Personal Privacy Exemptions – Overview

SUMMARY: Section I of this document addresses personal privacy-related exemptions listed in the Public Records Act (PRA). **Section II** addresses the federal Freedom of Information Act's privacy-related exemptions. **Section III** is a table summarizing general privacy exemptions in the public records laws of New England states and NY. **Appendix A** summarizes Vermont Supreme Court cases interpreting § 317(c)(7).

I. VERMONT LAW

A. Text of personal privacy-related exemptions in the Public Records Act (PRA) itself

1 V.S.A. § 317(c)(5)(A)(iii), (c)(7), (c)(10), (c)(12), (c)(19), (c)(21), and (c)(31) provide:

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

* * *

(5)(A) records dealing with the detection and investigation of crime, but only to the extent that the production of such records:

* * *

(iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy;

* * *

(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; 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;

* * *

(10) lists of names compiled or obtained by a public agency when disclosure would violate a person's right to privacy or produce public or private gain; provided, however, that this section does not apply to lists which are by law made available to the public, or to lists of professional or occupational licensees;

* * *

(12) records concerning formulation of policy where such would constitute a clearly unwarranted invasion of personal privacy, if disclosed;

* * *

(19) records relating to the identity of library patrons or the identity of library patrons in regard to library patron registration records and patron transaction records in accordance with 22 V.S.A. chapter 4;

* * *

(21) lists of names compiled or obtained by Vermont Life magazine for the purpose of developing and maintaining a subscription list, which list may be sold or rented in the sole discretion of Vermont Life magazine, provided that such discretion is exercised in furtherance of that magazine's continued financial viability, and is exercised pursuant to specific guidelines adopted by the editor of the magazine;

* * *

(31) records of a registered voter's month and day of birth, motor vehicle operator'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 contained in an application to the statewide voter checklist or the statewide voter checklist established under 17 V.S.A. § 2154;

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B. Case law and statements of intent

1 V.S.A. § 317(c)(5)(A)(iii): 1 V.S.A. § 317(c)(5)(C) provides**:** "It is the intent of the General Assembly that in construing subdivision (A) of this subdivision (5), the courts of this State will be guided by the construction of similar terms contained in 5 U.S.C. § 552(b)(7) (Freedom of Information Act) by the courts of the United States…." See summary in Part II(C).

1 V.S.A. § 317(c)(7): As interpreted by the Vermont Supreme Court, 1 V.S.A. § 317(c)(7) shields from disclosure records implicating individual privacy that would "reveal '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.'"[1] The "right to privacy" must be balanced against the public interest in favor of disclosure, including the need for "specific information ... to review the action of a governmental officer."[2] See **Appendix A** for a summary of Vermont Supreme Court cases interpreting 1 V.S.A. § 317(c)(7).

1 V.S.A. § 317(c)(10): *Sawyer v. Spaulding*[3] involved a request to the Treasurer by the owner of a unclaimed asset locator business for "'fiscal records concerning undeliverable, stale dated and/or outstanding state issued checks/warrants.'" The trial court held that the records were exempt under (c)(10), essentially agreeing with the Treasurer's argument that the request "'was the functional equivalent of a request for a list of names.'" The Supreme Court reversed, finding that the first element of (c)(10) was not satisfied because the request was not for a list, and the Treasurer could fulfill the request without creating a list. The Court noted that the exemption uses the past tense "and thus addresses only those lists in the agency's possession….it does not

[1] *Kade v. Smith*, 180 Vt. 554, 557 (2006) (quoting *Trombley v. Bellows Falls Union High School District*, 160 Vt. 101 (1993)).
[2] *Id.*
[3] 184 Vt. 545 (2008).

include lists that the Treasurer chooses to create in response to a request for information." The Court rejected the Treasurer's policy argument that (c)(10) should be read to extend to requests "for the individual components of a list rather than the list itself." The Court found that this interpretation would "unnecessarily expand[] the exemption and contravene[] the Legislature's 'strong policy in favor of disclosure.'"

1 V.S.A. § 317(c)(12): This exemption was mentioned only in passing in *Killington, Ltd. v. Lash*, and was not at issue in that case on appeal. In *Kade v. Smith*,[4] the Court acknowledged in a footnote that the language of (c)(12) requires application of a balancing test, but did not further address this exemption. In 1975, a former Attorney General testified that in drafting an earlier version of what ultimately became (c)(12), he intended it "basically [to be] an executive privilege exception…. What its intent was, was to protect the governor and mayors of cities and towns, chairmans [sic] of school boards who ever they may be, from their personal files being rifled while they are trying to get information. I think they have to be free to think of crazy ideas and not be embarrassed by them. They can be embarrassed by what they do, but they shouldn't be punished for having crazy ideas that never see the light of day."[5]

C. Committee's Prior Recommendation Regarding 1 V.S.A. § 317(c)(7)

The language recommended below appears in the Study Committee's January 2012 report.[6]

(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; 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~~:

(A) unique identifying information of a person, including a person's Social Security number, employee identification number, biometric identifiers, passwords or other access codes, medical records, home or personal telephone number, and personal e-mail addresses;

(B) the race, age, or gender of an individual employee of a public agency; provided that aggregate data related to the race, age, or gender of all employees of a public agency may be disclosed if presented in a form which does not reveal the identity of an individual employee;

(C) information related to personal finances;

(D) medical or psychological facts concerning a person;

(E) information in any files maintained to hire, evaluate, promote, or discipline an employee of a public agency; provided that all information in personnel files of an individual employee of a public agency shall be made available to that individual employee or his or her designated representative;

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[4] 180 Vt. 554, 558 n.5 (2006).

[5] *See http://Vermont archives.org/govhistory/governance/PublicRecords/Exemptions/1975_H276/HouseGeneralMilitaryAffairs_19750226.pdf*

[6] *Available* at http://www.leg.state.vt.us/reports/2012ExternalReports/276082.pdf

II. FEDERAL FREEDOM OF INFORMATION ACT (FOIA)

A. Text

5 U.S.C. 552(b)(6) and (b)(7)(C) provide:

> (b) This section does not apply to matters that are—
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> * * *
>
> (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
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> (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information
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> * * *
>
> (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

B. Case law – 5 U.S.C. § 552(b)(6)

- An agency should engage in two lines of inquiry to determine whether Exemption 6 applies: <u>first</u>, determine whether the requested record is contained in a personnel, medical, or "similar" file; <u>and, if so</u>, determine whether disclosure "would constitute a clearly unwarranted invasion of personal privacy" by balancing "the privacy interest that would be compromised by disclosure against any public interest in the requested information."[7]
- Based upon a review of the legislative history of the FOIA, the Supreme Court held that Congress intended the term "similar files" to be interpreted broadly. Exemption 6 is not limited "to a narrow class of files containing only a discrete kind of personal information," but was "intended to cover detailed Government records on an individual which can be identified as applying to that individual."[8]
- <u>Privacy Interest</u>: The Supreme Court has held that "both the common law and the literal understandings of privacy encompass the individual's control of information concerning his or her person."[9] The Court has also noted that information ***<u>need not be intimate or embarrassing to qualify for Exemption 6 protection</u>***.[10] A person may have a privacy interest in his or her name, address, phone number, date of birth, criminal history, medical history, and social security number.[11] One case listed the following as examples of personal information that may qualify for protection under Exemption 6: "marital

[7] *Multi Ag Media LLC v. USDA*, 515 F.3d 1224, 1228 (D.C. Cir. 2008).
[8] *U.S. Dep't of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982).
[9] *U.S. Dept. of Justice v. Reporters Committee for Freedom of Press*, 489 U.S. 749, 763 (1989).
[10] *Wash. Post Co.*, 456 U.S. at 600.
[11] *Department of Justice Guide to the Freedom of Information Act* (2009), Exemption 6, 426, n.43 (hereafter "*DOJ Guide to FOIA*").

status, legitimacy of children, identity of fathers of children, medical condition, welfare payments, alcoholic [sic] consumption, family fights, reputation, and so on…"[12]

- Public interest: The Supreme Court has held that the public interest is to be evaluated in light of the purposes for which Congress enacted FOIA: to "shed[] light on an agency's performance of its statutory duties" and to contribute "'to public understanding of the operations or activities of the government.'"[13]
- Courts have consistently upheld protection for: (1) birth dates; (2) religious affiliations; (3) citizenship data; (4) genealogical history establishing membership in a Native American Tribe; (5) social security numbers; (6) criminal history records; (7) incarceration of United States citizens in foreign prisons; (8) identities of crime victims; and (9) financial information.[14]
- Litigation regarding the release of lists of compilations of names and home addresses has been frequent, with courts finding such information exempt in many but not all cases.[15]

C. Language distinctions between Exemption 6 and Exemption (7)(C)

- The plain language of Exemption (7)(C) provides broader privacy protection than Exemption 6 in two respects; these distinctions have been recognized in many cases:

  (1) Exemption (7)(C) omits the word "clearly" before the phrase "unwarranted invasion of personal privacy."

  (2) The risk of harm standard under Exemption (7)(C) is "could reasonably be expected to constitute"—instead of "would constitute"—an invasion of privacy.

III. GENERAL PRIVACY EXEMPTIONS—NEW ENGLAND STATES, NEW YORK

State	Cite	Text	Illustrative Cases (Not Comprehensive)[16]
CT	Conn. Gen. Stat. § 1-210(b)(2), § 1-214	§ 1-210(b)(2): Personnel or medical files and similar files the disclosure of which **would constitute an invasion of personal privacy**. § 1-214: (b) Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (1) each employee concerned….	(1) In *City of Hartford v. FOIC*, 518 A.2d 49 (Conn. 1986), the Supreme Court held that a public agency must meet "a twofold burden of proof to establish the applicability" of this exemption. First, it must establish that the file is a "personnel or medical or similar file," and second it must establish that disclosure "would constitute an invasion of privacy." (2) Neither Freedom of Information Commission (FOIC), nor court, is required to engage in separate balancing procedure in deciding whether invasion of privacy would result from disclosure of public official's personnel evaluation. *Chairman, Criminal Justice Com'n v. FOIC*, 585 A.2d 96, (Conn. 1991). (3) In *Perkins v. FOIC*, 228 Conn. 158, 635 A.2d 783 (1993) and *Kureczka v. FOIC*, 228 Conn. 271, 636 A.2d 777 (1994), the Supreme Court interpreted the statutory phrase "invasion of personal privacy" in accordance with the common law tort standard for disclosure of private but embarrassing facts as reflected in 3 Restatement (Second) Torts, §652D. Therefore,

[12] *Rural Hous. Alliance v. USDA*, 498 F.2d 73, 77 (D.C. Cir. 1974).
[13] *Reporters Committee for Freedom of Press*, 489 U.S. at 773, 775.
[14] *DOJ Guide to FOIA*, Exemption 6, 480–81.
[15] *DOJ Guide to FOIA*, Exemption 6, 482–86.
[16] Some text is drawn from state-by-state summaries published by the Reporter's Committee for Freedom of the Press.

			disclosure may be denied only when the information sought does not pertain to legitimate matters of public concern and is highly offensive to a reasonable person (and not merely offensive to the person the data concerns).
MA	M.G.L. 4 § 7(26)(c)	(c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure **of which may constitute an unwarranted invasion of personal privacy**;	(1) *Globe Newspaper Co. v. Boston Retirement Bd*., 446 N.E.2d 1051 (Mass. 1983) ("medical . . . files or information are absolutely exempt from mandatory disclosure where the files or information are of a personal nature and relate to a particular individual") (2) A record that invades privacy is deemed public only if "the public interest in obtaining information substantially outweighs the seriousness of any invasion of privacy." *Attorney Gen. v. Collector of Lynn*, 385 N.E.2d 505 (Mass. 1979) (emphasis added); see also *Peckham v. Boston Herald*, Inc., 719 N.E.2d 888, 892 n.6 (Mass. App. 1999).
ME	1 M.R.S.A. § 402	No general personal privacy exemption, though there are specific provisions that exempt SSNs and "[p]ersonal contact information concerning public employees." *See* § 402(3)(N) and (O).	According to the summary of Maine's law published by the Reporter's Committee for Freedom of the Press, many exemptions scattered throughout Maine's Revised Statutes are incorporated as exemptions through 1 M.R.S.A. § 402(1). Each one must be consulted individually.
NH	N.H. Rev. Stat. § 91-A:5(IV)	IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; **and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy….**	(1) In analyzing privacy exemption, court conducts 3-step analysis. At step 1, it considers whether there is a privacy interest at stake that would be invaded by the disclosure. If there is, court moves on to step 2, and assesses public interest in disclosure, which should inform the public about the conduct and activities of their government. At step 3, it balances the public interest in disclosure against the government interest in nondisclosure and the individual's privacy interest in nondisclosure. *Union Leader Corp. v. New Hampshire Retirement System*, 162 N.H. 673 (2011); *Prof'l Firefighters of New Hampshire v. Local Gov't Center, Inc.*, 159 N.H. 699 (2010); *Lambert v. Belknap County Conv*. 157 N.H. 375 (2008). (2) *New Hampshire Civil Liberties Union v. City of Manchester*, 149 N.H. 437 (2003). At step two, the court assesses the public's interest in disclosure, with the recognition that while an individual's motives in seeking disclosure are irrelevant, in the privacy context, disclosure of the requested information should serve the purpose of informing the public about the conduct and activities of their government.
NY	McKinney's Public Officers Law §§ 87(2); 89(2).	§ 87(2): Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that: (a) are specifically exempted from disclosure by state or federal statute; (b) **if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article**; § 89(2). (a) The committee on public access to records may promulgate guidelines regarding	- If the issue falls under any of the specific exemptions of 89(2) then it is categorically excluded. If it does not fall under one of those exemptions, the court applies a balancing test. - *See Harbatkin v. New York City Dept. of Records and Information Services*, 971 N.E.2d 350 (N.Y. 2012). Public Officers Law § 89(2)(b) says that "[a]n unwarranted invasion of personal privacy includes, but shall not be limited to" seven specified kinds of disclosure. In a case, like this one, where none of the seven specifications is applicable, a court "must decide whether any invasion of privacy ... is 'unwarranted' by balancing the privacy interests at stake against the public interest in disclosure of the information."

		deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. **In the absence of such guidelines, an agency may delete identifying details when it makes records available.** (b) An unwarranted invasion of personal privacy includes, but shall not be limited to: i. disclosure of employment, medical or credit histories or personal references of applicants for employment; ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility; iii. sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes; iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency; vi. information of a personal nature contained in a workers' compensation record, except as provided by section one hundred ten-a of the workers' compensation law; or vii. disclosure of electronic contact information, such as an e-mail address or a social network username, that has been collected from a taxpayer under section one hundred four of the real property tax law.	
RI	R.I. Gen. Laws § 38-2-2(4)(A)(I):	(a) All records relating to a client/attorney relationship and to a doctor/patient relationship, including all medical information relating to an individual in any files. (b) Personnel and other personal individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552 *et. seq.;* provided, however [salary and benefits info], job description, dates of employment and positions held with the [public agency], and/or project, business telephone number, the city or town of residence, and date of termination shall be public….	***Note***: The Rhode Island Access to Public Records Law was substantially revised in 2012, including the personal individually-identifiable records exemption. I did not find any cases interpreting it. Subsec. (a) appears to establish a categorical exemption for client/attorney records as well as medical information relating to an individual. Subsec. (b) references "personnel and other personal individually-identifiable records deemed confidential by federal or state law or regulation" [sounds categorical] or that meets the clearly unwarranted invasion of personal privacy test of the federal FOIA, which is a balancing test.

Appendix A

Trombley v. Bellows Falls Union High School District, 160 Vt. 101 (1993)
Note: This summary does not address Open Meeting Law issues covered in the opinion.

- **Background:** Three athletic instructors sent voters a letter on official high school stationary complaining about athletic program budget cuts. The school board voted to condemn the actions of the instructors, on the basis that they had misused official school letterhead. At a special town meeting to reconsider the budget cuts, the board read its condemnation statement in public. The three instructors responded by filing a grievance contesting the condemnation.
- **PRA request**: Town residents requested records of the grievance and the response of the board, the superintendent, and the principal of the high school to the grievance.
- **Summary of Court's analysis, rule:** Exceptions to the PRA are strictly construed, and the burden is on the public agency to "make the specific factual record necessary to support the exception claimed." Records claimed exempt under § 317(c)(7)[17] must be evaluated "based on their content rather than where they are filed." The phrase "personal documents" is vague, so it should be construed, consistent with legislative intent expressed at 1 V.S.A. § 315, "in a limited sense to apply only when the privacy of the individual is involved." Thus, § 317(c)(7) covers "personal documents only if they reveal '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.'" Courts must also "examine the public interest in disclosure."
- **Held:** The Superior Court's holding that the records are exempt under § 317(c)(7) is reversed, and the case is remanded for *in camera* review consistent with the opinion.

Norman v. Vt. Office of Court Adm'r, 176 Vt. 593 (2004)
Note: This summary does not address the Court's analysis of 1 V.S.A. § 317(c)(1) and information related to expunged records.

- **Background/PRA request:** At issue on appeal are 7 records from the Office of the Court Administrator of a former State employee's personnel file concerning disciplinary action, an employment grievance, and a criminal records check.
- **Summary of Court's analysis, rule:** Court quoted *Trombley* and noted that it requires an individual's privacy interest to "be balanced against 'the public interest in disclosure.'" Whether records relating to "disciplinary action, performance evaluations, or employee grievances contain 'personal' information ...is a fact-specific determination, although we note that many courts have held that such records may contain highly personal, embarrassing information exempt from disclosure." The trial court failed to address the OCA's claim that all 7 records are exempt under 1 V.S.A. § 317(c)(7).
- **Held:** Reverse Superior Court's decision, and remand for further findings and analysis.

[17] At the time of the *Trombley* decision, what is now 1 V.S.A. § 317(c)(7) was found at 1 V.S.A. § 317(b)(7). In this summary, for consistency and to avoid confusion, I will refer to the exemption as 1 V.S.A. § 317(c)(7).

Kade v. Smith, 180 Vt. 554 (2006) (mem.)

- **PRA request:** Kade requested four performance evaluations of the Superintendent of the Northern State Correctional Facility.[18]
- **Background/Superior Court decision:**
  - State submitted a "Vaughn index" summarizing the structure of the performance evaluations, and affidavits from AHS's personnel chief and the Commissioner of Personnel describing interests at stake in keeping performance evaluations private.
  - Kade argued that, particularly in light of recent deaths of inmates which prompted an independent investigation that the trial court found suggested negligence on the part of the Superintendent, the evaluations would be useful in "assessing the depth and quality of her supervision by her superiors within the DOC."
  - The trial court applied a 2-part test of U.S. Supreme Court, which requires a requester to show that (1) the public interest sought to be advanced is significant, and (2) information in the record sought is likely to advance that interest. The trial court found that performance evaluations by nature deal with general performance rather than specific incidents, and were highly unlikely to reveal evidence of the Superintendent's negligence or lack of supervision. It held that the public interest did not weigh in favor of disclosure.
  - The trial court did not review the evaluations *in camera*, and decided that redaction would so drain the evaluations of substance as to "'render their release meaningless.'"
- **Summary of Court's analysis, rule:** The Court rejected the State's argument that performance evaluations are categorically exempt under 1 V.S.A. § 317(c)(7). After summarizing its decisions in *Trombley* and *Norman*, the Court reaffirmed that in deciding whether a record is exempt under 1 V.S.A. § 317(c)(7), privacy interests and the public interest in disclosure must be balanced. The Court found that the trial court had erred in failing to review the evaluations *in camera* in order to evaluate the public interest in disclosing them, and ordered the trial court to do so on remand. The Court directed the trial court to consider the relevance of the records to the public interest for which they were sought, and to consider other factors including "the significance of the public interest asserted; the nature, gravity, and potential consequences of the invasion of privacy occasioned by the disclosure; and the availability of alternative sources for the requested information." It also directed the trial court to carefully consider redaction.
- **Held:** Reverse trial court decision finding performance evaluations to be exempt, and remand for further proceedings in accordance with the Court's decision.
- **Dissent**: "The plain language of § 317(c)(7) does not call for a balancing test, and the Court should not read such a requirement into the statute." Presumably, the Legislature already balanced the competing interests stated in § 315 when it identified 35 exemptions in § 317.

Kade v. Smith, 2006 WL 6053199 (Vt. Super. Sept. 12, 2006)

Trial court's decision on remand:

- There is always a general public interest in whether public agencies adequately supervise and train employees and provide meaningful reviews, "but that does not outweigh the privacy interests of all government employees in their own performance evaluations."

[18] Kade also requested documents related to the evaluations, but the State responded, and the Court found, that no such records existed, and Kade did not challenge this finding. *Kade*, 180 Vt. at 555 n.1.

- However, it is clear that the real public interest in this case stems from more specific issues cited in investigative report of inmate deaths.
- **Held:** The court ruled that the balance of interests weighed in favor of releasing portions of evaluations that relate to issues cited in the investigative report (control of illicit drugs; quality of mental health treatment), and keeping the rest of the evaluations sealed.

Katz v. South Burlington School Dist., 185 Vt. 621 (2009) (mem.).

- This case primarily addresses the Open Meeting Law and whether a provision in a separation agreement with a Superintendent violated public policy.
- The Court noted in fn.2, however, that case law supported the school district's judgment that a separation agreement with a Superintendent was a public record subject to disclosure. It stated that *Trombley* "narrowly constru[ed the] personal documents" exception to the PRA to "apply only to documents that reveal 'intimate details' of a person's life,'" and cited cases from other jurisdictions regarding the public nature of settlement agreements.

Rutland Herald v. City of Rutland, 191 Vt. 357 (2012)

Note: This summary does not address the Court's analysis of 1 V.S.A. § 317(c)(5).

- **Background/PRA Request:**
  - The Herald requested documents related to the investigation of Rutland Police and DPW employees for viewing pornography at work, and the imposition of discipline against two DPW employees and a police officer for viewing pornography at work.
  - The City refused to produce 10 categories of records related to internal investigations and related personnel actions.
  - After balancing the public interest in disclosure against the harm to the individual under 1 V.S.A. § 317(c)(7), the trial court concluded that the balance tipped in favor of disclosure of all records, though for two letters to DPW employees regarding discipline for violations of an internet usage policy, the trial court redacted the employees' names and suspension dates.
- **Summary of analysis/rule:**
  - With the exception of two records, the Court did not review the trial court's balancing of public and private interests under 1 V.S.A. § 317(c)(7). However, it stated that in light of the statutory scheme as a whole, "it is apparent that the Legislature intended purely disciplinary investigations—those that do not deal with the investigation and detection of crime—to be evaluated under … § 317(c)(7)", except to the extent that they relate to "management and direction of a law enforcement agency" and not to a specified individual employee.
  - With regard to the two DPW employee letters analyzed under 317(c)(7), the Court found that trial court did not abuse its discretion under § 317(c)(7) when it found the public interest outweighed the privacy interest and released the records after redacting the employees' names and suspension dates.
- **Held:** Reverse and remand for analysis under 317(c)(5) for most records; affirm trial court's weighing of interests under 317(c)(7) and decision to release two records.

Rutland Herald v. City of Rutland, 2013 VT 98 (Oct. 11, 2013)

- **Background/Records at Issue:**
  - This was the second Supreme Court decision in this case, and followed the trial court's decision on remand. The records still at issue "concern several Rutland Police Department (RPD) employees who were investigated and disciplined for viewing and sending pornography on work computers while on duty."
  - The trial court found that these records did not deal with the detection or investigation of crime, so were not exempt under § 317(c)(5), and it also left in place its 2010 ruling that the records were not exempt under § 317(c)(7). The trial court refused to redact the employees' names and suspension dates, but said that it would redact information regarding "uninvolved citizens, confidential complaining witnesses, and family members" of the employees, as well as personal information "such as any medical information, home addresses, telephone numbers, social security numbers, drivers' license numbers, employee identification numbers, dates of birth, and email addresses."
- **Summary of analysis/rule:**
  - The trial court's balancing under 317(c)(7) is reviewed under an abuse of discretion standard.
  - The Court elected not to decide precisely what privacy interest, if any, employees have in viewing or emailing porn at work, except to note that employees cannot "reasonably expect a high level of privacy" on work computers while on duty.
  - It agreed with the trial court that an important public interest was at stake: "knowing how the policy department supervises its employees and responds to allegations of misconduct," particularly in the context of the repeated instances and apparent scope of misconduct over a 5-year period.
  - It stated that the trial court had identified "compelling reasons" not to redact the employees' names and suspension dates, including the goal of showing management's response, as well as not casting suspicion over the whole department.
- **Held:** Affirm trial court's decision that records are not exempt under § 317(c)(7).