

To: Kenneth Schatz, General Counsel, Agency of Human Services
From: Helena Gardner, Legislative Counsel
Re: Act 23 Questionnaire: AHS-related exemptions

Brief Overview: Part I (pp. 1–8) addresses Public Records Act (PRA) exemptions related to public health, medical and treatment records, health care administration, and advance directives. Part II (pp. 9–14) addresses PRA exemptions related to various human services topics.

As noted in the cover memo, the Act 23 project to list all PRA exemptions in the Public Records Act itself (at 1 V.S.A. § 317(c)) will not entail repealing all of the PRA exemptions scattered throughout the Vermont Statutes Annotated. Instead, wherever a draft “consolidated” exemption is proposed to be added to 1 V.S.A. § 317(c), in most cases exemptions that fall within its scope would not be repealed, but instead be amended to cross-reference back to the appropriate subdivision within 1 V.S.A. § 317(c).

I. PRA EXEMPTIONS RELATED TO PUBLIC HEALTH, MEDICAL AND TREATMENT RECORDS, HEALTH CARE ADMINISTRATION, AND ADVANCE DIRECTIVES

1) Consolidated exemption for public health records

The Public Records Study Committee (“Committee”) is considering recommending a consolidated “public health” exemption under 1 V.S.A. § 317(c) that cross-references several public health-related exemptions, and the repeal of 1 V.S.A. § 317(c)(37) as a standalone exemption. Because the specific language of public health-related exemptions is varied, the draft language below is intended to be flexible to accommodate those variations.

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

* * *

(37) records ~~provided to the department of health pursuant to the patient safety surveillance and improvement system established by 18 V.S.A. chapter 43a~~ collected for public health programs or activities, to the extent provided in 18 V.S.A. §§ 154 and 157 (Vermont Cancer Registry and Vermont Mammography Registry); 18 V.S.A. § 1001 (communicable disease reports and investigation information; public health records related to HIV or AIDS); 18 V.S.A. § 1552 (maternal mortality information); 18 V.S.A. § 1554 (Maternal Mortality Review Panel records and opinions); 18 V.S.A. § 1917 (Patient Safety Surveillance and Improvement System); and 18 V.S.A. § 5222 (fetal death reports);

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 18 V.S.A. § 1001(d) be amended to authorize the disclosure of communicable disease data aggregated in a manner that protects the privacy of individuals, along the lines of 18 V.S.A. § 1919?
- In its Jan. 2012 report, the Public Records Study Committee recommended that 18 V.S.A. § 1099 (venereal disease reports) be amended to cross-reference 18 V.S.A. § 1001. Would you object to the following amendment 18 V.S.A. § 1099: “All information and reports in connection with persons suffering from venereal diseases shall be kept confidential and shall be exempt from public inspection and copying as a confidential public health record under 18 V.S.A. § 1001. [*Other text not shown here would be struck.*]

2) Consolidated exemption for individually identifiable health information, and medical and treatment records

A. Individually identifiable health information. HIPAA regulations protect individually identifiable health information, and apply to covered entities. Depending on the context, a public agency may acquire individually identifiable health information, yet may not be a covered entity under HIPAA. The concept of protecting such information is already embedded in 1 V.S.A. § 317(c)(7), which protects “personal documents relating to an individual, including ... medical or psychological facts”, but under Vermont Supreme Court precedent, any record or information claimed exempt under 1 V.S.A. § 317(c)(7) is subject to a balancing test.

The Committee is considering recommending that, consistent with HIPAA, individually identifiable health information be categorically exempt from public inspection and copying, and not be subject to a balancing test.

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

* * *

(7)(A) except as may be authorized by law, individually identifiable health information, which is information, including demographic data, that:

(i) relates to a person’s past, present, or future physical or mental health or condition, the provision of health care to the individual, or the past, present, or future payment for the provision of health care to the individual; and

(ii) identifies the individual or for which there is a reasonable basis to believe can be used to identify the individual.

Various PRA exemptions scattered throughout the Vermont Statutes Annotated would cross-reference back to this new 1 V.S.A. § 317(c)(7)(A), including 18 V.S.A. § 1141 (results of communicable disease testing); 18 V.S.A. § 1852(a)(7) (hospital patient’s information); 18 V.S.A. § 5088 (Birth Information Network); 18 V.S.A. § 7103 (mental health records—*see question # 3 below*); 18 V.S.A. § 9333(c) (genetic testing information); 18 V.S.A. § 9457 (patient identifying information in hospital financial and services reporting requirements); and 21 V.S.A. § 516(a) (health care information of employee subject to drug tests). In addition, 1 V.S.A. § 317(c)(39) (records held by AHS or DFR, which include prescription information

containing patient-identifiable data, that could be used to identify a patient) might be read to fall under this exemption and could possibly be repealed.

Questions:

- Do you object to any or all of the above draft consolidated exemption for individually identifiable health information, 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?
- Assuming a new 317(c)(7)(A) protecting individually identifiable health information is enacted, would you object to the repeal of 1 V.S.A. § 317(c)(39)?
- Is the draft language of the consolidated exemption sufficiently broad to encompass the information described at 18 V.S.A. § 9333(c) (genetic testing information)?

B. Medical and treatment records. Some PRA exemptions are broader than HIPAA in that they categorically exempt from public inspection and copying medical or treatment records—not just the portions of such records that are individually identifying. The Committee is considering recommending separate exemption language for these:

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

* * *

(7)

* * *

(B) medical and treatment records, to the extent provided in 12 V.S.A. § 1612 (patient's privilege); 18 V.S.A. § 9414(f) (evaluation of managed care organization's performance; medical records protected by patient's privilege); 28 V.S.A. § 205 (confidential information revealed by offender in connection with treatment program); and 33 V.S.A. § 6705 (subrogation rights of Department of Vermont Health Access; medical treatment records)

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?

3) Updating 18 V.S.A. § 7103 to be consistent with HIPAA and state law

In its Jan. 2012 report, the Public Records Study Committee recommended that 18 V.S.A. § 7103 (mental health records) be amended to be consistent with HIPAA and state law. During the 2013 session, the House Government Operations Committee, in marking up H.54, considered the following draft rewrite of 18 V.S.A. § 7103:

§ 7103. DISCLOSURE OF INFORMATION

(a) All certificates, applications, records, and reports, other than an order of a court made for the purposes of this part of this title; and directly or indirectly identifying a patient or former

patient or an individual whose hospitalization or care has been sought or provided under this part, together with clinical information relating to such persons, shall be kept confidential and shall not be disclosed by any person except insofar:

(1) as the following persons have consented to disclosure in writing:

(A) the individual identified, in the records;

(B) the individual's health care agent under subsection 5264 an advanced directive that has become effective under section 9706 of this title, or a person specifically authorized by the individual to receive health care information under an advanced directive that has become effective under section 9706 of this title;

(C) the individual's legal guardian, if any (or, or, if the individual is an unemancipated minor, his or her parent or legal guardian), shall consent in writing guardian; or

(2) as disclosure may be necessary to carry out any of the provisions of this part; or

(3) as a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make disclosure would be contrary to the public interest.

(b) Nothing in this section shall preclude disclosure, ~~upon proper inquiry,~~ of information concerning an individual's medical condition the individual's family, clergy, physician, attorney, the individual's health care agent under section 5264 of this title, a person to whom disclosure is authorized by a validly executed durable power of attorney for health care, or to an interested party to a person authorized by law.

* * *

Questions:

- Do you object to this draft amendment? Do you have any suggestions for improving it?
- Is the language proposed on p.2 (item 2) for individually identifiable health information sufficiently broad to cover the records described in 18 V.S.A. § 7103?

4) Consolidated exemption for information the disclosure of which could cause an unwarranted invasion of personal privacy

As noted above, 1 V.S.A. § 317(c)(7) is an exemption for “personal records relating to an individual,” but through caselaw, any record claimed exempt under 1 V.S.A. § 317(c)(7) is subject to a balancing test. Not surprisingly, the General Assembly has decided that certain records implicating personal privacy should be categorically exempt, and not subject to a balancing test.

The Committee is taking up 1 V.S.A. § 317(c)(7) at its December 13, 2013 meeting. Because the Office of Legislative Council is charged under Act 23 with drafting a bill listing all PRA exemptions in the PRA itself, I have already been considering how 1 V.S.A. § 317(c)(7) might be amended. These categories include (c)(7)(A) and (B) (for individually identifiable health information and medical and treatment records) noted on pp.2-3 above; a (c)(7)(C) for certain financial records of individuals (see p. 10 below); as well as a new (c)(7)(D) for records implicating personal privacy that the General Assembly has previously determined should be categorically exempt:

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

* * *

(7)

* * *

(D) records the release of which constitutes an unwarranted invasion of personal privacy:

(i) to the extent provided in 18 V.S.A. § 1094 (petition and order for mandated venereal disease testing); 18 V.S.A. § 5112 (records related to the issuance of a new birth certificate in connection with a change of sex); 18 V.S.A. § 9719 (advance directives); 20 V.S.A. § 1941 (DNA samples and records); 33 V.S.A. § 111 (applicants for or recipients of assistance from DCF); and 33 V.S.A. § 6321 (individuals using attendant care services); [other citations omitted for brevity]

(ii) records of genealogy provided in an application or in support of an application for tribal recognition pursuant to chapter 23 of this title;

(iii) records relating to the identity of library patrons;

* * *

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?
- As a heads up, I am also considering recommending a subdivision (7)(E) “catchall,” and a subdivision (7)(F) exception requiring that personal records pertaining to an individual be disclosed to that individual. As noted, the Committee is taking up the personal records exemption, 1 V.S.A. § 317(c)(7), as a whole at its Dec. 13 meeting, and you will have a chance to review a complete draft of any recommended changes to 1 V.S.A. § 317(c)(7).

5) Prescription information containing prescriber-identifiable data

In its Jan. 2012 report, the Public Records Study Committee recommended that 1 V.S.A. § 317(c)(38) (records held by AHS which include prescription information containing prescriber-identifiable data) be amended. During the 2013 session, the House Government Operations Committee, in marking up H.54, considered the following draft rewrite of 1 V.S.A. § 317(c)(38):

~~(38) records held by the agency of human services, which include prescription information containing prescriber-identifiable data, that could be used to identify a prescriber, except that the records shall be made available upon request for medical research, consistent with and for purposes expressed in 18 V.S.A. §§ 4621, 4631, 4632, 4633, and § 4622, 18 V.S.A. § 9410, and 18 V.S.A. chapter 84, or as provided for in 18 V.S.A. chapter 84A, and for other law enforcement activities;~~

Numerous people were asked to review this language, including AAGs Allan Ruggles, Bessie Weiss, and Kate McCabe (I believe Kate responded for Bridget Asay and Wendy Morgan, who

were sent the language as well), and none objected to this amended language.

Question:

- Do you object to this draft amendment to 1 V.S.A. § 317(c)(38)? Do you have any suggestions for improving this draft language?

6) Consolidated exemption for records related to the regulation or monitoring of the production, sale, or dispensing of regulated drugs

A number of exemptions address records related to the regulation or monitoring of the production, sale, or dispensing of regulated drugs. The Committee is considering recommending the draft consolidated exemption below:¹

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

* * *

(#) records related to the regulation or monitoring of the production, sale, or dispensing of regulated drugs, to the extent provided in 18 V.S.A. § 4211 (prescriptions of regulated drugs and orders and records required by State regarding regulated drugs), 18 V.S.A. § 4284 (data collected under the Vermont Prescription Monitoring Program and all related information and records), 18 V.S.A. § 4473(b)(5)(A) (records of appeal before the medical marijuana review board), 18 V.S.A. § 4474d and 18 V.S.A. § 4474i (medical marijuana; records of registered persons);

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?

7) Consolidated exemption for address and town of residence information of participants in the Address Confidentiality Program.

Three PRA exemptions relate to the Address Confidentiality Program established at 15 V.S.A. chapter 21, subchapter 3. A draft consolidated exemption appears below.

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

* * *

(29) the records in the custody of the secretary of state of a participant in the Address Confidentiality Program described in, to the extent provided in 15 V.S.A. chapter 21, subchapter 3, except as provided in that subchapter 18 V.S.A. § 5083 (address and town of residence information in birth certificates), and 18

¹ I am also sending it to Rosemary Gretkowski for review.

V.S.A. § 5132 (address and town of residence information in marriage certificates);

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?

8) Is 18 V.S.A. chapter 204 still needed?

In its Jan. 2012 report, the Public Records Study Committee recommended that the standing committees of jurisdiction consider whether 18 V.S.A. chapter 204 (related to voluntary and involuntary sterilizations of mentally impaired adults) is still needed, and whether it should be repealed. This chapter includes a PRA exemption at 18 V.S.A. § 8713.

Questions:

- Is 18 V.S.A. chapter 204 still needed?
- If the Agency's view is that 18 V.S.A. chapter 204 should be repealed, does the Agency plan to recommend proposed legislation?

9) Consolidated trade secret/confidential business information exemption.

1 V.S.A. § 317(c)(9) is a general trade secret exemption already in the PRA, but this exemption is not categorical: it requires a showing that a purported trade secret “gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it...”

Perhaps because 1 V.S.A. § 317(c)(9) does not give commercial entities the certainty they desire, or because federal law controls the confidentiality of certain business information, many of the approximately 25 PRA exemptions that address business information create a categorical PRA exemption. Examples of the latter include 33 V.S.A. §§ 2002(c) and 2010(e).

To preserve the status quo, *i.e.* the distinction between categorical and non-categorical protection for different types of business information, the Committee is considering recommending that 1 V.S.A. § 317(c)(9) be amended as follows:

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

* * *

(9)(A) confidential business records or information, to the extent provided in 33 V.S.A. § 2002 (pharmaceutical company rebate and supplemental rebate amounts and manufacturer's pricing); 33 V.S.A. § 2010 (pharmaceutical pricing data) [citations to other exemptions omitted for brevity]; and

(B) trade secrets and confidential business records or information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented,

which is known only to certain individuals within a commercial concern or their agents, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it, except that the disclosures required by 18 V.S.A. § 4632 shall not be included in this subdivision;

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?

10) Consolidated exemption for professional licensees

Several PRA exemptions relate to the confidentiality of complaints against and investigations into professionally licensed persons, and information required to be reported about licensed medical practitioners. The Committee is considering recommending a consolidated exemption that addresses such records as follows:

(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 the draft language above, and if so, why?
- If you object only to the language but not to the concept of the consolidated exemption, could you suggest improvements to the language?
- Because 26 V.S.A. § 1317(a) was amended to require reporting to the Commissioner of DAIL, should § 1317(c) be amended to list the Commissioner of DAIL as well?

II. HUMAN SERVICES-RELATED EXEMPTIONS

1) Do 18 V.S.A. § 8728(a)(2) or (b)(2) create a Public Records Act exemption?

One of the challenges of Vermont’s public records law is identifying all of the Public Records Act (PRA) exemptions that are scattered throughout the Vermont Statutes Annotated. The PRA states that “records which by law are designated confidential or by a similar term” are exempt from public inspection and copying. See 1 V.S.A. § 317(c)(1).

18 V.S.A. § 8728(a)(2) or (b)(2) establish in very general terms a right of privacy and confidentiality of persons with developmental disabilities and their families who receive services from DAIL.

Question

- Does your Agency (DAIL) view 18 V.S.A. § 8728(a)(2) or (b)(2) as creating a PRA exemption? Would your Agency ever cite to this provision in denying a request for records related to development disability services provided?
- If 1 V.S.A. § 317(c)(7) was amended as proposed on pp. 4–5 above, should 18 V.S.A. § 8728 be listed under it?

2) Consolidated exemption for records related to guardianship evaluations and proceedings

Several PRA exemptions address records related to guardianship evaluations and proceedings. The Committee is considering recommending a consolidated exemption for such records as follows:

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

* * *

(#) records related to guardianship evaluations and proceedings, to the extent specified in 14 V.S.A. § 3068 (guardianship evaluation), 14 V.S.A. § 3068 (guardianship petition and proceedings, if petition dismissed), 18 V.S.A. § 9306 (developmental disabilities evaluation information), and 18 V.S.A. § 9309 (guardianship hearing for developmentally disabled);

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?

3) Consolidated personal finances exemption under an amended 1 V.S.A. § 317(c)(7)

As noted above, I am considering recommending that 1 V.S.A. § 317(c)(7) (personal records relating to an individual) be split up into several subdivisions. I am considering recommending a new subdiv. (C) that consolidates 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)

* * *

(C) records relating to an individual's personal finances:

(i) to the extent provided in 15 V.S.A. § 662 and Rule 4 of the Vermont Rules for Family Proceedings (affidavits of income and assets);*[other citations omitted for brevity]*

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

* * *

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?

4) Should 33 V.S.A. § 4105 be amended?

In its Jan. 2013 report, the Committee recommended that 33 V.S.A. § 4105 (information obtained by OCS to establish or modify a child support or parental rights order) be reviewed by the standing committees of jurisdiction. The Committees recognized the policy need for information collected by the Office of Child Support to be confidential, but stated that the blanket prohibition in subsec. (c) on most uses of the information appeared overbroad.

Question:

- As written, is 33 V.S.A. § 4105 so broad as to exempt records that do not need to be withheld to serve the purpose of the exemption?
- If the answer to the first question is yes, could the Agency propose amended language?

5) Consolidated exemption for pre-adoption background information or adoption-related records

Several PRA exemptions relate to pre-adoption background information or adoption-related records; several of the latter appear in 15A V.S.A. Article 6. The Committee is considering recommending a consolidated exemption to address these records as follows:

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

* * *

(#) pre-adoption background information and adoption-related records, to the extent provided in 15A V.S.A. § 2-105(d) (pre-adoption reports; identity of person furnishing or the subject of background information) and in 15A V.S.A. Article 6 (records of adoption proceeding);

Questions

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

6) 33 V.S.A. § 111: Names or information pertaining to applicants for or recipients of assistance from the Department for Children and Families

After consulting with Sue Harritt, the Public Records Study Committee recommended in its Jan. 2013 report that this section be repealed if 1 V.S.A. § 317(c)(7) were amended to address the information currently covered in 33 V.S.A. § 111. Alternatively, if 33 V.S.A. § 111 were to be retained, the Committee recommended that 33 V.S.A. § 111 be amended to avoid First Amendment issues raised by the language of § 111(b)(2). Sue Harritt also concurred with this recommendation.

Below is a proposed amendment to 33 V.S.A. § 111²:

§ 111. RECORDS, RESTRICTIONS, PENALTIES

(a) The names of or information pertaining to applicants for or recipients of assistance or benefits, including information obtained under section 112 of this title, shall not be disclosed to anyone, except for the purposes directly connected with the administration of the ~~department~~ Department or when required by law, and shall be exempt from public inspection and copying under 1 V.S.A. § 317(c)(7)(D).

(b) A person shall not:

(1) ~~Publish~~ publish, use, disclose, or divulge any of those records for purposes not directly connected with the administration of programs of the ~~department~~ Department, or contrary to regulations issued by the ~~commissioner~~; or

(2) ~~Use any records of the department of any kind or description for political or commercial purposes, or purposes not authorized by law~~ Commissioner.

Question:

- Does your Agency object to this draft amendment to 33 V.S.A. § 111, and if so, why?

² Please see p. 5 above for a proposed reference to 33 V.S.A. § 111 in an amended 1 V.S.A. § 317(c)(7).

7) Amend 33 V.S.A. § 306(c) (information about child abuse or neglect at a child care facility that results in fatality or near fatality) to consolidate into 1 V.S.A. § 317(c)(5)?

In 2013, Act 70³ substantially amended 1 V.S.A. § 317(c)(5), the PRA exemption for records dealing with the detection and investigation of crime. The subject matter of 33 V.S.A. § 306(c) appears to dovetail with 1 V.S.A. § 317(c)(5). As a result, below is proposed language to amend 33 V.S.A. § 306(c) to conform it to the new standards of 1 V.S.A. § 317(c)(5):

(c) The Commissioner may publicly disclose the findings or information about any case of child abuse or neglect that has resulted in the fatality or near fatality of a child, including information obtained under chapter 49 of this title, unless the ~~state's attorney or Attorney General who is investigating or prosecuting any matter involving the fatality requests the commissioner to withhold disclosure~~ findings or information are exempt from public inspection and copying under 1 V.S.A. § 317(c)(5), in which case the Commissioner shall not disclose any information until completion of any criminal proceedings involving the fatality or the ~~state's attorney~~ State's Attorney or Attorney General consents to disclosure, whichever occurs earlier.

Question

- Does your Agency object to this draft amendment to 33 V.S.A. § 306(c), and if so, why?

8) Consolidated criminal history records exemption.

Numerous PRA exemptions, including exemptions in Titles 16 and 20, relate to the confidentiality of criminal history records. The Committee is considering recommending a consolidated criminal history record exemption as follows:⁴

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

* * *

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

³ See <http://www.leg.state.vt.us/DOCS/2014/ACTS/ACT070.PDF>

⁴ This language will also be sent to the General Counsel of the Department of Public Safety for review.

9) Amendment to 33 V.S.A. § 908 (Division of Rate Setting; nursing home employee salaries).

In its Jan. 2013 report, after consulting with Sue Harritt, the Committee recommended that 33 V.S.A. § 908(a) be amended as shown below to clarify that if a nursing home employee is an employee of a public agency, his or her salary is not be exempt from public inspection and copying. If this change is made, this section will no longer create a PRA exemption.

§ 908. POWERS AND DUTIES

(a) Each nursing home or other provider shall file with the division Division, on request, such data, statistics, schedules, or information as the division Division may require to enable it to carry out its function. Information received from a nursing home under this section shall be available to the public, except that unless disclosure is required under 1 V.S.A. § 317(b), the specific salary and wage rates of employees, other than the salary of an administrator, shall not be disclosed.

* * *

Question

- Does your Agency object to this draft amendment to 33 V.S.A. § 908(a), and if so, why?

10) Consolidated exemption for reports and investigations of child and vulnerable adult abuse, neglect, or exploitation, and associated registry information

Several exemptions address the confidentiality of child and vulnerable adult abuse, neglect, or exploitation reports, investigations, and registry information. The Committee is considering recommending the draft consolidated exemption below, 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 related to reports and investigations of the abuse, neglect, or exploitation of children and vulnerable adults, and associated registry information, to the extent provided in 33 V.S.A. § 4913(d) (name of person filing a child abuse report and name of person mentioned in report); 33 V.S.A. § 4919 (Child Abuse Registry records); 33 V.S.A. § 4921 (records of child abuse investigations, assessments, reviews, and responses); 33 V.S.A. § 6903 (identity of person reporting suspected abuse of elderly or disabled); 33 V.S.A. § 6906 (unsubstantiated reports of abuse, neglect, and exploitation of a vulnerable adult); 33 V.S.A. § 6911 (reports and investigations of alleged abuse of vulnerable adults; vulnerable adult abuse registry)

Questions

- Do you object to any or all of the above draft consolidated exemption?

- If you object only to the language of the consolidated exemption but not the concept, could you offer suggestions to improve the language?

NOTE: The Committee's Jan. 2013 report recommended that the standing committees of jurisdiction review 33 V.S.A. §§ 4913, 4916, 4919, and 4919 in order to clarify and streamline the confidentiality provisions in these sections.

11) Records related to juvenile judicial proceedings

Numerous PRA exemptions relate to juvenile judicial proceedings. The Committee is considering recommending the consolidated juvenile judicial proceeding exemption below, which is intended to be flexible to accommodate the many variations across these exemptions.⁵

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

* * *

(#) records related to juvenile judicial proceedings, to the extent provided in 33 V.S.A. § 5117 (reports and files concerning a person subject to juvenile judicial proceedings); 33 V.S.A. § 5118 (notice to school officials that child has conducted a delinquent act requiring notice); 33 V.S.A. § 5119 (sealed juvenile delinquency records; special index of files or records that have been sealed; motion to unseal; victim information); 33 V.S.A. § 5201 (files related to withdrawn delinquency petition); 33 V.S.A. § 5204 (person under age 16 tried as an adult but acquitted; records of hearing regarding transfer to Criminal Division); 33 V.S.A. § 5205 (fingerprint files); 33 V.S.A. § 5234 (notice to victim prior to juvenile release; name of facility); 33 V.S.A. § 5282 (report from DCF as to whether a defendant should be treated as a youthful offender); 33 V.S.A. § 5287 (court records of youthful offender when youth successfully completes probation and offender status is terminated); 33 V.S.A. § 5309 (files related to a withdrawn petition that a child is in need of care or supervision);

Questions

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

⁵ This language will be shared with Pat Gable of the Court Administrator's Office.