

House Proposal of Amendment

S. 148

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

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

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:

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(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) 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;

(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. Rule 6(f) of the Vermont Rules of Criminal Procedure is amended to read:

(f) Secrecy of Proceedings and Disclosure. – Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the prosecuting attorneys for use in the performance of their duties. Otherwise, a juror, attorney, interpreter, court reporter, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when do directed by the court preliminarily to or in connection with a judicial proceeding, or as provided in Rule 16(a)(2). No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons. Notwithstanding any provision of this rule or any other provision of law, the Attorney General or a State's Attorney may disclose the decision of a grand jury not to return a true bill in a matter involving actions committed by a law enforcement officer while acting within the scope of employment or while on duty as a law enforcement officer.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

