

MEMORANDUM OF UNDERSTANDING BETWEEN
THE GOVERNOR'S REPRESENTATIVE AND
THE SECRETARY OF STATE OF VERMONT
REGARDING ARCHIVAL STORAGE OF GUBERNATORIAL PAPERS
OF RICHARD A. SNELLING

The purpose of this Memorandum of Understanding is to establish clear guidelines to govern public access to "the official correspondence of the Governor", upon the deposit of that correspondence into the custody of the Archives of the Office of the Secretary of State (hereafter "the State Archives").¹

The basis for these guidelines is a commitment, shared by those acting for late Governor Richard A. Snelling and his cabinet, on the one hand, and Secretary of State James H. Douglas on the other, to openness and accessibility of state government, coupled with a recognition that certain gubernatorial documents are exempted from the Right to Know law under the constitutionally-based doctrine of executive privilege.

The guidelines strike a balance between the desire, on the one hand, to preserve a full and complete record of Governor Snelling's second administration (which commenced January 10, 1991) for the benefit of future historians and the public's right to know, and, on the other hand, to respect, at least to a

¹ The only guidance provided by the Vermont statutes is that, upon retiring, the Governor is to deposit "the official correspondence of the Governor . . . with the Secretary of State," 3 V.S.A. §4(a), who, in turn, "shall . . . permit the public to inspect, examine and study the archives of his or her office: provided that any record placed in the keeping of the office under special terms or conditions of law restricting their use shall be made accessible only in accordance with those terms and conditions," 3 V.S.A. §117(a)(2).

limited extent, the confidentiality of gubernatorial documents deemed privileged under the Vermont Constitution and common law. Specifically, the guidelines affirm the public's right of access to all of the Governor's official correspondence, while at the same time setting the date for access to any executive privilege documents within the official correspondence to commence six years from January 10, 1993, the anticipated end of Governor Snelling's constitutional term.²

Guidelines to Govern Public Access
to Governor Snellings's Official Correspondence

(January 10, 1991 - August 13, 1991)

I. Subject to the special terms and conditions of the restriction set forth in paragraph II, below, Governor Snelling's official correspondence in the possession of the State Archives shall be open to the public, in accordance with established policies and practices of the State Archives.

II. Any portions of Governor Snelling's official correspondence determined by Elizabeth McLain (Edwards), Governor Snelling's Chief of Staff, to be encompassed by executive privilege shall be open to the public, in accordance with the established policies and practices of the State Archives, commencing on January 11, 1999. Prior to that date, the following special terms and

² The period of six years was chosen as a reasonable but brief period in comparison to the "executive privilege" closing periods used in other jurisdictions (e.g. up to twelve years federally, see the Presidential Records Act, 44 U.S.C.S. §2204(a); twenty years for the official papers of former Governor Thomas H. Kean of New Jersey (1982-1990), see Guidelines for Access to Governor Kean's Official Papers; and thirty years in Maryland, see Policy of the Hall of Records Commission regulating the Use of The Gubernatorial Files).

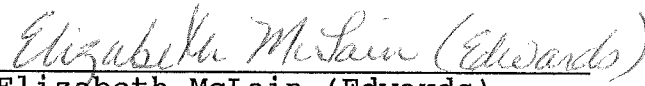
conditions of restriction shall apply:

A. Governor Snelling's executive privilege documents shall be housed and preserved in the State Archives in files that have been sealed and appropriately labelled and cross-referenced by the Governor's Office.


B. Governor Snelling's executive privilege documents in the possession of the State Archives shall be accessible only:

1. pursuant to a valid court order;
2. in accordance with written authorization from Elizabeth McLain (Edwards);
3. to the staff of the State Archives insofar as necessary to assure archival security; or
4. in the event that the document has been placed in the public domain.

Elizabeth McLain (Edwards), on behalf of late Governor Snelling, and James H. Douglas join in this Memorandum of Understanding for the purposes above stated.

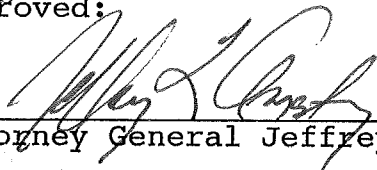

Elizabeth McLain (Edwards)

4-11-92
Date


James H. Douglas

1/31/92
Date

Approved:


Attorney General Jeffrey L. Amestoy

1/29/92
Date

Wibs Edwards / Chief of Staff

FROM: Michael Gilhooly

RE: Protocol for Governor's records

DATE: September 10, 1991

INTRODUCTION

The following protocol will apply as members of the staff prepare Governor Snelling's papers and records for; 1.) Vermont State Archives, 2.) the Snelling family's personal archives, 3.) the University of Vermont.

Preparation of the Governor's material for historical and family purposes will be overseen by Chief of Staff Wibs Edwards, with legal advice from Josh Fitzhugh. Mike Gilhooly and Ed Von Turkovich will handle the actual consolidation of files and route them to the proper destination as described in this protocol. The above individuals shall be known as the Governor's Archive Committee.

The protocol will break down the removal of the Governor's records in the following categories:

1. Governor's papers exempt from public disclosure per Title 1, Section 317, VSA
2. Governor's records timelocked under executive privilege
3. Personal papers
4. Papers which are considered non-records, as explained in memo from the General Services Department (attached)
5. All other public papers

EXEMPT FROM PUBLIC RECORDS

Under VSA Title 1, Section 317, the following public records are exempt from disclosure.

1. Designated confidential by law
2. May be disclosed by certain individuals as designated by law
3. If disclosed would violate legal standards of ethics
4. If disclosed would cause the violation of a law
5. Dealing with detection and investigation of a crime
6. Tax returns or related documents
7. Related to personnel actions, i.e. hiring, promotion, disciplinary
8. Tests or other documents relating to examinations
9. Trade secrets
10. Lists of names, not otherwise made public, which if disclosed would violate rights to privacy
11. Student records at state funded institutions

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12. Records concerning formulation of policy where disclosure is a clear invasion of privacy
13. Information on location of property for public agency purposes prior to public announcement
14. Records relevant to litigation
15. Negotiation of contracts
16. Voluntary information supplied to state prior to this public records law
17. Records of political subdivisions prior to determination of policy or before presentation of a budget
18. Internal affairs investigations by DPS

NOTE: These are the authors guidelines. Refer to statute for actual language.

EXECUTIVE PRIVILEGE TIMELOCK

"Executive privilege" records will become public, but will be timelocked under a memorandum of understanding signed by the Governor's representative and the Vermont Secretary of State.

"Executive privilege has been defined by the Vermont Supreme Court in the case of Killington, Ltd. v. Lash (February 16, 1990) and common law precedents. Executive privilege may be invoked to preserve the confidentiality of documents reflecting advisory opinions, recommendations and deliberations between the Governor and his staff which make up the formulation of government decisions and policies.

Executive privilege documents include:

1. Weekly reports from Secretaries and Commissioners
2. Letters, memos, messages (inter and intra-agency), notes, etc. between the Governor and senior staff. (Secretaries, Commissioners, their deputies, executive staff advisors, policy analysts and other advisors working on matters pertaining to government decisions and policies)
3. Governor's private work schedules

NOTE: Documents in this category will be sealed and placed in custody of the Secretary of State for a period to be determined by negotiation between Governor's staff and the Secretary.

PERSONAL DOCUMENTS AND PAPERS

Personal papers include:

- A. Campaign material, including; files, campaign memos, memos to file, contribution records (not public under law), notes, etc.

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- B. Personal correspondence between individuals considered to be friends of the Governor.
- C. All documents not considered by a reasonable person to be part of the official function of the Governor or the executive branch.

NOTE: Documents and letters in this category are the sole personal property of Barbara W. Snelling and shall be stored or disposed of as she sees fit.

NON-RECORDS

Non-records are defined as material which do not fit within the definition of state records. They include, but are not limited to:

1. Extra copies of documents saved for convenience or reference
2. Copies of documents which originate from other agencies are maintained by other agencies
3. Requests for information after the information has been sent.

Records exempted under "Non-Records Material" guidelines are outlined in a memo from General Services Department Deputy Commissioner Paul Ohlson. (Memo attached)

Decisions on destruction of all those "Non-Records Material" documents are the responsibility of the Governor's Archives Committee, provided that the legal guidelines supplied by GSA Public Records Division are followed. Once the committee determines that a document fits the legal description of the guidelines, that document may be destroyed with no further action. (Source: John Yacavoni, Director of Public Records)

Governor's Office records which should go to the Public Records Division of GSA are:

1. Financial records
2. Expense accounts
3. Purchase order records

PUBLIC RECORDS FOR STATE ARCHIVES

Simply put, all documents, papers and files which do not fit the above exemptions are considered public papers and will be placed in the custody of the Secretary of State for the state archives.

Also, all time locked papers will be sealed and placed in the custody of the Secretary of State.

All attorney client privileged papers will be placed under the custody of the Vermont Attorney General.

DOCUMENTS NEEDED FOR ORDERLY TRANSITION

Obviously, some documents, reports, letters and memos will be essential to the administration of Governor Dean. The original material will go to state archives, and copies should remain either in possession of the originating agency or the executive staff. Note: (All documents covered by executive privilege will be sealed and sent to the state archives.)

The documents should include but not be limited to:

1. Current projects
2. Active legislation
3. Budgets of Governor's Office and Policy Office
4. Active correspondence
5. Active Action Line documents
6. Active invitations for public appearances

Good judgement should be exercised by all Secretaries, Commissioners and staff members in easing the transition of government to Governor Dean.

Copies of documents need for transition should also be included in the appropriate category for historical disposition.

IMPLEMENTATION OF THIS PROTOCOL

This protocol will be implemented in the following fashion:

1. All files from executive office, policy office and action line will be reviewed and the committee will determine the proper disposition of the material based on Vermont law and this protocol.
2. All personal papers will be turned over to Barbara W. Snelling.
3. All Agency Secretaries will forward files which may be considered part of the Governor's Papers to the committee for disposition. Recommendations should be made regarding exemptions from public documents under Title 1 as earlier discussed or executive privilege.

The disposition of the Governor's papers will be as follows:

1. Public records state archives
2. Executive privilege records state archives (sealed/timelock)
3. Exempt under VSA Title 1 Public Records Div. GSA
4. Personal papers Barbara W. Snelling
5. Non-records destroyed by archive committee