UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JOHN L. FRANCO, JR., Plaintiff	*	CIVIL ACTION NO. 5:10-cv-237
v.	*	
HON. THOMAS TREMBLAY, Commissioner, Vermont Department, of Public Safety and THOMAS M. SALMON, Defendants	*	

VERIFIED COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF UNDER THE VERMONT PUBLIC RECORDS ACT AND THE FEDERAL CIVIL RIGHTS ACT

PARTIES

1) Plaintiff is a resident of Burlington, Vermont.

2) Defendant Tremblay is the Vermont Commissioner of Public Safety.

3) Defendant Salmon is the Vermont Auditor of Accounts. On November 13th, 2009 the Vermont State Police arrested and processed him for driving under the influence in the City of Montpelier which was recorded by video camera. He is named as a party here because he may claim a privacy interest against the public release of the video being requested by the plaintiff.

JURISDICTION

4) Federal question jurisdiction is provided under 28 U.S.C. §§1332 and 1343(a)(3). Supplemental jurisdiction over questions of state law is provided by 28 U.S.C. §1367.

FACTS

5) On September 7, 2010 the plaintiff a copy the video recording of the Salmon DUI

LAW OFFICES
OF
JOHN L. FRANCO, JR.
110 MAIN STREET
BURLINGTON, VERMONT 05401

stop using the Department of Public Safety's "Online Police Report and Public Records Ordering Service."

6) On September 7, 2010 plaintiff received an email confirmation that the request "had been successfully submitted to the Department of Public Safety."

7) On September 8, 2010 the plaintiff received an email confirmation from the Department of Public Safety that "Order Accepted and In-Process."

8) On September 14, 2010 the plaintiff received an email confirmation from the Department of Public Safety "DUI Incident Video Fulfilled and Shipped."

9) However on or about September 21, 2010 plaintiff received by first class mail dated September 15 that the document was claimed to be exempt pursuant to 1 V.S.A. § 317(c)(5). with instructions to appeal this denial to the defendant Tremblay.

10) That appeal was taken on September 24, 2010.

11) It was denied by defendant Tremblay was dated September 29, 2010, but received by plaintiff on October 4th.

COUNT I
PUBLIC RECORDS ACT REQUEST

12) Paragraphs 1-11 are restated.

13) The Salmon DUI video is a "record" as defined by 1 V.S.A. §317(b) "reflecting the initial arrest of a person" and is therefore outside the scope of the claimed exception of § 317(c)(5) which must be strictly construed against the custodian of records and any doubts are to be resolved in favor disclosure.

14) Plaintiff applies to the Court pursuant to the 1 V.S.A. § 319 to enjoin the defendant from withholding the DUI video and order its production.

LAW OFFICES
OF
JOHN L. FRANCO, JR.
110 MAIN STREET
BURLINGTON, VERMONT 05401

15) He also requests an award of attorneys fees and litigation costs under 1 V.S.A. § 319(d).

COUNT II – CIVIL RIGHTS ACT VIOLATION

16) Paragraphs 1-17 are restated.

17) Plaintiff has a qualified First Amendment right to the release of public records.

18) The withholding of the DUI video of Auditor Salmon violated plaintiff's qualified First Amendment right of access to this record.

19) The Department of Public Safety has in the past released the video of a motor vehicle stop of a public official by a State Trooper, the video of a stop on June 17, 2010 of Democratic Gubernatorial candidate Sen. Peter Shumlin on Interstate 91 in Fairlee, Vermont to Kristin Carlson of WCAX-TV which then aired it in a news broadcast on June 28, 2010.

20) Thomas Salmon is himself running for re-election as a Republican.

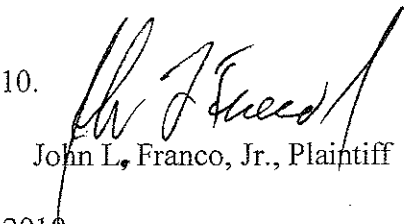
21) Commissioner Tremblay has thereby violated the federal Civil Rights Act. 42 U.S.C. § 1983.

22) Plaintiff seeks a mandatory injunction ordering Commissioner Tremblay to release a copy of the Salmon DUI video to the plaintiff.

23) The factual allegations in this complaint are true based upon personal knowledge.

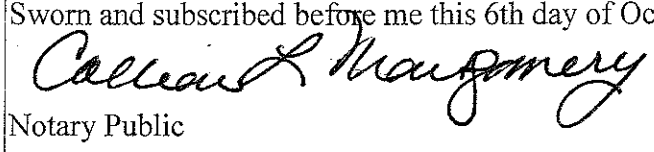
LAW OFFICES
OF
JOHN L. FRANCO, JR.
110 MAIN STREET
BURLINGTON, VERMONT 05401

Dated at Burlington, Vermont this 6th day of October, 2010.



John L. Franco, Jr., Plaintiff

Sworn and subscribed before me this 6th day of October, 2010.



Notary Public

LAW OFFICES
OF
JOHN L. FRANCO, JR.
110 MAIN STREET
BURLINGTON, VERMONT 05401

Subj:	**Vermont Police Report and Public Records Request Order**
Date:	9/7/2010 4:41:35 PM Eastern Daylight Time
From:	portal-support@vermont.nicusa.com
To:	johnfrancolaw@aol.com
Sent from the Internet (Details)	

Thank you for using Vermont's Online Police Report and Public Records Ordering Service.

Your order for the following documents has been successfully submitted to the Department of Public Safety (DPS).

Transaction Date: 09/07/2010 16:40:25
Reference Number: 24910163955-W
Customer (Name on Credit Card): John L. Franco

Order Summary:

DUI Video	$45.00
Total Amount Charged:	$45.00

The DPS Information Officer has received your order and is making every effort to get the information you requested to you in a timely manner. You will receive another e-mail when the status of your order has changed. You may also check on the status of your order at any time via the Internet at:
https://secure.vermont.gov/DPS/publicrecords/status.php

The charge on your credit card will say "Vermont Government Services".

Thank You,
Vermont Police Reports and Public Records Ordering Service

Subj: **Vermont Police Report and Public Records Request Order Status Change**
Date: 9/8/2010 9:17:19 AM Eastern Daylight Time
From: portal-support@vermont.nicusa.com
To: johnfrancolaw@aol.com
Sent from the Internet (Details)

Your order through the Vermont Police Report and Public Record Ordering system has been updated by the Department of Public Safety. The status of each document you ordered is:

Document	Status
DUI Incident Video	Order Accepted and In-Process

You may check on the status of your order at any time via the Internet at:
https://secure.vermont.gov/DPS/publicrecords/status.php

Thank You,
Vermont Police Reports and Public Records Ordering Service

Subj:	**Vermont Police Report and Public Records Request Order Status Change**
Date:	9/14/2010 12:50:52 PM Eastern Daylight Time
From:	portal-support@vermont.nicusa.com
To:	johnfrancolaw@aol.com

Sent from the Internet (Details)

Your order through the Vermont Police Report and Public Record Ordering system has been updated by the Department of Public Safety. The status of each document you ordered is:

Document	Status
DUI Incident Video	Fulfilled and Shipped

You may check on the status of your order at any time via the Internet at:
https://secure.vermont.gov/DPS/publicrecords/status.php

Thank You,
Vermont Police Reports and Public Records Ordering Service

VERMONT DEPARTMENT OF PUBLIC SAFETY
PUBLIC RECORD REQUEST

Requestor	Case #	Check #	Date
John Franco	09A304607	Online Payment REFUNDED	9/15/2010

We are unable to fulfill your request for the following reason:

☐ In order to process your request, payment is required. Please submit the following payment. (Checks should be made out to the Department of Public Safety) Amount Due: $20 per report / $20 per photo disc.

☒ The information you requested is a record dealing with the detection and investigation of a crime including those maintained on any individual or compiled in the course of a criminal investigation by a police agency. For more information, please refer to 1 VSA § 317 (c) (5) or visit www.leg.state.vt.us/statutes/statutes2.htm

☐ The report you requested is not a Vermont State Police case, you should contact:

☐ A Vermont State Police report number was not provided.

☐ Other: We have been unable to locate any photographs taken in relation to this case. It does not appear any were taken. Our apologies for any confusion this may have caused.

Under no circumstances will autopsy reports be released by the Department of Public Safety.

If your document request has been denied, you may appeal the denial to:

Thomas Tremblay, Commissioner
Department of Public Safety
103 S. Main Street
Waterbury, VT 05671-2101

LAW OFFICES
OF
JOHN L. FRANCO, JR.

110 Main Street, Suite 208
Burlington, Vermont 05401-8451
Telephone (802) 864-7207 FAX (802) 859-1876
Email: Johnfrancolaw@aol.com

September 24, 2010

Hon. Thomas Tremblay, Commissioner
Department of Public Safety 103 S. Main Street
Waterbury, VT. 05671-2101

Re: Appeal of Denial of Release of DUI Tape, Case # 09A304607

Dear Commissioner Tremblay,

On November 13th, 2009 the Vermont State Police arrested and processed Vermont Auditor of Accounts Thomas M. Salmon for driving under the influence in the City of Montpelier. Mr. Salmon was prosecuted, he pleaded guilty, and that case is now closed.

The State Police made a video recording of the initial stop and arrest of Mr. Salmon. On September 7, 2010 I requested a copy that video using the Department of Public Safety's "Online Police Report and Public Records Ordering Service." On September 7, 2010 I received an email confirmation that the request "had been successfully submitted to the Department of Public Safety." On September 8, 2010 the plaintiff received an email confirmation from the Department of Public Safety that "Order Accepted and In-Process." On September 14, 2010 I received an email confirmation from the Department of Public Safety "DUI Incident Video Fulfilled and Shipped."

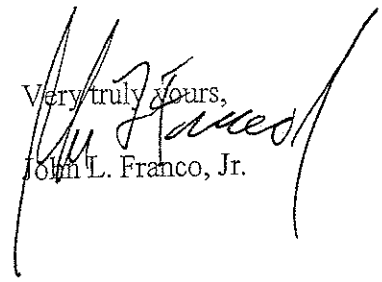
However this past Tuesday September 21 I received a notification by first class mail dated September 15, 2010 that the video was claimed to be exempt pursuant to 1 V.S.A. § 317(c)(5) and the online payment had been refunded, with instructions to appeal this denial to you. I appeal to you as instructed.

I do so on grounds that the video is a "record" as defined by 1 V.S.A. §317(b) "reflecting the initial arrest of a person" and is therefore outside the scope of the exception of § 317(c)(5) which must be strictly construed in favor of public disclosure. *Trombley v. Bellows Falls Union High School*, 160 Vt. 101, 108-09 (1993).*Kade v. Smith*, 2006 VT 44 ¶8.

Your Department also has a past practice of releasing videos of stops by State Troopers, most notably the release of the video of a stop in August of 2010 of Sen. Peter Shumlin on Interstate 91 to Kristin Carleson of WCAX-TV who then aired it in a news broadcast. The withholding of the DUI video of Auditor Salmon is a selective application of the exception with First Amendment implications that violates of equal protection of the law, and thereby violates

the federal civil rights act. 42 U.S.C. § 1983.

Very truly yours,



John L. Franco, Jr.

State of Vermont
Department of Public Safety
103 South Main Street
Waterbury, Vermont 05671-2101
www.dps.state.vt.us

September 29, 2010

John L. Franco Jr., Esq.
110 Main Street, Suite 208
Burlington, Vermont 05401-8451

Re: Appeal of Denial of Release of DUI Tape, Case #09A304607

Dear Mr. Franco,

I received your appeal on September 27, 2010 but did not actually review it until today (I had been out of the office).

On September 7, 2010 you requested a copy of the video recording of the DUI investigation of Thomas Salmon (incident 09A304607). On September 15, 2010 that request was denied based upon 1 V.S.A. 317 (c) (5). I apologize for the confusion regarding the message you received on September 14, 2010.

I have read and considered your letter of appeal. The record you seek is a recording of the trooper's motor vehicle stop, investigation (such as the road side tests and processing) of the DUI involving Mr. Salmon. While it also depicts Mr. Salmon being handcuffed it is not a record, such as an arrest warrant or citation, which is in fact a record reflecting the initial arrest.

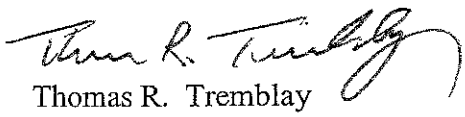
I am denying your appeal pursuant to 1 V.S.A. 317 (c) (5) the record you seek is a record dealing with the detection and investigation of a crime including those maintained on an individual or compiled during the course of a criminal investigation by the Vermont State Police.

VERMONT

Commissioner Tel 802 244-8718 FAX 802 241-5377 **Director Vermont State Police** Tel 802 244-7345 FAX 802 241-5551 **Director Criminal Justice Services** Tel 802 244-8786 FAX 802 241-5557 **Director Vermont Emergency Management** Tel 802 244-8721 FAX 802 241-5556 **Legal Counsel** Tel 802 244-6941 Fax 802 241-5377 **Internal Affairs** Tel 802 244-5194 FAX 802 241-5377 **Administrative Services** Tel 802 244-8763 FAX 802 241-5553 **Director of Fire Safety** Tel 802 479-7561 FAX 802 479-7562

Though not relevant to the appeal I will respond to your concern that I am somehow treating Mr. Salmon differently than Mr. Shumlin. Mr. Shumlin was stopped for a civil violation and not a criminal violation and therefore the record is not exempt pursuant to 1 V.S.A. 317 (c) (5). Mr. Shumlin also spoke to me in connection with the request (from a media professional) to release the video of the interaction between Mr. Shumlin and the trooper. During that conversation Mr. Shumlin encouraged me to release the video recording.

Sincerely,



Thomas R. Tremblay
Commissioner

Tara Thomas

From: Tebbetts, Anson [tebbetts@wcax.com]
Sent: Thursday, June 24, 2010 4:08 PM
To: Tara Thomas
Subject: RE: Speeding Ticket

and what is the deal on folks driving over 100 now....i think we need to do a story on this.....

thanks for looking into...

-----Original Message-----
From: Tara Thomas [mailto:tthomas@dps.state.vt.us]
Sent: Thursday, June 24, 2010 4:07 PM
To: Tebbetts, Anson
Subject: RE: Speeding Ticket

Hi Anson,
I'm still looking into this.
Tara

Sgt. Tara Thomas
Public Information Officer
Vermont State Police - Headquarters
103 South Main Street
Waterbury, VT 05676-2101
Office: 802-241-5277
Cell: 802-999-7687
Fax: 802-241-5551

From: Tebbetts, Anson [mailto:tebbetts@wcax.com]
Sent: Thursday, June 24, 2010 1:14 PM
To: Tara Thomas
Cc: Waterman, Scott; Carlson, Kristin; Hinkel, Christine
Subject: Speeding Ticket

Sgt.

We understand Sen. Peter Shumlin may have received a speeding ticket recently.
We also are exploring whether he tried to avoid the ticket by flashing his Senate ID...

thanks
Anson

Tebbetts@wcax.com

Anson Tebbetts
News Director
WCAX-TV
PO Box 4508
Burlington, VT 05406
802-652-6360

From: Tara Thomas
Sent: Friday, June 25, 2010 1:40 PM
To: Tebbetts, Anson
Cc: carlson@wcax.com
Subject: RE: Speeding Ticket

Hello Anson,

In response to your email :

Senator Shumlin was issued a Vermont Civil Violation Complaint ("speeding ticket") for speeding 81 MPH in a 65 MPH zone on Interstate 91 in Fairlee. This is a 2 point violation with a fine of $152.00. The ticket was issued by the Vermont State Police. The date and time of the stop was June 17, 2010, at 10:30 PM. The Trooper that wrote the ticket is on days off and we have been unsuccessful contacting him to inquire if Senator Shumlin attempted to avoid the ticket during the motor vehicle stop "by flashing his Senate ID." Regardless, at the time of the stop, it is clear that we issued the ticket.

We are reviewing the administrative processing of the ticket following the issuance of the ticket, but we are unable to comment on that.

Please contact Commissioner Tremblay if you have any further questions.

Respectfully,
Tara

Sgt. Tara Thomas
Public Information Officer
Vermont State Police - Headquarters
103 South Main Street
Waterbury, VT 05676-2101
Office: 802-241-5277
Cell: 802-999-7687
Fax: 802-241-5551

From: Tebbetts, Anson [mailto:tebbetts@wcax.com]
Sent: Thursday, June 24, 2010 1:14 PM
To: Tara Thomas
Cc: Waterman, Scott; Carlson, Kristin; Hinkel, Christine
Subject: Speeding Ticket

Sgt.

We understand Sen. Peter Shumlin may have received a speeding ticket recently.
We also are exploring whether he tried to avoid the ticket by flashing his Senate ID...

thanks
Anson

Tebbetts@wcax.com

Anson Tebbetts
News Director
WCAX-TV
PO Box 4508
Burlington, VT 05406
802-652-6360

Walter Goodell

From: Walter Goodell
Sent: Monday, June 28, 2010 1:37 PM
To: tebbetts@wcax.com
Cc: Walter Goodell
Subject: Video

Good afternoon Mr Tebbetts,

I know that you have been speaking with Sgt Tara Thomas our public information officer regarding a video copy.

I just learned that Kristin Carlson will be stopping by VSP HQ this afternoon to pick up that video.

I will make sure that Ms Carlson receives the video, as Sgt Thomas is not in today.

Regards,

Maj. Walt Goodell/VSP

Walter Goodell

From: Walter Goodell
Sent: Monday, June 28, 2010 1:41 PM
To: Tebbetts, Anson
Subject: RE: Video

The format is DVD +R.

From: Tebbetts, Anson [mailto:tebbetts@wcax.com]
Sent: Monday, June 28, 2010 1:40 PM
To: Walter Goodell
Cc: Carlson, Kristin
Subject: RE: Video

Major.
Thanks.
Kristin is scheduled to stop by headquarters around 2:30.
Do you know what format the video is in?

Thanks
Anson

-----Original Message-----
From: Walter Goodell [mailto:wgoodell@dps.state.vt.us]
Sent: Monday, June 28, 2010 1:37 PM
To: Tebbetts, Anson
Cc: Walter Goodell
Subject: Video

Good afternoon Mr Tebbetts,

I know that you have been speaking with Sgt Tara Thomas our public information officer regarding a video copy.

I just learned that Kristin Carlson will be stopping by VSP HQ this afternoon to pick up that video.

I will make sure that Ms Carlson receives the video, as Sgt Thomas is not in today.

Regards,

Maj. Walt Goodell/VSP

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JOHN L. FRANCO, JR.,	*	CIVIL ACTION NO.
Plaintiff	*	
	*	
v.	*	
	*	
HON. THOMAS TREMBLAY,	*	
Commissioner, Vermont Department,	*	
of Public Safety and THOMAS M.	*	
SALMON,	*	
Defendants	*	

MOTION FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

The plaintiff moves pursuant to 1 V.S.A. § 319 and 42 U.S.C. §1983 to enjoin the defendant Vermont Department of Public Safety Commissioner Thomas R. Tremblay from withholding the video of the DUI stop and arrest of Vermont Auditor of Accounts Thomas Salmon on June 17, 2010.

MEMORANDUM IN SUPPORT OF INJUNCTIVE RELIEF

I. THE SALMON DUI VIDEO IS AN NON- EXEMPT PUBLIC RECORD.

On November 13th, 2009 the Vermont State Police arrested and processed Vermont Auditor of Accounts Thomas M. Salmon for driving under the influence in the City of Montpelier. Mr. Salmon was prosecuted, he pleaded guilty, and that case is now closed. The State Police made a video recording of the initial stop and arrest of Mr. Salmon.

On September 7, 2010 plaintiff requested a copy that video using the Department of Public Safety's "Online Police Report and Public Records Ordering Service." On September 7, 2010 he received an email confirmation that the request "had been

LAW OFFICES
OF
JOHN L. FRANCO, JR.
110 MAIN STREET
BURLINGTON, VERMONT 05401

successfully submitted to the Department of Public Safety." On September 8, 2010 he received another email confirmation from the Department of Public Safety that "Order Accepted and In-Process." On September 14, 2010 he received an email confirmation from the Department of Public Safety "DUI Incident Video Fulfilled and Shipped." However on Tuesday September 21 he received a notification by first class mail dated September 15, 2010 that the video was claimed to be exempt pursuant to 1 V.S.A. § 317(c)(5). In pertinent part it exempt records relating to the

> detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency; provided however that...records reflecting the initial arrest of a person and the charge shall be public;

The online payment was refunded, with instructions to appeal this denial to defendant Tremblay.

That appeal was taken and denied on September 29, 2010 pursuant to § 317(c)(5). In pertinent part, Commissioner Tremblay reasoned that

> The record you seek is a recording of the trooper's motor vehicle stop, investigation (such as the roadside tests and processing) of the DUI involving Mr. Salmon (sic). While it depicts Mr. Salmon being handcuffed, it is not a record such as an arrest warrant or citation, which is in fact a record reflecting the initial arrest.

A video is most certainly a "record" as defined by 1 V.S.A. §317(b)

> As used in this subchapter, "public record" or "public document" means *all* papers, documents, *machine readable materials or any other written or recorded matters, regardless of their physical form or characteristics*, that are acquired in the course of agency business (emphasis added).

Insofar as, according to Commissioner Tremblay, it reflects Mr. Salmon's "road side tests and processing" and "it also depicts Mr. Salmon being handcuffed," the video is not only a record "reflecting the initial arrest of a person" under §317(c)(5), it is the *best* record.

LAW OFFICES
OF
JOHN L. FRANCO, JR.
110 MAIN STREET
BURLINGTON, VERMONT 05401

Exceptions to the general policy of disclosure under the Vermont Public Records Act are strictly construed against the custodian of records and any doubts are resolved in favor of disclosure. *Springfield Terminal Railway v. Agency of Transportation.*, 174 Vt. 341, 816 A.2d 448 (2002); *Trombley v. Bellows Falls Union High School*, 160 Vt. 101, 624 A.2d 857 (1993); *Kade v. Smith*, 2006 VT 44 ¶8, 180 Vt. 554, 904 A.2d 1080. Any ambiguity in the phrase "record reflecting the initial arrest of a person" must be strictly construed against the custodian and liberally in favor of public disclosure. The DUI stop and arrest video is therefore outside the scope of the exception of § 317(c)(5) and must be disclosed.

II. WAIVER.

The Commissioner has in the past released a video of a motor vehicle stop of a public official by State Troopers. It released to Kristin Carlson of WCAX-TV the video of a stop on June 17, 2010 of Democratic gubernatorial candidate Sen. Peter Shumlin for doing 81 MPH on Interstate 91. It aired in a news broadcast on June 28, 2010. That story, and the complete unedited video, may be viewed online at www.wcax.com/global/story.asp?s=12723019 (sponsored by a pop up internet ad of Mr. Shumlin's rival in the gubernatorial race). The emails regarding the WCAX request and the DPS' no-questions-asked release of the video are attached.

Commissioner Tremlay's reasoning distinguishing the Shumlin stop as being "civil" rather than "criminal" is erroneous. The stop of Sen. Shumlin was no less the "detection and investigation of a crime" than that of Auditor Salmon. Speeding supplies the factual basis for the investigation of a number possible crimes, including DUI. Speeding itself can form the bases of a charge of careless and negligent driving under 23 V.S.A. § 1091. *See State v. Stevens*, 150 Vt. 251, 552 A.2d 410 (1988). Indeed, according

LAW OFFICES
OF
JOHN L. FRANCO, JR.
110 MAIN STREET
BURLINGTON, VERMONT 05401

to press reports Mr. Salmon was stopped for failure to use a directional signal when executing a turn. Disclosure of the record of the "investigation" does not turn on what the investigating revealed or what the officer elected to charge as the offense. Nor does the right to the release of the video turn on whether one public official (Mr. Shumlin) consented to the release while the other (Mr. Salmon) did not.

By the release of the Shumlin video, the claim that videos of roadside motor vehicle stops of other public officials are exempted has now been waived.

III. CIVIL RIGHTS ACT VIOLATION.

More ominous are the First Amendment implications of the Commission's decision to withhold the Salmon DUI video in this particular election year context. Both videos are records of stops by the Vermont State Police on a public highway of public officials now running for election or re-election to statewide office. Peter Shumlin is a Vermont State Senator running for Vermont Governor as a Democrat. Thomas Salmon is himself running for re-election to the position of Vermont State Auditor as a Republican.

Requests for "access to public records" have substantial First Amendment implications. "Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process." *Copley Press v. Superior Court*, 18 Cal. Rptr. 3d 657 (Cal Ct. App. 2004) quoting *CBS v. Block*, 230 Cal Rptr. 362. This Circuit's Court of Appeals has concluded that there is a qualified First Amendment right to inspect public records with a presumptive right to release, subject to a demonstration that suppression is essential to preserve higher values and suppression must be narrowly tailored to serve

LAW OFFICES
OF
JOHN L. FRANCO, JR.
110 MAIN STREET
BURLINGTON, VERMONT 05401

that interest. *Hartford Courant v. Pellegrino*, 380 F.3d 83 (2nd Cir. 2004)[challenge to state court practice of sealing records of civil cases of "prominent" individuals].

Plaintiff does not dispute that law enforcement has a legitimate interest in protecting against disclosure of special law enforcement techniques and procedures, protecting witnesses and law enforcement personnel from retaliation, guarding against the privacy of those investigated, and otherwise protecting against interference with an investigation. *U.S. v. Meyerson*, 856 F.2d 481, 483-84 (2nd Cir. 1988). No such interests are implicated by the release of a video of a roadside DUI stop of a public official such as Mr. Salmon:

- It was a procedure performed in public view on a public highway, involving routine, statutorily-prescribed screening procedures with disclosure of no secret investigative or enforcement techniques;

- Mr. Salmon is a public official with no privacy interest in a public roadside stop for DUI stop, and his prosecution, and subsequent guilty plea are already matters of public record;

- There should be little risk of retaliation against witnesses or law enforcement personnel by a public official the State's own Auditor of Accounts. Indeed, if there were, that would be of particular public interest trumping any interest in nondisclosure;

- There are no confidential informants or identity of cooperating witnesses to protect;

- The case has long been concluded and release of the video involves no interference with any ongoing investigation. Both the Salmon and Shumlin cases concern closed investigations. *see Schneider v. City of* Jackson, 226 S.W.2d 332 (Tenn. 2007) and *Memphis Publishing Company v. Holt*, 710 S.W.2d 513 (Tenn. 1986) [statute relating to exception for criminal investigation does not apply to a closed investigation]; and

- The DPS' earlier release of the video of the Shumlin roadside stop and issuance of a UTT belies any contrary claims of competing, overriding higher values to be protected.

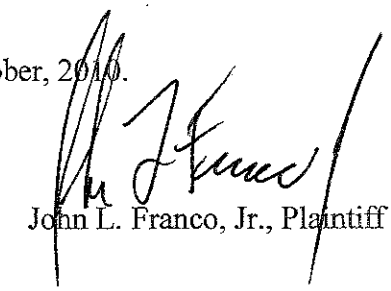
LAW OFFICES
OF
JOHN L. FRANCO, JR.
110 MAIN STREET
BURLINGTON, VERMONT 05401

Plaintiff therefore has demonstrated a First Amendment right to the release of the video, a right which Commissioner Tremblay has violated and thereby violated the federal Civil Rights Act. 42 U.S.C. § 1983.

Conclusion

Plaintiff is entitled to a mandatory injunction ordering Commissioner Tremblay to release a copy of the Salmon DUI video to the plaintiff. Given the limited time remaining before election day, the request is particularly time sensitive and should be granted without delay.[1]

Dated at Burlington, Vermont this 6th day of October, 2010.



John L. Franco, Jr., Plaintiff

LAW OFFICES
OF
JOHN L. FRANCO, JR.
110 MAIN STREET
BURLINGTON, VERMONT 05401

[1] Although not binding on a federal court, 1 V.S.A. § 319(b) provides for hearing "at the earliest practicable date and expedited in every way."