

1 S.148

2 Introduced by Committee on Judiciary

3 Date: March 12, 2013

4 Subject: Public records; criminal investigation records; exemption from  
5 disclosure

6 Statement of purpose of bill as introduced: This bill proposes, for purposes of  
7 determining when records dealing with the detection and investigation of crime  
8 are exempt from disclosure under the Vermont Public Records Act, to adopt a  
9 standard nearly identical to the federal Freedom of Information Act standard.

10 An act relating to criminal investigation records and the Vermont Public  
11 Records Act

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

13 ~~Sec. 1. 1 V.S.A. § 317 is amended to read:~~

14 § 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND  
15 DOCUMENTS

16 \* \* \*

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

19 \* \* \*

1 ~~(5)(A) records dealing with the detection and investigation of crime,~~  
2 ~~including those maintained on any individual or compiled in the course of a~~  
3 ~~criminal or disciplinary investigation by any police or professional licensing~~  
4 ~~agency; but only to the extent that the production of such records:~~  
5 ~~(i) could reasonably be expected to interfere with enforcement~~  
6 ~~proceedings;~~  
7 ~~(ii) would deprive a person of a right to a fair trial or an impartial~~  
8 ~~adjudication;~~  
9 ~~(iii) could reasonably be expected to constitute an unwarranted~~  
10 ~~invasion of personal privacy;~~  
11 ~~(iv) could reasonably be expected to disclose the identity of a~~  
12 ~~confidential source, including a state, local, or foreign agency or authority or~~  
13 ~~any private institution which furnished information on a confidential basis,~~  
14 ~~and, in the case of a record or information compiled by criminal law~~  
15 ~~enforcement authority in the course of a criminal investigation or by an agency~~  
16 ~~conducting a lawful national security intelligence investigation, information~~  
17 ~~furnished by a confidential source;~~  
18 ~~(v) would disclose techniques and procedures for law enforcement~~  
19 ~~investigations or prosecutions, or would disclose guidelines for law~~  
20 ~~enforcement investigations or prosecution if such disclosure could reasonably~~  
21 ~~be expected to risk circumvention of the law;~~

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

3 ~~(vii) would reveal the name of a person who is not the subject of~~  
4 ~~an investigation; or~~

5 ~~(viii) would reveal information that would facilitate the~~  
6 ~~commission of a crime;~~

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

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

17 \* \* \*

18 Sec. 2. EFFECTIVE DATE

19 ~~This act shall take effect on passage.~~

~~See 1. 1 V.S.A. § 317 is amended to read:~~

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

~~\* \* \*~~

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

~~\*\*\*~~

~~(5)(A) records dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency; 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), a public entity shall not reveal information that could be used to facilitate the commission of a crime or the name of a private individual who is a witness to or victim of a crime, unless withholding the name or information would conceal government wrongdoing;~~

~~(C) provided, however, that 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;~~

~~(D) 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;~~

~~\*\*\*~~

~~Sec. 2. EFFECTIVE DATE~~

~~This act shall take effect on passage~~

~~Sec. 1. 1 V.S.A. § 317 is amended to read:~~

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

~~\*\*\*~~

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

~~\*\*\*~~

~~(5)(A) records dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency; provided, however, that 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;

\* \* \*

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.