



State of Vermont

Department of Public Safety

45 State Drive

Waterbury, Vermont 05671-1300

<http://dps.vermont.gov/>

July 18, 2024

Marina Brown

Via Email: catskillmarina@gmail.com

RE: Public Records Request for Derby Barracks “duty roster”

Dear Ms. Brown:

I write in response to your Appeal submitted on July 11, 2024 related to your public records request for “*the duty roster with officer names and hours for June 8 2024 for the Derby Barracks.*”

On June 24, 2024, you submitted a public records request to the Vermont Department of Public Safety (the “Department”) for the following information about the Derby Barracks: “*The duty roster with officer names and hours for June 8 2024 for the Derby Barracks*” and “*the names of all officers who were assigned a police vehicle whether on duty or off duty June 8 2024.*”

On July 11, 2024, the Department responded to your request. The Department provided a list identifying the names of all officers assigned to the Derby Barracks for the relevant time period and explained that each Trooper is assigned a police vehicle at all times, whether on or off duty.

Later that day, you sent an email confirming that the Department provided you with the information you requested. Despite fulfilling your request, you explained you were filing an appeal. Specifically, you stated, “you gave me what i (sic) was looking for.but since you

gave a denial, i (sic) will appeal.” You also wrote “[f]or future reference, you might want to review *Herald Association, Inc. v. Dean*.” Based on your July 11, 2024 email, the Department fulfilled your request.

Upon receipt of your request, the Department conducted a search for records related to your request and discovered the Department does not keep a daily duty roster. Thus, the Department was unable to provide a duty roster for June 8, 2024. In order to satisfy your request, the Department created a list of members assigned to the Derby Barracks on the date in question. The Department’s disclosure satisfied your request as evidenced by your July 11, 2024 email.

The Department properly withheld the duty roster for several reasons: (1) the Department did not have a record with the limited information requested; (2) release of the duty roster if disclosed could result in a safety risk to the community, and (3) the duty roster contains personal information in which the employees’ privacy interests outweigh any cognizable public interest.

The contents of the duty roster exceeded the scope of the request. The duty roster as kept by the Department contained additional information beyond the scope of the request. Thus, the Department created a record to satisfy the request.

The duty roster contains sensitive information about law enforcement capacity. The duty roster identifies the work schedules of individual troopers and, perhaps more significantly, Barracks staffing levels. Of importance, the Derby Barracks staff patrols a large geographic area, causing further concerns about publicizing fluxuations in staffing levels during certain hours of the day. It is reasonable to conclude this type of information could be used to tailor criminal activity during hours of reduced staffing. Details of law enforcement capacity and other security procedures are exempt from public disclosure and copying under Vermont’s Public Records Act. *1 V.S.A. §317(c)(25)* (“security procedures, and similar information, the disclosure of which would threaten the safety of persons or the security of public property” are “exempt from public inspection and copying”). Revealing such information could present a security risk to the community and was appropriately withheld.

The duty roster is considered a “personal document” and, as such, is exempt from public release under the PRA. *1 V.S.A. § 317(c)(7)* (“personal documents relating to an individual” are “exempt from public inspection and copying”). “[P]ersonal documents relating to an individual” may be withheld if public release of the records could reveal “intimate details of a person's life, including any information that might subject the person to embarrassment, harassment, disgrace, or loss of employment.” *Trombley v. Bellows Falls Union High School*, 160 Vt. 101, 624 A.2d 857 (1993), (quoting *Young v. Rice*, 308 Ark. 593, 826 S.W.2d 252, 255 (1992)). This provision of the Vermont PRA is similar to the federal Freedom of Information Act (FOIA) exemption 5 USC 552(b)(6), which similarly states that “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy” are exempt from public release.

Employees possess a “cognizable privacy interest” in duty station rosters and releasing such information to the public constitutes an “unwarranted invasion of personal privacy.” *Long v. Office of Personnel Management*, 692 F.3d 185. A duty roster is “personal” in that it shows work hours of specific individuals. *Id.* An employee’s work schedule is personal data because it is “wholly information concerning his or her person.” *Id.*

Vermont’s Personnel Policy and Procedure Manual supports a finding that employees possess a cognizable privacy interest in records such as a duty roster. Duty rosters, like other State employee work schedules, are presumed to be confidential personnel records and are not considered public information. *Personnel Policy and Procedure Manual, § 5.4: Personnel Records and Protection of Employee Information*. Section 5.4 of Vermont’s personnel manual explicitly cites that the public is entitled to know an employee’s title, pay grade, employment category, length of employment, salary history and the Department where the employee works. All other information contained in the employee’s personnel file is presumed confidential.

Here, the duty roster identifies troopers by name and shows when they are on duty, thus revealing when each trooper is stationed at the barracks and away from his or her residence, oftentimes during late night and early morning hours. The duty rosters also reveal when a trooper is on vacation or leave which is protected information not subject to public disclosure. Disclosure of this type of information creates a risk for potential harassment and presents a

safety risk to the individual troopers, their families, and their property. Courts have recognized these as significant risks. *Long*, at 196 (reasoning that Duty Station Rosters could be withheld to protect federal employees' physical safety from risk of harassment.)

To determine whether a "personal document" should be withheld from the public, we consider the significance of the public interest in disclosure against the personal privacy interests at stake. *Trombley*, 160 Vt. 101, 624 A.2d 857 (1993). "In doing so, [one] must consider not only the relevance, if any, of the records to the public interest for which they are sought, but any other factors that may affect the balance, including the significance of the public interest asserted" and "the nature, gravity, and potential consequences of the invasion of privacy." *Id.*

The Department is committed to transparency and takes seriously our obligation to serve the public and to be held accountable for our actions and decisions. The law recognizes a legitimate public interest in furthering the public's "understanding of the operations or activities of the government." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 775, 109 S. Ct. 1468, 103 L.Ed.2d 774 (1989). However, there has been no showing of a legitimate public interest in the duty roster. In fact, here, the Department's July 11, 2024 disclosure satisfied the public's interest in the June 8, 2024 matter. Thus, it is fair to conclude that the employees' privacy interests in their work schedules and safety concerns outweigh any existing public interest.

Therefore, for the reasons stated above, I conclude that the duty roster was properly withheld in accordance with applicable law.

Finally, please accept this as notice that an agency's decision to withhold records may be appealed to Superior Court pursuant to 1 V.S.A. §319.

Sincerely,
Jennifer Morrison
Commissioner