

To: Susanne Young, Assistant Attorney General
From: Helena Gardner, Legislative Counsel
Re: Act 23 Questionnaire: exemptions related to the work of the Office of the Attorney General

1) Consolidated civil investigation exemption, and creating it in a new 1 V.S.A. § 317(d)

As you are aware, 1 V.S.A. § 317(c)(5), the PRA exemption for crime detection and investigation records, was amended in 2013. It does not address records related to civil investigations.

Numerous provisions scattered throughout the Vermont Statutes Annotated address the confidentiality of civil investigation records. Many of these are investigation and examination records of the Department of Financial Regulation; along the lines of federal Freedom of Information Act Exemption 8,¹ I am considering recommending that these DFR exemptions be described in a single exemption under a new 1 V.S.A. § 317(d).

As for non-DFR civil investigation records, I am considering recommending a separate consolidated exemption under a new 1 V.S.A. § 317(d).

The idea behind the new § 317(d) is to distinguish between records that an agency MAY withhold in response to a records request, and records that an agency MUST withhold.

The Public Records Study Committee (“Committee”) is considering recommending a consolidated civil investigation exemption as follows; for context, I am showing draft amended language for § 317(c) and (d):

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

* * *

[other text omitted for brevity]

(d) The following public records are exempt from public inspection and copying and may be withheld at the discretion of the public agency:

* * *

(#) records of civil investigations, to the extent provided in 9 V.S.A. § 2460 (record of Attorney General or State’s Attorney investigation); 9 V.S.A. § 2440(g) (investigation of violation of social security number provisions); and 9 V.S.A. § 4555(a) (complaint and investigation files of the Human Rights Commission)

* * *

[other text omitted for brevity]

¹ See 5 U.S.C. § 552(b)(8) (which exempts “matters...contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;”).

Questions:

- Do you object to the draft consolidated civil investigation exemption?
- If you object to the language, but not to the general concept of a consolidated civil investigation exemption, could you suggest alternative language?
- Do you object to placement of the draft consolidated language under a new 317(d)? In other words, should agencies be allowed, but not required, to withhold the civil investigation records?

2) Consolidated diversion exemption

Several PRA exemptions relate to the adult and youth diversion process and related proceedings. The Committee is considering recommending a consolidated diversion-related exemption as follows:²

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

* * *

(#) records gathered in the course of a juvenile or adult diversion process and records of diversion proceedings, to the extent provided in 3 V.S.A. § 163 (juvenile diversion process and sealed proceedings); 3 V.S.A. § 164 (adult diversion process and sealed proceedings); 12 V.S.A. §§ 7106 and 7108 (Windsor County Youth Court diversion proceedings);

Questions:

- Do you object to the draft consolidated diversion exemption?
- If you object to the language, but not to the general concept of a consolidated diversion exemption, could you suggest alternative language?

3) Consolidated settlement and mediation exemption

Several PRA exemptions protect records related to settlement discussions and mediation proceeding. The Committee is considering recommending a consolidated exemption as follows:

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

* * *

(#) records related to settlement discussions or mediation, to the extent provided in 9 V.S.A. § 4100b (motor vehicle franchise disputes; settlement discussions of parties before Transportation Board); 9 V.S.A. § 4555(b) (Human Rights Commission; settlement discussions); 12 V.S.A. § 4634 (report filed in connection with mandatory mediation program in mortgage foreclosure actions); 12 V.S.A. § 7015 (medical malpractice pre-suit mediation);

² I am also sending this language to Patricia Gable of the Court Administrator's Office for review.

Questions:

- Do you object to the above draft consolidated exemption?
- If you object to the language, but not to the concept of the consolidated exemption, could you suggest alternative language?

4) Consolidated exemption for personally identifying information

Several PRA exemptions address personally identifying information. The apparent purpose behind these exemptions is to protect information the disclosure of which would create a risk of identity theft or pose safety risks, or which is prohibited under federal law.

As a result, the Committee is considering recommending a consolidated exemption as follows:³

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

* * *

(#) personally identifying information the disclosure of which creates an unreasonable risk of identity theft or of harm to a specific individual or is prohibited under federal law, including credit card information in the possession of a court or the Judicial Bureau as specified at 4 V.S.A. § 741; social security numbers to the extent provided in 9 V.S.A. § 2440(d); the address or phone number of a crime victim who requests notification of release or escape to the extent provided in 13 V.S.A. § 5305; victim or survivor identifying information to the extent provided in 13 V.S.A. §§ 5322 and 5358a(c); voter identifying information to the extent provided in 17 V.S.A. § 2154(b); and motor vehicle records to the extent provided in 23 V.S.A. § 104;

Questions

- Do you object to the draft language above, and if so why?
- If you object only to the language, but not the concept of the consolidated identifying information exemption, could you suggest improvements to the language?

5) Consolidated expunged and sealed criminal record-related exemption

Three PRA exemptions relate to expunged or sealed criminal records or related indices. The Committee is considering recommending a consolidated exemption as follows:⁴

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

* * *

³ I am also sending this draft language to Deputy Secretary of State Brian Leven, John Dunleavy of the Agency of Transportation, Rosemary Gretkowski of the Department of Public Safety, and Sarah London for comment.

⁴ I am also sending this language to Rosemary Gretkowski and Patricia Gable.

(#) expunged or sealed criminal records or related indices, to the extent provided in 13 V.S.A. §§ 7041, 7606, and 7607;

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 to the general concept, could you offer suggestions to improve the language?