

1 **Version 1: Exemption for identity of persons who complain to the Auditor. Changes to**
 2 **H.543 As Passed the House are highlighted in yellow.**

3
 4 Sec. #. 32 V.S.A. § 163 is amended to read:

5 § 163. DUTIES OF THE AUDITOR OF ACCOUNTS

6 In addition to any other duties prescribed by law, the Auditor of Accounts shall:

7 * * *

8 (4) From time to time, as audits are completed, report his or her audit findings first to the
 9 Speaker of the House of Representatives and the President Pro Tempore of the Senate, then to
 10 the Governor, the Secretary of Administration, the Commissioner of Finance and Management,
 11 and the head of the department, institution, or agency covered by the report. The audit reports
 12 shall be public records and ~~10 copies~~ a copy of each report shall be furnished to and kept in the
 13 State Library for public use. Information that could be used to identify a person who makes a
 14 complaint to the Auditor shall be exempt from public inspection and copying under the Public
 15 Records Act until completion of an audit or investigation related to the complaint or, if no audit
 16 or investigation is initiated within one year of the complaint, until one year after the complaint
 17 was received. Draft audit reports, working papers, correspondence, and other materials relied on
 18 by the Auditor to produce the draft audit report shall be ~~confidential and~~ exempt from public
 19 inspection and copying under the Public Records Act until the audit is completed, except that
 20 such records shall be provided to the audited entity upon request unless the record identifies a
 21 confidential complainant or is exempt from public inspection and copying under another
 22 provision of law. Draft audit reports, working papers, correspondence, and other materials
 23 received by an audited entity prior to completion of an audit shall remain ~~confidential~~ exempt
 24 until completion of the audit, and shall not be further disclosed by the audited entity until
 25 completion of the audit.

26
 27 **NOTE:** The language in Version 2 does not prohibit the Auditor from releasing complainant
 28 identifying information or draft audit reports, working papers, etc. Instead, it says that such
 29 information and records is exempt. As a result, the Auditor retains the flexibility to disclose such
 30 information and records, including sharing complainant information with other agencies to
 31 follow-up.

32
 33 **Version 2: Protecting whistleblower complaints to any public agency; no time limitation**

34 Sec. #. 1 V.S.A. § 317(c) is amended to read:

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

2 * * *

3 (42) except as otherwise provided by law, information that could be used to identify a
4 person who alleges that a public agency, a public employee or official, or a person providing
5 goods or services to a public agency under contract has engaged in a violation of law, in waste,
6 fraud, or abuse of authority, or in an act creating a threat to health or safety;

7
8 **NOTE:** The “except as otherwise provided by law” proviso is meant to clarify that this
9 exemption does not supersede the requirements of 3 V.S.A. § 131 (Secretary of State; complaints
10 against licensees, investigations); 16 V.S.A. § 1708 (Agency of Education licensees); and 26
11 V.S.A. § 1318 (practice of medicine; complaints against licensees, investigations), or other
12 provisions of law.

13
14 **Version 3: Protecting whistleblower complaints to any public agency; good faith**
15 **requirement; whistleblower identity no longer exempt after triggering events**

16
17 Sec. #. 1 V.S.A. § 317(c) is amended to read:

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

19 * * *

20 (42) except as otherwise provided by law, information that could be used to identify a
21 person who alleges in good faith that a public agency, a public employee or official, or a person
22 providing goods or services to a public agency under contract has engaged in a violation of law,
23 in waste, fraud, or abuse of authority, or in an act creating a threat to health or safety, but only
24 until:

25 [(A) completion of any investigation or audit related to the allegation, or

26 (B) if no investigation or audit is initiated within one year of the allegation, until one
27 year after the allegation;]

28 **OR**

29 [the completion of any investigation resulting in substantiation of the allegation. If the allegation
30 is not investigated or substantiated, then identifying information of a person making the
31 allegation shall remain exempt from public inspection and copying under this subdivision.]

32 **NOTE:** The “substantiation of the allegation” language is intended to be a general term that
33 encompasses the triggering events listed in 3 V.S.A. § 131 (“filing of disciplinary charges or
34 stipulations or the taking of disciplinary action”); 16 V.S.A. § 1708 (“the filing of a formal
35 charge”); and 26 V.S.A. § 1318 (filing of disciplinary charges or stipulations or the taking of
36 disciplinary action, except as otherwise provided by law).

1 **Version 4: Clarifying that the identities of whistleblowers may be exempt from public and**
2 **inspection and copying under 1 V.S.A. § 317(c)(7), subject to the balancing of private and**
3 **public interests in disclosure.**

4
5 Sec. #. FINDINGS; STATEMENT OF PURPOSE

6 (a) Findings. The General Assembly finds that:

7 (1) Under 1 V.S.A. § 317(c)(7), personal records relating to an individual are exempt from
8 public inspection and copying.

9 (2) The Vermont Supreme Court has interpreted “personal records” under 1 V.S.A.
10 § 317(c)(7) as records the disclosure of which would “reveal ‘intimate details of a person’s life,
11 including any information that might subject the person to embarrassment, harassment, disgrace, or
12 loss of employment or friends.’” Under Vermont Supreme Court caselaw, a record containing
13 intimate details is only exempt if the invasion of privacy occasioned by disclosure of the record
14 outweighs the public interest in its disclosure.

15 (3) What constitutes “intimate” details of an individual’s life is subject to multiple
16 interpretations, which may be overly narrow and, thus, arguably prevent protection of personal
17 information that should be exempt from public disclosure. For example, information which
18 could reveal the identity of a person who makes a whistleblower complaint to a public agency
19 might not satisfy the “intimate detail” threshold requirement. By contrast, federal Freedom of
20 Information Act (FOIA) Exemptions 6 and 7(C), which also exempt records related to an
21 individual if privacy interests outweigh the public interest in disclosure, have no threshold
22 requirement that the record be intimate or embarrassing. Under FOIA Exemptions 6 and 7(C),
23 the identity of complainants and whistleblowers have been construed to be exempt from public
24 inspection and copying.

25 (b) Statement of purpose. It is the purpose of Sec. # of this act to:

26 (1) reorganize and restructure the personal records exemption of 1 V.S.A. § 317(c)(7);
27 (2) supersede the threshold requirement that a record relating to an individual must reveal
28 intimate details of that individual’s life in order to qualify as exempt under 1 V.S.A. § 317(c)(7),
29 thereby aligning Vermont law with federal cases interpreting FOIA Exemptions 6 and 7(C); and
30 (3) provide that a personal record shall be exempt from disclosure under 1 V.S.A.
31 § 317(c)(7) if it relates to a particular individual and if the nature, gravity, and potential
32 consequences of the invasion of privacy occasioned by disclosure of the record outweighs the
33 public interest in its disclosure.

1 Sec. #. 1 V.S.A. § 317(c)(7) is amended to read:

2 (7) ~~personal documents~~ records relating to ~~an~~ a particular individual, ~~including~~
3 ~~information in any files~~ if the nature, gravity, and potential consequences of an invasion of
4 privacy occasioned by disclosure of a record outweighs the public interest in favor of its
5 disclosure. A record may but is not required to reveal intimate or embarrassing facts about an
6 individual in order to qualify as exempt under this subdivision. Records exempt under this
7 subdivision may include:

8 (A) Information maintained to hire, evaluate, promote, or discipline any employee of a
9 public agency;. However, such information shall be made available to that individual employee
10 or his or her designated representative.

11 (B) ~~information in any files~~ Information relating to personal finances;.

12 (C) Individually identifying medical or psychological facts ~~concerning any individual~~
13 ~~or corporation~~ information; ~~provided, however, that all information in personnel files of an~~
14 ~~individual employee of any public agency shall be made available to that individual employee or~~
15 ~~his or her designated representative;~~

16

17 **NOTE:** This language encompasses other changes recommended by the Public Records Study
18 Committee in its January 2014 annual report.¹

¹ See Sec. 35 of App. G at <http://www.leg.state.vt.us/reports/2014ExternalReports/296198.pdf>