

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.

~~§ 144. HEARINGS OF GOVERNMENT TRANSPARENCY OFFICE~~

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

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

~~or~~

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

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

~~(c) A hearing convened to review a complaint received under section 143 of this title shall be conducted or notice provided or both according to the requirements of section 809 of this title. A hearing shall be open to the public, provided that the director or hearing officer may examine the contents of a contested public agency record in camera to determine whether such record or any part thereof shall be withheld under any of the exemptions set forth under 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 ~~(b) Except as to cases the court considers of greater importance, appeals to~~
2 ~~the superior court under this section take precedence on the docket over all~~
3 ~~cases and shall be assigned for hearing and trial or for argument at the earliest~~
4 ~~practicable date and expedited in every way.~~

5 (c) A person who does not receive proper notice under section 144 of this
6 title may appeal to the superior court under this section.

7 Sec. 8. 3 V.S.A. § 117(g) is amended to read:

8 (g) In fulfilling the duties of the state archives and records administration
9 program, the state archivist shall:

10 (1) establish and administer a records management program for the
11 application of effective and efficient methods to the creation, utilization,
12 maintenance, reformatting, retention, destruction, and preservation of public
13 records;

14 (2) cooperate with the heads of state agencies or public bodies to
15 establish and maintain a program for the appraisal and scheduling of public
16 records;

17 (3) analyze, develop, establish, and coordinate standards, procedures,
18 and techniques for the creation of, preservation of, and access to public
19 records;

20 * * *

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.

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

§ 315. STATEMENT OF POLICY

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the general assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of

~~this subchapter shall be liberally construed with the view towards carrying out the above declaration of public policy to implement this policy, and the burden of proof shall be on the public agency to sustain its action.~~

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

§ 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS

(a) Any person may inspect or copy any public record ~~or document~~ of a public agency, as follows:

(1) For any agency, board, department, commission, committee, branch instrumentality, or authority of the state, a person may inspect a public record on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and 12 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

(2) For any agency, board, committee, department, instrumentality, commission, or authority of a political subdivision of the state, a person may inspect a public record during customary office business hours.

(b) If copying equipment maintained for use by a public agency is used by the agency to copy the public record or document requested, the agency may charge and collect from the person requesting the copy the actual cost of providing the copy. The agency may also charge and collect from the person making the request, the costs associated with mailing or transmitting the record by facsimile or other electronic means. 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) In the following instances an agency may also charge and collect the cost of staff time associated with complying with a request ~~for a~~ to inspect or to copy of a public record: (1) the time directly involved in complying with the request exceeds ~~30 minutes~~ two hours; (2) the agency agrees to create a public record; or (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds ~~30 minutes~~ two hours. The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge.

(d) The secretary of state, after consultation with the secretary of administration, shall establish the actual cost of providing a copy of a public record that may be charged by state agencies. The secretary shall also

establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine "actual cost" the secretary shall consider the following only: the cost of the paper or the electronic media onto which a public record is copied, a prorated amount for maintenance and replacement of the machine or equipment used to copy the record and any utility charges directly associated with copying a record. The secretary of state shall adopt, by rule, a uniform schedule of public record charges for state agencies.

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

* * *

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

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

(a) As used in this subchapter,:

(1) "~~public~~ Public agency" or "agency" means any agency, board, department, commission, committee, branch, instrumentality, or authority of the state or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the state.

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

(b) ~~As used in this subchapter, "public record" or "public document" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. Individual salaries and benefits of and salary schedules relating to~~

~~electe~~d or appointed officials and employees of public agencies shall not be exempt from public inspection and copying

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

(2) The provisions of this subchapter addressing the "right to privacy" or "personal privacy" in personal and economic pursuits do not create any right beyond the rights specified under subsection (c) of this section as express exemptions to the public's right to inspect or copy public records.

* * *

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

* * *

(7) personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation if disclosure of information would violate the individual's right to privacy as defined in subsection (b) of this section; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his or her designated representative;

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

§ 318. PROCEDURE

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

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

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

The certification shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial. The custodian shall also notify the person of his or her right to appeal to the head of the agency any adverse determination;

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

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

(5) in unusual circumstances as herein specified the time limits prescribed in this subsection may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten ~~working~~ business days from receipt of the request. As used in this subdivision, "unusual circumstances" means to the extent reasonably necessary to the proper processing of the particular request:

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

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

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

(b) Any person making a request to any agency for records under subsection (a) of this section shall be deemed to have exhausted the person's administrative remedies with respect to each request if the agency fails to comply within the applicable time limit provisions of this section. Upon any determination by an agency to comply with a request for records, the records shall be made available promptly to the person making such request. Any notification of denial of any request for records under this section shall set

forth the names and titles or positions of each person responsible for the denial of such request.

(c)(1) Any denial of access by the custodian of a public record may be appealed to the head of the agency. The head of the agency shall make a written determination on an appeal within five business days after the receipt of the appeal. A written determination shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial.

(2) If the head of the agency reverses the denial of a request for records, the records shall be promptly made available to the person making the request. A failure by the agency to comply with any of the time limit provisions of this section shall be deemed a final denial of the request for records by the agency.

(d) In responding to a request to inspect or copy a record under this subchapter, a public agency shall consult with the person making the request in order to clarify the request or to obtain additional information that will assist the public agency in responding to the request and, when authorized by this subchapter, in facilitating production of the requested record for inspection or copying. In unusual circumstances, as that term is defined in subdivision (a)(5) of this section, a public agency may request that a person seeking a voluminous amount of separate and distinct records narrow the scope of a public records request.

(e) A public agency shall not withhold any record in its entirety on the basis that it contains some exempt content if the record is otherwise subject to disclosure; instead, the public agency shall redact the information it considers to be exempt and produce the record accompanied by an explanation of the basis for denial of the redacted information.

(f) If a person making the request has a disability which requires accommodation to gain equal access to the public record sought, the person shall notify the public agency of the type of accommodation requested. The public agency shall give primary consideration to the accommodation choice expressed by the requestor, but may propose an alternative accommodation so long as it achieves equal access. The public agency shall provide accommodation to the person making the request unless the agency can demonstrate that accommodation would result in a fundamental alteration in the nature of its service, programs, activities, or in undue financial and administrative burden.

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

§ 319. ENFORCEMENT

(a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the civil division of the superior court in the county in which the complainant resides, or has his or her personal place of business, or in which the public records are situated, or in the civil division of the superior court of Washington County, to enjoin the public agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case, the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 317 of this title, and the burden ~~is~~ of proof shall be on the public agency to sustain its action.

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

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

~~(d)(1) The~~ Except as provided in subdivision (2) of this section, the court may shall assess against the public agency reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(2) The court may, in its discretion, award attorney's fees to a complainant that has substantially prevailed if a public agency, within 10 business days of entering an appearance:

(A) concedes that a contested record or records are public; and

(B) provides the record or records to the complainant.

Sec. 6. 1 V.S.A. § 320(b) is amended to read:

(b) In the event of noncompliance with the order of the court, the civil division of the superior court may punish for contempt the responsible employee or official, and in the case of a uniformed service, the responsible member.

Sec. 7. 3 V.S.A. § 117(g) is amended to read:

(g) In fulfilling the duties of the state archives and records administration program, the state archivist shall:

(1) establish and administer a records management program for the application of effective and efficient methods to the creation, utilization, maintenance, reformatting, retention, destruction, and preservation of public records;

(2) cooperate with the heads of state agencies or public bodies to establish and maintain a program for the appraisal and scheduling of public records;

(3) analyze, develop, establish, and coordinate standards, procedures, and techniques for the creation of, preservation of, and access to public records;

(4) take custody of archival records in accordance with record schedules approved by the state archivist;

(5) maintain a record center to hold inactive records in accordance with records schedules approved by the state archivist;

(6) arrange, describe, and preserve archival records, and promote their use by government officials and the public;

(7) permit the public to inspect, examine, and study the archives, provided that any record placed in the keeping of the office of the secretary of state under special terms or conditions of law restricting their use shall be made accessible only in accord with those terms and conditions;

(8) cooperate with and assist to the extent practicable state institutions, departments, agencies, municipalities, and other political subdivisions and individuals engaged in the activities in the ~~field~~ management of public records, archives, manuscripts, and history;

(9) accept for filing copies of land records submitted in microfilm, electronic media, or similar compressed form by municipal or county clerks;

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

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

(12) have the authority, on its own motion, to issue advisory opinions as to whether a particular type of record is public and available for inspection and copying;

(13) provide municipal public agencies and members of the public information and advice regarding the requirements of the public records act,

including an informational website and a toll-free telephone number during the regular business hours of the office;

(14) establish a training program for the public records officers of public agencies regarding the requirements of the public records act and the procedure and process for responding to requests to inspect or copy a public record.

Sec. 8. 1 V.S.A. § 313(a)(6) is amended to read:

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

Sec. 9. 3 V.S.A. § 218(d) is amended to read:

(d) The head of each state agency or department shall designate a member of his or her staff as the records officer for his or her agency or department, and shall notify the Vermont state archives and records administration in writing of the name and title of the person designated, and shall post the name and contact information of the person on the agency or department website, if one exists. The public records officer shall manage the agency's compliance with the requirements of this section and with the requirements of the public records act, as set forth in 1 V.S.A. chapter 5, subchapter 3, regarding receipt and response to requests for public records. A public records officer annually shall complete a records management training course offered by the Vermont state archives and records administration.

Sec. 10. 24 V.S.A. chapter 33, subchapter 14 is added to read:

Subchapter 14. Municipal Public Records Officer

§ 1146. MUNICIPAL PUBLIC RECORDS OFFICER

(a) On or before January 1, 2012, the legislative body of a municipality shall appoint, and determine the term of service for, a municipal public records officer.

(b) A municipal public records officer shall manage the municipality's compliance with the requirements of the public records act, as set forth in 1 V.S.A. chapter 5, subchapter 3. The municipal public records officer shall provide guidance to any agency, board, committee, department, branch, instrumentality, commission, or authority of the municipality regarding compliance with the requirements of the public records act.

(c) The name, title, and contact information for the municipal public records officer shall be posted on the municipality's website, if one exists, and

in a prominent location in the municipal offices or office of the municipal clerk.

(d) A public records officer annually shall complete a records management training course offered by the Vermont state archives and records administration.

(e) As used in this section, "municipality" shall mean a city, town, or village of the state and shall mean a school district, as that term is defined in 16 V.S.A. § 11(a)(10).

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

(b) Reports filed pursuant to this section shall be an exempt record and confidential pursuant to ~~subdivision 317(b)(1) of Title 1~~ 1 V.S.A. § 317(c)(1) and shall be maintained for the sole and confidential use of the commissioner, except that the reports may be disclosed to the federal government or to the appropriate energy agency or department of another state with substantially similar confidentiality statutes for regulations with respect to such reports. However, the commissioner shall make available to appropriate committees of the general assembly statistical information derived from the reports required by this section, provided that this may be done in a manner which preserves the confidentiality of the reports submitted by particular persons.

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

(b) A registered voter's month and day of birth, driver's license number, the last four digits of the applicant's Social Security number, and street address if different from the applicant's mailing address shall not be considered a public record as defined in ~~subsection 317(b) of Title 1~~ 1 V.S.A. § 317(a)(2). Any person wishing to obtain a copy of all of the statewide voter checklist must swear or affirm, under penalty of perjury pursuant to chapter 65 of Title 13, that the person will not use the checklist for commercial purposes. The affirmation shall be filed with the secretary of state.

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

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

Sec. 14. PUBLIC RECORDS LEGISLATIVE STUDY COMMITTEE

(a) There is established a legislative study committee to review the requirements of the public records act and the numerous exemptions to that act

in order to assure the integrity, viability, and the ultimate purposes of the act. The review committee shall consist of:

(1) Three members of the house of representatives, appointed by the speaker of the house; and

(2) Three members of the senate, appointed by the committee on committees.

(b) The review committee shall review the exemptions set forth in 1 V.S.A. § 317 or elsewhere in the Vermont Statutes Annotated to the inspection and copying of public records under the public records act, 1 V.S.A. chapter 5, subchapter 3. Prior to each legislative session, the committee shall submit to the house and senate committees on government operations and the house and senate committees on judiciary recommendations concerning whether the public records act and exemptions under the act from inspection and copying of a public record should be repealed, amended, or remain unchanged. The report of the committee may take the form of draft legislation.

(c) In reviewing and making a recommendation under subsection (b) of this section, the study committee may review:

(1) Whether the public records act requires revision;

(2) Whether an exemption to inspection or copying under the public records act is necessary, antiquated, or in need of revision;

(3) Whether an exemption to inspection or copying under the public records act is as narrowly tailored as possible, including the need to clarify the term "personal documents" referenced in 1 V.S.A. § 317(c)(7) in order to ensure that it does not unintentionally limit access to public records that are not personnel records; and

(4) Whether the public records act should be amended to clarify application of the act to contracts between a public agency and a private entity for the performance of a governmental function; and

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

(d) In developing recommendations authorized under subsection (a) of this section, the study committee shall consult with the secretary of administration, the secretary of state, the office of the attorney general, representatives of municipal interests, representatives of school or education interests, representatives of the media, and advocates for access to public records.

(e) The study committee shall elect co-chairs from among its members. For attendance at a meeting when the general assembly is not in session,

legislative members of the commission shall be entitled to the same per diem compensation and reimbursement for actual and necessary expenses as provided members of standing committees under 2 V.S.A. § 406. The study committee is authorized to meet no more than three times each year during the interim between sessions of the general assembly.

(f) Legislative council shall provide legal and administrative services to the study committee. The study committee may utilize the legal, research, and administrative services of other entities, such as educational institutions and, when necessary for the performance of its duties, the Vermont state archives and records administration.

Sec. 15. LEGISLATIVE COUNCIL; LIST OF PUBLIC RECORDS ACT

EXEMPTIONS

The legislative council, under its statutory revision authority set forth in 2 V.S.A. § 421, shall compile a list of all known Vermont statutory exemptions to the inspection and copying of public records under the public records act, 1 V.S.A. chapter 5, subchapter 3. Legislative council shall publish the list of exemptions compiled under this section as a statutory revision note to 1 V.S.A. § 317 and shall update the list as necessary.

Sec. 16. REPEAL

~~1 V.S.A. § 321~~ Sec. 14 of this act (public records legislative study committee) is repealed on January 15, 2015.

Sec. 17. EFFECTIVE DATE

This act shall take effect on July 1, 2011.