

1 **Version 1: exemption for identity of persons who complain to the Auditor; addition to**
2 **H.543 As Passed the House**

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. Draft audit reports, working papers, correspondence, and other
14 materials relied on by the Auditor to produce the draft audit report shall be exempt from public
15 inspection and copying under the Public Records Act and shall not be released until the audit is
16 completed, but shall be provided to the audited entity upon request unless the record is exempt
17 from public inspection and copying under this subdivision or another provision of law.
18 Information that could be used to identify a person who makes a complaint to the Auditor shall
19 not be released to the audited entity or any other person until completion of an audit related to
20 the complaint or, if no audit is initiated within one year of the complaint, until one year after the
21 complaint was received. Draft audit reports, working papers, correspondence, and other
22 materials received by an audited entity prior to completion of an audit shall remain confidential
23 until completion of the audit, and shall not be further disclosed by the audited entity until
24 completion of the audit.

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

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

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

28 * * *

29 (42) information that could be used to identify a person who alleges that a public agency,
30 a public employee or official, or a person providing goods or services to a public agency under
31 contract has engaged in a violation of law; in waste, fraud, or abuse of authority; or in an act
32 creating a threat to health or safety;

1 **Version 3: Protecting whistleblower complaints to any public agency; whistleblower**
2 **identity may be revealed after triggering events; good faith requirement**

3
4 Sec. #. 1 V.S.A. § 317(c) is amended to read:

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

6 * * *

7 (42) information that could be used to identify a person who alleges in good faith that a
8 public agency, a public employee or official, or a person providing goods or services to a public
9 agency under contract has engaged in a violation of law, in waste, fraud, or abuse of authority, or
10 in an act creating a threat to health or safety, but only until:

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

12 (B) if no investigation is initiated within one year of the allegation, until one year after
13 the allegation;]

14 OR

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

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

21
22 Sec. #. FINDINGS; STATEMENT OF PURPOSE

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

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

26 (2) The Vermont Supreme Court has interpreted “personal records” under 1 V.S.A.
27 § 317(c)(7) as records the disclosure of which would “reveal ‘intimate details of a person’s life,
28 including any information that might subject the person to embarrassment, harassment, disgrace, or
29 loss of employment or friends.’” Under Vermont Supreme Court caselaw, a record containing
30 intimate details is only exempt if the invasion of privacy occasioned by disclosure of the record
31 outweighs the public interest in its disclosure.

32 (3) What constitutes “intimate” details of an individual’s life is subject to multiple
33 interpretations, which may be overly narrow and, thus, arguably prevent protection of personal
34 information that should be exempt from public disclosure. For example, information which

1 could reveal the identity of a person who makes a whistleblower complaint to a public agency
 2 might not satisfy the “intimate detail” threshold requirement. By contrast, federal Freedom of
 3 Information Act (FOIA) Exemptions 6 and 7(C), which also exempt records related to an
 4 individual if privacy interests outweigh the public interest in disclosure, have no threshold
 5 requirement that the record be intimate or embarrassing. Under FOIA Exemptions 6 and 7(C),
 6 the identity of complainants and whistleblowers have been construed to be exempt from public
 7 inspection and copying.

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

9 (1) reorganize and restructure the personal records exemption of 1 V.S.A. § 317(c)(7);

10 (2) supersede the threshold requirement that a record relating to an individual must reveal
 11 intimate details of that individual’s life in order to qualify as exempt under 1 V.S.A. § 317(c)(7),
 12 thereby aligning Vermont law with federal cases interpreting FOIA Exemptions 6 and 7(C); and

13 (3) provide that a personal record shall be exempt from disclosure under 1 V.S.A.
 14 § 317(c)(7) if it relates to a particular individual and if the nature, gravity, and potential
 15 consequences of the invasion of privacy occasioned by disclosure of the record outweighs the
 16 public interest in its disclosure.

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

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

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

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

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