

To: Brian Leven, Deputy Secretary of State
From: Helena Gardner, Legislative Counsel
Re: Act 23 Questionnaire: exemptions related to the work of the Office of the Secretary of State

1) Consolidated exemption for professional licensees

Several PRA exemptions relate to the confidentiality of complaints against and investigations into professionally licensed persons, and information required to be reported about licensed medical practitioners. The Public Records Study Committee (“Committee”) is considering recommending the following consolidated exemption to address such records:

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

* * *

(#) records of complaints against and investigations into professional licensees and information required to be reported about professional licensees, to the extent provided in 3 V.S.A. § 131 (Secretary of State; complaints against licensees, investigations); 16 V.S.A. § 1708 (Agency of Education licensees); 26 V.S.A. §§ 1317 and 1368 (information required to be reported by health care institutions and insurers); and 26 V.S.A. § 1318 (practice of medicine; complaints against licensees, investigations);

Questions:

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

2) Consolidated exemption for personally identifying information

Several 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:

(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); victim or survivor identifying information to the extent provided in 13 V.S.A. §§ 5322 and 5358a(c); 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; 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 to the language but not to the concept of this consolidated exemption, could you suggest improvements to the language?

3) Revised and consolidated personal records exemption

As you know, 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

The Committee is taking up this exemption at its December 13 meeting. However, because the Office of Legislative Council has been charged under Act 23 with drafting a PRA exemption consolidation bill, I have been considering ways to possibly restructure 1 V.S.A. § 317(c)(7). In short, I am considering recommending that it be split up into 6 subdivisions, (c)(7)(A)–(F). Some of these subdivisions would retain the idea of a balancing test, whereas others would recognize categories of personal information that the General Assembly has previously determined should be categorically exempt.

The new subdivision (c)(7)(D) would cover records implicating personal privacy that the General Assembly has previously decided 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 an individual’s personal finances*]
- (D) records the disclosure of which would cause an unwarranted invasion of personal privacy, to the extent provided in 17 V.S.A. § 2150 (Board of Civil Authority records relating to a person’s voter registration decisions); 24 V.S.A. § 1884 (books of registry held by municipal treasurer or other designated registrar); 32 V.S.A. § 983 (books of registry held by the State Treasurer or other designated registrar); [*cross references from other titles omitted for brevity*]

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

² *Id.*

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?

4) Consolidated peer review-related exemption

Three Public Records Act exemptions address the confidentiality of peer review records. The Public Records Study 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 peer review proceedings, to the extent specified in 18 V.S.A. § 9414(f) (evaluation of managed care organization's performance; peer review records); 26 V.S.A. § 1443 (health services peer reviews); and 26 V.S.A. § 4190 (licensed midwives peer reviews);

Questions:

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