

From: Josh Arneson <jarneson@richmondvt.gov>
Sent: Wednesday, December 9, 2020 11:30 AM
To: Fred Satink <fsatink@vlct.org>
Cc: Kapitanski, Kyle <Kyle.Kapitanski@vermont.gov>; Trevor Whipple <twhipple@vlct.org>
Subject: Re: F & I Policy revisions-commentary

Fred,

I want to follow up on your response regarding how insurance coverage would be affected if the Town adopted a new FIPP. I believe the FIPP draft that I shared with you in August/September has changed a bit. See attached. The attached is currently under consideration by the Town and is the same as the policy that Winooski recently adopted. Does this change anything in the opinion you provided in September? Also, your opinion in September indicated there may be changes to the 2021 coverage document. Were those changes made and if so how do they relate to the policy under consideration?

Thank you for any updates you can provide on this topic as the Town considers this option.

Josh Arneson

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Fred Satink

Dec 11, 2020,
4:16 PM (6 days
ago)

to me, Trevor, Kyle

Hi Josh, thanks for reaching out on this issue. You had noted that this was modeled after Winooski's policy. Please note that they never approached us for an opinion on their policy – so we will consider Richmond's draft on its own merits.

As I mentioned to you on our call the other day, I did ask Trevor to review the attached draft, given his exceptional understanding of the PACIF model law enforcement policies, LE best practices, and applicable statutes. I've paraphrased his comments (in blue) below for your consideration. Feel free to follow-up with him, if you have particular questions regarding any of his points:

1. He questioned the current layout and formatting of the document as its current structure could impact the ability of law enforcement personnel to thoroughly understand and abide by the policy. He suggests using our model policy as the basic framework, and then making desired adjustments to that.

2. He noted that there is a section that appears to have been left out of the current draft. It deals with supervisors accepting and responding to complaints, and the mandatory collection of car stop data. He has highlighted the applicable section in the attached Vermont Fair & Impartial Policing 2018 policy and recommends it be included in your policy.
3. Section VII (f) in the town's current draft document is written so the officer cannot consider immigration status at all during arrest. As part of Vermont Rules of Criminal Procedure (Rule 3), officers are called upon to assess if someone is a risk of flight when deciding if they should be released or continued in custody. Immigration status should not be solely an indicator, but an officer should be able to consider it in the overall assessment where appropriate.
4. Section IX removes the ability for an officer to detain someone in a potential serious situation. If someone was removed from the country because they committed a serious crime, the officer should per policy, have the ability to address the crime of illegal re-entry, a felony. He has encountered sex crime cases where a person was deported after serving time. To have them return - and not be able to address their illegal presence adds risk where it does not need to exist.
5. Section X does not allow for a situation like the one above. What if a victim is found to be a federal fugitive because they have returned to the country after being deported for a criminal act?
6. The amended policy removes the Savings Clause. The first addition to the proposed policy states "Nothing in the Richmond Police Department Fair and Impartial Policing policy is intended to violate federal law", which is that no government entity can prohibit any government official from sending information to INS, yet modifications to the policy appear to prohibit those actions.

As for the underwriting and coverage perspective, I feel that the previous email response provided on 9/16 (which is part of this thread below) is still largely true – especially with regard to the public officials liability (POL) coverage. Additionally, for 2021, we added the following **exclusion** to our casualty coverage which includes the general liability coverage that applies to law enforcement operations. This is very similar to such exclusions that exist in commercial liability coverage:

19. Any loss brought about or contributed to by the fraud, dishonesty, or bad faith of a Named Member or Member, or arising from the deliberate violation of any federal, state, or local statute, ordinance, rule, regulation, or other clearly established law.

As is the case with the public officials coverage, the possibility exists that a given law enforcement liability claim under certain circumstance, could be found to be excluded by the above language. Additionally (as is the case with our POL coverage), it is impossible to predict in advance when an occurrence, act, or event is or is not covered, as that determination is based on the individual associated facts of the given incident.

As Trevor notes, the upfront statement regarding the intent to not violate federal law, appears to be lost in some of the policy language that to a lay person appears to require such violations. The

other concern is the lack of a saving clause. As we recommended to the Town of Hartford when they were considering their FIPP, we DO recommend retaining that clause. It would seem to lessen the likelihood of determining that coverage is excluded due to exclusion noted above or that which is present in the POL section.

Again, our advice is to engage legal counsel to determine whether the policy as drafted violates State or Federal law. This type of opinion could be quite useful in helping the town frame a policy which does not violate statute, which seemingly would reduce the possibility that a related incident would be found to be excluded from coverage.

I apologize for the lengthy response, but I do hope this is helpful to the town's deliberations on this issue.

Regards,
Fred

Frederick J. Satink

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