

1 H.73

2 Introduced by Representative Sweaney of Windsor

3 Referred to Committee on

4 Date:

5 Subject: Public records act; government transparency office; enforcement

6 Statement of purpose: This bill proposes to establish a government  
7 transparency office to administer the requirements of the public records act.

8 The bill would also amend procedural and fee requirements under the public  
9 records act.

10 An act relating to establishing a government transparency office to enforce  
11 the public records act

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

13 Sec. 1. 1 V.S.A. § 315 is amended to read:

14 § 315. STATEMENT OF POLICY

15 It is the policy of this subchapter to provide for free and open examination  
16 of records consistent with Chapter I, Article 6 of the Vermont Constitution.  
17 Officers of government are trustees and servants of the people and it is in the  
18 public interest to enable any person to review and criticize their decisions even  
19 though such examination may cause inconvenience or embarrassment. All  
20 people, however, have a right to privacy in their personal and economic

1       pursuits, which ought to be protected unless specific information is needed to  
2       review the action of a governmental officer. Consistent with these principles,  
3       the general assembly hereby declares that certain public records shall be made  
4       available to any person as hereinafter provided. To that end, the provisions of  
5       this subchapter shall be liberally construed ~~with the view towards carrying out~~  
6       ~~the above declaration of public policy~~ to implement this policy, and the burden  
7       of proof for nondisclosure of a public record shall be on the agency that would  
8       deny access to the public record.

9       Sec. 2. 1 V.S.A. § 316 is amended to read:

10       § 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS

11       (a) Any person may inspect or copy any public record or document of a  
12       public agency, on any day other than a Saturday, Sunday, or a legal holiday,  
13       between the hours of nine o'clock and 12 o'clock in the forenoon and between  
14       one o'clock and four o'clock in the afternoon; provided, however, if the public  
15       agency is not regularly open to the public during those hours, inspection or  
16       copying may be made during customary office hours.

17       (b) If copying equipment maintained for use by a public agency is used by  
18       the agency to copy the public record or document requested, the agency may  
19       charge and collect from the person requesting the copy the actual cost of  
20       providing the copy. The agency may also charge and collect from the person  
21       making the request, the costs associated with mailing or transmitting the record

1 by facsimile or other electronic means. Nothing in this section shall exempt  
2 any person from paying fees otherwise established by law for obtaining copies  
3 of public records or documents, but if such fee is established for the copy, no  
4 additional costs or fees shall be charged.

5 (c) In the following instances an agency may also charge and collect the  
6 cost of staff time associated with complying with a request ~~for a~~ to inspect or  
7 to copy of a public record: (1) the time directly involved in complying with  
8 the request exceeds ~~30 minutes~~ two hours; (2) the agency agrees to create a  
9 public record; or (3) the agency agrees to provide the public record in a  
10 nonstandard format and the time directly involved in complying with the  
11 request exceeds ~~30 minutes~~ two hours. The agency may require that requests  
12 subject to staff time charges under this subsection be made in writing and that  
13 all charges be paid, in whole or in part, prior to delivery of the copies. Upon  
14 request, the agency shall provide an estimate of the charge.

15 (d) The secretary of state, after consultation with the secretary of  
16 administration, shall establish the actual cost of providing a copy of a public  
17 record that may be charged by state agencies. The secretary shall also  
18 establish the amount that may be charged for staff time, when such a charge is  
19 authorized under this section. To determine "actual cost" the secretary shall  
20 consider the following only: the cost of the paper or the electronic media onto  
21 which a public record is copied, a prorated amount for maintenance and

1 replacement of the machine or equipment used to copy the record and any  
2 utility charges directly associated with copying a record. The secretary of state  
3 shall adopt, by rule, a uniform schedule of public record charges for state  
4 agencies.

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

15 \* \* \*

16 Sec. 3. 1 V.S.A. § 317 is amended to read:

17 § 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND  
18 DOCUMENTS

19 (a) As used in this subchapter:

20 (1) "~~public~~ Public agency" or "agency" means any agency, board,  
21 department, commission, committee, branch, instrumentality, or authority of

1 the state or any agency, board, committee, department, branch, instrumentality,  
2 commission, or authority of any political subdivision of the state.

3 (2) "Public record" or "public document" means any written or recorded  
4 information, regardless of physical form or characteristics, which is produced  
5 or acquired in the course of public agency business. Individual salaries and  
6 benefits of and salary schedules relating to elected or appointed officials and  
7 employees of public agencies shall not be exempt from public inspection and  
8 copying.

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

15 (1) A person's "right to privacy" or "personal privacy," as these terms  
16 are used in this subchapter, is violated or invaded only if disclosure of  
17 information about the person reveals intimate details of a person's life,  
18 including any information that might subject the person to embarrassment,  
19 harassment, disgrace, or loss of employment or friends.

20 (2) The provisions of this subchapter addressing the "right to privacy" or  
21 "personal privacy" in personal and economic pursuits do not create any right

1 beyond the rights specified under subsection (c) of this section as express  
2 exemptions to the public's right to inspect or copy public records.

3 \* \* \*

4 Sec. 4. 1 V.S.A. § 318 is amended to read:

5 § 318. PROCEDURE

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

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

12 (2) if the custodian considers the record to be exempt from inspection  
13 under the provisions of this subchapter, the custodian shall so certify in  
14 writing. Such certification shall identify the records withheld and the basis for  
15 the denial. ~~The A record shall be produced for inspection or a certification~~  
16 ~~shall be made that a record is exempt~~ within ~~two~~ five business days of the day  
17 of the request, unless otherwise provided in subdivision (5) of this subsection.

18 The certification shall include the asserted statutory basis for denial and a brief  
19 statement of the reasons and supporting facts for denial. The custodian shall  
20 also notify the person of his or her right to appeal ~~to the head of the agency any~~  
21 ~~adverse determination appeal~~ under section 319 of this title or to file a

1 complaint with the government transparency office under 3 V.S.A. chapter 5,  
2 subchapter 4;

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

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

13 (5)(4) in unusual circumstances as herein specified the time limits  
14 prescribed in this subsection may be extended by written notice to the person  
15 making such request setting forth the reasons for such extension and the date  
16 on which a determination is expected to be dispatched. No such notice shall  
17 specify a date that would result in an extension for more than ten working days  
18 from the day of the initial request. As used in this subdivision, “unusual  
19 circumstances” means to the extent reasonably necessary to the proper  
20 processing of the particular request:

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

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

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

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

20 (c)(1) Any denial of access by the custodian of a public record may be  
21 appealed to the head of the agency. ~~The head of the agency shall make a~~



1 ~~written determination on an appeal within five business days after the receipt~~  
2 ~~of the appeal. A written determination shall include the asserted statutory basis~~  
3 ~~for denial and a brief statement of the reasons and supporting facts for denial.~~

4 ~~(2) If the head of the agency reverses the denial of a request for records,~~  
5 ~~the records shall be promptly made available to the person making the request.~~  
6 ~~A failure by the agency to comply with any of the time limit provisions of this~~  
7 ~~section shall be deemed a final denial of the request for records by the agency~~  
8 ~~under section 319 of this title or a complaint may be filed with the government~~  
9 ~~transparency office under 3 V.S.A. chapter 5, subchapter 4.~~

10 ~~(d) In responding to a request to inspect or copy a record under this~~  
11 ~~subchapter, a public agency shall consult with the person making the request in~~  
12 ~~order to clarify the request or to obtain additional information that will assist~~  
13 ~~the public agency in responding to the request and, when authorized by this~~  
14 ~~subchapter, in facilitating production of the requested record for inspection or~~  
15 ~~copying. In unusual circumstances, as that term is defined in subdivision~~  
16 ~~(a)(4) of this section, a public agency may request that a person seeking a~~  
17 ~~voluminous amount of separate and distinct records narrow the scope of a~~  
18 ~~public records request.~~

1 Sec. 5. 1 V.S.A. § 319 is amended to read:

2 § 319. ENFORCEMENT

3 (a) Any person aggrieved by the denial of a request for public records  
4 under this subchapter may file a complaint with the government transparency  
5 office under 3 V.S.A. chapter 5, subchapter 4 or may apply to the superior  
6 court in the county in which the complainant resides, or has his personal place  
7 of business, or in which the public records are situated, or in the superior court  
8 of Washington County, to enjoin the public agency from withholding agency  
9 records and to order the production of any agency records improperly withheld  
10 from the complainant. ~~In such a case~~ an appeal to the superior court with no  
11 review by the government transparency office, the court shall determine the  
12 matter de novo, and may examine the contents of such agency records in  
13 camera to determine whether such records or any part thereof shall be withheld  
14 under any of the exemptions set forth in section 317 of this title, and the  
15 burden ~~is~~ of proof for nondisclosure of a public record shall be on the agency  
16 to sustain its action.

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

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

5 (d) The court may assess against the public agency reasonable attorney fees  
6 and other litigation costs reasonably incurred in any case under this section in  
7 which the complainant has substantially prevailed. A public agency that does  
8 not comply with or appeals an order issued under 3 V.S.A. § 145 by the  
9 director of the government transparency office requiring disclosure of a record  
10 shall be presumed to be liable under this subsection for reasonable attorney  
11 fees and other litigation costs when the complainant has substantially  
12 prevailed.

13 Sec. 6. 1 V.S.A. § 321 is added to read:

14 § 321. PUBLIC RECORDS ACT REVIEW COMMITTEE

15 (a) There is established a committee to review the requirements of the  
16 public records act and the numerous exemptions to that act in order to assure  
17 the integrity, viability, and the ultimate purposes of the act. The review  
18 committee shall consist of the following members:

19 (1) One member of the senate appointed by the committee on  
20 committees;

21 (2) One member of the house of representatives appointed by the

1 speaker of the house;

2 (3) The attorney general or his or her designee;

3 (4) The secretary of administration or his or her designee;

4 (5) The state archivist or his or her designee;

5 (6) One representative of municipal interests, appointed by the  
6 committee on committees;

7 (7) Two representatives of newspaper publishers, broadcasters, or other  
8 press interests appointed by the governor;

9 (8) One representative of school or educational interests appointed by  
10 the governor; and

11 (9) Two representatives of a statewide coalition of advocates of freedom  
12 of access appointed by the speaker of the house.

13 (b) The review committee shall review and analyze each of the exemptions  
14 set forth in section 317 of this section or elsewhere in statute to the inspection  
15 and copying of public records required under this subchapter. Prior to each  
16 legislative session, the committee shall report to the house and senate  
17 committees on government operations and the house and senate committees on  
18 judiciary with recommendations concerning whether an exemption from  
19 inspection and copying of a public record should be repealed, amended, or  
20 remain unchanged. The report of the committee may take the form of draft  
21 legislation.

1        (c) In reviewing and making a recommendation under subsection (b) of this  
2        section regarding an existing exemption to inspection and copying of a public  
3        record, the committee shall review the following criteria:

4            (1) Whether a record protected by an exemption is required to be  
5            collected and maintained;

6            (2) The value to an agency or to the public in maintaining a record  
7            protected by the exemption;

8            (3) Whether federal law requires a record to be confidential;

9            (4) Whether the exception protects an individual's right to privacy and,  
10        if so, whether that interest substantially outweighs the public interest in the  
11        disclosure of records;

12           (5) Whether public disclosure puts a business at a competitive  
13           disadvantage and, if so, whether that business's interest substantially  
14           outweighs the public interest in the disclosure of records;

15           (6) Whether public disclosure compromises the position of a public  
16           agency in negotiations and, if so, whether that public agency's interest  
17           substantially outweighs the public interest in the disclosure of records;

18           (7) Whether public disclosure jeopardizes the safety of a member of the  
19           public or the public in general and, if so, whether that safety interest  
20           substantially outweighs the public interest in the disclosure of records;

21           (8) Whether the exception is as narrowly tailored as possible;

1           (9) Whether public disclosure of a public record interferes with good  
2 governance and if so whether it outweighs the public interest in disclosure;

3           (10) Any other criteria that assist the review committee in determining  
4 the value of the exemption as compared to the public's interest in the record  
5 protected by the exception.

6           (d) The review committee may hold public hearings and solicit the input of  
7 interested parties regarding exemptions under its review. The office of the  
8 secretary of state and the office of the attorney general shall provide staff  
9 services to the committee.

10       Sec. 7. 3 V.S.A. chapter 5, subchapter 4 is added to read:

11                       Subchapter 4. Government Transparency Office

12       § 141. DEFINITIONS

13       As used in this subchapter:

14           (1) "Director" means the executive director of the government  
15 transparency office.

16           (2) "Office" means the government transparency office.

17           (3) "Public agency" shall have the same meaning as 1 V.S.A.

18       § 317(a)(1).

19           (4) "Public record" shall have the same meaning as 1 V.S.A.

20       § 317(a)(2).

1           (5) “Public records act” means the requirements set forth in 1 V.S.A.  
2 chapter 5, subchapter 3 regarding the inspection and copying of public records.

3           (6) “Secretary” means the secretary of state.

4           § 142. GOVERNMENT TRANSPARENCY OFFICE; ESTABLISHMENT;

5                   DUTIES

6           (a) Establishment. There is established within the office of the secretary of  
7 state a government transparency office to administer and enforce the  
8 requirements of the public records act as set forth in 1 V.S.A. chapter 5,  
9 subchapter 3. The office shall have a director who shall be appointed by the  
10 secretary of state and who shall be an exempt employee.

11           (b) Duties of the director. The director:

12                   (1) shall receive and review complaints of violations of the public  
13 records act;

14                   (2) shall issue an order in response to a complaint under subdivision (1)  
15 of this subsection as to whether a public agency has violated the public records  
16 act, whether the public agency acted properly or reasonably, or whether the  
17 complaint is outside its jurisdiction, frivolous, or without factual basis;

18                   (3) may order a public agency to allow inspection and copying of a  
19 record;

1           (4) may, on its own motion, issue advisory opinions as to whether a  
2 particular type of record is public and available for inspection and copying;  
3 and

4           (5) shall establish training programs for public agency employees  
5 responsible for responding to requests for public records.

6           § 143. POWERS OF GOVERNMENT TRANSPARENCY OFFICE

7           In addition to any other provision of law, the director may exercise the  
8 following powers:

9           (1) Hold a hearing to review a complaint alleging violation of the public  
10 records act and to allow the complaining party and the relevant public agency  
11 opportunity to present information and comment regarding the complaint.

12           (2) Issue subpoenas and administer oaths in connection with any  
13 authorized hearing, investigation, or disciplinary proceeding. Subpoenas may  
14 be issued ex parte by the director.

15           (3) Establish a process to provide parties to a complaint the opportunity  
16 to resolve the complaint through mediation.

17           (4) Adopt rules to implement the requirements of this subchapter,  
18 including procedural requirements for submission and hearing of complaints.

19           (5) Appoint a hearing officer or officers to receive complaints, conduct  
20 hearings, administer oaths, and make findings of fact, in the form of a  
21 proposed order, to the director.



1        § 144. HEARINGS OF GOVERNMENT TRANSPARENCY OFFICE

2            (a) Within two working days of receipt of a complaint, the director shall  
3        schedule a time and place for a hearing to review the complaint, unless:

4            (1) the parties to the complaint agree to mediation offered by the office;  
5        or

6            (2) the director finds that the complaint is outside the jurisdiction of the  
7        office, frivolous, or without factual basis.

8            (b) The director shall mail a copy of the complaint and notice of a hearing  
9        held under this subsection to the public agency alleged to be in violation of the  
10       public records act, the person filing the complaint, and such other parties, if  
11       any, that the director determines have an interest in the resolution of the  
12       complaint.

13           (c) A hearing convened to review a complaint received under section 143  
14       of this title shall be conducted or notice provided or both according to the  
15       requirements of section 809 of this title. A hearing shall be open to the public,  
16       provided that the director or hearing officer may examine the contents of a  
17       contested public agency record in camera to determine whether such record or  
18       any part thereof shall be withheld under any of the exemptions set forth under  
19       1 V.S.A. § 317.

1        § 145. ORDER OF THE DIRECTOR

2            (a) The director shall issue an order in response to a complaint under  
3        subdivision 142(b)(1) of this title within seven working days of receipt of the  
4        complaint, unless:

5            (1) the parties to the complaint agree to mediation offered by the office;

6        or

7            (2) the director finds that the complaint is outside the jurisdiction of the  
8        office, frivolous, or without factual basis. In such a case, the director shall  
9        issue a written finding regarding the disposition of the complaint.

10          (b) In an appeal of an order or action of the director under this subchapter  
11        the court shall give deference to an order or action of the director that is  
12        reasonable and consistent with applicable law.

13          (c) A public agency that does not comply with an order of the director  
14        requiring disclosure of a record shall be presumed to be liable under 1 V.S.A.  
15        § 319(d) for reasonable attorney fees and other litigation costs when the person  
16        filing the complaint has substantially prevailed.

17        § 146. TRAINING

18          (a) The training program required under section 142 of this title for public  
19        agency employees responsible for responding to requests for public records  
20        shall:

1           (1) Address the requirement that all state agencies and departments shall  
2 identify a public records officer to:

3           (A) oversee the establishment, maintenance, and implementation of a  
4 records management program; and

5           (B) manage the agency's receipt and response to requests for public  
6 records according to the requirements of the public records act.

7           (2) Address the requirement that all state agencies establish an approved  
8 records management program under section 218 of this title; and

9           (3) Require the public records officer and public records liaisons at all  
10 state agencies to complete records training every two years.

11           (b) Beginning January 15, 2012, and annually thereafter, the director shall  
12 report to the house and senate committees on government operations regarding  
13 the status of the training program required under this subchapter, including  
14 state agency compliance with requirements of the public records act and with  
15 the requirements of section 218 of this title.

16           § 147. APPEAL

17           (a) A party aggrieved by an order or action of the director under this  
18 subchapter may appeal to the superior court in the county in which the  
19 aggrieved party resides, or has his or her personal place of business, or in  
20 which the public records are situated, or in the superior court of Washington  
21 County.



1 (10) receive grants, gifts, aid, or assistance, of any kind, from any  
2 source, public or private, for the purpose of managing or publishing public  
3 records; ~~and~~

4 (11) serve on the Vermont historical records advisory board, as  
5 described in 44 U.S.C. § 2104, to encourage systematic documentation in  
6 Vermont and the collecting of archival records; and

7 (12) operate an informational website and toll-free telephone number  
8 during the regular business hours of the office that shall provide municipal  
9 public agencies and members of the public information regarding the  
10 requirements of the public records act.

11 Sec. 9. 1 V.S.A. § 313(a)(6) is amended to read:

12 (6) Discussion or consideration of records or documents excepted from  
13 the access to public records provisions of ~~subsection~~ section 317(b) of this title.  
14 Discussion or consideration of the excepted record or document shall not itself  
15 permit an extension of the executive session to the general subject to which the  
16 record or document pertains;

17 Sec. 10. 3 V.S.A. § 218(d) is amended to read:

18 (d) The head of each state agency or department shall designate a member  
19 of his or her staff as the records officer for his or her agency or department and  
20 shall notify the Vermont state archives and records administration in writing of  
21 the name and title of the person designated. The public records officer shall

1 manage the agency's compliance with the requirements of this section and with  
2 the requirements of the public records act regarding receipt and response to  
3 requests for public records according to the requirements of the public records  
4 act as set forth in 1 V.S.A. chapter 5, subchapter 3.

5 Sec. 11. 9 V.S.A. § 4113(b) is amended to read:

6 (b) Reports filed pursuant to this section shall be an exempt record and  
7 confidential pursuant to ~~subdivision 317(b)(1) of Title 1~~ 1 V.S.A. § 317(c)(1)  
8 and shall be maintained for the sole and confidential use of the commissioner,  
9 except that the reports may be disclosed to the federal government or to the  
10 appropriate energy agency or department of another state with substantially  
11 similar confidentiality statutes for regulations with respect to such reports.

12 However, the commissioner shall make available to appropriate committees of  
13 the general assembly statistical information derived from the reports required  
14 by this section, provided that this may be done in a manner which preserves the  
15 confidentiality of the reports submitted by particular persons.

16 Sec. 12. 17 V.S.A. § 2154(b) is amended to read:

17 (b) A registered voter's month and day of birth, driver's license number,  
18 the last four digits of the applicant's Social Security number, and street address  
19 if different from the applicant's mailing address shall not be considered a  
20 public record as defined in ~~subsection 317(b) of Title 1~~ 1 V.S.A. § 317(a)(2).

21 Any person wishing to obtain a copy of all of the statewide voter checklist

1 must swear or affirm, under penalty of perjury pursuant to chapter 65 of  
2 Title 13, that the person will not use the checklist for commercial purposes.

3 The affirmation shall be filed with the secretary of state.

4 Sec. 13. 32 V.S.A. § 3755(e) is amended to read:

5 (e) Any applicant for appraisal under this subchapter bears the burden of  
6 proof as to his or her qualification. Any documents submitted by an applicant  
7 as evidence of income shall be held in confidence by any person accepting or  
8 reviewing them pursuant to provisions of this subchapter, and shall not be  
9 made available for public examination, whether or not such person is subject to  
10 the provisions of ~~subdivision 317(a)(6) of Title 1~~ 1 V.S.A. § 317(c)(6).

11 Sec. 14. REPEAL

12 1 V.S.A. § 321 (public records act review committee) is repealed on  
13 January 15, 2015.

14 Sec. 15. EFFECTIVE DATE

15 This act shall take effect on July 1, 2012.