

To: Karen Richards, Executive Director, Human Rights Commission
From: Helena Gardner, Legislative Counsel
Re: Act 23 Questionnaire: Human Rights Commission-related exemptions

1) Consolidated settlement and mediation exemption

Several Public Records Act exemptions protect records related to settlement discussions and mediation proceeding. The Public Records Study Committee (“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 at 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); and 12 V.S.A. § 7015 (medical malpractice pre-suit mediation);

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?

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

As you are probably aware, 1 V.S.A. § 317(c)(5), the PRA exemption for crime detection and investigation records, was amended in 2013. This provision does not address records of 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 The Committee is 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, the Committee is 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, and those that an agency **MUST** withhold.

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;”).

The consolidated exemption for civil investigation records would appear 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); 9 V.S.A. § 4555(a) (complaint and investigation files of the Human Rights Commission)

* * *

[other text omitted for brevity]

Questions:

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