

# Vermont Legislative Council

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## MEMORANDUM

To: Molly Bachmann, David Brotzman, Dave Cassetty, Steve Collier, Geoff Commons, John Dunleavy, Patricia Gabel, Rosemary Gretkowski, David Herlihy, Karen Horn, John Kessler, Brian Leven, Tom Little, Sarah London, Tom Mercurio, Bill Reedy, Karen Richards, Kenneth Schatz, Susanne Young, Armando Vilaseca, John Zicconi

From: Helena Gardner, Legislative Counsel

Date: November 6, 2013 (November 7, 2013 for Dave Cassetty)

Subject: Legislative Public Records Study Committee – Act 23 – Questionnaire

As many of you know, the Legislative Public Records Study Committee (Committee) was created in 2011 and is charged with reviewing the requirements of the Public Records Act (PRA) and the approximately 245 statutory exemptions to the PRA. Many confidentiality provisions are scattered throughout the Vermont Statutes Annotated (V.S.A.) and are incorporated by reference as PRA exemptions through 1 V.S.A. § 317(c)(1), (c)(2), and (c)(3). These provisions have been drafted by different persons and reviewed by various committees over almost a 40-year period. Unsurprisingly, this evolutionary process has resulted in inconsistent language across exemptions as well as exemptions that duplicate or relate to the same basic subject matter.

To address some of these problems, **Act 23 of 2013** (pasted below on p.2) directs the Office of Legislative Council to prepare a draft bill listing all exemptions to the PRA in one statutory provision of the PRA and in so doing, to consolidate exemptions relating to the same subject matter into a single exemption *where appropriate*. The goal is **not** necessarily to repeal exemptions scattered throughout the V.S.A. and to put them all in the PRA, but instead to create a complete list of exemptions in the PRA itself and to cross-reference back to that list.

As noted above, many exemptions address similar subject matter. For example, I have identified approximately 25 exemptions other than 1 V.S.A. § 317(c)(9) that may qualify as “trade secrets” or confidential business information, 31 that address personal privacy or identity theft concerns, and 19 that address personal health information. Because of these and other opportunities for consolidation, the Committee does not expect to recommend a list that is 245 exemptions long. However, the Committee needs your help to ensure that exemptions are only consolidated *where appropriate*. As a result, the questionnaire attached is targeted to ask you whether specific exemptions are appropriate for consolidation.<sup>1</sup>

Many of you have already testified before the Committee, explaining the rationale for the exemptions in your agency’s area of expertise. Some of you have recommended that exemptions be repealed or amended; in some cases, the Committee has of its own initiative recommended that exemptions be amended. The questionnaire does not seek to revisit prior testimony, but instead to summarize prior recommendations, and to check if you agree with them.

The Committee requests responses to the questionnaire on or before **December 6, 2013**. Feel free to call me at 828-5950 with any questions, and thank you so much for your help.

<sup>1</sup> Not all exemptions in your agency’s subject area may be included in the questionnaire, because some appear to “stand alone.”

**No. 23. An act relating to Public Records Act exemptions.**

(H.54)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. DRAFT PUBLIC RECORDS BILL; OFFICE OF LEGISLATIVE  
COUNCIL

(a) To advance the objectives of 2011 Acts and Resolves No. 59, Sec. 11, which created a Public Records Legislative Study Committee (“Committee”) charged with reviewing the requirements of the Public Records Act and the numerous exemptions to that Act, staff of the Office of Legislative Council (“staff”) shall prepare and submit to the Committee a draft bill on or before November 1, 2013 that:

(1) lists in one statutory provision in 1 V.S.A. chapter 5, subchapter 3 all exemptions to the public inspection and copying requirements of the Public Records Act that are set forth throughout the Vermont Statutes Annotated;

(2) amends existing exemptions to the Public Records Act set forth throughout the Vermont Statutes Annotated in order to cross-reference the list required under subdivision (1) of this subsection;  
and

(3) amends exemptions to the Public Records Act as recommended by the Committee in its 2012 and 2013 annual reports, as those recommendations were proposed to be updated in version 3.2 of the House Government Operation Committee’s draft strike-all amendment to House Bill No. 54.

(b) In preparing the draft bill required under subsection (a) of this section, staff shall consolidate exemptions that relate to the same subject matter into a single exemption, if consolidation does not alter the substance of an exemption. Staff shall prepare for the Committee’s review a list of exemptions for which consolidation may be appropriate, but for which consolidation would potentially alter the substance of an exemption.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

Date the Governor signed the bill: May 13, 2013