

1 S.3

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Public records; traffic tickets; video recordings of roadside DUI stops

6 Statement of purpose: This bill proposes to establish that traffic tickets and
7 video recordings of roadside DUI stops are public records subject to disclosure
8 under Vermont's access to public records statute. The bill also establishes a
9 maximum fee of \$4.00 that the department of public safety may charge for
10 providing a copy of such a video in response to a public records request.

11 An act relating to establishing that traffic tickets and video recordings of
12 roadside DUI stops are public records

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. FINDINGS

15 The general assembly finds:

16 (1) The policy of the Vermont access to public records statute, stated in
17 1 V.S.A. § 315, is "to provide for free and open examination of records
18 consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of
19 government are trustees and servants of the people and it is in the public

1 interest to enable any person to review and criticize their decisions even
2 though such examination may cause inconvenience or embarrassment.”

3 (2) In enforcing the Vermont access to public records statute, the
4 Vermont supreme court has observed that “(o)pen access to governmental
5 records is a fundamental precept of our society.” *Shlansky v. City of*
6 *Burlington*, 2010 Vt. 90 (Oct. 1, 2010). For that reason, the court has held that
7 exceptions to the general policy of disclosure must be strictly construed against
8 the agencies holding the records, with any doubts resolved in favor of
9 disclosure, and that an agency resisting disclosure has the burden of showing
10 that the record falls within one of the statutory exceptions. *Wesco, Inc. v.*
11 *Sorrell*, 177 Vt. 287 (2004); *Springfield Terminal Railway Co. v. Agency of*
12 *Transportation*, 174 Vt. 341 (2002).

13 (3) In large part on the basis of the principles set forth in subdivisions
14 (1) and (2) of this section, the civil division of the Vermont superior court
15 recently found that a video of a roadside DUI stop and arrest recorded on a
16 Vermont state trooper’s dashboard video recorder was a public record subject
17 to disclosure under the Vermont access to public records statute. *Franco v.*
18 *Tremblay*, No. 740-10-10 Wncv (Vt. Super. Ct., Washington Unit, Oct. 27,
19 2010).

20 (4) The access to public records statute’s policy of promoting
21 government accountability through free and open examination of public

1 records would best be served by enacting in statute the Vermont superior
2 court's decision in *Franco v. Tremblay* that a video recording of a roadside
3 DUI stop was a public record.

4 Sec. 2. 1 V.S.A. § 316 is amended to read:

5 § 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS

6 (a) Any person may inspect or copy any public record or document of a
7 public agency, on any day other than a Saturday, Sunday, or a legal holiday,
8 between the hours of nine o'clock and 12 o'clock in the forenoon and between
9 one o'clock and four o'clock in the afternoon; provided, however, if the public
10 agency is not regularly open to the public during those hours, inspection or
11 copying may be made during customary office hours.

12 * * *

13 (d)(1) The secretary of state, after consultation with the secretary of
14 administration, shall establish the actual cost of providing a copy of a public
15 record that may be charged by state agencies. The secretary shall also
16 establish the amount that may be charged for staff time, when such a charge is
17 authorized under this section. To determine "actual cost" the secretary shall
18 consider the following only: the cost of the paper or the electronic media onto
19 which a public record is copied, a prorated amount for maintenance and
20 replacement of the machine or equipment used to copy the record and any
21 utility charges directly associated with copying a record. The secretary of state

1 shall adopt, by rule, a uniform schedule of public record charges for state
2 agencies.

3 (2) Notwithstanding subdivision (1) of this section or any other
4 provision of law, the department of public safety shall not charge more than
5 \$4.00 for providing a copy of a video recording of a roadside stop and arrest
6 for a violation of 23 V.S.A. § 1201.

7 * * *

8 Sec. 3. 1 V.S.A. § 317 is amended to read:

9 § 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND
10 DOCUMENTS

11 (a) As used in this subchapter, “public agency” or “agency” means any
12 agency, board, department, commission, committee, branch, instrumentality, or
13 authority of the state or any agency, board, committee, department, branch,
14 instrumentality, commission, or authority of any political subdivision of the
15 state.

16 (b) As used in this subchapter, “public record” or “public document” means
17 any written or recorded information, regardless of physical form or
18 characteristics, which is produced or acquired in the course of public agency
19 business. Individual salaries and benefits of and salary schedules relating to
20 elected or appointed officials and employees of public agencies shall not be
21 exempt from public inspection and copying.

1 (c) The following public records are exempt from public inspection and
2 copying:

3 * * *

4 (5) records dealing with the detection and investigation of crime,
5 including those maintained on any individual or compiled in the course of a
6 criminal or disciplinary investigation by any police or professional licensing
7 agency; provided, however, that records relating to management and direction
8 of a law enforcement agency ~~and~~ records reflecting the initial arrest of a
9 person, including any video recording of a roadside stop and arrest for a
10 violation of 23 V.S.A. § 1201, any ticket, citation, or complaint issued for a
11 traffic violation as defined in 23 V.S.A. § 2302, and the charge shall be public;

12 * * *

13 Sec. 4. EFFECTIVE DATE

14 This act shall take effect on passage.