policies in a timely manner.



VSP-DIR-301

Fair and Impartial Policing

1.0 PURPOSE

1.1 The intent of this policy is to reaffirm the Vermont State Police commitment to unbiased policing, to clarify the circumstances in which members can consider race, ethnicity, gender or other potentially improper criteria when making law enforcement decisions, and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable and impartial way.

2.0 POLICY

2.1 It is the policy of the Vermont State Police that the department shall not condone the use of any bias based policing in the services our employees provide to the community in connection with our law enforcement activities.

3.0 DEFINITIONS

- (1) "Personal Criteria" may include, but are not limited to, race, ethnicity, immigration status, national origin, color, gender, sexual orientation, gender identity, marital status, mental or physical disability, religion, and socio-economic level.
- (2) "Suspicious activity" is defined as "Observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity." As with investigations of civil violations, if a member needs to identify an individual and that individual does not have identification, the member may use whatever tools, including federal databases, are reasonably necessary to identify the individual under the circumstances.

4.0 PROCEDURE

4.1 Fair and Impartial Policing: General Principles

(1) As required by statutes, Chapter I, Article 11 of the Vermont Constitution and Amendment IV of the United States Constitution, all enforcement actions by law enforcement officers, such as investigative detentions, traffic stops, arrests, searches and seizures, etc., must be based on reasonable suspicion, probable cause, or other required standards.

(A) Members must be able to articulate specific facts, circumstances, and conclusions which support the required standard for enforcement actions.

(B) Members may take into account the reported race, ethnicity or other personal criteria of suspects based on credible, reliable, locally-relevant information that links persons of specific description criteria to particular criminal incidents.

(2) Except as provided in 4.1(1)(B) above:

(A) Members will not consider race, ethnicity, or other personal criteria in establishing either reasonable suspicion or probable cause.

(B) Members will not single out or otherwise treat persons differently because of their race, ethnicity, or other personal criteria. Law enforcement officers may allow for special accommodations to be made for individuals with disabilities.

(C) Members will not engage in biased based profiling tactics in traffic contacts, field contacts, asset seizure/forfeiture processes, or any other law enforcement function.

4.2 Preventing Perceptions of Biased Policing

In an effort to prevent any misperceptions of biased law enforcement, each member shall do the following when conducting pedestrian and vehicle stops:

- (1) be courteous and professional;
- (2) identify himself/herself to the individual (providing name and agency) and state the reason for the stop as soon as practical, unless providing this information will compromise the member's or public safety;
- (3) ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense, and that the individual understands the purpose of reasonable delays;
- (4) answer any questions the individual may have;
- (5) Provide the member's name and duty assignment verbally, when requested. Members may also provide the information in writing or on a business card.
- (6) Explain if the member determines that the reasonable suspicion was unfounded (e.g., after an investigatory stop).

4.3 Responding to Bias-Based Reports:

- (1) If any member of the agency receives a call for service, whose only foundation has to do with an individual's race, ethnicity, gender, age, perceived or known mental illness, sexual orientation, gender identity, marital status, religion, disability, socioeconomic level, immigration status, or other potentially improper personal criteria, the employee will attempt to explore if there are any specific behaviors that call for police response. If no specific behavior is identified, the caller's contact information will be obtained and he/she will be advised that the member in charge of the shift will contact him/her.
- (2) The member will contact the shift supervisor and provide the circumstances of the call. The shift supervisor will contact the caller and explain that we do not respond to calls for service that are based solely on a person's race, ethnicity, gender, age, perceived or known mental illness, sexual orientation, gender identity, marital status, religion, disability, socioeconomic level, immigration status or other potentially improper personal criteria.
- (3) The shift supervisor should attempt to educate the caller on our fair and impartial policing policy and philosophy. He/she should also explain that we respond to behaviors/actions of individuals that appear suspicious, threatening, illegal, etc. and not to situations based solely on a person's characteristics/attributes as defined above. The shift supervisor will document this interaction via an RMS report. In the case of a call for service that is based solely on a caller's suspicion that an individual present in

Vermont is an undocumented foreign national, the supervisor shall inform the caller that federal authorities are primarily responsible for enforcing federal immigration law.

4.4 Matters Relating to Immigration and Citizenship Status

(1) General Policies:

(A) Detecting or apprehending individuals whose only violation of law is that they are foreign citizens present in the United States without authorization and proper documentation is not a law enforcement priority for the Vermont State Police. Accordingly, except as noted below, members should not use agency resources, equipment or personnel for the purpose of detecting or apprehending individuals whose only violation of law is that they are present in the United States without authorization and proper documentation.

(B) Members shall not stop, investigate, detain or question an individual solely for the purpose of determining whether the individual is in the United States without authorization and proper documentation.

(C) An individual's presence in the United States without proper documentation or authority, standing alone, when that individual has not been previously removed, is not a criminal violation. Therefore, members may not initiate an investigation based solely on information or suspicion that an individual is in the United States without authorization and proper documentation.

(2) Inquiries Concerning Citizenship Status

(A) Members should not ask an individual about his or her immigration status when investigating a civil violation. If a member needs to identify an individual and that individual does not have identification, the member may use whatever tools, including federal databases, are reasonably necessary to identify the individual under the circumstances. Identification methods may include a foreign passport, consular identification, or other government-issued documents that are reasonably reliable, subject to the same reasonable scrutiny and follow-up for authentication as any other forms of identification.

(B) With regard to investigations involving criminal offenses or suspicious activity, a member may ask an individual about his or her immigration status under the following circumstances:

i) If the member is conducting a criminal investigation or an investigation of suspicious activity based on reasonable suspicion AND the immigration status of the suspect is relevant to the investigation, provided that the investigation is initiated for a reason or reasons independent of information or suspicion that an individual is (or individuals are) in the United States without proper authorization in violation of the civil provisions of federal immigration law; or

ii) After a suspect has been arrested for a criminal violation.

(3) Notwithstanding the provisions in sections 1 and 2, above,

(A) members operating near the Canadian border who have reason to believe that an illegal border crossing has immediately occurred may ask a suspect about his or her immigration status;

(B) members operating near the Canadian border may solicit the support of federal law enforcement in connection with state law matters if reasonably necessary to protect officer and/or public safety; and

(C) members operating near the Canadian border may make inquiries consistent with sections (1) and (2) above.

(4) This policy is not intended to impair relationships with federal authorities, compromise officer safety, or hinder local, state or federal law enforcement priorities. It is not intended to change the Vermont State Police's cooperation and coordination with federal authorities to enhance border security.

4.5 Compliance

(1) The Vermont State Police are committed to providing periodic cultural training for its members. Fair and Impartial Policing training will be conducted annually for all members. It is the goal of this Department to ensure that all employees are sensitive to, and aware of, cultural diversity issues and what constitutes biased policing.

(2) The Vermont State Police is committed to the vigorous investigation of complaints of this nature and violations of this policy shall result in disciplinary action.

(3) Additionally, the Vermont State Police has in place committees to review all video tapes on reported use of force, pursuit, and vehicle searches. The opinions and recommendations of each respective committee are forwarded to the Vermont State Police Office of Professional Development for review.

4.6 Supervision and Accountability

(1) Supervisors shall ensure that all members in their command are familiar with the content of this policy and are operating in compliance with it. Supervisors should randomly review records such as reports or video/audio recordings, or otherwise monitor the conduct of the members in their command for the purpose of ensuring compliance with this policy and to identify training issues.

(2) Upon the request from a member of the public, members will explain how a person should make a complaint regarding an officer's conduct.

(3) All members are required to report allegations, complaints, or knowledge of a suspected violation of this policy in accordance with VSP-GEN-205, of the Department's Rules and Regulations.

(4) The Department shall investigate alleged violations of this policy in accordance with the provisions of VSP-GEN-205, of the Department's Rules and Regulations.

(5) Members are required to annually review the Office of Professional Development training segment related to Fair and Impartial Policing.

4.7 Annual Review

1) The Vermont State Police Fair and Impartial Policing Committee will convene annually to review current policies, practices, and citizen concerns regarding fair and impartial policing.

Effective December 10, 2003

Revised May 15, 2009

Revised July 15, 2011
Revised November 4, 2011

Revised June 18, 2014

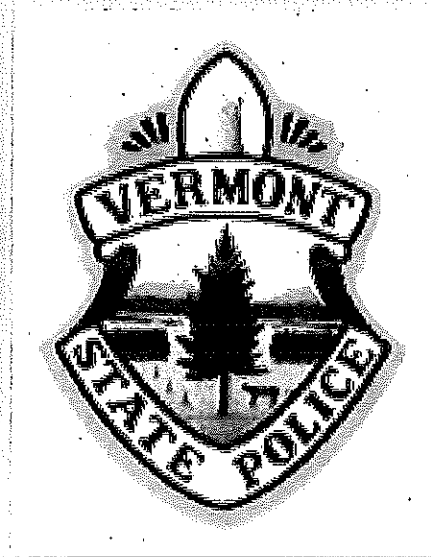
The Vermont State Police Manual is not intended to apply in any criminal or civil proceeding outside of internal Department proceedings. No policy included in this publication should be construed as creating a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.



VSP-TRAIN-1131

Fair and Impartial Policing Training

Below is a series of PowerPoint slides that provide training on the topic of Fair and Impartial Policing. Once you have completed a review of all content, please electronically sign this document.

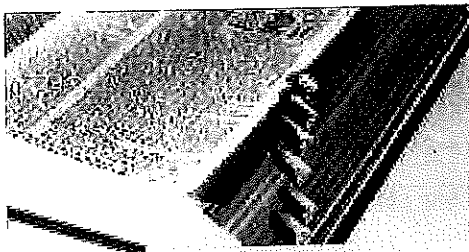


Fair and Impartial Policing



The Vermont State Police will not condone the use of any bias based policing in the services our employees provide to the community in connection with our law enforcement activities.

Policy Statement



Conduct by law enforcement members motivated solely by "Personal Criteria".

Race

Ethnicity

Immigration status

National origin

Color

Gender

Sexual orientation

Gender identity

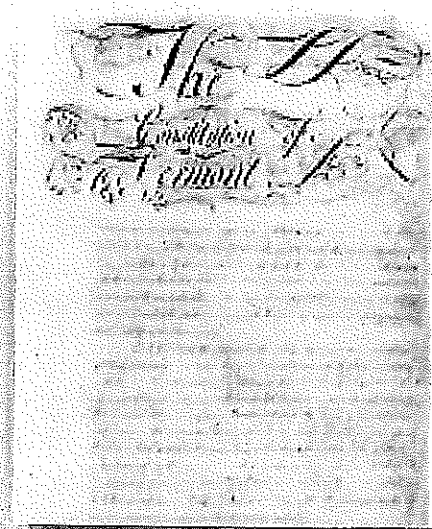
Marital status

Mental or physical disability

Religion

Socio-economic level

Definition - Bias Based Policing



All enforcement actions must be based on reasonable suspicion, probable cause, or other required standards. Articulate specific facts, circumstances, and conclusions which support the required standard for enforcement actions.

Constitutional Provisions

NOTES: As required by statutes, Chapter I, Article 11 of the Vermont Constitution and Amendment IV of the United States Constitution, all enforcement actions by law enforcement officers, such as investigative detentions, traffic stops, arrests, searches and seizures, etc., must be based on reasonable suspicion, probable cause, or other required standards.

Law enforcement officers must be able to articulate specific facts, circumstances, and conclusions which support the required standard for enforcement actions.

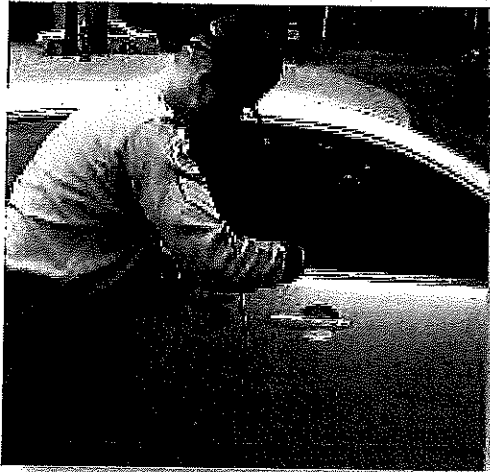
Law enforcement officers may take into account the reported race, ethnicity or other personal criteria of suspects based on credible, reliable, locally-relevant information that links persons of specific description criteria to particular criminal incidents.



Be courteous and professional. Answer questions.

Pedestrian and Vehicle Stops

NOTES: In an effort to prevent inappropriate perceptions of bias based policing, each member will do the following when conducting pedestrian and vehicle stops.

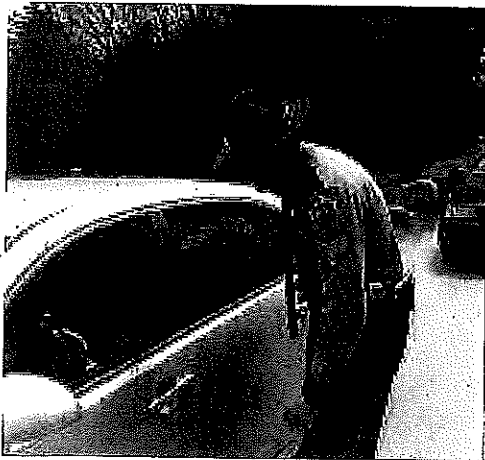


Be courteous and professional.

Identify himself or herself to the individual and state the reason for the stop as soon as practical.

Ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense, and that the individual understands the purpose of reasonable delays.

Procedures 1



Answer any questions the individual may have.

Provide the member's name and duty assignment verbally, when requested.

Explain if the member determines that the reasonable suspicion was unfounded.

Procedures 2

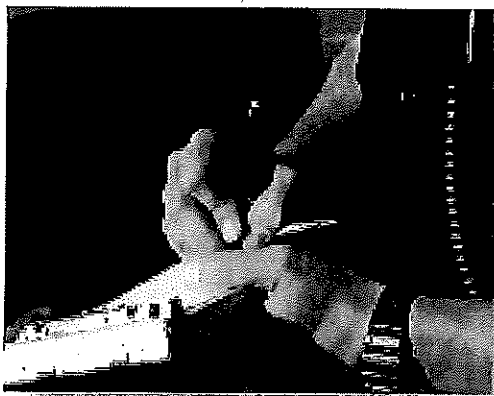


Don't use agency resources, equipment or personnel to detect or apprehend individuals whose only violation of law is that they are present in the US without authorization and proper documentation.

Immigration Law Enforcement

NOTES: Detecting or apprehending individuals whose only violation of law is that they are foreign citizens present in the United States without authorization and proper documentation is not a law enforcement priority for the Vermont State Police. An individual's presence in the United States without proper documentation or authority, standing alone, when that individual has not been previously removed, is not a criminal violation. Therefore, members will not initiate an investigation based solely on information or suspicion that an individual is in the United States without authorization and proper documentation.

Members should not use agency resources, equipment or personnel for the purpose of detecting or apprehending individuals whose only violation of law is that they are present in the United States without authorization and proper documentation.

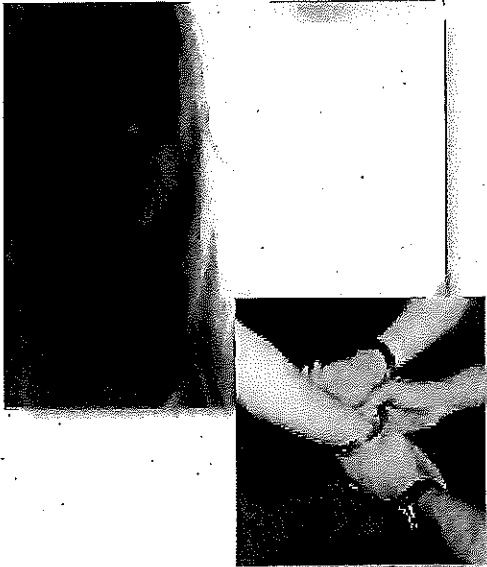


Do not ask about immigration status when investigating a civil violation.

If a member needs to identify an individual and that individual does not have identification, the member may use whatever tools, including federal databases, are reasonably necessary to identify the individual under the circumstances.

Procedures 1

NOTES: Members should not ask an individual about his or her immigration status when investigating a civil violation. If a member needs to identify an individual and that individual does not have identification, the member may use whatever tools, including federal databases; are reasonably necessary to identify the individual under the circumstances. Identification methods may include a foreign passport, consular identification, or other government-issued documents that are reasonably reliable, subject to the same reasonable scrutiny and follow-up for authentication as any other forms of identification.



When conducting a criminal investigation or an investigation of suspicious activity based on reasonable suspicion AND the immigration status of the subject is relevant to the investigation.

After a suspect has been arrested for a criminal violation.

Procedures 2

NOTES: If a member is investigating a criminal offense or suspicious activity, a member may ask an individual about his or her immigration status under the following circumstances.

If the member is conducting a criminal investigation or an investigation of suspicious activity based on reasonable suspicion AND the immigration status of the subject is relevant to the investigation, such as may be the case in some instances of Human Trafficking, provided that the investigation is initiated for a reason or reasons independent of information or suspicion that an individual is (or individuals are) in the United States without proper authorization in violation of the civil provisions of federal immigration law.

- (2) After a suspect has been arrested for a criminal violation.



"Suspicious activity" is defined as "Observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity".

Suspicious Activity

NOTES: "Suspicious activity" is defined as "Observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity."

As with investigations of civil violations, if a member needs to identify an individual and that individual does not have identification, the member may use whatever tools, including federal databases that are reasonably necessary to identify the individual under the circumstances.



Ensure that all are familiar with the content of the Vermont State Police Bias Free Policing policy and are operating in compliance.

Supervision and Accountability

NOTES: Supervisors shall ensure that all members in their command are familiar with the content of the Vermont State Police Bias Free Policing policy and are operating in compliance with it. Supervisors should randomly review records such as reports or video and audio recordings, or otherwise monitor the conduct of the members in their command for the purpose of ensuring compliance with this policy and to identify training issues.

Upon the request from a member of the public, members will explain how a person should make a complaint regarding an officer's conduct.

All members are required to report allegations, complaints, or knowledge of a suspected violation of this policy in accordance with Section III, Article III, of the Department's Rules and Regulations.

The Department shall investigate alleged violations of this policy in accordance with the provisions of Section III, Article III, of the Department's Rules and Regulations.



The Vermont State Police will not condone the use of any bias based policing in the services our employees provide to the community in connection with our law enforcement activities.

Detecting or apprehending individuals whose only violation of law is that they are foreign citizens present in the United States without authorization and proper documentation is not a law enforcement priority for the Vermont State Police.

Summary

NOTES: The Vermont State Police will not condone the use of any bias based policing in the services our employees provide to the community in connection with our law enforcement activities.

Bias Based Policing is defined as - Conduct by law enforcement members motivated solely by "Personal Criteria". "Personal Criteria" may include, but is not limited to, race, ethnicity, immigration status, national origin, color, gender, sexual orientation, gender identity, marital status, mental or physical disability, religion, and socio-economic level.

Detecting or apprehending individuals whose only violation of law is that they are foreign citizens present in the United States without authorization and proper documentation is not a law enforcement priority for the Vermont State Police.

**VSP-DIR-305****Victims Assistance**

1.0 PURPOSE

- 1.1 This agency recognizes that law enforcement is dependent upon the aid of crime victims and witnesses in order to hold criminals accountable for their actions. It is desirable to gain the cooperation of victims and witnesses, thereby enhancing the agency's ability to make arrests that will result in criminal prosecution.

2.0 POLICY

- 2.1 To provide sensitive, fair, and high quality services to crime victims and witnesses.

3.0 PROCEDURE**3.1 Victim and Witness Contact**

- (1) All victims and witnesses shall be treated with courtesy, sensitivity, and respect.
- (2) Members shall make reasonable efforts to inform victims of crime of available services. Victims and witnesses will be offered a safe and friendly location for providing statements or other investigatory processes. Members shall ensure continued safety by reviewing safety planning with victim/witness when appropriate.

3.2 Analysis of Needs and Available Services

- (1) All Vermont State Police members are charged with providing high quality assistance to victims and witnesses consistent with section 3.1 of this policy.
- (2) The Vermont Victim Assistance Program provides each county with a Victim Advocate Service that is available to all crime victims and witnesses. The Victim Advocate is engaged in an ongoing evaluation of the needs of crime victims and available services.
- (3) The Vermont State Police shall maintain a close working relationship with all victim service agencies and their respective advocates.

3.3 Procedures for Victim/Witness Assistance

- (1) The Vermont State Police will ensure the confidentiality of victims and witnesses, and their role in case development, to the extent allowed by law.
- (2) Victim/Witness assistance information shall be available to the public 24 hours a day through the department's Public Safety Answering Points (PSAP's). Dispatchers shall provide callers with appropriate referrals from the list below:
 - (A) Medical Attention - an ambulance or referral to one of the local hospitals
 - (B) Counseling - Women's Rape Crisis Center, Women Helping Battered Women (WHBW), Crisis, or other agencies.

(C) Emergency Financial Assistance - Referral to the Department of Social Welfare or the Victim/Witness Advocate of the State's Attorney's Office, or the Vermont Center for Crime Victim Services (Victim Compensation).

(D) Legal - Referrals will be made when appropriate to individuals needing assistance in civil restraining orders to appropriate community-based agencies. Immigration-related referrals shall be made to the Vermont Refugee Assistance Program.

(E) For all other requests, the dispatcher shall attempt to provide an appropriate referral from the telephone lists maintained within each PSAP including a referral to the 211 service.

3.4 Assisting Immigrant Victims/Witnesses

(1) To effectively serve immigrant communities and to ensure trust and cooperation of all victims/witnesses, members will not ask about, or investigate immigration status of crime victims/witnesses. Federal law does not require law enforcement officers to ask about the immigration status of crime victims/witnesses.

(2) Members will ensure that individual immigrants and immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses.

(3) Members should communicate that they are there to provide assistance and to ensure safety, and not to deport victim/witnesses, and that members do not ask victims/witnesses about their immigration status, nor will they report immigrants or immigration status to the Bureau of Immigration and Customs Enforcement (BICE).

3.5 Assistance During Preliminary Investigation

(1) In addition to investigating alleged criminal incidents, members should seek to provide assistance to the victims of crime and the persons who witness criminal behavior. During the preliminary investigation of any incident, the investigating member shall seek to:

(A) Ensure victims'/witnesses' safety and to create a safety plan when appropriate.

(B) Provide the victim/witness information regarding available services. Depending on the nature of the incident, the following referrals may be appropriate; counseling, medical attention, emergency, shelter, victim advocacy, or compensation programs.

(C) Provide the victim/witness with the case number and information regarding subsequent steps, if any, in the processing of the case.

(D) Provide the victim/witness with the appropriate number to call to report additional information or to receive information about the status of the case.

(E) Remind the victim/witness to immediately report any further threats or intimidation from the suspect or the suspect's friends or family.

(F) Victims/Witnesses who express specific reasons for fearing future intimidation or victimization should be referred to either Family Court for a Relief from Abuse Order or the State's Attorney's Office for Conditions of Release.

(2) When appropriate, any reports received of further victimization or intimidation of victims/witnesses should be investigated as a separate incident.

3.6 Assistance During Follow-Up Investigation

(1) During the follow up investigation, most of the victim assistance will be the responsibility of the State's Attorney's Office Victim Advocate. The Victim Advocate maintains contact with victims until final case disposition to inform them of all court hearings and, if necessary, to provide transportation for the victim to attend. Other services available include, but are not limited to, arranging for daycare so the victim can attend court hearings, arranging for counseling, and assistance with shelter.

(2) The Victim Advocate is mandated by state law to explain to all victims and witnesses the procedures involved in the prosecution of their case and their role in this procedure.

(3) The investigating member shall schedule necessary lineups and additional interviews with the victim or witness. If needed, transportation can be arranged through the Victim Advocate.

(4) Property taken as evidence from a victim or witness shall be returned as promptly as possible. The Victim Advocate frequently fields requests for return of property and is available to explain to victims and witnesses the evidentiary value of their property if it necessary to hold the item for trial.

3.7 Notification of Victim Upon Arrest or Change in Custody

(1) When a suspect is arrested for any crime, the arresting member should attempt to determine if the victim wants to be notified of any subsequent change in custody status. If the victim indicates that he/she would like to be notified, members should complete the form provided by the Victim Advocate with the victim's name, address and phone number.

(2) If the suspect is bailed out prior to arraignment, the booking officer at Corrections is responsible for notifying the victim listed on the sheet.

(3) If the suspect's custody status changes at arraignment, the Victim Advocate is responsible for notifying the victim. If, at any time after incarceration, the custody status of a suspect changes (escape, furlough, etc.), the Department of Corrections is responsible for notifying the victim.

4.0 Resources

4.1 Assisting Immigrant Victims of Domestic Violence - Law Enforcement Guide (pdf)

Effective October 1, 1987

Revised July 1, 1990

Revised December 1, 1997

Revised April 15, 2009

Revised September 5, 2014

The Vermont State Police Manual is not intended to apply in any criminal or civil proceeding outside of internal Department proceedings. No policy included in this publication should be construed as creating a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.



VSP-DIR-305

Victim's Assistance

1.0 Purpose

- 1.1 This agency recognizes that law enforcement is dependent upon the aid of crime victims and witnesses in order to hold criminals accountable for their actions. It is desirable to gain the cooperation of victims and witnesses, thereby enhancing the agency's ability to make arrests that will result in criminal prosecution.

2.0 Policy

- 2.1 To provide sensitive, fair, and high quality services to crime victims and witnesses.

3.0 Procedure

3.1 Victim and Witness Contact

- A. All victims and witnesses shall be treated with courtesy, sensitivity, and respect.
- B. Members shall make reasonable efforts to inform victims of crime of available services. Victims and witnesses will be offered a safe and friendly location for providing statements or other investigatory processes. Members shall ensure continued safety by reviewing safety planning with victims/witnesses when appropriate.

3.2 Analysis of Needs and Available Services

- A. All Vermont State Police members are charged with providing high quality assistance to victims and witnesses consistent with section 3.1 of this policy.
- B. The Vermont Victim Assistance Program provides each county with a Victim Advocate Service that is available to all crime victims and witnesses. The Victim Advocate is engaged in an ongoing evaluation of the needs of crime victims and available services.

- C. The Vermont State Police shall maintain a close working relationship with all victim service agencies and their respective advocates.

3.3 Procedures for Victim/Witness Assistance

- A. The Vermont State Police will ensure the confidentiality of victims and witnesses, and their role in case development, to the extent allowed by law.
- B. Victim/Witness assistance information shall be available to the public 24 hours a day through the department's Public Safety Answering Points (PSAPs). Dispatchers shall provide callers with appropriate referrals from the list below:
 - 1. Medical Attention - an ambulance or referral to one of the local hospitals.
 - 2. Counseling - Women's Rape Crisis Center, Women Helping Battered Women (WHBW), Crisis, or other agencies.
 - 3. Emergency Financial Assistance - Referral to the Department of Social Welfare or the Victim/Witness Advocate of the State's Attorney Office, or the Vermont Center for Crime Victim Services (Victim Compensation).
 - 4. Legal - Referrals will be made when appropriate to individuals needing assistance in civil restraining orders to appropriate community based agencies. Immigration related referrals shall be made to the Vermont Refugee Assistance Program.
 - 5. For all other requests, the dispatcher shall attempt to provide an appropriate referral from the telephone lists maintained within each PSAP, including a referral to the 211 service.

3.4 Assisting Immigrant Victims/Witnesses

- A. To effectively service immigrant communities and to ensure trust and cooperation of all victims/witnesses, members will not ask about, or investigate immigration status of crime victims/witnesses. Federal law does not require law enforcement officers to ask about the immigration status of crime victims/witness. Although communication with federal

immigration authorities regarding victim/witness immigration status is permitted, it is not required under 8 U.S.C. §§ 1373 and 1644.

- B. Members will ensure that individual immigrants and immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses.
- C. Members should communicate that they are here to provide assistance and to ensure safety, not to deport victims/witnesses, and that members do not ask victims/witnesses about their immigration status unless obtaining information regarding immigration status is relevant to the criminal investigation (for example, in human trafficking investigations). In instances where the victim/witness is also a suspect, please refer to VSP-DIR-301 4.4.2, Inquiries Concerning Citizen Status.

3.5 Assistance During Preliminary Investigation

- A. In addition to investigating alleged criminal incidents, members should seek to provide assistance to the victims of crime and the persons who witness criminal behavior. During the preliminary investigation of any incident, the investigating member shall seek to:
 - 1. Ensure victim/witness safety and to create a safety plan when appropriate.
 - 2. Provide the victim/witness information regarding available services. Depending on the nature of the incident, the following referrals may be appropriate: counseling, medical attention, emergency shelter, victim advocacy, or compensation programs.
 - 3. Provide the victim/witness with the case number and information regarding subsequent steps, if any, in the processing of the case.
 - 4. Provide the victim/witness with the appropriate number to call to report additional information or to receive information about the status of the case.
 - 5. Remind the victim/witness to immediately report any further threats or intimidation from the suspect or the suspect's friends or family.
 - 6. Victims/Witnesses who express specific reasons for fearing future intimidation or victimization should be referred to either Family

Court for a Relief from Abuse Order or the State's Attorney Office for Conditions of Release.

- B. When appropriate, any reports received of further victimization or intimidation of victims/witnesses should be investigated as a separate incident.

3.6 Assistance During Follow-Up Investigation

- A. During the follow up investigation, most of the victim assistance will be the responsibility of the State's Attorney Office Victim Advocate. The Victim Advocate maintains contact with victims until final case disposition to inform them of all court hearings and, if necessary, to provide transportation for the victim to attend. Other services available include, but are not limited to, arranging for daycare so the victim can attend court hearings, arranging for counseling, and assisting with shelter.
- B. The Victim Advocate is mandated by state law to explain to all victims and witnesses the procedures involved in the prosecution of their case and their role in this procedure.
- C. The investigating member shall schedule necessary lineups and additional interviews with the victim or witness. If needed, transportation can be arranged through the Victim Advocate.
- D. Property taken as evidence from a victim or witness shall be returned as promptly as possible. The Victim Advocate frequently fields requests for return of property and is available to explain to victims and witnesses the evidentiary value of their property if it is necessary to hold the item for trial.

3.7 Notification of Victim Upon Arrest or Change in Custody

- A. When a suspect is arrested for any crime, the arresting member should attempt to determine if the victim wants to be notified of any subsequent change in custody status. If the victim indicates he/she would like to be notified, members should complete the form provided by the Victim Advocate with the victim's name, address, and phone number.
- B. If the suspect is bailed out prior to arraignment, the booking officer at Corrections is responsible for notifying the victim listed on the sheet.

- C. If the suspect's custody status changes at arraignment, the Victim Advocate is responsible for notifying the victim. If, at any time after incarceration, the custody status of the suspect changes (escape, furlough, etc.), the Department of Corrections is responsible for notifying the victim.

4.0 Resources

4.1 Assisting Immigrant Victims of Domestic Violence - Law Enforcement Guide (pdf).

Effective October 1, 1987

Revised July 1, 1990

Revised December 1, 1997

Revised April 15, 2009

Revised September 5, 2014

Revised July 7, 2017

The Vermont State Police Manual is not intended to apply in any criminal or civil proceeding outside of internal Department proceedings. No policy included in this publication should be construed as creating a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

Storm, Heidi

From: VSP Sworn (hqOff, DPSLegal, HQ1VSPADMIN and 309 users)
<VSP0SWORN@LISTSERV.DPS.STATE.VT.US> on behalf of Yates, Linda
<Linda.Yates@VERMONT.GOV>
Sent: Thursday, July 6, 2017 10:14 AM
To: DPS - vsp0sworn
Subject: [VSP0SWORN] Policy Change Effective July 21, 2017

The following policy is issued or revised effective July 21, 2017. All sworn members must sign into Power DMS <https://powerdms.com/ui/Login.aspx> to read the policy and acknowledge the same by electronic signature no later than July 21, 2017. This is the only notice you will receive.

1. VSP-DIR-305 Victim's Assistance Awards.

Additional language added to section 3.4.

*Linda J. Yates, Executive Staff Assistant
Vermont State Police – Director's Office
45 State Drive
Waterbury VT 05671-1300
802-241-5260 phone
802-241-5551 fax
Linda.Yates@vermont.gov*

Storm, Heidi

From: DPS - vsp0sworn on behalf of Yates, Linda <Linda.Yates@VERMONT.GOV>
Sent: Friday, July 7, 2017 11:24 AM
To: DPS - vsp0sworn
Subject: [VSP0SWORN] Policy Change Effective July 7, 2017

Importance: High

This is an amendment to the message that was distributed on July 6, 2017. The following policy is issued or revised effective July 7, 2017 not July 21, 2017 as was advised. All sworn members must sign into Power DMS <https://powerdms.com/ui/Login.aspx> to read the policy and acknowledge the same by electronic signature. This is the only notice you will receive.

1. VSP-DIR-305 Victim's Assistance

Additional language added to section 3.4.

*Linda J. Yates, Executive Staff Assistant
Vermont State Police – Director's Office
45 State Drive
Waterbury VT 05671-1300
802-241-5260 phone
802-241-5551 fax
Linda.Yates@vermont.gov*

French, Anthony

From: French, Anthony
Sent: Saturday, April 8, 2017 9:13 AM
To: Buckley, Chris; LaBombard, Francis; Martin, Daniel V; Perkins, Mark; Dean, Paul; Diaz, Roel; Frissora, Anthony; Gauthier, Zachary; Hashim, Nader; Hudon, Jeff; Hughes, Kevin; Lengfellner, Jason; Lunderville, Bryson; Matthews, James; Reilly, Sean; Salvatore, Gary; Shepley, Colin; Sorensen, Mike; Soule, Austin; Steeves, Matthew; Trenosky, Max; Turner, Brian; Valcourt, Travis; Vitali, Eric; Waitekus, John
Subject: FW: ICE ERO Duty Phone Number

Troops,

See below contact information for ICE. Make sure you are following the policy on this, it's a hot topic. There's more to the policy, but basically if you arrest someone, you may call ICE. In any situation, before you were to call, run it by a supervisor.

Lieutenant Anthony French
Station Commander
Westminster Barracks
1330 Westminster Heights Road
Putney, VT 05346
(802) 722-4600

From: Curtis, Jefferey [REDACTED]
Sent: Tuesday, April 4, 2017 5:19 PM
To: Manley, Michael <Michael.Manley@vermont.gov>
Subject: ICE ERO Duty Phone Number

Captain Manley,

Please inform your troopers Immigration and Customs Enforcement, Enforcement and Removal Operations has a new duty officer phone number.

The phone number is [REDACTED] (Please do not share with the general public this is for law enforcement personnel only)

If for any reason you need to verify the identity of a subject you are investigating please feel free to give us a call at the above duty officer phone or you can call me at one of the numbers below. We will do our best to assist you.

If you have any questions please give me a call.

Jefferey Curtis, SDDO
DHS/ICE/ERO/BOS
[REDACTED]

Farmer, Roger

From: Manley, Michael
Sent: Wednesday, April 5, 2017 8:33 PM
To: Danoski, Jeffrey; Studin, Michael; O'Donnell, Hugh; Farmer, Roger; French, Anthony
Subject: FW: ICE ERO Duty Phone Number

As you can see, I am backed up with emails this week....See below, good info for everyone to have. I passed along to dispatch as well...

Captain Michael Manley
Troop Commander-Troop B
Vermont State Police
P.O. Box 83
New Haven, VT 05472
P: 802-388-4919

From: Curtis, Jefferey [REDACTED]
Sent: Tuesday, April 4, 2017 5:19 PM
To: Manley, Michael <Michael.Manley@vermont.gov>
Subject: ICE ERO Duty Phone Number

Captain Manley,

Please inform your troopers Immigration and Customs Enforcement, Enforcement and Removal Operations has a new duty officer phone number.

The phone number is [REDACTED] (Please do not share with the general public this is for law enforcement personnel only)

If for any reason you need to verify the identity of a subject you are investigating please feel free to give us a call at the above duty officer phone or you can call me at one of the numbers below. We will do our best to assist you.

If you have any questions please give me a call.

Jefferey Curtis, SDDO
DHS/ICE/ERO/BOS

From: Trautman, Tracey (OJP) <Tracey.Trautman@usdoj.gov>
Sent: Monday, July 2, 2018 5:47 PM
To: Anderson, Thomas
Cc: Casto, Chris (OJP); Carr, Karen
Subject: Additional request for information
Attachments: VT Document Request Follow Up_070218.pdf

Good afternoon Commissioner Anderson:

Enclosed please find a supplemental request for information. Please provide your response to me at this email address, with a copy to Chris Casto.

Please send your response at your earliest convenience, and I will ask for an expedited review.

Thanks-
Tracey

Tracey Trautman
Deputy Director
Bureau of Justice Assistance
U.S. Department of Justice
(202) 305-1491 (desk)
[REDACTED]
Tracey.Trautman@usdoj.gov



U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

July 2, 2018

Thomas Anderson
Commissioner
Vermont Department of Public Safety
45 State Drive
Waterbury, VT 05671

RE: Award Number 2016-DJ-BX-0406, Vermont Department of Public Safety

Dear Commissioner Anderson:

Thank you for your May 10, 2018, response to the Department's request for information related or pertinent to your FY 2016 Byrne JAG award — specifically, information regarding compliance with 8 U.S.C. § 1373, a statute that the solicitation under which the award was made expressly indicated was an applicable federal law.

The Department remains concerned as to the interpretation and application of Vermont's policies. For example, Vermont's Fair and Impartial Policing Policy Section XI(a)¹ states the following:

Information about an individual that is outside the scope of Sections 1373 and 1644 (*i.e.*, information other than "citizenship or immigration status") should not be shared with federal immigration authorities unless there is justification on the grounds of (i) public safety, (ii) officer safety, or (iii) law enforcement needs that are not related to the enforcement of federal civil immigration law.

This policy restricts information sharing with federal immigration authorities and, in purporting to circumscribe Section 1373, mischaracterizes its scope as being limited to "citizenship or immigration" status information when Section 1373 is broader and covers "information *regarding*" citizenship or immigration status.

In addition, the Vermont State Police "Fair and Impartial Policing" training bulletin provided in your response states "[d]on't use agency resources, equipment or personnel to detect or apprehend individuals whose only violation of law is that they are present in the US without authorization and proper documentation." See VSP-DIR-301. A state police officer responding to

¹ See Model Fair and Impartial Policing Policy (approved by the Criminal Justice Training Council on December 7, 2017), available at <http://vcjtc.vermont.gov/sites/vcjtc/files/files/Fair%20and%20Impartial%20Policing%20Policy%2012-7-2017.pdf>. Effective March 1, 2018, Vermont law enforcement agencies are required to adopt a fair and impartial policing policy that includes, at a minimum, each component of the Criminal Justice Training Council's model fair and impartial policing policy. Vt. Stat. Ann. tit. 20, § 2366. If this is not the operative policy, please inform the Department in your response.

an ICE inquiry may be construed as “using agency . . . personnel to detect or apprehend” an individual illegally present in the United States, which would violate the training bulletin’s statement. This prohibition would restrict information sharing with federal immigration authorities and appears to violate Section 1373.²

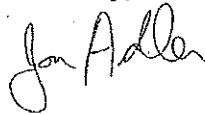
The Department is concerned that Vermont’s policies may restrict responding to ICE inquiries for information that falls within the scope of Section 1373—specifically, inquiries regarding the custody status, release date, and personal information (such as address) of aliens in criminal custody in Vermont.

Assuming Vermont is willing to certify, unequivocally, that its policies do not restrict individuals or local jurisdictions from responding to such inquiries—and will make that clear to any entities that would be affected by this policy or a substantially similar policy—the Department would have no evidence that Vermont is currently out of compliance with Section 1373. Please inform the Department whether Vermont is willing to provide such assurances and clarifications.

The request for information was made in keeping with the Department’s authorities in connection with the award, *see, e.g.*, 34 U.S.C. § 10230(b); 2 C.F.R. § 200.336(a), and further to its ongoing award-monitoring and -oversight obligations, which (of course) it will continue to discharge as to all aspects of the award, to include (consonant with the award solicitation) compliance with Section 1373.

The Department has not made a final determination regarding Vermont’s compliance with Section 1373. This letter does not constitute final agency action and nothing in this letter creates any right or benefit enforceable at law against the United States.

Sincerely,



Jon Adler
Director

²

The email from Vermont State Police Lieutenant Anthony French dated April 8, 2017, which was provided in your response, states that law enforcement officers should call a supervisor “[i]n any situation” before calling ICE. If these conversations result in officers failing to provide information within the scope of Section 1373 that would have otherwise been provided, this could violate Section 1373.

From: Trautman, Tracey (OJP) <Tracey.Trautman@usdoj.gov>
Sent: Monday, July 2, 2018 5:43 PM
To: Anderson, Thomas
Cc: Casto, Chris (OJP)
Subject: RE: Vermont Byrne JAG

Commissioner Anderson:

I do apologize for the delay, and I appreciate your comments on the impact of the lack of funding. I'll move these to my boss (BJA Director) and our Principal Deputy Assistant Attorney General.

It looks like the Department is requesting additional information on your last submission, and I will be sending you another letter shortly.

Thank you—

Tracey

Tracey Trautman
Deputy Director
Bureau of Justice Assistance
U.S. Department of Justice
(202) 305-1491 (desk)

Tracey.Trautman@usdoj.gov

From: Anderson, Thomas [mailto:Thomas.Anderson@vermont.gov]
Sent: Monday, July 02, 2018 5:19 PM
To: Trautman, Tracey (OJP) <Tracey.Trautman@ojp.usdoj.gov>
Cc: Casto, Chris (OJP) <Chris.Casto@ojp.usdoj.gov>
Subject: Vermont Byrne JAG

Tracey: Thank you for speaking with me this afternoon. To reiterate, the continued withholding the FY17 Byrne JAG grant from Vermont will have significant impacts on our ability to combat the opioid epidemic that continues to grip our state. This grant provides funding for salaries of a state police sergeant (supervisor) and a local officer, both assigned full time to the State Police Drug Task Force. In addition to salaries, Byrne JAG provides funding for overtime, equipment, and general day-to-day operating expenses, including money needed for the purchase of evidence, i.e., "buy money." Without this funding, we would be forced to eliminate the sergeant position and one local officer from the task force. This in turn would result in us having to reduce the number of VDTF units from 4 to 3 with a concomitant reduction of DTF coverage statewide. This would be a win for heroin traffickers targeting Vermont.

I am also perplexed why a decision on the continued withholding of this grant has not been made. I provided our initial response to DOJ regarding its concerns about the State of Vermont's compliance with 8 U.S.C. § 1373 in mid-December. As that response made clear, the State of Vermont is in full compliance with its obligations under the law. It was not until mid-April that OJP provided any response to my December letter by requesting additional information. This was provided in early May. Thus, OJP has been reviewing this matter for nearly 7 months. I therefore respectfully request that OJP promptly decide whether to permanently withhold the FY17 grant or release these funds. As I mentioned, I stand ready to answer any further questions OJP has regarding Vermont's compliance with 1373.

Thanks again.

Tom

Thomas D. Anderson
Commissioner
Department of Public Safety
45 State Dr.
Waterbury, VT 05671
802-244-8718
Thomas.Anderson@vermont.gov

From: Trautman, Tracey (OJP) <Tracey.Trautman@usdoj.gov>
Sent: Friday, July 6, 2018 4:54 PM
To: Anderson, Thomas
Cc: Casto, Chris (OJP); Carr, Karen; Gretkowski, Rosemary
Subject: RE: Additional request for information

Good afternoon Commissioner Anderson:

What the DOJ is requesting specifically is a written assurance that Vermont's policies, in practice (as a matter of fact), do not restrict individuals or local jurisdictions from responding to inquiries from the U.S. Immigration and Customs Enforcement (ICE) –including inquiries regarding the custody status, release date, and personal information (such as address) of aliens in criminal custody.

It is true that the DOJ interprets the foregoing information to fall within the scope of 8 U.S.C. § 1373; and if the DPS disagrees (in whole or in part), the DOJ will, of course, consider any views or arguments the DPS may wish to offer. Even if DPS does not agree with this legal interpretation, the cooperation requested to qualify for the grant is to respond to inquiries regarding the custody status, release date, and personal information (such as address) of aliens in criminal custody.

Thanks and have a good weekend—

Tracey

Tracey Trautman
Deputy Director
Bureau of Justice Assistance
U.S. Department of Justice
(202) 305-1491 (desk)
[REDACTED]
Tracey.Trautman@usdoj.gov

From: Anderson, Thomas [mailto:Thomas.Anderson@vermont.gov]
Sent: Thursday, July 05, 2018 4:23 PM
To: Trautman, Tracey (OJP) <Tracey.Trautman@ojp.usdoj.gov>
Cc: Casto, Chris (OJP) <Chris.Casto@ojp.usdoj.gov>; Carr, Karen <Karen.Carr@vermont.gov>; Gretkowski, Rosemary <Rosemary.Gretkowski@vermont.gov>
Subject: RE: Additional request for information

Thanks Tracy.

Just so I am clear, DOJ is requiring the Department of Public Safety to accept DOJ's interpretation of what information falls within the scope of § 1373 as a condition precedent to release of the grants? Is that correct?

Tom Anderson

Thomas D. Anderson
Commissioner
Department of Public Safety

45 State Dr.
Waterbury, VT 05671
802-244-8718
Thomas.Anderson@vermont.gov

From: Trautman, Tracey (OJP) <Tracey.Trautman@usdoj.gov>
Sent: Thursday, July 5, 2018 4:09 PM
To: Anderson, Thomas <Thomas.Anderson@vermont.gov>
Cc: Casto, Chris (OJP) <Chris.Casto@usdoj.gov>; Carr, Karen <Karen.Carr@vermont.gov>; Gretkowski, Rosemary <Rosemary.Gretkowski@vermont.gov>
Subject: RE: Additional request for information

Commissioner Anderson:

Thank you for your question.

We are requesting a written assurance that Vermont's policies, in practice, do not restrict individuals or local jurisdictions from responding to inquiries from the U.S. Immigration and Customs Enforcement (ICE) –including inquiries regarding the custody status, release date, and personal information (such as address) of aliens in criminal custody. We interpret such information to fall within the scope of 8 U.S.C. § 1373.

This assurance should be provided by the chief executive of the Vermont Department of Public Safety. After providing us such an assurance, please subsequently submit the CEO/CLO certifications separately for award acceptance. The CEO/CLO certifications should reflect that same interpretation and application of Section 1373 that is included in your assurance requested above. If this is not your understanding, please indicate as such.

Thanks-
Tracey Trautman

From: Anderson, Thomas [<mailto:Thomas.Anderson@vermont.gov>]
Sent: Tuesday, July 03, 2018 11:58 AM
To: Trautman, Tracey (OJP) <Tracey.Trautman@ojp.usdoj.gov>
Cc: Casto, Chris (OJP) <Chris.Casto@ojp.usdoj.gov>; Carr, Karen <Karen.Carr@vermont.gov>; Gretkowski, Rosemary <Rosemary.Gretkowski@vermont.gov>
Subject: RE: Additional request for information

Tracey: Can you clarify and confirm for me that the certification requested in Mr. Adler's letter is the "Certifications and Assurances by the Chief Executive of the Applicant Government" and the "FY 2017 Certification of Compliance with 8 U.S.C. § 1373" to be executed by the chief legal officer of Vermont?

Thomas D. Anderson
Commissioner
Department of Public Safety
45 State Dr.
Waterbury, VT 05671
802-244-8718
Thomas.Anderson@vermont.gov

From: Trautman, Tracey (OJP) <Tracey.Trautman@usdoj.gov>
Sent: Monday, July 2, 2018 5:47 PM
To: Anderson, Thomas <Thomas.Anderson@vermont.gov>
Cc: Casto, Chris (OJP) <Chris.Casto@usdoj.gov>; Carr, Karen <Karen.Carr@vermont.gov>
Subject: Additional request for information

Good afternoon Commissioner Anderson:

Enclosed please find a supplemental request for information. Please provide your response to me at this email address, with a copy to Chris Casto.

Please send your response at your earliest convenience, and I will ask for an expedited review.

Thanks-
Tracey

Tracey Trautman
Deputy Director
Bureau of Justice Assistance
U.S. Department of Justice
(202) 305-1491 (desk)

Tracey.Trautman@usdoj.gov



State of Vermont
Department of Public Safety
45 State Drive
Waterbury, Vermont 05671-1300
<http://dps.vermont.gov/>

August 29, 2018

Via Email through Chris Casto and Tracey Trautman

Jon Adler
Director
U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance
Washington, DC 20531

Dear Director Adler:

I write in response to your letter of July 2, 2018 regarding the FY 2016 Byrne JAG grant award to the Vermont Department of Public Safety (DPS), Award Number 2016-DJ-BX-0406 (the FY 2016 Byrne JAG grant).

The Department of Justice (DOJ) claims that part of its "monitoring" obligations of the above-referenced grant includes ensuring DPS's compliance with 8 U.S.C. § 1373, which DOJ interprets to include inquiries from the Department of Homeland Security Immigration and Customs Enforcement (ICE) "regarding the custody status, release date, and personal information (such as address) of aliens in criminal custody in Vermont." See July 2, 2018 Letter from Director Jon Adler to Commissioner Thomas Anderson.

Putting aside DOJ's interpretation of Section 1373 and its legal authority to impose these immigration-related conditions on the Byrne JAG grants (which courts have consistently been rejecting in challenges to such authority), DPS complied with its certification requirement under the FY 2016 Byrne JAG Grant. This certification was provided by DPS as part of its "Standard Assurances" submitted in connection with its FY 2016 Byrne JAG application (attached), it was reaffirmed in my letter of December 15, 2017 (attached), and this letter further affirms that certification.¹ See also FY 2016 Byrne JAG State Solicitation at 12-13, *available at* <https://www.bja.gov/Funding/JAGState16.pdf> (referring to "applicants").

¹ While not clear from DOJ's July 2, 2018 letter, to the extent DOJ is requiring DPS to certify that each and every local jurisdiction, regardless of whether it is a subgrantee, complies with 8 U.S.C. § 1373, such a certification is impossible to provide and goes far beyond the certification requirement in the FY 2016 Byrne JAG grant application or award, which only requires the applicant's certification of compliance with "all applicable" federal laws. See Standard Assurances (attached). DPS certification is therefore limited to what is required by the grant, namely that DPS, as the applicant, is in compliance with the legal requirements of 8 U.S.C. § 1373.

As set forth in my December 15, 2017 letter (which DOJ did not respond to until April 12, 2018), the Vermont Criminal Justice Training Council's Model Fair and Impartial Policing Policy (Model Policy) and the Vermont State Police Fair and Impartial Policing Policy (VSP FIP Policy) fully comply with the legal requirements of 8 U.S.C. § 1373. These two policies are the basis for DOJ's contentions that DPS may not be in compliance with Section 1373.

Your July 2, 2018 letter identifies two concerns regarding DPS's compliance with Section 1373. First, you contend that subsection (a) of Section XI of the Model Policy "restricts information sharing with federal immigration authorities and, in purporting to circumscribe Section 1373, mischaracterizes its scope as being limited to 'citizenship or immigration' status information when Section 1373 is broader and covers 'information *regarding*' citizenship or immigration status." Second, DOJ speculates that a Vermont State Police training bulletin—not the VSP FIP Policy—could be construed as restricting the sharing of information with federal immigration authorities in violation of Section 1373. For the below reasons, DOJ's concerns are speculative and unsupportable.

Section XI of the Model FIP Policy specifically addresses communications with federal immigration authorities. It states:

[Agency members] have no obligation to communicate with federal immigration authorities regarding the immigration or citizenship status of any individual. Two federal statutes, 8 U.S.C §§ 1373 and 1644, provide that local and state agencies and officials may not prevent or restrict their employees from communicating with other government officials (for example, ICE or CBP) regarding an individual's "citizenship or immigration status". [Agency and members] shall apply this policy in a manner consistent with the lawful operation of these two statutes.

Although the policy states that there is no affirmative obligation to contact federal immigration authorities regarding the immigration or citizenship status of any individual, it makes crystal clear that an employee cannot be prohibited or restricted from communicating with any government official, including ICE or CPB "*regarding* an individual's citizenship or immigration status." Critically, it further instructs that the policy is to be applied in a manner consistent with the objectives of Section 1373. DOJ has raised no concerns regarding this provision of the policy.

Rather, DOJ complains about subsection (a) of Section XI, which provides:

Information about an individual that is outside the scope of Sections 1373 and 1644 (*i.e.*, information other than "citizenship or immigration status") should not be shared with federal immigration authorities unless there is justification on the grounds of (i) public safety, (ii) officer safety, or (iii) law enforcement needs that are not related to the enforcement of federal civil immigration law.

DOJ asserts that the parenthetical contained in this subsection may improperly circumscribe the requirements of Section 1373. However, neither this subsection nor the parenthetical can be

interpreted as limiting the scope of the information required by the statute as suggested by DOJ. It is simply a fanciful reading of this subsection to conclude that the omission of the word “regarding” within the parenthetical renders the policy nonconforming with the legal requirements of Section 1373. Nor is there anything remarkable about the policy being limited to information within the scope of Section 1373.

More importantly, all parts of the policy should be “construed together.” *Cf. Erlenbaugh v. United States*, 409 U.S. 239, 244 (1972) (statutory analysis). Accordingly, when read *in pari materia* with the policy’s stated objective that it be applied in a manner consistent with the operation of Section 1373, DOJ’s interpretation is further undercut and unsupportable. When read against the backdrop of the requirement that the policy be applied in a manner consistent with Section 1373—i.e., an employee cannot be prohibited or restricted from communicating with any government official, including ICE or CPB “regarding an individual’s citizenship or immigration status”—the parenthetical language in subsection (a) is properly read to include “information regarding” citizenship and immigration status.

DOJ’s July 2, 2018 letter also raises no specific concerns with the VSP FIP Policy, which is the controlling policy for the Vermont State Police (VSP). Rather, DOJ points to a VSP training bulletin—which is designed to aid troopers in implementing the VSP FIP Policy and not supersede it—to support its assertion that VSP restricts the sharing of information with federal immigration authorities in violation of Section 1373. DOJ’s interpretation is inaccurate, entirely speculative, and simply wrong. The portion of the training bulletin referenced in DOJ’s July 2, 2018 letter provides as follows:

Members should not use agency resources, equipment or personnel for the purpose of detecting or apprehending individuals whose only violation of law is that they are present in the United States without authorization and proper documentation.

The section of the VSP FIP Policy to which this training bulletin applies states:

4.4 Matters Relating to Immigration and Citizenship Status

(1) General Policies:

(A) Detecting or apprehending individuals whose only violation of law is that they are foreign citizens present in the United States without authorization and proper documentation is not a law enforcement priority for the Vermont State Police. Accordingly, except as noted below, members should not use agency resources, equipment or personnel for the purpose of detecting or apprehending individuals whose only violation of law is that they are present in the United States without authorization and proper documentation.

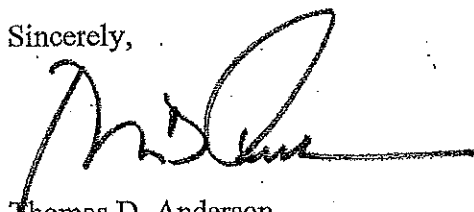
The training bulletin does not trump the VSP FIP Policy. When the training bulletin is read in the context of the controlling VSP FIP Policy, it is readily apparent that the training bulletin is designed to implement that portion of the VSP FIP Policy setting forth that civil immigration enforcement is not a law enforcement priority of VSP. Such a policy is entirely appropriate and does not run afoul of Section 1373. The training bulletin does not, as DOJ wrongly contends, restrict a member from responding to an ICE inquiry. Moreover, members have never been

instructed or trained that they may not respond to ICE inquiries about an alien in VSP custody, including custody status, release date, or personal information.²

For these reasons, DPS is in full compliance with the lawful requirements of the above-reference FY 2016 Byrne JAG grant award.

Finally, DPS provides this letter in its ongoing attempt to cooperate with DOJ and comply with its legal obligations under the grant and 8 U.S.C. § 1373. This letter does not constitute an admission or agreement that DPS accepts or agrees with DOJ's interpretation of the grant requirements or DPS's legal obligations under 8 U.S.C. § 1373. Similarly, it is not intended to be nor is it a waiver of any legal or equitable rights DPS may have against DOJ, including seeking injunctive relief or any other remedy provided under law.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Anderson', with a long horizontal stroke extending to the right.

Thomas D. Anderson
Commissioner

² In a footnote, DOJ conjures up a scenario based on an email from Vermont State Police Lieutenant Anthony French to support a claim that the FIP Policy in practice violates Section 1373. However, a fair reading of Lt. French's email simply does not support DOJ's contention. Indeed, Lt. French specifically states in his email, "if you arrest someone, you may call ICE." The fact he counsels involving a supervisor in such circumstances is not evidence of a potential Section 1373 violation. In fact, the involvement of a supervisor is more likely to ensure full compliance with the statute and facilitate the providing of information within the scope of Section 1373.

From: Trautman, Tracey (OJP) <Tracey.Trautman@usdoj.gov>
Sent: Wednesday, October 17, 2018 8:32 AM
To: Anderson, Thomas
Cc: Carr, Karen; Birmingham, Matthew
Subject: RE: Response to OJP letter of July 2, 2018
Attachments: 2018-10-16 ltr to Vermont.pdf

Good morning Commissioner Anderson:

Please find enclosed additional correspondence from BJA. Should you have any questions, please let me know.

Thanks

Tracey

Tracey Trautman

Deputy Director

Bureau of Justice Assistance

U.S. Department of Justice

(202) 305-1491 (desk)

Tracey.Trautman@usdoj.gov

From: Anderson, Thomas [<mailto:Thomas.Anderson@vermont.gov>]
Sent: Thursday, October 11, 2018 12:15 PM
To: Trautman, Tracey (OJP) <Tracey.Trautman@ojp.usdoj.gov>
Cc: Carr, Karen <Karen.Carr@vermont.gov>; Birmingham, Matthew <Matthew.Birmingham@vermont.gov>
Subject: RE: Response to OJP letter of July 2, 2018

Thank you.

As additional proof that Vermont's policies are in full compliance with 8 U.S.C. § 1373, attached is a recent press release issued by the Vermont State Police in connection with the arrest and processing of an individual for leaving the scene of an accident and driving under the influence of alcohol. This individual was taken into custody by Border Patrol after BP was contacted by the Vermont State Police in full compliance with its policy.

Tom Anderson

From: Trautman, Tracey (OJP) <Tracey.Trautman@usdoj.gov>
Sent: Wednesday, October 3, 2018 12:17 PM
To: Anderson, Thomas <Thomas.Anderson@vermont.gov>
Cc: Carr, Karen <Karen.Carr@vermont.gov>
Subject: RE: Response to OJP letter of July 2, 2018

Good afternoon Commissioner Anderson:

I apologize for the delay. I will send this forward and note that you are still awaiting a response.

Thanks

Tracey

Tracey Trautman

Deputy Director

Bureau of Justice Assistance

U.S. Department of Justice

(202) 305-1491 (desk)

Tracey.Trautman@usdoj.gov

From: Anderson, Thomas [<mailto:Thomas.Anderson@vermont.gov>]
Sent: Wednesday, October 03, 2018 10:00 AM
To: Trautman, Tracey (OJP) <Tracey.Trautman@ojp.usdoj.gov>
Cc: Carr, Karen <Karen.Carr@vermont.gov>
Subject: FW: Response to OJP letter of July 2, 2018

Good morning Ms. Trautman:

I am writing to inquire as to the status of this matter. I have not received a response to my August 29 letter to Director Adler. As you are aware, DOJ's ongoing withholding of Vermont's FY 17 Byrne JAG grant and COPS Anti-Heroin grant continues to materially and profoundly affect Vermont's ability to combat the opioid epidemic in this state.

Thank you.

Tom Anderson

Thomas D. Anderson

Commissioner

Department of Public Safety

45 State Dr.

Waterbury, VT 05671

802-244-8718

Thomas.Anderson@vermont.gov

From: Carr, Karen

Sent: Thursday, August 30, 2018 9:34 AM

To: 'Tracey.Trautman@usdoj.gov' <Tracey.Trautman@usdoj.gov>

Cc: Casto, Chris (OJP) <Chris.Casto@usdoj.gov>

Subject: Response to OJP letter of July 2, 2018

Dear Ms. Trautman:

Attached please find Commissioner Thomas D. Anderson's response to OJP Director Adler's letter of July 2, 2018.

Thank you,

Karen Carr

Karen Carr | Executive Staff Assistant | Vermont Department of Public Safety | Vermont State Police
45 State Drive | Waterbury, VT 05671 | Main: 802-244-8718 | Fax: 802-241-5551



U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

October 16, 2018

Thomas D. Anderson
Commissioner
Vermont Department of Public Safety
45 State Drive
Waterbury, VT 05671-1300

RE: *Award Number 2016-DJ-BX-0406, Vermont Department of Public Safety*

Dear Commissioner Anderson:

On July 2, 2018, in connection with its ongoing monitoring of compliance with the terms of the above award, the Department of Justice sent you a letter raising concerns regarding your compliance with 8 U.S.C. § 1373 (a requirement under that award). In particular, the Department expressed concern that the Vermont Fair and Impartial Policing Policy Section XI(a) and a "Fair and Impartial" training bulletin may violate section 1373. On August 29, 2018, you responded to that letter.

Thank you for clarifying that, consistent with current law at both the federal and state levels, it is your intention and understanding that employees of the Vermont Department of Public Safety are not, under the Fair and Impartial Policing policy, prohibited or restricted from communicating information regarding an individual's citizenship or immigration status with any government officials, including Immigration and Customs Enforcement ("ICE") officials and Customs and Border Protection officials. In addition, thank you for clarifying that, notwithstanding certain provisions of the VSP Training bulletin, members of the Vermont State Police have never been instructed or trained that they may not respond to ICE inquiries about an alien in police custody, including inquiries as to custody status, release date, or personal information, and that any such instruction (were it to occur) would be inconsistent with VSP FIP policy.

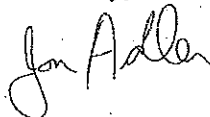
The Department remains concerned that, given the tenor and some language in the Fair and Impartial Policing policy and the VSP Training bulletin, employees of the Vermont Department of Public Safety may be confused about what immigration-related information may be shared with federal authorities. This concern would be resolved, however, if the Vermont Department of Public Safety would agree to inform its employees and members of the Vermont State Police that they are not restricted in any way from sharing information regarding citizenship and immigration status, including custody status, release dates, and addresses, with

federal authorities. A memorandum to all employees that included the following information would suffice:

All personnel are reminded that you may share—and it is consistent with the Vermont Fair and Impartial Policing Policy and federal law to share—with federal authorities, including the U.S. Immigration and Customs Enforcement, any and all information, including information regarding citizenship and immigration status (including custody release dates and addresses), to which you have access or knowledge as a result of the performance of your job duties for the State of Vermont or its political subdivisions, regarding any individual.

If the Vermont Department of Public Safety were to provide this clarification to all of its employees and members of the Vermont State Police, the Department of Justice would be satisfied that there is no evidence that Vermont policy or practice is currently out of compliance with 8 U.S.C. § 1373.

Sincerely,

A handwritten signature in cursive script that reads "Jon Adler".

Jon Adler
Director

From: Carr, Karen
Sent: Tuesday, November 20, 2018 2:27 PM
To: Anderson, Thomas
Subject: FW: Award Number 2016-DJ-BX-0406 Vermont Department of Public Safety
Attachments: 11-20-18 Award Number 2016-DJ-BX-0406 Vermont Department of Public Safety - Adler.pdf

Karen Carr | Executive Staff Assistant | Vermont Department of Public Safety | Vermont State Police
45 State Drive | Waterbury, VT 05671 | Main: 802-244-8718 | Fax: 802-241-5551

From: Carr, Karen
Sent: Tuesday, November 20, 2018 2:27 PM
To: 'Tracey.Trautman@usdoj.gov' <Tracey.Trautman@usdoj.gov>; Casto, Chris (OJP) <Chris.Casto@usdoj.gov>
Cc: 'Steven.H.Cook@usdoj.gov' <Steven.H.Cook@usdoj.gov>
Subject: Award Number 2016-DJ-BX-0406 Vermont Department of Public Safety

Dear Ms. Trautman,

Please find attached Commissioner Anderson's letter regarding Award Number 2016-DJ-BX-0406 Vermont Department of Public Safety.

Thanks,

Karen

Karen Carr | Executive Staff Assistant | Vermont Department of Public Safety | Vermont State Police
45 State Drive | Waterbury, VT 05671 | Main: 802-244-8718 | Fax: 802-241-5551



State of Vermont
Department of Public Safety
45 State Drive
Waterbury, Vermont 05671-1300
<http://dps.vermont.gov/>

November 20, 2018

Via Email through Chris Casto and Tracey Trautman

Jon Adler
Director
U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance
Washington, DC 20531

RE: Award Number 2016-DJ-BX-0406, Vermont Department of Public Safety

Dear Director Adler:

I am writing in response to your letter of October 16, 2018. After careful consideration and with due respect, I must decline your request to provide the detailed training instructions to Vermont employees as set forth in your letter. The requested instructions in your letter follow an interpretation of Section 1373 that federal courts have consistently found legally erroneous. DPS's training has been and will remain consistent with the law as set forth in statute and as interpreted by courts.

As I have made clear in my letters and the documents provided to the Office of Justice Program (OJP), DPS fully complies with the requirements of federal law, including 8 U.S.C. § 1373. Indeed, DOJ has made no finding to the contrary. Rather, over the course of a year, DOJ has only voiced its "concerns" about DPS's compliance with Section 1373; yet, it has not identified a single instance in which DPS has impeded requests for information within the scope of Section 1373. I am therefore requesting that if such instances exist, you identify them and provide me a summary of each within 10 days. Absent notification of specific instances in which DPS impeded requests for information within the scope of Section 1373, DPS can only conclude no such cases exist.

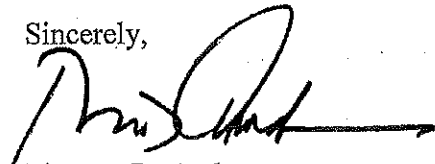
As you are also aware, OJP's year-long review has also resulted in the withholding of DPS's 2017 and 2018 Byrne JAG awards. It has further directly resulted in DOJ withholding the COPS Anti-Heroin grant awarded to DPS. As I have previously advised you, the impact of these grants being withheld has and will continue to severely impact the Vermont State Police's ability to combat the opioid epidemic in Vermont, which is a stated DOJ priority. This, in turn, has and

Nov. 20, 2018 Letter to Jon Adler
Page 2

will continue to negatively impact the mission of the U.S. Attorney's Office in Vermont (and DOJ) which relies heavily on investigative support from the Vermont State Police for its drug related investigations and prosecutions.

I am therefore formally requesting that the OJP make a final decision within the next 30 days whether DPS complies with the terms of the above award and advise me of your decision. I am also reiterating my request to be provided within 10 days with notification of any specific instance(s) in which DPS impeded requests by federal authorities for information governed by Section 1373.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Anderson', with a long horizontal stroke extending to the right.

Thomas D. Anderson
Commissioner

cc: Steven H. Cook
Associate Deputy Attorney General
United States Department of Justice

From: Trautman, Tracey (OJP) <Tracey.Trautman@usdoj.gov>
Sent: Friday, February 8, 2019 3:24 PM
To: Anderson, Thomas
Cc: Casto, Chris (OJP)
Subject: Re: Award Number 2016-DJ-BX-0406 Vermont Department of Public Safety

Commissioner Anderson:

I understand. The Department is working on a response and I apologize for any delay.

Thanks
Tracey

On Feb 8, 2019, at 3:01 PM, Anderson, Thomas <Thomas.Anderson@vermont.gov> wrote:

Good afternoon Tracey.

The courtesy of a response from DOJ to my November 20 letter would be appreciated.

Tom Anderson

Thomas D. Anderson
Commissioner
Department of Public Safety
45 State Dr.
Waterbury, VT 05671
802-244-8718
Thomas.Anderson@vermont.gov


From: Trautman, Tracey (OJP) <Tracey.Trautman@usdoj.gov>
Sent: Wednesday, January 30, 2019 1:11 PM
To: Anderson, Thomas <Thomas.Anderson@vermont.gov>; Casto, Chris (OJP) <Chris.Casto@usdoj.gov>
Subject: RE: Award Number 2016-DJ-BX-0406 Vermont Department of Public Safety

Good afternoon Commissioner Anderson:

Let me circle back with our leadership and see if we have a response yet.

Thanks
Tracey Trautman

Tracey Trautman
Deputy Director
Bureau of Justice Assistance
U.S. Department of Justice
(202) 305-1491 (desk)


Tracey.Trautman@usdoj.gov

From: Anderson, Thomas [<mailto:Thomas.Anderson@vermont.gov>]
Sent: Wednesday, January 30, 2019 1:08 PM
To: Trautman, Tracey (OJP) <Tracey.Trautman@ojp.usdoj.gov>; Casto, Chris (OJP) <Chris.Casto@ojp.usdoj.gov>
Subject: FW: Award Number 2016-DJ-BX-0406 Vermont Department of Public Safety

Good afternoon Ms. Trautman and Mr. Casto:

Welcome back! I am still awaiting a response to my November 20, 2018 (attached). Can you please advise whether DOJ intends to respond and, if so, when I might expect DOJ's response.

Thank you.

Tom Anderson

Thomas D. Anderson
Commissioner
Department of Public Safety
45 State Dr.
Waterbury, VT 05671
802-244-8718
Thomas.Anderson@vermont.gov

From: Carr, Karen
Sent: Tuesday, November 20, 2018 2:27 PM
To: 'Tracey.Trautman@usdoj.gov' <Tracey.Trautman@usdoj.gov>; Casto, Chris (OJP) <Chris.Casto@usdoj.gov>
Cc: 'Steven.H.Cook@usdoj.gov' <Steven.H.Cook@usdoj.gov>
Subject: Award Number 2016-DJ-BX-0406 Vermont Department of Public Safety

Dear Ms. Trautman,

Please find attached Commissioner Anderson's letter regarding Award Number 2016-DJ-BX-0406 Vermont Department of Public Safety.

Thanks,

Karen

Karen Carr | Executive Staff Assistant | Vermont Department of Public Safety | Vermont State Police
45 State Drive | Waterbury, VT 05671 | Main: 802-244-8718 | Fax: 802-241-5551



U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

February 22, 2019

Thomas Anderson
Commissioner
Vermont Department of Public Safety
45 State Drive
Waterbury, Vermont 05671

Re: Vermont Department of Public Safety Letter of November 20, 2018

Dear Commissioner Anderson:

This responds to your letter dated November 20, 2018.

After reviewing that letter and our earlier correspondence, and based on the present record, I am pleased to report that we accept your representations that the Vermont Department of Public Safety "fully complies with the requirements of federal law, including 8 U.S.C. § 1373." We similarly accept the representations in your August 29, 2018 letter that: (a) Vermont employees "cannot be prohibited or restricted from communicating with any government official, including an ICE or CPB 'regarding an individual's citizenship or immigration status,'" (b) the Vermont State Police training bulletin does not restrict police officers from responding to ICE inquiries, and (c) police officers have never been instructed or trained that they may not respond to ICE inquiries about an alien in Vermont State Police custody, including requests for custody status, release date, or other personal information. Based on these representations, we trust that Vermont shares the Department's law enforcement priorities and goals.

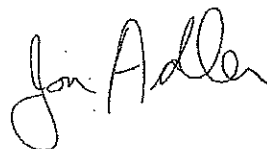
We continue to note our concerns that some of your training materials will confuse employees as to their right to communicate and cooperate with federal law enforcement authorities. For example, the Fair and Impartial Policing Policy, Section XI(a), deemphasizes cooperation with federal immigration authorities and minimizes the importance of cooperation with federal law enforcement agencies. Such training material may lead Vermont employees to mistakenly believe they may not provide information to, or otherwise cooperate with, federal law enforcement authorities, including DHS and ICE. Furthermore, the materials may impose unwarranted, and indeed unlawful, limitations on information sharing with federal law enforcement.

Although we are not at this time withholding grants from Vermont based on those concerns, many other jurisdictions have, upon request and without issue, altered training materials to ensure the appropriate implementation of compliance with federal law and to assuage Department concerns that training materials provide potentially confusing information about cooperation with federal authorities. We encourage Vermont to do the same.

Your letter dated November 20, 2018, notes that federal courts have disagreed with the Department's interpretation of 8 U.S.C. § 1373. We do not comment on ongoing litigation, but we will note that the Department is vigorously defending its interpretation of Section 1373, including pending appeals. Regardless, if a grant recipient provides incomplete, vague, or misleading information that causes unlawful actions by its employees and agents, that recipient may be at risk of violating grant conditions, which results in the withholding of grant funds, suspension or termination of an award, ineligibility for future awards or subawards, or other actions, as appropriate. Indeed, the Department often liaises with other federal law enforcement authorities, allowing us to independently verify compliance with federal law.

We look forward to continuing to work with your state as we endeavor to implement important public safety objectives. Please do not hesitate to let us know if you should have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Adler". The signature is fluid and cursive, with the first name "Jon" and last name "Adler" clearly distinguishable.

Jon Adler
Director

Martin, Grier

From: Martin, Grier
Sent: Tuesday, April 30, 2019 2:04 PM
To: Martin, Grier
Subject: FW: COPS Anti-Heroin Grant

From: Trudeau, Daniel
Sent: Wednesday, March 13, 2019 2:51 PM
To: Martin, Grier <Grier.Martin@vermont.gov>; Petersen, David <David.Petersen@vermont.gov>
Subject: FW: COPS Anti-Heroin Grant

Search results for - FW: Hirschfeld.2-26-19.DNJ Grants

From: Moore, Gerald (COPS) [<mailto:Gerald.Moore2@usdoj.gov>]
Sent: Thursday, February 1, 2018 1:17 PM
To: Hall, Glenn <Glenn.Hall@vermont.gov>
Cc: LaPlant, Tatum <Tatum.LaPlant@vermont.gov>
Subject: RE: COPS Anti-Heroin Grant

Good Afternoon,

Based on the information provided, your department does not appear to be in violation of the non-supplanting agreement. However, because your agency continues to experience budgetary issues, and because you have already been in direct contact with our Legal Division and received guidance on the non-supplanting requirement, I would advise you to refer to the letter from Martin Onwu, COPS Office Associate General Counsel, dated April 28, 2017. Although your current fiscal challenge may be slightly different than last year, the non-supplanting guidance would still apply.

From: Hall, Glenn [<mailto:Glenn.Hall@vermont.gov>]
Sent: Wednesday, January 31, 2018 1:57 PM
To: Moore, Gerald (COPS) <gemoore@cops.usdoj.gov>
Cc: LaPlant, Tatum <Tatum.LaPlant@vermont.gov>
Subject: FW: COPS Anti-Heroin Grant

Hi Gerald,

We have come to some resolution on how our agency will need to address current and upcoming budget pressures. As a result of these pressures the State Police will need to sustain vacancy savings during the upcoming fiscal year. These vacancies most often impact our uniform division, which are the first responders to every day emergency calls for service, and are vital to the mission of the State Police. While our enforcement efforts to combat heroin and opiates remain a top priority, we must lessen the impact of our uniform division by carrying a portion of our vacant positions from state funded drug investigator positions (Drug Task Force). We currently have two (2) state funded drug task force positions vacant and intend to leave up to three (3) positions vacant at least through the next state fiscal year. This

decision was made due to recent, unexpected budget pressures and not as a result of our receipt of the COPS AHTF grant.

The five (5) drug investigators added as a result of the 2015 COPS AHTF grant will remain in place through June of 2018 which will complete two full years. Our intention will be to accept the 2017 COPS AHTF grant and hire five (5) new Troopers in July of 2018 as required by the grant. We would then assign five (5) seasoned troopers to the drug task force as we did with the previous grant.

I am writing to make sure you have clarity on our situation and that you there is no violation of the non-supplanting agreement. Please let us know if you see any issues and whether you would require any other documentation. Thanks in advance.

Regards,

Glenn

Major Glenn E. Hall
Criminal Division Commander
Vermont State Police
45 State Drive
Waterbury, VT 05671

(802)241-5491

Please note new e-mail address:

Glenn.Hall@vermont.gov

From: Hall, Glenn

Sent: Friday, January 19, 2018 10:44 AM

To: Moore, Gerald (COPS) <Gerald.Moore2@usdoj.gov>

Cc: Birmingham, Matthew <Matthew.Birmingham@vermont.gov>; Chadwick, Joanne <Joanne.Chadwick@vermont.gov>; LaPlant, Tatum <Tatum.LaPlant@vermont.gov>; Hallenbeck, Richard <Richard.Hallenbeck@vermont.gov>; Hayward, Marie <Marie.Hayward@vermont.gov>

Subject: RE: COPS Anti-Heroin Grant

Gerald,

Thank you for the quick response. We will discuss further and get back to you.

Glenn

Major Glenn E. Hall
Criminal Division Commander
Vermont State Police
45 State Drive
Waterbury, VT 05671

(802)241-5491

Please note new e-mail address:

Glenn.Hall@vermont.gov

From: Moore, Gerald (COPS) [<mailto:Gerald.Moore2@usdoj.gov>]
Sent: Friday, January 19, 2018 10:17 AM
To: Hall, Glenn <Glenn.Hall@vermont.gov>
Cc: Birmingham, Matthew <Matthew.Birmingham@vermont.gov>
Subject: RE: COPS Anti-Heroin Grant

Good Morning,

After checking with Legal, your agency may be able to reassign the locally-funded task force officers without violating the nonsupplanting requirement, if you are able to demonstrate with documentation that the decision to reassign was not related to the receipt of COPS Office funding and that they would have reassigned with or without the receipt of COPS Office funding. Legal stated they provided your agency with a letter of guidance last year that would apply to this situation.

If this is the case, your agency would not need to modify the grant as we discussed yesterday. However, your agency would still need to increase their sworn force by the number of positions awarded, and assign that number to the task force.

From: Hall, Glenn [<mailto:Glenn.Hall@vermont.gov>]
Sent: Friday, January 19, 2018 9:39 AM
To: Moore, Gerald (COPS) <gemoore@cops.usdoj.gov>; Perry, Delka (COPS) <dperry@cops.usdoj.gov>
Subject: COPS Anti-Heroin Grant

Good morning,

I was just following up on our conference call from Wednesday regarding our COPS grant as we explore potential options. For planning purposes on our end, do know when we can anticipate a response?

Thank you again in advance for your consideration.

Regards,

Glenn

Major Glenn E. Hall
Criminal Division Commander
Vermont State Police
45 State Drive
Waterbury, VT 05671

(802)241-5491
Please note new e-mail address:
Glenn.Hall@vermont.gov

