

To: David Brotzman, Executive Director, Vermont Center for Geographic Information
From: Helena Gardner, Legislative Counsel
Re: Act 23 Questionnaire: GIS-related exemption

1) Consolidated “personal records” exemption

1 V.S.A. § 317(c)(7) is an exemption for “personal records relating to an individual...” As interpreted by the Vermont Supreme Court, this exemption shields from disclosure records implicating individual privacy that would “reveal ‘intimate details of a person’s life, including any information that might subject the person to embarrassment, harassment, disgrace, or loss of employment or friends.’”¹ The “right to privacy” must be balanced against the public interest in favor of disclosure, including the need for “specific information ... to review the action of a governmental officer.”² Not surprisingly, the General Assembly has determined that certain categories of information implicating personal privacy should not be subject to a balancing test, but rather should be categorically exempt from public inspection and copying.

The Public Records Study 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 complete list of exemptions to the Public Records Act under the PRA itself, I have already been considering recommended amendments to 1 V.S.A. § 317(c)(7). In short, I am considering recommending that it be split into 6 subdivisions, including a new subdivision (D) for information which the General Assembly has determined should be categorically exempt:

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

* * *

(7)(A) [text omitted – individually identifying health information]

(B) [text omitted – medical records categorically exempt]

(C) [text omitted – records relating to personal finances]

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

(i) to the extent provided in 10 V.S.A. § 123(c) (Geographic Information System; individual identifiers); 13 V.S.A. § 5358a(a) (Victims Compensation Board; records reviewed for approving an application for compensation); [cross references from other titles 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 the draft language above, and if so why?
- If you object only to the language, but not to the concept of splitting up 317(c)(7) and including a reference to 10 V.S.A. § 123, could you suggest improvements to the language?

¹ *Kade v. Smith*, 180 Vt. 554, 557 (2006) (quoting *Trombley v. Bellows Falls Union High School District*, 160 Vt. 101 (1993)).

² *Id.*