

To: Secretary Vilaseca, Agency of Education
From: Helena Gardner, Legislative Counsel
Re: Act 23 Questionnaire: education-related exemptions

1) Revise 1 V.S.A. § 317(c)(11)?

The Public Records Act (PRA) defines “public record” as “any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of **public agency** business,” and it defines “**public agency**” as “any agency, board, department, commission, committee, branch, instrumentality, or authority of the state or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the State.” See 1 V.S.A. § 317 (emphasis added).

1 V.S.A. § 317(c)(11) provides:

(c) The following public records are exempt from public inspection and copying:
* * *

(11) student records, including records of a home study student, at *educational institutions or agencies funded wholly or in part by state revenue*; provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974 (P.L. 93-380) and as amended;

(emphasis added). This language appears in the list of exemptions to the Public Records Act, yet appears to encompass, at least in part, student records in the possession of institutions that do fall under the definition of “public agency.”

Questions:

- Are there institutions in Vermont “funded . . . in part by state revenue” that do not meet the PRA definition of “public agency”? If so, would you object to striking the entire phrase “~~... at educational institutions or agencies funded wholly or in part by state revenue~~” from 1 V.S.A. § 317(c)(11)?
- Legislative Council has a new convention for citing to federal law. Would you object to the following amended language? “...under the provisions of the Federal Family Educational Rights and Privacy Act of 1974 ~~(P.L. 93-380) and as~~, 20 U.S.C. § 1232g, as may be amended;

2) Consolidated criminal history exemption

Numerous PRA exemptions relate to the confidentiality of criminal history records. The Public Records Study Committee (“Committee”) is considering recommending a consolidated criminal history record exemption as follows:¹

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

¹ This language will also be sent to Rosemary Gretkowski of the Department of Public Safety for review.

* * *

(#) 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 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 to the language but not to the concept of the consolidated exemption, could you offer suggestions to improve the language?

3) Consolidated exemption for professional licensees

Several PRA exemptions relate to the confidentiality of complaints against and investigations into professionally licensed persons. The Committee is considering recommending a consolidated exemption that addresses such records, which is intended to be flexible to accommodate the variations across these exemptions:

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

* * *

(#) records of complaints against and investigations into professional licensees and information required to be reported about professional licensees, to the extent provided in 3 V.S.A. § 131 (Secretary of State; complaints against licensees, investigations); 16 V.S.A. § 1708 (Agency of Education licensees); 26 V.S.A. §§ 1317 and 1368 (information required to be reported by health care institutions and insurers); and 26 V.S.A. § 1318 (practice of medicine; complaints against licensees, investigations);

Questions:

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