

No one in Bennington should feel unsafe or unprotected. It is clear that Kiah Morris, James Lawton, and their family suffered horrific personal attacks and felt unsafe in our community. The Town respectfully disagrees with the allegations they have asserted against the Bennington Police Department and disagrees with the Human Rights Commission's Investigative Report. However, the Town has agreed to settle their claims in an effort to bring some closure and allow the community to move forward.

The Town wants to stress that it is committed to focusing on the progress the Town has made and continues to make. In August 2019, the Town engaged the IACP for an assessment of the Bennington Police Department and has been implementing initiatives based on what it learned from that assessment. The Town has a vision statement and the Bennington Police Department has a mission statement, both of which will guide Bennington as it moves forward.

STATE OF VERMONT

HUMAN RIGHTS COMMISSION

VHRC Case Nos.: PA19-0012,
PA19-0013, and PA19-0014

RUQAIYAH (KIAH) MORRIS, *et al.*,)
)
 Complainants,)
)
 v.)
)
 BENNINGTON POLICE DEPARTMENT,)
)
 Respondent.)

RESPONDENT’S RESPONSE TO INVESTIGATIVE REPORT

NOW COMES Respondent, Bennington Police Department (“Respondent” or “BPD”), by and through its attorneys McNeil, Leddy & Sheahan, P.C., and hereby responds to the Investigative Report (“IR” or “Report”), dated and approved by the Executive Director on March 4, 2021.

Respondent respectfully requests that the Commission decline to accept the Report’s preliminary recommendation that there are reasonable grounds to believe that Respondent discriminated against Complainants Ruqaiyah (Kiah) Morris, Ruqaiyah (Kiah) Morris o/b/o J.L., and James Lawton on the basis of race and color, in violation of 9 V.S.A. § 4502(a) of the Vermont Fair Housing and Public Accommodations Act (“VFHPAA”). Based on the investigative record and the findings in the Report, there is no basis for a claim under the VFHPAA.

Respondent appends hereto and incorporates herein by reference its *Response to Ruqaiyah (Kiah) Morris Complaint of Public Accommodations Discrimination*, its *Motion to Dismiss Morris o/b/o J.L.’s Complaint of Public Accommodations Discrimination*, and its

**McNEIL
LEDDY &
SHEAHAN**

271 South Union St.
Burlington, VT 05401

T 802.863.4531

F 802.863.1743

www.mcnailvt.com

Motion to Dismiss James Lawton's Complaint of Public Accommodations Discrimination, all previously submitted to the Commission on April 1, 2019.

Accordingly, Respondent requests that the Commissioners decide against the preliminary recommendation.

INTRODUCTION

As Respondent stated in the introduction to its Response to Ms. Morris's Complaint on April 1, 2019, "Complainant has undoubtedly been the target of abhorrent racist online harassment carried out by at least one known bigoted individual in the Town of Bennington, Max Misch.¹ Respondent does not condone such behavior and finds it vile and disgusting." This statement remains true today.

However, this investigation did not target Mr. Misch nor other bigoted individuals who have directed racist online statements to Ms. Morris and Mr. Lawton. This investigation did not target the group of juveniles who knocked on Complainants' door and ran in September 2018.² This investigation did not target the FBI, the Vermont Attorney General's Office, or the Bennington County State's Attorney's Office³, agencies that declined to investigate or declined to prosecute Complainants' allegations. Instead, Complainants decided to just target the Bennington Police Department. So while Respondent sympathizes with Complainants and the fact that they have been subjected to vile, racist online attacks, it must defend itself from

¹ Although referred to as a "central figure" in the Report (IR, p. 3), Mr. Misch was not interviewed for the HRC investigation.

² See *Sanchez & Ramirez v. Polak* (VHRC 2021) (finding reasonable grounds for neighbor-on-neighbor discrimination on the basis of race, color, and national origin).

³ Ms. Morris in her testimony accused Bennington County State's Attorney Erica Marthage of dereliction of duty and claimed that Ms. Marthage is highly problematic. Mr. Lawton claimed in his testimony that Erica Marthage and Chief Doucette were "co-conspirators." The investigation did not interview Erica Marthage.

Complainants' allegation that it was the BPD that endangered Complainants' family. (See Complaint, ¶ 28).

OBJECTIONS TO THE INVESTIGATIVE REPORT

The IR is lengthy, and is a reflection of an investigation into allegations spanning years. Respondent has significant concerns with Report, and specifically portions that either pertain to issues in which the BPD was not involved, omit relevant citations to the investigative record, or even contradict the record.

I. THE BPD DID INVESTIGATE THE "DING, DONG, DITCH" INCIDENTS AS BIAS-RELATED

Officer Amanda Knox undertook the investigation into the "ding, dong, ditch" incidents, looked extensively for any evidence of racial discrimination, but found none. However, the IR includes the finding that "BPD did not investigate the 'ding, dong, ditch' incidents as bias related incidents." (IR, p. 22). The Report then includes speculation that if the juveniles or their parents were connected to Kevin Hoyt via Facebook in 2020, then it is "not inconceivable" that they could have been connected at the time of the "ding, dong, ditch" incidents in September and October of 2018, "but the issue was not investigated." (*Id.*). The Report later includes further speculation that if the Attorney General's Office was informed of the October 17, 2018 Lisa Shapiro and Max Misch interviews, then that agency could have conducted further investigation into the "ding, dong, ditch" incidents "to determine if they were bias-related incidents." (*Id.*, p. 34).

But these incidents were investigated to determine if they were bias-related. Officer Knox spearheaded the investigation of the "ding dong ditch" incidents, and during the course of the HRC investigation, Complainants and the investigation all consistently praised her police work related to those incidents. Going to great lengths, she tracked down the juveniles involved

**McNEIL
LEDDY &
SHEAHAN**

271 South Union St.
Burlington, VT 05401

T 802.863.4531

F 802.863.1743

www.mcneilvt.com

and they were issued “no trespass” orders. The investigation asked Officer Knox directly about whether she investigated the “ding dong ditch” incidents as bias related incidents, and Officer Knox made clear that she did. Below is an excerpt from Officer Knox’s December 10, 2020 interview:

Investigator: “Was there any indication that they were targeting Kiah and James based on, you know, Kiah’s race at all?”

Officer Knox: “No, I mean, I couldn’t find any racial motivation for any of it. And I looked, like, extensively. I talked to them three different times. I talked to every single child that was there, as well as the parents. And I spoke with the parents about who these people were, and the importance, ah what, she was a state representative at the time, and so, I was just trying to see if this was a hate crime, or if this was targeting on purpose I wanted to figure out why because it was just continuously on these two houses.”

Officer Knox confirmed that the juveniles did not know who Ms. Morris was, and that they initially targeted next door neighbor Erica Benoit’s house because they got a reaction from her (she fired a shotgun in the air after they knocked on her door), and moved next door to Complainants’ house when Ms. Benoit was not home. Officer Knox testified she was aware of the racial component of the case, investigated it, and found no evidence of racial bias. However, contrary to the evidentiary record, the IR finds that these incidents were not investigated as “bias-related.” (IR, p. 22). The omission of any substantive reference to Officer Knox’s testimony is also contrary to law, because “[i]f a witness is interviewed, a summary of the witness statement shall be included in any report prepared in connection with the complaint.” 9 V.S.A. § 4554(c). The IR notes only that an interview occurred on December 10, 2020, without summarizing or including any portions of her statement. (IR, p. 3). Officer Knox’s statement, and any other statements from witnesses, “shall be taken into consideration in determining whether or not there are reasonable grounds to believe that unlawful discrimination has occurred.” 9 V.S.A. § 4554(c). It does not appear that Officer Knox’s statement has been

**McNEIL
LEDDY &
SHEAHAN**

271 South Union St.
Burlington, VT 05401

T 802.863.6531

F 802.863.1743

www.mcneillvt.com

considered at all, and because there is no summary included in the report, the Commissioners will not be able to consider it in making their determination.

The Report further includes the finding that “[i]ssues of trust call into question the thoroughness of the investigation into whether the ‘ding, dong, ditch’ incidents might have been orchestrated by Kevin Hoyt⁴ or others.” (IR, p. 52). Officer Knox was asked by the investigation whether the juveniles had a connection to Kevin Hoyt and she said she did not think they had any connection. It seems the basis for “call[ing] into question the thoroughness of the investigation” is a Facebook connection the investigation found between one of the juveniles and Kevin Hoyt from 2020. It is a huge leap to assert that a Facebook connection 18 months in the future, after the “ding, dong, ditch” incidents gained significant publicity and Mr. Hoyt was campaigning for Vermont Governor and very active on social media⁵, could possibly form the basis for some deficiency in the September – October 2018 investigation. Moreover, this HRC investigation had subpoena power to compel testimony from anyone it believed would provide testimony material to the complaints. *See* 9 V.S.A. § 4553(a)(5). Rather than speculating, this investigation could have simply interviewed Mr. Hoyt about the conceivability of his “orchestrat[ing]” the “ding, dong, ditch” incidents.

This assertion that the “ding, dong, ditch” incidents were not investigated as bias related was in error and cannot form a basis for a finding of discrimination on the part of Respondent. (*See* IR, pp. 22, 34, 52).

**McNEIL
LEDDY &
SHEAHAN**

271 South Union St.
Burlington, VT 05401

T 802.863.4531

F 802.863.1743

www.mcneilvt.com

⁴ Kevin Hoyt was a Republican candidate for the Bennington House 2-1 District in 2018.

⁵ According to Ballotpedia, Mr. Hoyt received 4,576 votes for Governor in 2020 General Election, placing third out of eight candidates. He also has approximately 2,000 followers on Facebook.

II. IT IS CLEAR THE COMPUTER PASSWORDS WERE REQUESTED AND THAT COMPLAINANTS INTENTIONALLY STALLED IN PROVIDING THEM TO BPD

Officer Michael Sharshon testified that he requested the Complainants' passwords over the telephone and in person at their residence. Ms. Morris and Mr. Lawton both testified similarly, admitting that Ms. Morris intentionally withheld the passwords because she did not understand why they were needed. Furthermore, footnote 77 of the IR quotes an email from Ms. Morris to Attorney General T.J. Donovan, recalling that on August 14, 2018, a BPD officer called her and requested the passwords, and then visited her home the next day, August 15, 2018, and again requested passwords. (IR, p. 16). August 15, 2018 would be the same day Ms. Morris signed the "permission to search form" and admittedly stalled BPD by not providing the passwords. Incredibly, the Report states that on August 15, 2018, "the passwords were not provided at that juncture and it is not clear whether they were requested," in direct contradiction of Ms. Morris's email admission that they were requested. (IR, p. 16).

The Report also makes no mention of the affidavits the HRC investigation obtained from Commander Matthew Raymond and Detective Sergeant Eric Jollymore regarding the passwords and computer forensic examination of Complainants' computers.⁶ Det. Jollymore swore in his affidavit that the standard Vermont State Police Computer Crimes Unit / Vermont Internet Crimes Against Children Analysis Request Form was utilized by BPD in making its request for a forensic examination and that a section on the form calls for the investigator to provide a passcode if one is known. He

⁶ Respondent requested that the investigation interview Detective Sergeant Jollymore and Commander Raymond, noting that it seemed the computer forensic analysis was an important focus of the investigation. They were not interviewed, but these affidavits were obtained instead.

stated that it is the standard and routine practice for the lab to request that investigators obtain passcodes for electronic devices. He stated that asking investigators if passwords are available or could be made available is a routine question asked by examiners in the lab, and while he did not specifically recall asking BPD to retrieve the passwords for Complainants' computers, he may have done so. Commander Raymond likewise stated that while he did not specifically remember requesting that anyone in the BPD retrieve the passwords, he may have done so as that would have been standard practice for any examination being completed with consent.

It is clear that the passwords were requested on at least two occasions (August 14 and 15, 2018), that Complainants admittedly stalled BPD by not providing them, and that they were not provided until August 20, 2018. (IR, pp. 16-17). Despite this, the Report concludes that the BPD and Chief Doucette failed to "act expediently" with respect to the computers. (IR, p. 52). But equal blame could be placed on Complainants, the Vermont State Police, and the Attorney General's Office for the computer examination investigation not concluding until October 10, 2018. Complainants waited nearly a week from the date of the first undisputed request for passwords (August 14, 2018) to provide them to the BPD (August 20, 2018). Complainants also cancelled two scheduled interviews with Detective Sergeant Alberico on September 6, 2018 and September 19, 2018 due to Mr. Lawton's health. Det. Alberico and Det. Jollymore were not able to interview Complainants until October 3, 2018, during which Mr. Lawton informed them that he had purchased the computer from someone on Facebook Marketplace earlier that year. The screen name "dead dead" belonged to that person's ten-year-old son and was determined to not be any threat toward Mr. Lawton or his family.

**McNEIL
LEDDY &
SHEAHAN**

271 South Union St.
Burlington, VT 05401

T 802.863.4531

F 802.863.1743

www.mcneilvt.com

Based on the investigative record, the assertion that the BPD failed to act “expediently” was in error and cannot support a finding of discrimination.

III. CHIEF DOUCETTE’S PRESS RELEASE RESPONDED TO MS. MORRIS PUBLICLY STATING BPD HAD DONE “NOTHING”

As the Report notes, on August 30, 2018, Ms. Morris spoke on VPR’s Vermont Edition and stated that she went to law enforcement for counsel and the response was “nothing.” She described the response as a “shoulder shrug” and a “good luck.” (IR, p. 19). This was weeks after BPD had requested Ms. Morris provide the passwords to the computers and over a week after the computers had been transferred to the lab for examination. Also, when the BPD took Mr. Lawton’s call about the “dead dead” on his computer on July 27, 2018, he initially complained of Twitter comments made by Max Misch. Mr. Lawton provided BPD with screen shots showing partial portions of these Twitter conversations, and although the comments did not appear to be criminal in nature, the BPD sent a report to the Bennington State’s Attorney’s Office, along with the Twitter posts, for review and potential prosecution. But Ms. Morris on VPR characterized the BPD’s response thus far as a “shoulder shrug.” It was against this backdrop that Chief Doucette then issued the September 1, 2018 press release to explain to the Bennington community the process and issues surrounding the delay in delivering the computers to the state lab. Chief Doucette was also standing up for the people in his department, who were being criticized for allegedly failing to assist Ms. Morris and Mr. Lawton, and contributing to Ms. Morris’s resignation from the Legislature. This public sentiment was especially unfair given that Ms. Morris was admittedly getting to the point of resigning prior to the “dead dead” computer incident. Ms. Morris was also an elected State Representative at the time with a public platform, and was speaking with numerous

media outlets about her decision to leave the Legislature, but seemed content to leave alone the public's belief that BPD failure had caused her to resign as a representative. It was reasonable for Chief Doucette to respond and defend his department. Chief Doucette's press release cannot reasonably be viewed as a markedly "hostile action" towards Complainants. (IR, p. 50).

IV. THE REPORT DOES NOT CITE AUTHORITY FOR AN ALLEGED DUTY TO REPORT THE MISCH INTERVIEW

While the IR states assertively that a "central dut[y]" of a law enforcement officer is to provide information to investigating authorities, the Report does not include citation to any authority for such a legal duty. (See IR, p. 48). Nor does it cite to any authority for the assertion that Chief Doucette had a legal duty to notify Complainants of the Misch interview. Even where a victim or victim's family is an initial complainant to law enforcement (unlike here where an anonymous complaint came from Lisa Shapiro's therapist), Vermont courts have found law enforcement officers have no special duty of care to a specific person beyond that extended to the general public. See, e.g., *Kane v. Lamothe*, 2007 VT 91, ¶¶ 1, 5, 182 Vt. 241 (2007) (finding no special duty to domestic violence victim and no gross negligence for failure to arrest former boyfriend); see also *Baptie v. Bruno*, 2013 VT 117, ¶ 13-14, 195 Vt. 308 (2013) (finding officer had no special duty to a murder victim even though family had previously complained of threats).

It also appears that even if the Misch interview was reported, it would not have changed the Attorney General's finding of insufficient evidence to bring any charges. Even when the Attorney General's Office learned of the Misch interview, it did not amend or change its findings in the January 14, 2019 report. While the Attorney General responded "yes" when asked whether he believed the BPD should have provided the

**McNEIL
LEDDY &
SHEAHAN**

271 South Union St.
Burlington, VT 05401

T 802.853.4531

F 802.853.1743

www.mcneilvt.com

information earlier, he did not state that the information would have changed the outcome of his office's report.⁷ The Attorney General's Office also did not seek an Extreme Risk Protection Order when it learned of the information.⁸ Nor did the Bennington County State's Attorney's Office.⁹ Finally, the Report does not state that Complainants filed for another stalking order against Max Misch after learning of the October 17, 2018 interview. Overall, while the Report definitively but without cited authority states that the BPD should have notified the Attorney General's Office and Complainants about the Misch interview, when the information was disclosed it does not appear that any different action was taken.

V. THERE IS NO REASONABLE BASIS FOR THE ASSERTION IN THE REPORT THAT CHIEF DOUCETTE WAS CONNECTED TO JOEY KULKIN OR KEVIN HOYT

Chief Doucette in his investigation interview described that Mr. Kulkin frequently emailed him and other Town officials, and consistently filed public records requests. The IR focuses on Joey Kulkin's email to Chief Doucette stating: "Feel free to use backchannels to chat. You know where to find me." (IR, p. 21). Chief Doucette noted in his interview that he did not respond to Mr. Kulkin's email and testified that he did not communicate with Mr. Kulkin via "backchannels." However, the investigation seems to have taken Complainants' theory of a conspiracy between the BPD and Mr. Kulkin at face value. Even though he is repeatedly referenced in the IR, Mr. Kulkin was not interviewed for the investigation. Again, this question of whether Chief Doucette used "backchannels" to communicate with Mr. Kulkin has become

⁷ Mr. Donovan, whose opinion on this issue appears to be material to this investigation, was not interviewed. (See, e.g., IR, p. 30 (asserting as a "fact" that the Max Misch interview was relevant to the second phase of the AG's investigation)).

⁸ As noted, an Extreme Risk Protection Order may be sought by the Attorney General or a State's Attorney. Neither the AG nor the Bennington County State's Attorney sought such an order.

⁹ No one from the Bennington County State's Attorney's Office was interviewed for this investigation.

material to the complaints, based on a reading of the Report. Indeed, the investigation considered an interview of Mr. Kulkin and asked Complainants their thoughts, but Mr. Lawton advised: “don’t waist [sic] your time with him. I believe kiah would tell you the same.” Mr. Lawton also reiterated his theory of a conspiracy among several people in Bennington, stating in reference to Mr. Kulkin:

Pretty much everything he does and says is a lie to serve his own purpose. It would be no different than trying to make sense out of anything Kevin Hoyt or max would say to you. You will not get the truth. He is a full partner in the machine that is Max Misch, Kevin Hoyt, Colleen Harrington and now the many others spreading hate and discord in Bennington county. Truth and facts have no meaning to them.

If the investigation was not going to credit Chief Doucette’s testimony, and instead adopt Complainants’ theory of a conspiracy that the Report suggests involved Chief Doucette, then interviews of Mr. Kulkin and Mr. Hoyt, if not others, would have been appropriate.

The IR also refers to a “significant leak of the Attorney General’s findings prior to the January 2019 press conference” and implies it came from Chief Doucette. (IR, p. 21 fn 101, p. 52). But the “significant leak” referred to appears to come from Mr. Kulkin posting on his Facebook page the Friday prior to the AG’s January 14, 2019 press conference that the result of the state computer forensics investigation revealed no death threats. This was determined on October 10, 2018 after an investigation involving many people and agencies. As the IR notes, the investigation “has no information” about the source of the leak and could have come from any number of people or agencies. (IR, p. 52).

Without any “information,” and with Chief Doucette’s testimony confirming no “backchannel” connection, there is no basis to for this conjecture in the Report.

**McNEIL
LEDDY &
SHEAHAN**

271 South Union St.
Burlington, VT 05401

T 802.863.4531

F 802.863.1743

www.mcneilvt.com

VI. THE DAVIS INCIDENT IS NOT AN APPROPRIATE COMPARATOR

While the Complaints contain sweeping allegations spanning years, the investigation's focus is on one occurrence – the BPD not informing the Attorney General's Office or Complainants about the interviews of Lisa Shapiro and Max Misch on October 17, 2018. However, this decision by the BPD not to report these interviews, which originated from a telephone call from Ms. Shapiro's therapist and uncovered no evidence of a crime, cannot form the basis for a violation of the VFHPAA.

To support its finding of discrimination based on this decision, the investigation refers to a late 2012, early 2013 incident involving a former beloved teacher at Mount Anthony Union High School, Steven Davis, who suffered a mental breakdown and began threatening his family, neighbors, and the school district. However, the Steven Davis case is not an appropriate comparator to this case.¹⁰ The IR refers to the standard for comparing conduct for purposes of a Title VII disparate treatment analysis in the employment context. As the Report notes, while the standard for comparing conduct does not require a showing that both cases are identical, there must be "a reasonably close resemblance to the facts and circumstances," and they must be similar in all material respects. (IR, p. 40, fn 180). "The determination that two acts are of comparable seriousness requires—in addition to an examination of the acts—an examination of the context and surrounding circumstances in which those acts are evaluated." *Graham v. Long Island R.R.*, 230 F.3d 34, 40 (2d Cir. 2000). Because the cases are not materially similar and the context and surrounding circumstances are starkly different, they cannot be used in a disparate treatment analysis.

¹⁰ In footnote 182, the IR describes Respondent's mistaken belief that Mr. Davis's records were expunged. Respondent and its counsel took responsibility for this mistake.

A. THE DAVIS INCIDENT INVOLVED ESCALATION AFTER INITIAL POLICE CONTACT

The IR includes the assertion that “[i]t does not matter that ‘nothing’ happened to Complainants – ‘nothing’ happened in the Davis case either.” (IR, p. 46). However, this is not entirely accurate as it is relevant to the use of the Davis case as a comparator. Yes, subsequent to the Misch interview on October 17, 2018, nothing happened according to the Report. The “Background and Timeline” section of the IR ends with the Misch interview. (IR, p. 31). There are no facts regarding escalation of behavior by Mr. Misch or threats to Complainants following this interview. This is in direct contrast to the Davis case. With Davis, there was significant escalation of threatening behavior in the hours and days following initial police contact.

BPD officers first responded to the Davis home at 4:23 PM on December 30, 2012, because his neighbor had concerns about Mr. Davis, including Mr. Davis saying he would be leaving with his children that evening while his wife went to the movies and witnessing Mr. Davis putting a black gun case in his car. BPD officers spoke with Mr. Davis at his home, spoke about his AR-15 rifle, which Mr. Davis said his wife didn’t know about, and although Mr. Davis was showing some signs of being mentally disturbed and made some statements about the school union, he was not threatening to harm himself or others. Officers left the scene.

This initial contact, while still unlikely to be considered a truly appropriate comparator, would have the most “reasonably close resemblance to the facts and circumstances” of the Lisa Shapiro and Max Misch interviews. Officers left each time after interviewing a subject.

But in the Davis case, later that night, at 10:05 PM on December 30, 2012, BPD officers returned to the Davis home in response to a family fight. At that point Mrs. Davis told police she was afraid of Mr. Davis, and BPD officers advised her about obtaining an Abuse Prevention Order and also informed her that Mr. Davis had an AR-15 in the trunk of his car. Mrs. Davis

**McNEIL
LEDDY &
SHEAHAN**

271 South Union St.
Burlington, VT 05401

T 802.863.4531

F 802.863.1743

www.mcneilvt.com

obtained an Abuse Prevention Order and BPD served it at 3:30 AM on December 31, 2012. Per that order, Mr. Davis was required to relinquish all firearms, and the AR-15 was seized as a result.

With respect to the Misch interview, there was no further activity regarding Mr. Misch following the initial police contact when Chief Doucette and Det. Cole visited his home to speak with him. BPD left Mr. Misch's home just as the BPD officers left the Davis home following their initial contact. In Davis, BPD officers responded about six hours later in response to a family fight. Nothing further occurred with Mr. Misch, possibly because the home visit had the desired effect of quieting things down. Unlike in the Davis incident, where his behavior escalated and the BPD was inundated with calls warning of Mr. Davis's threatening and erratic behavior, BPD received no further complaints from Lisa Shapiro or others regarding Mr. Misch.

B. THE CONTEXT AND SURROUNDING CIRCUMSTANCES OF THE DAVIS INCIDENT DIFFERED SIGNIFICANTLY

As Ms. Morris stated in her interview, the Davis case was a big deal because it had to do with the school. Most people living in Bennington at the time would likely similarly recall the incident. The events with Mr. Davis occurred just weeks after the Sandy Hook Elementary shooting, when the entire country was still in shock and on edge regarding school violence.

In contrast, as the Report points out, the Misch interview occurred shortly after S.55, the magazine ban, went into effect on October 1, 2018. Prior to the law taking effect, gun and high-capacity magazine sales soared. As one gun shop owner noted, "Anytime you're told you can't have something, you want it." Thus the law precipitated a significant increase in the sale of 30-round magazines of the type Lisa Shapiro and Max Misch purchased in September 2018. It makes sense that someone would purchase an

**McNEIL
LEDDY &
SHEAHAN**

271 South Union St.
Burlington, VT 05401

T 802.863.4531

F 802.863.1743

www.mcneilvt.com

AR-15-type rifle and high-capacity magazines during this period of time while they still could.

It is clear that the Davis and Misch incidents were significantly different. Mr. Davis was making videos threatening the school, his colleagues, and his neighbors. His behavior escalated and he targeted more and more people over a short period of time. Many people in the community at large were frightened and contacted the BPD. While Mr. Misch had directed hateful rhetoric online towards Complainants, Mr. Lawton complained about this on July 27, 2018, and a report was sent to the Bennington County State's Attorney's Office for prosecution. Complainants or one of the Complainants also appear to have been "following" Mr. Misch on Instagram in 2018 and were able to capture the 2018 Instagram posts referenced in the Report, but these were not shared with the BPD. Further, as of October 10, 2018, the "dead dead" issue was confirmed as a misunderstanding with the source of the screen name being a 10-year-old son of the prior computer owner.¹¹ Lisa Shapiro also told Chief Doucette and Det. Cole that Mr. Misch was not going to go search anyone out to kill because he hates them. She also told police she did not see him as dangerous, and that if he acted it would be in self-defense. Ms. Shapiro informed police that she was a nurse with 32 years of experience, that she knew Mr. Misch better than anyone, and that he was incapable of dishonesty. She also told Chief Doucette and Det. Cole that going to speak with Mr. Misch would be a good idea and might quiet things down. While Ms. Shapiro described Mr. Misch's racist beliefs and described a prior domestic violence incident where he strangled her, she noted that he

¹¹ Although the investigation into the "dead dead" incident concluded on October 10, 2018, and Complainants and their counsel were informed of the outcome, the notion that this was a death threat was repeated in news stories for months after.

was mentally ill and needed help, but did not express to the BPD any immediate concern for safety.

Overall, these facts and circumstances are starkly different than the Davis incident and that prior incident cannot be relied upon as a conduct comparator in this case.

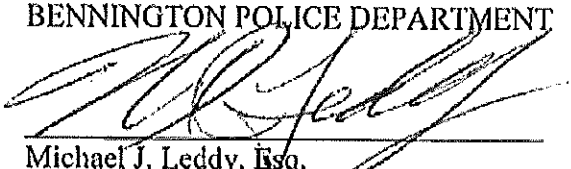
CONCLUSION

Based on the foregoing, the investigative record, and the findings in the Investigative Report, there are no reasonable grounds to believe the Bennington Police Department violated the VFHPAA. Therefore, Respondent requests that the Commissioners decide against the preliminary recommendation in the Investigative Report.

Dated at Burlington, Vermont, this 9th day of April 2021.

BENNINGTON POLICE DEPARTMENT

By:



Michael J. Leddy, Esq.
MCNEIL, LEDDY & SHEAHAN, P.C.
271 South Union Street
Burlington, VT 05401
Attorneys for Respondent

400000/597

**MCNEIL
LEDDY &
SHEAHAN**

271 South Union St.
Burlington, VT 05401

T 802.863.4531

F 802.863.1743

www.mcneilvt.com