

To: Bill Reedy, General Counsel, Vermont State Colleges
Thomas Mercurio, Deputy General Counsel, UVM
From: Helena Gardner, Legislative Counsel
Re: Act 23 Questionnaire: higher education-related exemptions

1) Distinguishing between public records that MUST be kept confidential and those that MAY be withheld if the subject of a public records request.

Currently, the Public Records Act (PRA), unlike the federal Privacy Act,¹ does not have a specific provision listing public records that MUST be kept confidential (as opposed to records that may but are not required to be withheld from public inspection and copying).

The Public Records Study Committee (“Committee”) is considering recommending that the current 1 V.S.A. § 317(c) be split into two separate lists for each category as follows:

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

* * *

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

* * *

In addition, next year the Study Committee will be considering whether the PRA should be amended to specify a penalty for agencies that intentionally (or negligently?) release public records that “shall not be released.” Some exemptions scattered throughout the Vermont Statutes Annotated include penalties,² but the PRA itself does not.

Questions:

- Should 1 V.S.A. § 317(c)(23) be included under § 317(c) or § 317(d)? In other words, should UVM or the State Colleges have the option to release the records described in existing § 317(c)(23)?
- Do you object to the concept of splitting existing 1 V.S.A. § 317(c) as shown above, i.e. into an amended 317(c) that specifies that certain public records shall not be released, and a new 317(d) which states that certain public records are exempt and may be withheld at the discretion of the agency?
- If you don’t object to the general concept, but object to the draft language above, could you suggest alternative language?

2) Amending 1 V.S.A. § 317(c)(23)

In fall 2011, the Committee reviewed and took testimony on 1 V.S.A. § 317(c)(23). It ultimately recommended retention of the exemption with an amendment providing that certain records regarding the care of animals used for research or scientific testing shall be available for

¹ 5 U.S.C. § 552a.

² See, e.g., 20 V.S.A. § 2056a(f) (*dissemination of criminal history records*).

inspection and copying. The Committee recommended adding the following sentence at the end of the existing exemption language: This subdivision shall not apply to records, other than research protocols, produced or acquired by an institutional animal care and use committee regarding the committee's compliance with state law or federal law regarding or regulating animal care;

Question:

- Do you object to adding the language above to 1 V.S.A. § 317(c)(23), and if so, why?