

To: Stephen Wisloski, State Treasurer's Office
From: Helena Gardner, Legislative Counsel
Re: Act 23 Questionnaire: Treasurer-related exemption

Revised and consolidated personal records exemption

As you probably 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.’”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

Not surprisingly, the General Assembly has decided that certain records implicating personal privacy should be categorically exempt from public inspection and copying, and not subject to a balancing test.

The Committee is taking up this exemption at its December 13 meeting. However, because my office has been charged under Act 23 with drafting a PRA exemption consolidation bill, 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. Some of these subdivisions will retain the concept of a balancing test, whereas others will recognize categories of personal records that the General Assembly has previously determined should be categorically exempt.

These categories would include a new (c)(7)(C) for records related to an individual’s personal financial records and a new (c)(7)(D) for records implicating personal privacy that the General Assembly has previously decided 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 disclosure of which would cause an unwarranted invasion of personal privacy, to the extent provided in 24 V.S.A. § 1884 (books of registry held by municipal treasurer or other designated registrar); 32 V.S.A. § 983 (books of registry held by the State Treasurer or other designated registrar);
[*cross references from other titles omitted for brevity*]

¹ *Kade v. Smith*, 180 Vt. 554, 557 (2006) (quoting *Trombley v. Bellows Falls Union High School District*, 160 Vt. 101 (1993)).

² *Id.*

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

(F) a record described in this subdivision (7) shall be disclosed to the individual to whom it pertains, or to his or her designated representative, unless it is otherwise exempt from public inspection and copying;

Questions:

- Do you object to any or all of the above draft language, and if so, why?
- If you object only to the language of the draft consolidated exemption but not to the general concept, could you offer suggestions to improve the language?
- Should 32 V.S.A. § 983 be amended and clarified, so that books of registry held by agents of the Treasurer should not be considered public records at all (in which case they would not need to be listed as a PRA exemption)? If the answer to this question is yes, could you send me draft suggested language?