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December 09, 2024

Chief Anthony Cambridge  
Richmond Police Department  
203 Bridge St.  
Richmond, VT 05477

Josh Arneson  
Town Manager  
Town of Richmond  
203 Bridge St.  
Richmond, VT 05477

Correspondence sent via e-mail

Re: Richmond Police Department FIP Policy Review

Dear Chief Cambridge and Town Manager Arneson,

Thank you for submitting a draft Fair and Impartial Policing (FIP) Policy for review. It is my understanding that you are considering, as a Town, whether to approve the alternate FIP policy circulated by Migrant Justice, the VCJC model policy, or a policy that falls somewhere in between.

**Legal Background.** Vermont’s FIP statute, 20 V.S.A. § 2366(a)(1), requires all state and local law enforcement agencies to adopt “a fair and impartial policing policy that includes each component of the Criminal Justice Council’s model fair and impartial policing policy. In 2017, the Vermont Legislature amended Section 2366 to add a new subsection (f), which reads:

“Nothing in this section [i.e., Section 2366] 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.”

Earlier that year, the Vermont Legislature included virtually identical language in a different Title 20 statute that addressed information-sharing between Vermont and federal authorities. *See* 20 V.S.A. § 4651(d).

It was the enactment of these two Vermont laws that led the VCJC to revise its model FIP policy in December 2017 to reflect that any restrictions in communicating with federal immigration



authorities were not intended to conflict with those two federal statutes. As you are aware, both federal statutes prohibit state and local governments from restricting their agencies or officials from voluntarily sharing with federal immigration authorities information regarding an individual's citizenship or immigration status — that is, information regarding their legal status affecting their rights to reside in the U.S. or exercise certain rights, such as voting in federal elections.

Those two Vermont laws (Section 2366(f) and Section 4651(d)) remain in effect today. Consequently, the VCJC's revised 2024 model FIP policy continues to provide that law enforcement agencies may not restrict communications in a manner that conflicts with lawful requirements of 8 U.S.C. §§ 1373 and 1644. This most recent version includes additional text emphasizing that most information about individuals — such as their appearance, physical location, address, and family relationships — are not governed by Sections 1373 and 1644, and thus may be subject to restriction, consistent with the balance of the VCJC model FIP policy.

In discussions leading up to the VCJC's most recent revision to its model FIP policy, some have pointed out that in 2019, the Vermont Legislature amended the FIP statute to permit law enforcement agencies to include in their FIP policies provisions that “include additional restrictions on agency members' communication and involvement with federal immigration authorities or communications regarding citizenship or immigration status.” 20 V.S.A. § 2366(a)(1). However, the Legislature did not repeal subsection (f), which still prohibits agency policies or practices that conflict with the lawful requirements of the two federal immigration statutes, 8 U.S.C. §§ 1373 and 1644. Nor did the Legislature repeal the identical prohibition set forth in 20 V.S.A. § 4651(d).

The import of the 2019 amendment was to permit local law enforcement agencies to impose more restrictions on communications with federal authorities — provided they do not conflict with the lawful requirements of Sections 1373 and 1644. Any number of potential additional, but non-conflicting restrictions come to mind. For example, Section VI.d.7. of the current VCJC model FIP policy permits law enforcement agencies to “share information (other than information regarding citizenship or immigration status) about an individual with federal immigration authorities” to serve “[I]aw enforcement needs that are not related to the enforcement of federal civil immigration law (e.g., individual may be a human trafficking victim, a crime victim, or witness entitled to a T, U, or S visas.” Because such information is not within the scope of Sections 1373 and 1644, law enforcement agencies could, pursuant to 20 V.S.A. § 2366(a)(1), place additional restrictions on such communications if they so choose. In short, the 2019 amendment to the FIP statute does not authorize any Vermont law enforcement agencies to enact policies or practices that conflict with the lawful operation of Sections 1373 and 1644.

**Richmond's 2024 Draft FIP Revision.** The foregoing background provides the context for the VCJC's concerns with Richmond's draft revision to its FIP policy. The draft RPD FIP policy not only fails to include any of the VCJC model FIP policy's references to 8 U.S.C. §§ 1373 and 1644, but also includes broad prohibitions on communications with federal immigration authorities that, on their face, conflict with those two federal laws.

While RPD is not required to name or describe the federal statutes at length as the VCJC’s model policy does, it is also not permitted to adopt any policies or practices that conflict with the lawful of Sections 1373 and 1644.

Consequently, to comply with Vermont’s FIP statute, RPD’s policy must either incorporate language from the VCJC model FIP policy or add its own language to make clear that RPD is not issuing a blanket ban on communication with federal agents that would conflict with the lawful operation of Sections 1373 and 1644. The VCJC would be happy to discuss with you any proposed language to achieve that result.

**Prior VCJC Review of RPD’s Current FIP Policy.** During the Council meeting on November 6, 2024, representatives from the town of Richmond wondered what had changed since 2021 when Richmond’s then-recent revision to its FIP policy, following what has been called the “Winooski Model,” was considered compliant by the Council and the Attorney General’s Office (AGO). The implied question being why the phrase, “Nothing in the [Agency] Fair and Impartial Policing policy is intended to violate federal law,” was sufficient in 2021 to mitigate the removal of all mention of the 8 USC §§1374 and 1644 but is not enough today.

In these and related discussions there appears to be a misimpression that the VCJC or the AGO had “certified” RPD and other agency policies that were contrary to the lawful operation of 8 U.S.C. §§ 1373 and 1644.

I would like to take this opportunity to correct that misunderstanding by referring to the AGO’s March 10, 2021 letter to Richmond, which discussed its then-recent revision to RPD’s FIP policy. I have attached that letter for your reference. I quote the most relevant portions below:

“In comparing the Richmond policy to the Council’s model policy, we noted that it did not include any of the model policy’s references to two federal immigration statutes — 8 U.S.C. §§ 1373 and 1644. . . .

. . .

As noted above, the Richmond policy does not specifically mention Sections 1373 or 1644. However, it does provide that nothing in the policy ‘is intended to violate federal law.’

***Construing this phrase to mean that nothing in the Richmond FIP policy is intended to conflict with the lawful requirements of Sections 1373 and 1644, we can say that the Richmond policy includes each element of the Council’s model policy.”***

AGO Letter to Richmond at 1-2 (March 10, 2021) (emphasis added).

Plainly then, the VCJC’s 2021 approval was conditioned on its understanding that the Richmond FIP policy would not be construed so as to conflict with the above-described federal laws.

We acknowledge, of course, that your draft 2024 FIP policy includes also the phrase, “Nothing in the [Agency] Fair and Impartial Policing policy is intended to violate federal law.” However, other provisions of the draft include blanket prohibitions on communicating with federal

authorities that do conflict with Sections 1373 and 1644 — at least where it concerns voluntary sharing of information “regarding citizenship or immigration status.” Further, recent discussions about the RPD draft and other “Winooski Model” proposals have given us the impression that the intent is indeed to conflict with Sections 1373 and 1644.

It is possible that we have misunderstood Richmond’s intentions, and thus ask that you clarify that point in writing at your earliest convenience. As discussed at length above, Vermont law does not permit law enforcement agencies to enact practices or policies that conflict with the lawful requirements of Sections 1373 and 1644.

The FIP statute contemplates a process whereby the VCJC and AGO work with agencies to help them square their FIP policies with the components of the model FIP policy. 20 V.S.A. § 2366(b). We are happy to continue that process with you. If that process is not successful, Section 2366(b) provides a self-executing mechanism which provides that the “agency . . . shall be deemed to have adopted, and shall follow and enforce, the model policy issued by the Council.”

Further, since 2022, Vermont statute provides that a law enforcement agency’s failure to “follow and enforce” VCJC-required policies could lead to the agency being prohibited “[1] from having its law enforcement applicants or officers trained by the Police Academy or [2] from otherwise using the services of the Council.” 20 V.S.A. § 2359 (a). While I remain fully confident that Richmond would not find itself in that situation, I mention the law to correct or prevent any mistaken belief that there are no practical consequences if an agency declines to follow and enforce VCJC-required policies.

**AGO Consultation.** In keeping with the FIP statute, 20 V.S.A. § 2366(b), I have consulted with the Attorney General’s Office regarding the foregoing. The AGO shares the concerns expressed above and it also shares the VCJC’s commitment to work with Richmond to ensure its revised FIP policy comports with the VCJC model FIP policy and applicable law.

I look forward to working you or your legal counsel on these issues.

Sincerely,

*Kim McManus*

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*She/Her*

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March 10, 2021

Chief Kyle Kapitanski  
Richmond Police Department  
203 Bridge Street  
Richmond, VT 05477

Dear Chief Kapitanski,

Thank you for providing the Criminal Justice Training Council and our office with a copy of the Richmond Police Department Fair and Impartial Policing (FIP) Policy, effective January 19, 2021. Vermont's FIP statute, 20 V.S.A. § 2366, requires the Council, in consultation with our office to review agencies' FIP policies to ensure the following statutory requirements:

[Each agency] shall adopt a fair and impartial policing policy that includes each component of the Criminal Justice Training Council's model fair and impartial policing policy. Such agencies and constables may include additional restrictions on agency members' communication and involvement with federal immigration authorities or communications regarding citizenship or immigration status. Agencies and constables may not adopt a policy that allows for greater communication or involvement with federal immigration authorities than is permitted under the model policy.

20 V.S.A. § 2366(a)(1).

In comparing the Richmond policy to the Council's model policy, we noted that it did not include any of the model policy's references to two federal immigration statutes — 8 U.S.C. §§ 1373 and 1644. Among other things, those two statutes provide that a local government entity may not prohibit, or in any way restrict, any government entity or official from "sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual."

Vermont's FIP statute, 20 V.S.A. § 2366, provides, in relevant part, "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." *Id.*, at subsection (f). Accordingly, the Council's model policy included several provisions stating that various restrictions on officers or agency communications were not intended to conflict with the lawful requirements of those two federal statutes.

As noted above, the Richmond policy does not specifically mention Sections 1373 or 1644. However, it does provide that nothing in the policy "is intended to violate federal law." Construing this phrase to mean that nothing in the Richmond FIP policy is intended to conflict with the lawful requirements of Sections 1373 and 1644, we can say that the Richmond policy includes each element of the Council's model policy. Consequently, we can also say that the Richmond policy complies with the Vermont FIP statute, 20 V.S.A. § 2366(a)(1).

Respectfully,



David Scherr  
Assistant Attorney General  
Co-Chief, Community Justice Division