

**To:** Geoff Commons, Director of Public Advocacy, Public Service Department  
**CC:** Christopher Recchia, Commissioner, Public Service Department  
**From:** Helena Gardner, Legislative Counsel  
**Re:** Act 23 Questionnaire: PSD-related exemptions

**1) Consolidated trade secret/confidential business information exemption**

1 V.S.A. § 317(c)(9) is the Public Records Act's (PRA) general trade secret exemption. 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 titles that address business information create a categorical PRA exemption. Examples of the latter include 3 V.S.A. § 2222b(c) (plans submitted for construction or installation of cables, wires, or telecommunications facilities) and 9 V.S.A. § 4113(b) (petroleum storage facility reports).

Sarah London informed me that although 3 V.S.A. § 2222b references such plans being submitted to the Secretary of Administration, they are actually submitted to the Public Service Department or the Public Service Board (she was not sure which). Please let me know if I should forward the questions below to the appropriate person at the PSB.

To preserve the status quo, *i.e.* the distinction between categorical and non-categorical protection for different types of business information, the Public Records Study 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 3 V.S.A. § 2222 (plans for construction or installation of cables, wires, or telecommunications facilities); 9 V.S.A. § 4113 (petroleum storage facility reports) [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?

## 2) Consolidated complaint and dispute resolution exemption

1 V.S.A. § 317(c)(26) (DFR) and (c)(27) (Public Service Dep't) are nearly identical exemptions related to complaints against regulated entities and associated agency-assisted dispute-resolution.

The Committee is considering recommending that (c)(27) be repealed and effectively folded into a broadened (c)(26). The language below will also be sent to the Department of Financial Regulation for review.

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

\* \* \*

(26) information and records provided ~~to the department of financial regulation by an individual~~ a person to a public agency for the purposes of having the ~~department~~ the public agency assist ~~that individual~~ the person in resolving a dispute with ~~any person or company~~ a person regulated by the ~~department~~ public agency, and any information or records ~~provided by a company or any other person in~~ acquired in connection with the individual's dispute;

### 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?