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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