

#231

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4/5 No. 231

H.276

- 1 Introduced by Mr. Kedroff of Springfield
2 Referred to Committee on *Government Operations - G & M affairs.*
3 Subject: General provisions; public access
4 Sponsor's statement of purpose: It is the purpose of this bill to
5 provide for access to public records or documents.

6	Own Vote		Legislative Vote						
	Yes	No	Date	Senate	House	Yes	No	Date	Comments
7			1st Reading						
			Committee Report						
8			2nd Reading						
			3rd Reading						
9			Amended—Calendar						
			Amended—Journal						
			” ”						
10			Committed						
			Recommitted						
11			Ordered to Lie						
			Called up						
12			Passed						
			Messaged						
13			Com. of Conference						
			Withdrawn						
14			Signed by Governor						

15 AN ACT TO ADD 1 V.S.A. CHAPTER 5 SUBCHAPTER 3 RELATING TO ACCESS TO
16 PUBLIC DOCUMENTS AND RECORDS

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

18

19 Sec. 1. 1 V.S.A. chapter 5 subchapter 3 is added to read:

20 Subchapter 3. Access to Public Records

21 § 315. STATEMENT OF POLICY

22 (a) It is the policy of this subchapter to provide for free and open
23 examination of records consistent with Chapter I, Article 6 of the
24 Vermont constitution. Officers of government are trustees and servants
25 of the people and it is in the public interest to enable any person

1 to review and criticize their decisions even though such examination
 2 may cause inconvenience or embarrassment. All people, however, have a
 3 right to privacy in their personal and economic pursuits, which ought
 4 to be protected unless specific information is needed to review the
 5 action of a governmental officer. Consistent with these principles, the
 6 general assembly hereby declares that certain public records shall be
 7 made available to any person as hereinafter provided. To that end, the
 8 provisions of this subchapter shall be liberally construed with the view
 9 towards carrying out the above declaration of public policy.

10 ~~§ 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS~~

11 Any person may inspect or copy any public record made or preserved by
 12 a public agency, on any day other than a Saturday, Sunday, or a legal
 13 holiday between the hours of nine o'clock and twelve o'clock in the
 14 forenoon and between one o'clock and four o'clock in the afternoon;
 15 provided, however, if the public agency is not regularly open to the
 16 public during those hours, inspection may be made during customary office
 17 hours. A public agency is any agency, board, department, commission,
 18 committee, branch or authority of the state or any agency, board, com-
 19 mittee, department, branch, commission or authority of any political
 20 subdivision of the state, including private schools designated as pub-
 21 lic schools under section 827 of Title 16. If a photocopying machine
 22 or other mechanical device maintained for use by a public agency is
 23 used to copy the public document or record, the person requesting the
 24 copy may be charged with the actual ~~out-of-pocket~~ cost of providing the
 25 ~~copy. Nothing in this section shall exempt any person from paying fees~~

§ 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS

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

(b) If a photocopying machine or other mechanical device maintained for use by a public agency is used by the agency to copy the public record or document requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public agency. 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) A public agency having photocopying or other mechanical copying facilities shall utilize those facilities to produce copies. If the public agency does not have such facilities, nothing in this section shall be construed to require the public agency to provide or arrange for photocopying service, to use or permit the use of copying facilities other than its own, to permit operation of its copying facilities 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.

(d) 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.

~~An agency having copying~~
 1 otherwise established by law for obtaining public documents. ~~Agency~~
 2 ~~facilities shall provide copies of any public records available under this~~
 3 ~~facilities shall be made available to any person for copying public~~
 4 ~~records, but an agency which does not have facilities for photocopying~~
 5 ~~An agency shall not be required to permit the operation of a copying machine by other~~
 6 ~~need not provide photocopying service. An agency may make reasonable than its own~~
 7 ~~personnel.~~
 8 rules to prevent disruption of agency operations, to preserve the secur-
 9 ity of public records, and to protect them from damage.

~~§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS~~

~~§ 317. DEFINITION; PUBLIC RECORDS~~

(a) As used in this subchapter, "public agency" or "agency" means any agency, board,
 2 department, commission, committee, or authority of the state. Towns, cities, counties, schools
 3 all papers, correspondence, staff reports, individual salaries, salary
 4 schedules or any other written or recorded matters produced or acquired
 5 in the course of agency business except:
 6 (1) records which by law are designated confidential or by a similar
 7 term;
 8 (2) records which by law may only be disclosed to specifically desig-
 9 nated persons;
 10 (3) records which, if made public pursuant to this subchapter, would
 11 cause the custodian to violate duly adopted standards of ethics or conduct
 12 for any profession regulated by the state;
 13 (4) records which, if made public pursuant to this subchapter, would
 14 cause the custodian to violate any statutory or common law ~~privilege~~
 15 ~~privilege~~;
 16 (5) records dealing with the detection and investigation of crime,
 17 including those maintained on any individual or compiled in the course
 18 of a criminal or disciplinary investigation by any police or professional
 19 relating to management and direction of a law enforcement agency and records
 20 licensing agency; provided, however, records/reflecting the initial arrest
 21 of a person and the charge shall be public;

and all subdivisions thereof are not included in this definition.

(b) As used in this subchapter, "public record" or "public document" means

(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

1 ~~(6) a tax return filed with or maintained by the Vermont department~~
2 ~~person to any public agency in connection with agency business;~~
3 ~~of taxes;~~

4 (7) personal documents relating to an individual, including in-
5 formation in any files maintained to hire, evaluate, promote or disci-
6 pline any ~~employees of any~~ ^{employee of a} public agency, information in any files re-
7 lating to personal ^{finances} medical or psychological facts concerning any indi-
8 vidual; ^{or corporation} provided, however, that all information in personnel files of
9 an individual employee of any public agency shall be made available to
10 that individual employee or his designated representative;

11 (8) test questions, scoring keys, and other examination instru-
12 ments or data used to administer a license, employment, or academic
13 examination;

14 (9) trade secrets, including, but not limited to, any formulae,
15 plan, pattern, process, tool, mechanism, compound, procedure, produc-
16 tion data, or compilation of information which is not patented, which
17 is known only to certain individuals within a commercial concern, and
18 which gives its user ^{or owner} an opportunity to obtain business advantage over
19 competitors who do not know it or use it;

20 (10) lists of names compiled or obtained by ^{a public} any agency when dis-
21 closure would violate a person's right to privacy or produce public or
22 private gain, provided; however, that this section does not apply to
23 lists which are by law made available to the public;

24 (11) student records at educational institutions funded wholly or
25 in part by state revenue; provided, however, that such records shall
26 be made available upon request ^{under the provisions of the Federal Family} ~~of the student involved, or the parent~~
^{Educational Rights and Privacy Act of 1974 (P.L. 93-380) and as amended;}
~~or legal guardian of the student;~~

(15) records relating specifically to negotiation of contracts including but not limited to collective bargaining agreements with public employees.

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1 (12) ~~correspondence, communications and records of an elected office~~
2 ~~holder or public agency employee~~ concerning formulation of policy re-
3 ~~lating to his office~~ where such would constitute a clearly unwarranted
4 invasion of personal privacy, if disclosed;

5 (13) information pertaining to the location of real or personal
6 property for public / ^{agency} purposes prior to public announcement of the pro-
7 ject and information pertaining to appraisals or purchase price of real
8 or personal property for public purposes prior to the formal award of
9 contracts thereof;

10 (14) ~~records which are relevant to litigation to which the public agency is a part~~
11 ~~of record, provided all such matters shall be available to the public after ruled discoverable~~
12 ~~a party but which records would not be available to another party under~~
13 ~~by the court before which the litigation is pending, but in any event upon final termination~~
14 ~~the rules of pretrial discovery;~~
15 the litigation;

16 § 318. PROCEDURE

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

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

24 (2) if the custodian considers the record to be exempt from inspec-
25 tion under the provisions of this subchapter, he shall so certify in
writing stating his reasons for denial of access to the record. Such
certification shall be made within two business days, unless otherwise
provided in division (5) of this subsection. The custodian shall also

(6) Any voluntary information provided by an individual, corporation, organization, partner-
ship, association, trustee, estate, or any other entity in the state of Vermont, which has
been gathered prior to the enactment of this act, shall not be considered a public document.

1 notify the person of his right to appeal to the head of the agency any
2 adverse determination;

3 (3) if appealed to the head of the agency, the head of the agency
4 shall make a determination with respect to any appeal within five days,
5 excepting Saturdays, Sundays, and legal public holidays, after the re-
6 ceipt of such appeal. If an appeal of the denial of the request for
7 records is in whole or in part upheld, the agency shall notify the per-
8 son making such request of the provisions for judicial review of that
9 determination under section 319 of this title;

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

13 (5) in unusual circumstances as herein specified the time limits
14 prescribed in this subsection may be extended by written notice to the
15 person making such request setting forth the reasons for such extension
16 and the date on which a determination is expected to be dispatched. No
17 such notice shall specify a date that would result in an extension for
18 more than ten working days. As used in this division, "unusual circum-
19 stances" means to the extent reasonably necessary to the proper proces-
20 sing of the particular request:

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

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

1 (C) the need for consultation, which shall be conducted with all
2 practicable speed, with another agency having a substantial interest in
3 the determination of the request or among two or more components of the
4 agency having substantial subject matter interest therein, or with the
5 attorney general.

6 (b) Any person making a request to any agency for records under sub-
7 section (a) of this section shall be deemed to have exhausted his admin-
8 istrative remedies with respect to each request if the agency fails to
9 comply within the applicable time limit provisions of this section.
10 Upon any determination by an agency to comply with a request for records,
11 the records shall be made available promptly to the person making such
12 request. Any notification of denial of any request for records under
13 this section shall set forth the names and titles or positions of each
14 person responsible for the denial of such request.

15 § 319. ENFORCEMENT

person aggrieved by the denial of a request for public records under this subchapter

16 (a) Any ~~aggrieved person~~ may apply to the superior court in the county
17 in which the complainant resides, or has his personal place of business,
18 or in which the public records are situated, or in the superior court
19 of Washington County, to enjoin the public agency from withholding
20 agency records and to order the production of any agency records improp-
21 erly withheld from the complainant. In such a case the court shall
22 determine the matter de novo, and may examine the contents of such
23 agency records in camera to determine whether such records or any part
24 thereof shall be withheld under any of the exemptions set forth in sec-
25 tion 317 of this title, and the burden is on the agency to sustain its
26 action.

1 (b) Except as to cases the court considers of greater importance,
2 proceedings before the superior court, as authorized by this section,
3 and appeals therefrom, take precedence on the docket over all cases and
4 shall be assigned for hearing and trial or for argument at the earliest
5 practicable date and expedited in every way.

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

10 (d) The court may assess against the public agency reasonable
11 attorney fees and other litigation costs reasonably incurred in any
12 case under this section in which the complainant has substantially
13 prevailed.

14 § 320. PENALTIES

15 (a) Whenever the court orders the production of any public agency
16 records, improperly withheld from the complainant and assesses against
17 the agency reasonable attorney fees and other litigation costs, and the
18 court additionally issues a written finding that the circumstances sur-
19 rounding the withholding raise questions whether the agency personnel
20 acted arbitrarily or capriciously with respect to the withholding, the
21 department of personnel if applicable to that employee, shall promptly
22 initiate a proceeding to determine whether disciplinary action is war-
23 ranted against the officer or employee who was primarily responsible
24 for the withholding. The department, after investigation and consider-
25 ation of the evidence submitted, shall submit its findings and recom-

1 mendations to the administrative authority of the agency concerned and
 2 shall send copies of the findings and recommendations to the officer
 3 or employee or his representative. The administrative authority shall
 4 take the corrective action that the department recommends.

5 ~~(b) Any other person who unlawfully prohibits another from examining,~~
 6 ~~inspecting or copying any public record or document may, in addition~~
 7 ~~to the action taken in subsection (a) of this section, be assessed a~~
 8 ~~penalty of not more than \$1,000.00, in a civil action.~~

9 (b) In the event of noncompliance with the order of the court, the
 10 superior court may punish for contempt the responsible employee or
 11 official, and in the case of a uniformed service, the responsible mem-
 12 ber.

13
 14
 15 *Matthew J. O'Connor Jr.*
 16 SPEAKER OF THE HOUSE OF REPRESENTATIVES
 17 *David D. Rosen*
 18 PRESIDENT OF THE SENATE,

19
 20 APPROVED: *Thomas P. Hulme*
 21 Governor
 22 April 7, 1976
 23
 24
 25

House of Representatives,

March 26, 1976

ENTERED ON THE CALENDAR FOR NOTICE.

Dina G. J. J. J.
FIRST ASST. CLERK

House of Representatives,

March 26, 1976

The bill, appearing on the calendar for notice, was taken up under suspension of the rules, as moved by Mr. Carson

of Rutland City
Senate proposal
amendment considered, and concurred in.

UPON MOTION OF MR. Carson
OF Rutland City
THE RULES WERE SUSPENDED AND THE ACTION OF THE HOUSE ON THE BILL WAS REFERRED MESSAGES TO THE SENATE FOR WITHDRAWAL OF THE BILL TO THE GOVERNOR FOR WITHDRAWAL
bill to the Governor for withdrawal
FIRST ASSISTANT CLERK,

STATE OF VERMONT
RECEIVED AND FILED

APR 8 3 11 PM '76

SECRETARY OF STATE
DEPUTY SECRETARY OF STATE