

To: Public Records Study Committee
From: Nicole L. Mace, General Counsel, Vermont School Boards Association
Re: 1 V.S.A. 317(c) (15) & (17)
Date: October 10, 2014

Thank you for the opportunity to testify today. I was asked to speak about exemption (c)(17) - "records of interdepartmental and intradepartmental communications...to the extent that they cover other than primarily factual materials and are preliminary to any determination of policy or action or precede the presentation of the budget," - but I would also like to spend a couple of minutes on (c)(15) as well - "records relating specifically to negotiation of contracts including collective bargaining agreements with public employees" - since that exemption also impacts public school districts.

The VSBA is a member organization serving the 288 elected school boards in the State of Vermont. As General Counsel for the Association, I provide legal information, training and guidance to school board members and superintendents in order to help them perform their roles lawfully and effectively. I do not represent school districts when they are faced with legal challenges and if they receive a public records request I often will refer them to their school district's attorney to provide them with advice.

I want to start by saying that of course all exemptions to the Public Records Act need to be viewed narrowly in order to provide the public with access to information and to ensure that local government is transparent and accountable. We believe that exemptions (c)(15) and (17) strike the right balance between the need to generate sound policy and creative budget proposals and to develop collective bargaining strategy with the public's need to have the opportunity to evaluate whether a specific idea or proposal has merit.

In preparing today's testimony I spoke with several attorneys who represent school districts on a range of legal issues. My sense from those conversations is that most public records requests in school districts are related to personnel issues and contract negotiations, which is why I wanted to speak to exemption (c)(15).

It is critical that exemption (c)(15) is maintained, because without it, school boards' ability to develop collective bargaining strategies could be significantly disadvantaged. Since public employee unions are not subject to the same obligations as school districts under the Public Records Act, they would not be obligated to disclose documents or records - including fiscal and political analyses of their proposals - but could access those of the boards if this exemption were eliminated. This could have serious implications on boards' abilities to develop a range of proposals to put forward in current or future negotiations, thus damaging their position at the bargaining table.

As for exemption (c)(17), my view is that this is also an important protection to support school officials in developing sound policy and budget proposals. The purpose of this exemption is to allow decision makers to have access to the full range of competing options/ideas/proposals prior to having to present a particular course of action in a public meeting. If school officials were obligated to work under conditions in which their preliminary proposals or ideas developed for the purpose of creating a budget or policy would be subjected to public examination, we may see a chilling effect on the range of ideas generated. At a time of tight resources, the need for creative thinking is particularly great.

Thank you.