

To: Tom Little, Vermont Student Assistance Corporation
From: Helena Gardner, Legislative Counsel
Re: Act 23 Questionnaire: VSAC-related PRA exemption

1) 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.’”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

The Public Records Study 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.

Among these subdivisions would be a new § 317(c)(7)(C) that would consolidate exemptions related to an individual’s personal financial records:

(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) records relating to an individual’s personal finances:

(i) to the extent specified in 15 V.S.A. § 662 and Rule 4 of the Vermont Rules for Family Proceedings (affidavits of income and assets); 16 V.S.A. § 2943 (income certificates and reports made to the Vermont Student Assistance Corporation); 31 V.S.A. § 674(L11) (financial and other personal records produced or acquired by Tri-State Lottery Commission); and 33 V.S.A. § 3102(f) (records obtained by the Department of Taxes related to individuals’ applications for assistance);

(ii) if disclosure of the record would constitute a clearly unwarranted invasion of personal privacy;

(D) *[text omitted – records the disclosure of which has previously been determined to cause an unwarranted invasion of personal privacy]*

(E) *[text omitted – catchall]*

(F) *[text omitted – exception, if person to whom record refers requests its disclosure]*

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

² *Id.*

Questions:

- Do you object to any or all of the draft amended (c)(7) shown above?
- If you object to the draft language shown above, but not to the general concept of splitting up (c)(7), could you offer suggestions to improve the language?

2) Amend 16 V.S.A. § 2843

When you testified before the Public Records Study Committee at its Nov. 30, 2012 meeting, you noted that the PRA exemption at 16 V.S.A. § 2843 could be stand to be updated and modernized. As noted in my cover memorandum, the goal of the Act 23 project is not necessarily to repeal exemptions scattered throughout the Vermont Statutes Annotated, but instead to list them in the PRA and to cross-reference back to this list.

Below is draft language amending this section to update the language, and cross-reference back to the appropriate section in the PRA:

§ 2843. APPLICATIONS, CERTIFICATES, AND REPORTS

(a) The recipient must apply for an incentive grant at least annually. Grants may be for a maximum of five full-time equivalent school years.

(b) Each applicant for an incentive grant shall furnish a certificate of income with the application. Attached to the certificate shall be a form of consent, executed by the student and any other required persons, granting permission to the Vermont ~~commissioner of taxes~~ Commissioner of Taxes to disclose the income tax information required by subsection (c) of this section.

(c) The Vermont ~~commissioner of taxes~~ Commissioner of Taxes, when requested by the ~~corporation~~ Corporation, shall compare any certificate filed pursuant to this subchapter with the state income tax returns filed by the persons making such certificate and shall report any instances of discrepancy to the ~~corporation~~ Corporation.

(d) Except as otherwise may be provided in this subchapter or other applicable law or court order, or by agreement of the applicant, ~~certificates and reports made to the corporation under this section shall be confidential, and it shall be unlawful for anyone to divulge the amount of income or any particulars set forth in a certificate or any report made to an applicant or the corporation~~ incentive grant applications and other records received by the Corporation under this section shall not be released and shall be exempt from public inspection and copying under 1 V.S.A. § 317(c)(7)(C). Nothing herein shall be construed to prevent the publication of ~~However,~~ statistical data may be publicly released as long as the ~~identification~~ identities and the applications, certificates, and reports of particular individuals, certificates, and reports is prevented are not released.

Question:

- Do you have any problems with the above language, and if so, do you have any suggestions for improvements?