

**To:** Rosemary Gretkowski, General Counsel, Department of Public Safety  
**From:** Helena Gardner, Legislative Counsel  
**Re:** Act 23 Questionnaire: Department of Public Safety-related exemptions

**1) Consolidated exemption for records related to the regulation or monitoring of the production, sale, or dispensing of regulated drugs**

Several Public Records Act (“PRA”) exemptions address records related to the regulation or monitoring of the production, sale, or dispensing of regulated drugs. The Public Records Study Committee (“Committee”) is considering recommending the draft consolidated exemption below.<sup>1</sup>

(c) The following public records shall be kept confidential and be exempt from public inspection and copying:

\* \* \*

(#) records related to the regulation or monitoring of the production, sale, or dispensing of regulated drugs, to the extent provided in 18 V.S.A. § 4211 (prescriptions of regulated drugs and orders and records required by State regarding regulated drugs); 18 V.S.A. § 4284 (data collected under the Vermont Prescription Monitoring Program and all related information and records); 18 V.S.A. § 4473(b)(5)(A) (records of appeal before the Medical Marijuana Review Board); and 18 V.S.A. §§ 4474d and 4474i (medical marijuana; records of registered persons);

**Questions:**

- Do you object to any or all of the above draft consolidated exemption related to regulated drugs?
- If you object only to the language of the consolidated exemption but not to the general concept, could you offer suggestions to improve the language?
- Does 18 V.S.A. § 4474i merely duplicate the substance of 18 V.S.A. § 4474d? If so, should it be repealed?

**2) Consolidated criminal history records exemption.**

Numerous PRA exemptions relate to the confidentiality of criminal history records. The Committee is considering recommending a consolidated criminal history record exemption as follows:

(c) The following public records are exempt from public inspection and copying and shall not be released:

\* \* \*

(#) criminal history records and the identity of persons requesting the same, to the extent provided in 16 V.S.A. § 253 (background checks; education); 20 V.S.A. chapter 117 (records of, or received through, the Vermont Criminal

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<sup>1</sup> As noted in the cover memorandum, each of these exemptions would be retained in their respective statutes, but be amended to cross-reference this consolidated exemption.

**Information Center**; 26 V.S.A. § 1353(8) (Board of Medical Practice; licensing and certification of health professionals); and 33 V.S.A. § 309 (criminal convictions of a child care employee or prospective employee);

**Questions:**

- Do you object to any or all of the above draft consolidated exemption, and if so, why?
- If you object only to the language of the consolidated exemption but not to the general concept, could you offer suggestions to improve the language?

**3) Consolidated sex offender registry-related exemption**

Title 13, chapter 157, subchapter 3 limits disclosure of sex offender registry information to specifically designated persons, and it protects the identity of victims of sex offenses and of requesters of sex offender registry records. Three sections address the confidentiality of this information: 13 V.S.A. §§ 5402, 5411, and 5411a. The Committee is considering recommending a consolidated exemption for such records as follows:

(c) The following public records are exempt from public inspection and copying and shall not be released:

\* \* \*

(#) sex offender registry information and the identity of victims of sex offenses and of requesters of sex offender registry records, to the extent provided in 13 V.S.A. chapter 157, subchapter 3;

**Questions:**

- Do you object to any or all of the above draft consolidated exemption, and if so, why?
- If you object only to the language of the consolidated exemption but not to the general concept, could you offer suggestions to improve the language?

**4) Consolidated expunged and sealed criminal record-related exemption**

Three PRA exemptions relate to expunged or sealed criminal records or related indices. The Committee is considering recommending a consolidated exemption as follows:

(c) The following public records are exempt from public inspection and copying and shall not be released:

\* \* \*

(#) expunged or sealed criminal records or related indices, to the extent provided in 13 V.S.A. §§ 7041, 7606, and 7607;

**Questions:**

- Do you object to any or all of the above draft consolidated exemption, and if so, why?
- If you object only to the language of the consolidated exemption but not to the general concept, could you offer suggestions to improve the language?

## 5) Consolidated personal records exemption

As you know, 1 V.S.A. § 317(c)(7) is the general Public Records Act exemption for “personal records relating to an individual...” As interpreted by the Vermont Supreme Court, this exemption 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.’”<sup>2</sup> 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.”<sup>3</sup> Not surprisingly, the General Assembly has decided that certain records implicating personal privacy should be categorically exempt, and not subject to a balancing test.

The Public Records Study Committee is taking up this exemption at its December 13 meeting. However, because the Office of Legislative Council has been charged under Act 23 with drafting a PRA exemption consolidation bill this fall, I have already been considering ways to possibly restructure 1 V.S.A. § 317(c)(7). In short, I am considering recommending that it be split up into 6 subdivisions.

Among these subdivisions would be a new § 317(c)(7)(D) that would list records implicating personal privacy which the General Assembly has previously determined should be categorically exempt.

(c) The following public records are exempt from public inspection and copying and shall not be released:

\* \* \*

(7)

(A) [text omitted – individually identifying health information]

(B) [text omitted – medical records categorically exempt]

(C) [text omitted – records relating to an individual’s personal finances]

(D) records the release of which constitutes an unwarranted invasion of personal privacy:

(i) to the extent provided in 10 V.S.A. § 123(c) (Geographic Information System; individual identifiers); 13 V.S.A. § 5358a(a) (Victims Compensation Board; records reviewed for approving an application for compensation); 18 V.S.A. § 1094 (petition and order for mandated venereal disease testing); 18 V.S.A. § 5112 (records related to the issuance of a new birth certificate in connection with a change of sex); 18 V.S.A. § 9719 (advance directives); 20 V.S.A. § 1941 (DNA samples and records); 21 V.S.A. § 516(b) (employee drug test results); 22 V.S.A. § 172 (library patron records); 23 V.S.A. § 1607 (data collected with automated license plate recognition systems); 30 V.S.A. §§ 7055 and 7059 (enhanced 911 database customer information; linked name and street addresses and requests to municipalities to delink the same); 33 V.S.A. § 111 (applicants for or recipients of assistance from DCF); 33 V.S.A. § 6321 (individuals using attendant care services);

<sup>2</sup> *Kade v. Smith*, 180 Vt. 554, 557 (2006) (quoting *Trombley v. Bellows Falls Union High School District*, 160 Vt. 101 (1993)).

<sup>3</sup> *Id.*

(ii) records of genealogy provided in an application or in support of an application for tribal recognition pursuant to chapter 23 of this title;

(iii) records relating to the identity of library patrons;

(E) [text omitted – catchall, balancing test]

(F) [exception for records related to an individual requested by that individual]

#### Questions:

- Do you object to any or all of the above draft consolidated exemption, and if so, why?
- If you object only to the language of the consolidated exemption but not to the general concept of splitting up (c)(7) as outlined above, could you offer suggestions to improve the language?

#### 6) Consolidated exemption for personally identifying information

Several PRA exemptions address personally identifying information. The apparent purpose behind these exemptions is to protect information the disclosure of which would create a risk of identity theft or pose safety risks, or which is prohibited under federal law.

As a result, the Committee is considering recommending a consolidated exemption as follows:<sup>4</sup>

(c) The following public records are exempt from public inspection and copying and shall not be released:

\* \* \*

(#) personally identifying information the disclosure of which creates an unreasonable risk of identity theft or of harm to a specific individual or is prohibited under federal law, including credit card information in the possession of a court or the Judicial Bureau as specified at 4 V.S.A. § 741; social security numbers to the extent provided in 9 V.S.A. § 2440(d); the address or phone number of a crime victim who requests notification of release or escape to the extent provided in 13 V.S.A. § 5305; victim or survivor identifying information to the extent provided in 13 V.S.A. §§ 5322 and 5358a(c); voter identifying information to the extent provided in 17 V.S.A. § 2154(b); and motor vehicle records to the extent provided in 23 V.S.A. § 104;

#### Questions

- Do you object to the draft language above, and if so why?
- If you object only to the language, but not the concept of the consolidated identifying information exemption, could you suggest improvements to the language?

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<sup>4</sup> I am also sending this draft language to Deputy Secretary of State Brian Leven, John Dunleavy of the Agency of Transportation, Susanne Young of the Attorney General's office, and Sarah London for comment.