

A MATTER OF PUBLIC RECORD



A GUIDE TO VERMONT'S PUBLIC RECORDS LAWS

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“Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer.” 1 V.S.A. § 315

This pamphlet serves as an introduction to the subject of public records. It is written for use by those who seek access to public records and for the custodians of those records. It is our hope that by explaining the public’s right to examine and copy most of the records within the custody of state or local officials, and by identifying the exceptions we will promote easy access to Vermont’s public records.

I want to thank Attorney Paul Gillies for his assistance in writing portions of this pamphlet. You will recognize his contributions for their colorful stories, conversational prose and penetrating insight. I would also like to thank my predecessor, former Secretary of State Deborah Markowitz, for first publishing this guide upon which this new updated version is based.

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Table of Contents

Historical Context.....	4
The Public Records Law.....	5
1. Sources of Law.....	5
2. Applicability of the Law	6
3. The Process	7
Limitations on Requests.....	10
Motive Is Not Relevant.....	11
What Documents Are Public.....	11
Executive Privilege.....	13
Appeals	15
Conclusion	15

Appendix

Safe at Home: Address Confidentiality Program	16
Sample Public Records Request Letter for a Broad Request.....	17
Sample Public Records Request Letter for a Narrow Request	18
Uniform Schedule of Public Records Charges	19
Title One of the Vermont Statutes.....	20

Historical Context

Lewis Morris was elected secretary of the Vermont Constitutional Convention when it met in Windsor in 1793. He took down the minutes of the convention, in the form of a journal, listing the motions and the votes of the delegates, noting the changes they made to the constitution now that Vermont was a member of the United States. He used the minutes to inform Alden Spooner, the man who published the 1793 Constitution, about what had changed as a result of the convention, and Spooner gave them to Stephen Jacob, another member of the convention.



Windsor Constitution House

Nobody filed them in a government office. Nobody sought to print them or have copies made. Morris and Jacob believed the journals were private property, and so they remained private until 1877, when they were displayed at the Vermont Centennial exhibition in Windsor. After the ceremonies, however, they were sent back to their owner, Horace Everett, who lived in Council Bluffs, Iowa, where many years later they were found in an old trunk. The journals were not published until 1921 ~ 128 years after the convention. The original is now at the Vermont State Archives and Records Administration in Middlesex.

What a strange history for what today we would regard as the most public of public documents. At the time Lewis Morris took the minutes of the convention, however, nobody thought they had any public value. He might have been secretary to the convention, but Morris thought the minutes were his property, to be given away or sold as he saw fit, and so did those who had custody of them for all of those years.

The realization that public documents belong to everybody was not a common idea in 1793 or even as late as 1906, when Percival Clement, a candidate for Vermont Governor, asked the Auditor of Accounts for copies of state financial records. Clement believed state

government had grown wasteful and extravagant. Total state expenses had gone up 112 percent in the thirty years ending on June 30, 1901, while the population had grown less than four percent over that time. In this he saw "gross negligence and misconduct in the management of the moneys of the State."

The Auditor told Clement he could not see the financial records because they were not public and because he had an improper motive for requesting to see them (he wanted to use them in a political campaign). When the Vermont Supreme Court heard the appeal of the Auditor's decision, the Court did not hesitate to overrule the Auditor. The records were public, meaning they could be reviewed and copied, and the motives of the person requesting them were irrelevant.

Nearly a century later, citizens and government officials alike understand that the records of state and local government are *public records*, that with some exceptions they may be reviewed and copied and that there are laws in place to ensure that records are accessible upon request. Those laws are set forth in the Vermont Public Records Act, part of what is known as the "right-to-know" laws. Along with the Vermont Open Records Act, the law is intended to be administered and enforced with a liberal bias toward openness and accessibility.

Today we do not regard those who ask to review a public record as intruders (or at least we should not think of them that way). We also do not throw up barriers to keep people from looking at minutes of meetings, government studies and reports or even the arrest records of the local police department. A person's motives for asking and having copies made are none of government's business. No one would think of taking off with the only copy of a set of minutes of a public body, because now we understand the public nature of government records.

The Public Records Law

1. Sources of Law

The Constitution: The law of public records is based on a provision of the Vermont Constitution. Article 6 of Chapter I guarantees, "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." In a democracy, the people have a right to know what their government has done and more importantly why public decisions have been made. That is the principle behind the law of public records.

Statutory Law: The details of the law are principally found in Title 1, Sections 315

through 320 of the Vermont Statutes Annotated. You can find a copy of the law on line at www.leg.state.vt.us/statutes. Also, the law can be found in every Town Clerk's office, in the first volume of a set of green books that contain all the statutory law of Vermont. Remember that the most current law is found in the paper pocket part of the volume you are using, and make sure the pocket part you use has the current year printed on it. You can also find a complete copy of these laws in an appendix at the back of this guide.

Other Vermont statutes may also affect the public's right to access records of government.

- *4 V.S.A. § 693, for instance, discusses public inspection of court records, since the Vermont Public Records law does not govern the judiciary.*
- *There is an exception for one category of local property assessment records, inventories of business personal property, that is exempt from public disclosure, and the law even includes penalties for disclosure of the information contained in the documents. See 32 V.S.A. § 4009.*
- *The records of a regional development corporation relating to identity of a potential industrial client, the location of a property to be developed by the client with assistance from the corporation, or details of a lease, sale or option of the same, are expressly exempted from disclosure by 24 V.S.A. § 2786.*

2. Applicability of the Law

The public records law only applies to the "public records" of "public agencies." These are defined by the law as follows:

"**Public agencies**" include any agency, board, department, commission, committee, branch, instrumentality or authority of the state or any agency, board, committee, department, branch, instrumentality, commission or authority of any political subdivision of the state.

"**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 produced or acquired in the course of agency business. Title 1, Chapter 5, Subchapter 3 is the first place to look in determining which records are public. Ideally, a bright line should separate these two, but there are occasional close calls.

*Our advice when there are close calls is to err on the side of openness. Indeed, the courts seem to follow this rule when asked to resolve disputes about whether or not certain records are public. See *Finburg v. Murnane*, 159 Vt. 431*

3. The Process

Upon request the custodian of a public record must **promptly** produce the record for inspection.

(a) Timing:

- If the record does not exist in the format requested, or if it is in active use or is in storage and therefore not available for use at the time the person asks to examine it, the custodian must state this in writing and set a date and hour within **one calendar week** of the request when the record will be available for examination.

Clarify the Request

In responding to a request to inspect or copy a record, a public agency must consult with the person making the request in order to clarify the request or to obtain additional information that will assist the public agency in responding to the request. 1 V.S.A. § 318(d)

- If the custodian considers the record to be exempt from inspection he or she must state this in writing, giving the reasons for the denial. This certification must be made within **three business days**, unless more time is necessary as allowed below.
- The time frame for making a determination on a record request may be extended for up to **ten business days** with written notice to the person making the request. This notice must state the reasons for the extension and the date on which a determination is expected to be made. An extension is only permitted in "unusual circumstances" to the extent reasonably necessary for properly processing the particular request. This includes when there is the need:
 - to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
 - to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
 - for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein, or with the Attorney General.

Public Records Must Be Open to the Public

Public records must be open to public inspection and copying. Every member of the public has the right to inspect and copy any public record or document of a public agency unless it is exempt from disclosure. Records must be made available during all customary office hours of the custodian of the records. 1 V.S.A. § 316

(b) Denying a Records Request:

- In the event that the custodian considers the record to be exempt, he or she must:
 - notify the person requesting the document in writing;
 - notify the person of the right to appeal to the head of the agency; and
 - certify that the record is exempt from inspection.
- The certification shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial.
- The head of the agency must decide the issue within five business days after receiving the appeal. If an appeal of the denial of the request for records is in whole or in part upheld, the agency must notify the person of his or her right to appeal to court.
- A person who wishes to appeal the agency denial may apply to the superior court in the county where he or she lives or has a business, or in the location of the public records, or in the superior court of Washington County.

If the municipality or state agency loses any part of the case the court is required to award the person requesting the documents reasonable attorney fees and other litigation costs. See 1 V.S.A. § 319(d)

(c) Copying Records:

A public agency must make copies upon request – but only if it has the equipment to make the copies.

- If the public agency does not have the equipment necessary to produce a copy, Vermont law will not require it to provide or arrange for copying service. A public agency can also prevent the use of copying equipment other than its own, it may

prohibit the operation of its copying equipment by other than its own personnel, and it may prohibit removal of the public record for purposes of copying.

- A public agency does not have to make its own personnel available for making handwritten or typed copies of the public record or document requested.

Accommodations for Persons with Disabilities

If a person making the request has a disability which requires accommodation to gain equal access to the public record sought, the person shall notify the public agency of the type of accommodation requested. The public agency shall give primary consideration to the accommodation choice expressed by the requestor, but may propose an alternative accommodation so long as it achieves equal access. The public agency shall provide accommodation to the person making the request unless the agency can demonstrate that accommodation would result in a fundamental alteration in the nature of its service, programs, activities, or in undue financial and administrative burden.

(d) Electronic Records

- An agency may, but is not required, to provide copies of public records in a nonstandard format, to create a public record or to convert paper public records to electronic format.
- Standard formats for copies of public records shall be as follows: for copies in paper form, a photocopy of a paper public record or a hard copy print-out of a public record maintained in electronic form; for copies in electronic form, the format in which the record is maintained. Any format other than the formats described above is a nonstandard format.
- A public agency may make reasonable rules to prevent disruption of operations, to preserve the security of public records or documents, and to protect them from damage. 1 V.S.A. § 316(j).

Electronic Records are Public Records

If an agency maintains public records in an electronic format, they shall be available for copying in either the standard electronic format or the standard paper format, as designated by the party requesting the records.

(e) Copying and Production Costs:

- **Actual Costs:** The agency may charge and collect from those requesting the copy the actual cost of providing the copy as well as the costs associated with mailing or transmitting the record by fax or other electronic means. (This rule will not override specific laws establishing charges for copies of particular records. See Official Fee Schedule and Town Clerk Fee List included as part of the appendix.)
- An agency may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record when:
 - (1) the time directly involved in complying with the request exceeds 30 minutes;
 - (2) the agency agrees to create a public record; or
 - (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds 30 minutes.

The agency may require:

1. *Written requests whenever staff time charges will apply.*
2. *All charges paid, in whole or in part, prior to delivery of the copies.*

Upon request, the agency must provide an estimate of the charges.

Limitations on Requests

Be careful about confusing the law on public records with a request for information. **The public does not have the right to require a public official or employee to do research or create a document that does not exist.** For example, if a person wants to compile a list of all properties in town that are larger than ten acres the person may ask for a copy of the grand list, either on paper or disk, and compile that information from the database, but the person cannot require that the clerk or lister do that work for the requestor. If records do not exist with the information the person seeks already culled out, the person should not expect government officials to do the research or create the record on request.

Copying is another conundrum. Suppose a person wants a copy of a tape of a meeting he or she attended. If the town owns equipment that will allow copies to be made of a magnetic tape, then the town is obliged to provide a copy, but if not, the most a person gets to do is to listen to the town's copy. Paper is easy. Electronic media is easy. Copying

videotapes or audiotapes may not be possible in many places, where the equipment is not available.

Motive Is Not Relevant

The courts have been clear that the motive of the person requesting a record is irrelevant when determining whether a records request should be granted. *Finburg v. Murnane*, 159 Vt. 431 (1992). This means that even if a person is asking for the voter checklist on disc for the purpose of solicitation the town may not deny the request. And even if the town has gone to great expense to gather demographic or geographic information about the town, that information must be made available to anyone who requests it – even if that person will be republishing the information for commercial gain. In these cases the town may only charge the individual the actual cost of producing copies of the document. The cost of compiling the information that is the basis of the document may not be passed along.

What Documents Are Public

All public records regardless of format (i.e. tape recordings, videotapes, paper documents, microfilm and microfiche, emails or any other means of capturing and reproducing the work of government) are open and accessible, unless there is a specific statute exempting them from public disclosure.

There are 40 exemptions from disclosure listed in section 317 of Title 1 of the Vermont Statutes Annotated (V.S.A.). In addition, the Legislative Council, in a historical note to this statutory section, lists 243 exemptions that exist throughout the V.S.A. Furthermore, the Vermont State Archives and Records Administration, a division of the Secretary of State's Office, publishes on its website a "Right to Know" database that sets forth a comprehensive list of the exemptions.

While it is impossible to discuss every possible public record here, we should discuss the most common examples. To start, the following is a listing of public records that are clearly exempt from disclosure:

- Personnel records of state or local officials or employees. However, individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies are not be exempt from public inspection and copying.
- Student records, including disciplinary records, transcripts or other material relating to a student at a public school.
- Criminal investigatory files, produced by law enforcement agencies.

- Memos to or from the Governor to an agency secretary relating directly to the establishment of policy.
- Income Tax returns on individuals or corporations.

Check the Law for Yourself

It makes sense to do a little checking before asking any official for a public record, or if you are the custodian of the record, before denying access to a record. The critical section is 1 V.S.A. § 317 where there is a list of documents exempted from public disclosure.

On the other hand, the following is a list of some of the most commonly requested records:

- Minutes of meetings.
- Criminal arrest records, information or indictments, through police departments or the District Court.
- Orders, decisions, rulings, pleadings; ordinances, bylaws, regulations.
- Town grand lists, checklists, vouchers, invoices.
- Salaries and job descriptions, of government employees.

A few explanations of exemptions:

1. *The prohibition against release of the location of archeological sites and underwater historic properties exists because of the concern that those sites will be plundered.*
2. *The exempt status of the Vermont Life magazine subscription list is intended to keep the official state magazine competitive.*
3. *The confidential nature of the identity of library patrons and the books they take out of a library is intended to protect the privacy of those individuals.*

If we had to define a policy of public records, looking purely at Section 317 of Title 1, it is simply that information in public records relating to individuals is generally protected, except when those individuals are government employees (and even then, there are safeguards, such as the protection against public review of employee discipline files or social security withholdings), while nearly everything officially produced by government officials must be available for inspection and copying. There is a fine balance, and a few notable exceptions. See *Trombley v. Bellows Falls Union High School District*, 160 Vt. 101 (1993) (Only personal personnel documents are exempt from disclosure. Those are documents that reveal intimate details of a person's life.)

Executive Privilege

The Governor can communicate with other policy-making officials within the Executive Branch of state government and expect that the communications will remain confidential. In some cases, the records cannot even be reviewed by a Court, just to see if what is included in the records is properly judged confidential by the officials claiming the privilege.

Official correspondence of the Governor, such as letters and emails from the Governor to constituents, or their letters and emails to the Governor, are not protected. Nor of course are all the official proclamations, press releases, policy statements, reports or speeches of the Governor. The Governor's schedule (the one he is given by his staff, and his staff use to know his whereabouts) is also public.

At the heart of the executive function, however, there is an entirely legal zone of confidentiality, recognized by the Vermont Supreme Court, allowing the Governor to be advised by appointees and to advise them of his or her thinking on particular issues.

Naturally, there is a good deal of interest in these very materials, but to date the Courts have been diligent in defending the Governor from the prying eyes of those who would like to invade this domain.

All this talk about confidentiality might lead some to conclude that the range of documents available for review and copying is small, but the opposite is true. The problem in many instances is that the public is not assertive enough to ask for copies of public papers, and is left out of important decisions and vital information because of a misunderstanding about the liberal nature of the access law.

There is no executive privilege for town managers, selectboards, school boards, superintendents, mayors or other state or local officials. There are, however, other privileges recognized in law, particularly the lawyer-client privilege, which is used to protect opinion letters of a town attorney or an Assistant Attorney General to a local or state official from disclosure.

Five Possible Answers To A Public Record Request:

“Here they are.” The records are clearly public, and the custodian knows it, cheerily providing them and inviting you to take a seat to review them and/or to have a photocopy made of them to take home. Sometimes there is a fee, based on the actual cost of copying. Other records, such as birth, marriage and death certificates, and deeds and mortgages, have a fee set by statute. Some places do not charge for the first few copies. To avoid embarrassment, discuss the fee with the custodian before the photocopier is turned on.

“They are packed away.” The law allows custodians to delay up to a week in producing a public document if it is in storage. To exercise this authority, the keeper of the records must certify that fact in writing to you, giving a date and hour when the record will be available. The same delay is available when a document is in active use. For example, if you want a copy of all the tax bills the town has sent out this year and you make that request the same week that the town treasurer is sending the bills out, it is appropriate for the treasurer to write you a note to tell you to expect them next week.

“I do not know if they are public or not.” Some documents are so obviously public, such as minutes or property tax bills, that there is no need for deep analysis to figure out that they should be produced. Others require more care. Take, for instance, a request for a copy of the town attorney’s legal opinion. In some circumstances, this document might be privileged; in others, particularly if it has been circulated at a public meeting, it might no longer enjoy a privilege. A little inquiry by the keeper of the record would avoid embarrassment later, and is entirely appropriate under the law, but only up to ten working days and only after a written response to the person who requested the records, explaining why a delay is needed.

“There is no such record.” This answer must also be given in writing. Naturally, if the record exists, and you know it, you should not accept this answer. If the record did exist, and was destroyed, you may seek an answer to how and when they were destroyed. Some records are kept forever; others have a legal shelf-life, established by the Public Records Advisory Board. You may obtain a schedule of retention schedules from the Division of Public Records in Middlesex without charge.

“The record is exempt from public access.” This is a denial of the request. As with the others, it must be in writing, explaining why. The writing must include a statement about your appeal rights. The appeal is taken to the head of the agency. With an elective town clerk, there is no one in a superior position, so the decision of the clerk is final, justifying the right to appeal to the Superior Court of your county. With a clerk in the Vermont Department of Health, for instance, the appeal is to the Commissioner of Health. When an appeal is taken, the head of the agency has five working days to rule on the request. At that point, the appeal is ripe (assuming the conclusion is to sustain the decision of the employee).

Appeals

Going to court to appeal the denial of a public records request is something the law assumes a person can do alone, without a lawyer. However, if a person hires an attorney and wins the lawsuit, the law requires the court to require the public agency to pay the complainant's reasonable attorney fees and other litigation costs. The statute (1 V.S.A. § 319(d)) is not an absolute guarantee that lawyer's fees will be granted if a lawsuit is filed because subdivision (d)(2) gives the court the discretion to award fees and costs when a complainant has substantially prevailed provided that the public agency, within the time allowed for service of an answer under Rule 12(a)(1) of the Vermont Rules of Civil Procedure (20 days):

1. concedes that a contested record or contested records are public; and
2. provides the record or records to the complainant.

1. **Starting the Process.** The court process is very formal. To challenge a denial a person must file a notice of appeal within 30 days of the date the records request was denied. Note that these are 30 calendar days, not business days. The appeal can be as simple as a description of what occurred, an explanation of what was requested (with a copy of the written request) and then the denial (including the written response if there was one.) A copy of the appeal is filed with the Superior Court of the county of the complainant's residence, place of business, or location of the public records. A copy of the appeal must also be given to the official who denied the records. The court is required by law to take up this case "promptly." It can, in exceptional circumstances, allow the agency more time to come up with the records.
2. **The Hearing.** Be ready for the hearing. If you are representing yourself without an attorney you should think in advance of what the judge might ask, and be prepared with answers. Avoid duplication and irrelevancy. Treat the judge with respect, and speak only to the judge, not to the other party. Stand when the judge enters and leaves the room, and when you are talking. Speak up in a loud and clear voice.
3. **Appeal To Supreme Court.** If the court denies your request, you have a right to appeal that decision to the Vermont Supreme Court within 30 days of the ruling.

Conclusion

It is not disrespectful to want to see the records of our government. It is, instead, the right of every member of the public. Rights, to be preserved, need to be exercised!

Appendix

Safe at Home: Address Confidentiality Program

Sometimes our public records system can have the unintended result of endangering certain people in our communities by making it possible to track that person down. For this reason the Secretary of State's Office started the Safe At Home program.

Safe At Home allows victims of domestic violence, rape or stalking to keep their addresses out of the public records system. The program allows participants to use the Safe At Home substitute address whenever they obtain state and local government services (a driver's license, food stamps, Medicaid, car registration, etc.). Participants can also use the address to have other first class mail (with the exception of packages) forwarded to them from the substitute address to their actual, confidential location.

Safe At Home offers domestic violence, sexual assault and stalking victims another layer of protection in their overall safety plan by providing a substitute mailing address to use whenever their home, work or school address is required. (phone/all bills, etc.)

For more information about the Safe at Home program call the Office of the Secretary of State at 802-828-2363.

Sample Public Records Request Letter for a Broad Request

(date) *(very important!)*

Dear *(Record Custodian)*:

Pursuant to Vermont's Public Records Act, 1 V.S.A. 315-320, I hereby request copies of the following records:

All letters, memoranda, reports or other writings issued or received by you or by staff in your department during 1992, 1993 or 1994 that treat the question of paper manufacturing waste in the waters of the XYZ River.

I am addressing this request to you in the belief that you are the custodian of such documents. If you are not, I request that you forward my request to the proper custodian of such documents and inform me of who that person is.

I hereby agree to pay reasonable and customary costs for these copies upon delivery, *(next portion optional ~ but remember that some requests might result in thousands of pages of photocopies)* provided that the total does not exceed \$_____. If the charge would exceed that amount, please so inform me before incurring the expense. *(end of optional portion)*

If the law does not allow me to have access to some of these records, please inform me within three business days, as provided by law, and inform me of the specific exemption that applies to each record or portion of a record being withheld. If an otherwise public record has a portion that is exempt from disclosure, please redact the exempt portion and release a copy of the rest of the document together with a notation of the specific exemption that applies to the redacted portion.

If some or all of my request is denied, please tell me the title and name of the person responsible for the denial and, as the law requires, please inform me of the appeal procedures available to me and the name of the person to whom an appeal may be made.

(Next portion optional) If you have questions about this request, please call me at _____ *(end optional portion ~ but be sure to tell the records custodian how you wish to be contacted)*.

Thank you for your assistance.

Sample Public Records Request Letter for a Narrow Request

(date) (very important!)

Dear *(Record Custodian)*:

Pursuant to Vermont's Public Records Act, 1 V.S.A. 315-320, I hereby request copies of the following records:

- 1) Any bill or invoice for labor involving roof construction or repair that was paid by your office during the months of June, July or August, 1995.
- 2) Any roofing materials bill or invoice paid by your office during the same period.

I am addressing this request to you in the belief that you are the custodian of such documents. If you are not, I request that you forward my request to the proper custodian of such documents and inform me of who that person is.

I hereby agree to pay reasonable and customary costs for these copies.

If the law does not allow me to have access to some of these records, please so inform me within three business days, as provided by law, and inform me of the specific exemption that applies to each record or portion of a record being withheld. If an otherwise public record has a portion that is exempt from disclosure, please redact the exempt portion and release a copy of the rest of the document together with a notation of the specific exemption that applies to the redacted portion.

If some or all of my request is denied, please tell me the title and name of the person responsible for the denial and, as the law requires, please inform me of the appeal procedures available to me and the name of the person to whom appeal may be made.

(Next portion optional) If you have questions about this request, please call me at _____ *(end optional portion ~ but be sure to tell the records custodian how you wish to be contacted).*

Thank you for your help.

Uniform Fee Schedule

Under 1 V.S.A. 316(d) the Secretary of State shall adopt, by rule, a uniform schedule of public record charges for state agencies. The current rule was adopted November 14, 2003 and became effective on December 1, 2003. The schedule also applies, under 1 V.S.A. 316(e), to political subdivisions whose legislative bodies have not adopted a uniform schedule. The schedule does not apply to public records governed by fees otherwise established by law.

Uniform Schedule of Public Records Charges for State Agencies (CVR 04-000-002)

Pursuant to [1 V.S.A. 316\(d\)](#) and Acts 1996, No. 159 section 1, the following fees are established as the actual cost of providing a copy of a public record:*

1. For staff time involved in physically duplicating a record, \$.33 per minute after the first 30 minutes.
2. For senior-level staff time, and information technology specialists' time spent extracting data from databases or performing similar tasks necessary to comply with a request to create a new public record, \$.57 per minute.
3. For any other staff time for which cost can be charged and collected under this section, \$.45 per minute.
4. For photocopies, \$.05 per single-sided page, \$.09 per double-sided page for pages up to 8.5 by 14 inches.
5. For color photocopies, \$1.00 per single-sided page.
6. For computer-generated paper copies, \$.02 per page for pages up to 8.5 by 14 inches.
7. For computer diskettes, \$.28 each for 3.5-inch diskettes.
8. For compact discs, \$.86 each for write-once CD w/case, \$2.31 each for re-writable CD w/case.
9. For audio tapes, \$.81 each.
10. For video tapes, \$1.69 each.
11. For DVDs, \$2.00 each for write-once DVD w/case, \$4.00 each for re-writable DVD w/case.

**Note: there are fees for copies of public records that are established by statute that may override the fees established by this schedule.*

Title 1 of the Vermont Statutes Annotated, Chapter 5:

Sub-Chapter 3: Access To Public Records

§ 315. Statement of policy

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the General Assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed to implement this policy, and the burden of proof shall be on the public agency to sustain its action. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 2011, No. 59, § 1.)

§ 316. Access to public records and documents

(a) Any person may inspect or copy any public record of a public agency, as follows:

(1) For any agency, board, department, commission, committee, branch, instrumentality, or authority of the State, a person may inspect a public record on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and 12 o'clock in the forenoon and between one o'clock and four o'clock in the afternoon;

(2) For any agency, board, committee, department, instrumentality, commission, or authority of a political subdivision of the State, a person may inspect a public record during customary business hours.

(b) If copying equipment maintained for use by a public agency is used by the agency to copy the public record or document requested, the agency may charge and collect from the person requesting the copy the actual cost of providing the copy. The agency may also charge and collect from the person making the request, the costs associated with mailing or transmitting the record by facsimile or other electronic means. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

(c) Unless otherwise provided by law, in the following instances an agency may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record: (1) the time directly involved in complying with the request exceeds 30 minutes; (2) the agency agrees to create a public record; or (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds 30 minutes. The agency may require that requests subject to staff time charges under this subsection

be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge.

(d) The Secretary of State, after consultation with the Secretary of Administration, shall establish the actual cost of providing a copy of a public record that may be charged by state agencies. The Secretary shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine "actual cost," the Secretary shall consider the following only: the cost of the paper or the electronic media onto which a public record is copied, a prorated amount for maintenance and replacement of the machine or equipment used to copy the record and any utility charges directly associated with copying a record. The Secretary of State shall adopt, by rule, a uniform schedule of public record charges for State agencies.

(e) After public hearing, the legislative body of a political subdivision shall establish actual cost charges for copies of public records. The legislative body shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine actual cost charges, the legislative body shall use the same factors used by the Secretary of State. If a legislative body fails to establish a uniform schedule of charges, the charges for that political subdivision shall be the uniform schedule of charges established by the Secretary of State until the local legislative body establishes such a schedule. A schedule of public records charges shall be posted in prominent locations in the town offices.

(f) State agencies shall provide receipts for all moneys received under this section. Notwithstanding any provision of law to the contrary, a State agency may retain moneys collected under this section to the extent such charges represent the actual cost incurred to provide copies under this subchapter. Amounts collected by a State agency under this section for the cost of staff time associated with providing copies shall be deposited in the General Fund, unless another disposition or use of revenues received by that agency is specifically authorized by law. Charges collected under this section shall be deposited in the agency's operating account or the General Fund, as appropriate, on a monthly basis or whenever the amount totals \$100.00, whichever occurs first.

(g) A public agency having the equipment necessary to copy its public records shall utilize its equipment to produce copies. If the public agency does not have such equipment, nothing in this section shall be construed to require the public agency to provide or arrange for copying service, to use or permit the use of copying equipment other than its own, to permit operation of its copying equipment by other than its own personnel, to permit removal of the public record by the requesting person for purposes of copying, or to make its own personnel available for making handwritten or typed copies of the public record or document requested.

(h) Standard formats for copies of public records shall be as follows: for copies in paper form, a photocopy of a paper public record or a hard copy print-out of a public record maintained in electronic form; for copies in electronic form, the format in which the record is maintained. Any format other than the formats described in this subsection is a nonstandard format.

(i) If an agency maintains public records in an electronic format, nonexempt public records shall be available for copying in either the standard electronic format or the standard paper format, as designated by the party requesting the records. An agency may, but is not required to, provide copies of public records in a nonstandard format, to create a public record or to convert paper public records to electronic format.

(j) A public agency may make reasonable rules to prevent disruption of operations, to preserve the security of public records or documents, and to protect them from damage.

(k) Information concerning facilities and sites for the treatment, storage, and disposal of hazardous waste shall be made available to the public under this subchapter in substantially the same manner and to the same degree as such information is made available under the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. chapter 82, subchapter 3, and the Federal Freedom of Information Act, 5 U.S.C. section 552 et seq. In the event of a conflict between the provisions of this subchapter and the cited federal laws, federal law shall govern. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 1987, No. 85, § 5, eff. June 9, 1987; 1995, No. 159 (Adj. Sess.), § 1; 2003, No. 158 (Adj. Sess.), § 4; 2011, No. 59, § 2.)

§ 317. Definitions; public agency; public records and documents

(a) As used in this subchapter:

(1) "Business day" means a day that a public agency is open to provide services.

(2) "Public agency" or "agency" means any agency, board, department, commission, committee, branch, instrumentality, or authority of the State or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the State.

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

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

(1) records which by law are designated confidential or by a similar term;

(2) records which by law may only be disclosed to specifically designated persons;

(3) records which, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the State;

(4) records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process

privilege as it applies to the General Assembly and the Executive Branch agencies of the State of Vermont;

(5)(A) records dealing with the detection and investigation of crime, but only to the extent that the production of such records:

(i) could reasonably be expected to interfere with enforcement proceedings;

(ii) would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecution if such disclosure could reasonably be expected to risk circumvention of the law;

(vi) could reasonably be expected to endanger the life or physical safety of any individual;

(B) Notwithstanding subdivision (A) of this subdivision (5), records relating to management and direction of a law enforcement agency; records reflecting the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, as that term is defined in 23 V.S.A. § 2302; and records reflecting the charge of a person shall be public;

(C) It is the intent of the General Assembly that in construing subdivision (A) of this subdivision (5), the courts of this State will be guided by the construction of similar terms contained in 5 U.S.C. § 552(b)(7) (Freedom of Information Act) by the courts of the United States;

(D) It is the intent of the General Assembly that, consistent with the manner in which courts have interpreted subdivision (A) of this subdivision (5), a public agency shall not reveal information that could be used to facilitate the commission of a crime or the identity of a private individual who is a witness to or victim of a crime, unless withholding the identity or information would conceal government wrongdoing. A record shall not be withheld in its entirety because it contains identities or information that have been redacted pursuant to this subdivision;

(6) a tax return and related documents, correspondence and certain types of substantiating forms which include the same type of information as in the tax return itself filed with or maintained by the Vermont Department of Taxes or submitted by a person to any public agency in connection with agency business;

(7) personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote, or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his or her designated representative;

(8) test questions, scoring keys, and other examination instruments or data used to administer a license, employment, or academic examination;

(9) trade secrets, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it, except that the disclosures required by 18 V.S.A. § 4632 shall not be included in this subdivision;

(10) lists of names compiled or obtained by a public agency when disclosure would violate a person's right to privacy or produce public or private gain; provided, however, that this section does not apply to lists which are by law made available to the public, or to lists of professional or occupational licensees;

(11) student records, including records of a home study student, at educational institutions or agencies funded wholly or in part by State revenue; provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974 (P.L. 93-380) and as amended;

(12) records concerning formulation of policy where such would constitute a clearly unwarranted invasion of personal privacy, if disclosed;

(13) information pertaining to the location of real or personal property for public agency purposes prior to public announcement of the project and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts thereof;

(14) records which are relevant to litigation to which the public agency is a party of record, provided all such matters shall be available to the public after ruled discoverable by the court before which the litigation is pending, but in any event upon final termination of the litigation;

(15) records relating specifically to negotiation of contracts including collective bargaining agreements with public employees;

(16) any voluntary information provided by an individual, corporation, organization, partnership, association, trustee, estate, or any other entity in the State of Vermont, which has been gathered prior to the enactment of this subchapter, shall not be considered a public document;

(17) records of interdepartmental and intradepartmental communications in any county, city, town, village, town school district, incorporated school district, union school district, consolidated water district, fire district, or any other political subdivision of the State to the extent that they cover other than primarily factual materials and are preliminary to any determination of policy or action or precede the presentation of the budget at a meeting held in accordance with section 312 of this title;

(18) records of the office of internal investigation of the Department of Public Safety, except as provided in 20 V.S.A. § 1923;

(19) records relating to the identity of library patrons or the identity of library patrons in regard to library patron registration records and patron transaction records in accordance with 22 V.S.A. chapter 4;

(20) information which would reveal the location of archeological sites and underwater historic properties, except as provided in 22 V.S.A. § 762;

(21) lists of names compiled or obtained by Vermont Life magazine for the purpose of developing and maintaining a subscription list, which list may be sold or rented in the sole discretion of Vermont Life magazine, provided that such discretion is exercised in furtherance of that magazine's continued financial viability, and is exercised pursuant to specific guidelines adopted by the editor of the magazine;

(22) any documents filed, received, or maintained by the Agency of Commerce and Community Development with regard to administration of 32 V.S.A. chapter 151, subchapters 11C and 11D (new jobs tax credit; manufacturer's tax credit), except that all such documents shall become public records under this subchapter when a tax credit certification has been granted by the Secretary of Administration, and provided that the disclosure of such documents does not otherwise violate any provision of Title 32;

(23) any data, records, or information developed, discovered, collected, or received by or on behalf of faculty, staff, employees, or students of the University of Vermont or the Vermont State Colleges in the conduct of study, research, or creative efforts on medical, scientific, technical, scholarly, or artistic matters, whether such activities are sponsored alone by the institution or in conjunction with a governmental body or private entity, until such data, records, or information are published, disclosed in an issued patent, or publicly released by the institution or its authorized agents. This subdivision applies to research notes and laboratory notebooks, lecture notes, manuscripts, creative works, correspondence, research proposals and agreements, methodologies, protocols, and the identities of or any personally identifiable information about participants in research;

(24) records of, or internal materials prepared for, the deliberations of any public agency acting in a judicial or quasi-judicial capacity;

(25) passwords, access codes, user identifications, security procedures, and similar information the disclosure of which would threaten the safety of persons or the security of public property;

(26) information and records provided to the Department of Financial Regulation by an individual for the purposes of having the department assist that individual in resolving a dispute with any person or company regulated by the Department, and any information or records provided by a company or any other person in connection with the individual's dispute;

(27) information and records provided to the Department of Public Service by an individual for the purposes of having the Department assist that individual in resolving a dispute with a utility regulated by the Department, or by the utility or any other person in connection with the individual's dispute;

(28) records of, and internal materials prepared for, independent external reviews of health care service decisions pursuant to 8 V.S.A. § 4089f and of mental health care service decisions pursuant to 8 V.S.A. § 4089a;

(29) the records in the custody of the Secretary of State of a participant in the address Confidentiality Program described in 15 V.S.A. chapter 21, subchapter 3, except as provided in that subchapter;

(30) all code and machine-readable structures of State-funded and controlled database applications, which are known only to certain State departments engaging in marketing activities and which give the State an opportunity to obtain a marketing advantage over any other state, regional, or local governmental or nonprofit quasi-governmental entity, or private sector entity, unless any such State department engaging in marketing activities determines that the license or other voluntary disclosure of such materials is in the State's best interests;

(31) records of a registered voter's month and day of birth, motor vehicle operator's license number, the last four digits of the applicant's Social Security number, and street address if different from the applicant's mailing address contained in an application to the statewide voter checklist or the statewide voter checklist established under 17 V.S.A. § 2154;

(32) with respect to publicly-owned, -managed, or -leased structures, and only to the extent that release of information contained in the record would present a substantial likelihood of jeopardizing the safety of persons or the security of public property, final building plans, and as-built plans, including drafts of security systems within a facility, that depict the internal layout and structural elements of buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by an agency before, on, or after the effective date of this provision; emergency evacuation, escape, or other emergency response plans that have not been published for public use; and vulnerability assessments, operation and security manuals, plans, and security codes. For purposes of this subdivision, "system" shall include electrical, heating, ventilation, air

conditioning, telecommunication, elevator, and security systems. Information made exempt by this subdivision may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to a licensed architect, engineer, or contractor who is bidding on or performing work on or related to buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by the State. The entities or persons receiving such information shall maintain the exempt status of the information. Such information may also be disclosed by order of a court of competent jurisdiction, which may impose protective conditions on the release of such information as it deems appropriate. Nothing in this subdivision shall preclude or limit the right of the General Assembly or its committees to examine such information in carrying out its responsibilities or to subpoena such information. In exercising the exemption set forth in this subdivision and denying access to information requested, the custodian of the information shall articulate the grounds for the denial;

(33) the account numbers for bank, debit, charge, and credit cards held by an agency or its employees on behalf of the agency;

(34) affidavits of income and assets as provided in 15 V.S.A. § 662 and Rule 4 of the Vermont Rules for Family Proceedings;

(35) Expired.]

(36) anti-fraud plans and summaries submitted by insurers to the Department of Financial Regulation for the purposes of complying with 8 V.S.A. § 4750;

(37) records provided to the Department of Health pursuant to the Patient Safety Surveillance and Improvement System established by 18 V.S.A. chapter 43a;

(38) records held by the Agency of Human Services, which include prescription information containing prescriber-identifiable data, that could be used to identify a prescriber, except that the records shall be made available upon request for medical research, consistent with and for purposes expressed in 18 V.S.A. §§ 4621, 4631, 4632, 4633, and 9410 and 18 V.S.A. chapter 84, or as provided for in 18 V.S.A. chapter 84A and for other law enforcement activities;

(39) records held by the Agency of Human Services or the Department of Financial Regulation, which include prescription information containing patient-identifiable data, that could be used to identify a patient;

(40) records of genealogy provided in support of an application for tribal recognition pursuant to chapter 23 of this title;

(41) documents reviewed by the Victim's Compensation Board for purposes of approving an application for compensation pursuant to 13 V.S.A. chapter 167, except as provided by 13 V.S.A. §§ 5360 and 7043(c). (Added 1975, No. 231 (Adj. Sess.), § 1; amended 1977, No. 202 (Adj. Sess.); 1979, No. 156 (Adj. Sess.), § 6; 1981, No. 227 (Adj. Sess.), § 4; 1989, No. 28, § 2; 1989, No. 136 (Adj. Sess.), § 1; 1995, No. 46, §§ 23, 58; 1995, No. 159 (Adj. Sess.), § 2; No. 167 (Adj. Sess.), § 29; No. 182 (Adj. Sess.), § 21, eff. May 22, 1996; No. 180 (Adj. Sess.), § 38;

No. 190 (Adj. Sess.), § 1(a); 1997, No. 159 (Adj. Sess.), § 12, eff. April 29, 1998; 1999, No. 134 (Adj. Sess.), § 3, eff. Jan. 1, 2001; 2001, No. 28, § 9, eff. May 21, 2001; 2001, No. 76 (Adj. Sess.), § 3, eff. Feb. 19, 2002; No. 78 (Adj. Sess.), § 1, eff. Apr. 3, 2002; 2003, No. 59, § 1, eff. Jan. 1, 2006; 2003, No. 63, § 29, eff. June 11, 2003; 2003, No. 107 (Adj. Sess.), § 14; 2003, No. 146 (Adj. Sess.), § 6, eff. Jan. 1, 2005; 2003, No. 158 (Adj. Sess.), § 2; 2003, No. 159 (Adj. Sess.), § 12; 2005, No. 132 (Adj. Sess.), § 1; 2005, No. 179 (Adj. Sess.), § 3; 2005, No. 215 (Adj. Sess.), § 326; 2007, No. 80, § 18; 2007, No. 110 (Adj. Sess.), § 3; 2007, No. 129 (Adj. Sess.), § 2; 2009, No. 59, § 5; 2009, No. 107 (Adj. Sess.), § 5, eff. May 14, 2010; 2011, No. 59, § 3; 2011, No. 78 (Adj. Sess.), § 2, eff. April 2, 2012; 2011, No. 145 (Adj. Sess.), § 8, eff. May 15, 2012; 2013, No. 70, § 1.)

§ 317a. Disposition of public records

A custodian of public records shall not destroy, give away, sell, discard, or damage any record or records in his or her charge, unless specifically authorized by law or under a record schedule approved by the state archivist pursuant to 3 V.S.A. § 117(a)(5). (Added 2007, No. 96 (Adj. Sess.), § 1.)

§ 318. Procedure

(a) Upon request, the custodian of a public record shall promptly produce the record for inspection, except that:

(1) if the record is in active use or in storage and therefore not available for use at the time the person asks to examine it, the custodian shall so certify this fact in writing to the applicant and set a date and hour within one calendar week of the request when the record will be available for examination;

(2) if the custodian considers the record to be exempt from inspection under the provisions of this subchapter, the custodian shall so certify in writing. Such certification shall identify the records withheld and the basis for the denial. A record shall be produced for inspection or a certification shall be made that a record is exempt within three business days of receipt of the request, unless otherwise provided in subdivision (5) of this subsection. The certification shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial. The custodian shall also notify the person of his or her right to appeal to the head of the agency any adverse determination;

(3) if appealed to the head of the agency, the head of the agency shall make a determination with respect to any appeal within five business days after the receipt of such appeal. If an appeal of the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under section 319 of this title;

(4) if a record does not exist, the custodian shall certify in writing that the record does not exist under the name given to the custodian by the applicant or by any other name known to the custodian;

(5) in unusual circumstances as herein specified the time limits prescribed in this subsection may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten business days from receipt of the request. As used in this subdivision, "unusual circumstances" means to the extent reasonably necessary to the proper processing of the particular request:

(A) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(B) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(C) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein, or with the Attorney General.

(b) Any person making a request to any agency for records under subsection (a) of this section shall be deemed to have exhausted the person's administrative remedies with respect to each request if the agency fails to comply within the applicable time limit provisions of this section. Upon any determination by an agency to comply with a request for records, the records shall be made available promptly to the person making such request. Any notification of denial of any request for records under this section shall set forth the names and titles or positions of each person responsible for the denial of such request.

(c)(1) Any denial of access by the custodian of a public record may be appealed to the head of the agency. The head of the agency shall make a written determination on an appeal within five business days after the receipt of the appeal. A written determination shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial.

(2) If the head of the agency reverses the denial of a request for records, the records shall be promptly made available to the person making the request. A failure by the agency to comply with any of the time limit provisions of this section shall be deemed a final denial of the request for records by the agency.

(d) In responding to a request to inspect or copy a record under this subchapter, a public agency shall consult with the person making the request in order to clarify the request or to obtain additional information that will assist the public agency in responding to the request and, when authorized by this subchapter, in facilitating production of the requested record for inspection or copying. In unusual circumstances, as that term is defined in subdivision (a)(5) of this section, a public agency may request that a person seeking a voluminous amount of separate and distinct records narrow the scope of a public records request.

(e) A public agency shall not withhold any record in its entirety on the basis that it contains some exempt content if the record is otherwise subject to disclosure; instead, the public agency

shall redact the information it considers to be exempt and produce the record accompanied by an explanation of the basis for denial of the redacted information.

(f) If a person making the request has a disability which requires accommodation to gain equal access to the public record sought, the person shall notify the public agency of the type of accommodation requested. The public agency shall give primary consideration to the accommodation choice expressed by the requestor, but may propose an alternative accommodation so long as it achieves equal access. The public agency shall provide accommodation to the person making the request unless the agency can demonstrate that accommodation would result in a fundamental alteration in the nature of its service, programs, activities, or in undue financial and administrative burden.

(g) The Secretary of State shall provide municipal public agencies and members of the public information and advice regarding the requirements of the Public Records Act and may utilize informational websites, toll-free telephone numbers, or other methods to provide such information and advice. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 2005, No. 132 (Adj. Sess.), § 2; 2007, No. 110 (Adj. Sess.), § 1; 2011, No. 59, § 4.)

§ 319. Enforcement

(a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the Civil Division of the Superior Court in the county in which the complainant resides, or has his or her personal place of business, or in which the public records are situated, or in the Civil Division of the Superior Court of Washington County, to enjoin the public agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case, the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 317 of this title, and the burden of proof shall be on the public agency to sustain its action.

(b) Except as to cases the court considers of greater importance, proceedings before the Civil Division of the Superior Court, as authorized by this section, and appeals there from, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(c) If the public agency can show the court that exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

(d)(1) Except as provided in subdivision (2) of this subsection, the court shall assess against the public agency reasonable attorney's fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(2) The court may, in its discretion, assess against a public agency reasonable attorney's fees and other litigation costs reasonably incurred in a case under this section in which the

complainant has substantially prevailed provided that the public agency, within the time allowed for service of an answer under Rule 12(a)(1) of the Vermont Rules of Civil Procedure:

- (A) concedes that a contested record or contested records are public; and
- (B) provides the record or records to the complainant.

(3) The court may assess against the complainant reasonable attorney's fees and other litigation costs reasonably incurred in any case under this section when the court finds that the complainant has violated Rule 11 of the Vermont Rules of Civil Procedure. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 2011, No. 59, § 5.)

§ 320. Penalties

(a) Whenever the court orders the production of any public agency records, improperly withheld from the complainant and assesses against the agency reasonable attorney's fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether the agency personnel acted arbitrarily or capriciously with respect to the withholding, the Department of Human Resources if applicable to that employee, shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Department, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his or her representative. The administrative authority shall take the corrective action that the Department recommends.

(b) In the event of noncompliance with the order of the court, the Civil Division of the Superior Court may punish for contempt the responsible employee or official, and in the case of a uniformed service, the responsible member.

(c) A person who willfully destroys, gives away, sells, discards, or damages a public record without having authority to do so shall be fined at least \$50.00 but not more than \$1,000.00 for each offense. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 2003, No. 156 (Adj. Sess.), § 15; 2007, No. 96 (Adj. Sess.), § 2; 2011, No. 59, § 6.)