

On the Record



Deputy Secretary Chris Winters ~ Jenny Prosser

WHY ARE WE HERE?
LEARNING OBJECTIVES:

- Describe the Vermont public records act
- Identify how to comply with the law



WHY ARE WE really HERE?

Democracy – Accountability - Openness

- The public has a right to know!
- Public records laws (and open meeting laws) protect our direct access to the decisions that affect us.
- Understanding these laws makes everyone a better citizen.



IN GOVERNMENT, THE ULTIMATE BOSS IS THE PUBLIC

Vermont Constitution – Chapter 1, Article 6

*That **all power** being originally inherent in and consequently derived **from the people**, therefore, **all officers of government**, whether legislative or executive, **are their trustees and servants**; and at all times, in a legal way, **accountable to them**.*



PUBLIC RECORDS

1 V.S.A. § § 315-320



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WHAT IS A “PUBLIC RECORD?”

“Any written or recorded information, regardless of physical form or characteristics, produced or acquired in the course of public agency business.”

All government records are public records.

Some public records are exempt from disclosure.

WHO MUST COMPLY?

“**PUBLIC AGENCIES**” of the state and its municipalities:

- State and municipal agencies, boards, departments, commissions, committees, branches, instrumentalities, and authorities.



WHO MAY ASK TO INSPECT OR COPY A PUBLIC RECORD?

Any person!

“The identity and motive of the requestor cannot be considered when weighing access to public documents.”

Shlansky v. City of Burlington and Burlington Police Department, 2010 VT 90.



HOW TO MAKE A REQUEST?

Anyone may inspect:

- State records on ***weekdays***, 9-12 and 1-4.
- Municipal records during “***customary business hours***” (when the office is open to provide services).

Request best practices:

- ***There is no “in writing” requirement*** (but it’s a good idea!)
- ***List or specifically describe*** the records requests.
- Be clear: **INSPECT or COPY**.
 - NO CHARGE to inspect
 - If asking for copies, also request an estimate of the fee.
- ***Date*** requests and include ***contact info***.



HOW DO I COMPLY?

- “***Promptly***” produce the record for inspection.
“Promptly” means “**immediately, with little or no delay**, and unless otherwise provided [in the public records act] not more than three business days...”
- Accept the request in ***any manner or format***.
Exception: If staff time costs are involved, an agency may require requests to be made in writing.
- If necessary, ***consult with the requestor*** to ***clarify or narrow*** the request or get additional information that will help you respond.
- If necessary, request an extension of time.



MAKING A DETERMINATION

THE RULE:

Public agencies **MUST** produce public records for inspection and copying unless the record is “exempt” under statute.

THE POLICY:

“...in the public interest to enable any person to review and criticize [government] decisions even though such examination may cause inconvenience or embarrassment.” 1 V.S.A. § 315.

THE BURDEN OF PROOF:

The PRA *“represents a strong policy favoring access...”*

“We construe these exceptions strictly against the custodians of records and resolve any doubts in favor of disclosure...The burden of proof is on the agency seeking to avoid disclosure.”

Wesco v. Sorrell, 2004 VT 102.



MAKING A DETERMINATION

Where are the exemptions?

- 40+ are listed in the PRA itself (1 V.S.A. § 317).
- Approximately 200 are scattered throughout statute.

Resources:

- Legislative Council's *List of PRA Exemptions*
- SoS *Right to Know Database*

Each public agency should know and maintain a compilation of the specific State and Federal laws and regulations that affect access to records in its custody.



WHY COMPLY?

An agency that denies access to non-exempt public records may face litigation and could be charged the requester's court costs.

An individual who willfully destroys or discards a public record without authority faces fines.

More importantly, prompt compliance supports our notions of:

...openness,

...accountability,

...our democracy.



ENFORCEMENT

- 1) Appeal to “*head of agency.*”
- 2) Within *five business days*, head of agency must:
 - *Make the records available promptly*; or
 - *Give notice of denial in writing*, including *statutory basis*, brief statement of *reasoning* and *supporting facts*, and details about *appeal rights*.
- 3) Denial upheld? No head of agency? Time limits ignored?
 - You can *file an appeal in court*
 - *30-day deadline* – generally counted from date of denial.

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QUESTIONS?



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THANK YOU!

Please call or visit our office with any questions!

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