



STATE OF VERMONT

MEMORANDUM

To: Sen. Tim Ashe, Senate Committee on Finance
Rep. Bill Botzow, House Committee on Commerce and Economic Development

From: Public Records Study Committee

Date: January #, 2015

Subject: Public Records Act exemptions

The Public Records Study Committee (Committee) was created in 2011 and charged with reviewing all of the statutory exemptions to the Public Records Act, and recommending whether each exemption should be amended, repealed, or kept in its existing form.

Over the last several years, the Committee has fulfilled its charge and, in doing so, has concluded that some exemptions raise issues more appropriately addressed by the relevant committees of jurisdiction.

Below is a description of two exemptions that the Committee recommended be reviewed by the Senate Committee on Finance and the House Committee on Commerce and Economic Development.

We thank you in advance for considering our recommendations.

9 V.S.A. § 2440(d),(f), and (g) (general prohibition on disclosing Social Security numbers to the public; request for redacted record; records of investigation of violations of provisions related to Social Security number protection)

9 V.S.A. § 2440 is a lengthy provision known as the Social Security Number Protection Act (Act). Subsection (d) of this section governs the duties of the State and its agencies and political subdivisions, and any agent or employee thereof, in connection with Social Security numbers collected from individuals. Subsection (e) lists exceptions to the requirements of subsection (d). Among these exceptions is subdivision (e)(6), which allows a State agency or political subdivision to continue a practice in place prior to January 1, 2007, that is inconsistent with the requirements of subsection (d), provided that certain conditions are satisfied.

Subsection (f) confers on “any person” a right to request that a town clerk or clerk of court redact the person’s Social Security number (and various other identifiers) from official records available on a public website. The request itself must include specific information and is a public record, but “access [to it] shall be restricted to the town clerk, the clerk of court, their staff, or upon order of the court.”

Subsection (g) provides for enforcement of the Act by the Attorney General and State’s Attorney (and the Department of Financial Regulation in the case of persons licensed or registered by DFR). Subdivision (3) addresses the right of a law enforcement agency and the Department of Public Safety to designate as confidential information that the agency or Department provides to the AG or state’s attorney.

The Committee found that the language of this section generally makes Social Security numbers—as well requests to town clerks under subsection (f) and investigation records under subsection (g)—exempt from public inspection and copying under the Public Records Act. However, the Committee also found that the exempt status of these records probably should be clarified. In addition, Sen. Jeanette White found the exception authorized under subdivision (e)(6) of the section to be troubling.

Because the Act is a complex piece of legislation with many interrelated parts, and passage of the Act involved the consultation of many interested parties, the Committee declined to make specific recommendations to amend the Act. It found, however, that the time has come to take a fresh look at the Act, and recommended that your committees (as well as the Committees on Government Operations) review this section.

32 V.S.A. § 5930a(h) (information submitted by a business to the Economic Progress Council)

32 V.S.A. § 5930a establishes the Vermont Economic Progress Council and governs its award of tax stabilization agreements and exemptions as well as Vermont employment growth incentives. Subsection (h) creates a public records exemption for “information and materials submitted by a business concerning its income taxes and other confidential financial information,” except that such information may be shared with JFO and the Auditor of Accounts. Subsection (h) goes on to prohibit JFO and the Auditor from disclosing any “proprietary business information....”

The Committee was unsure whether the references to “confidential financial information” and “proprietary business information” are intended to refer to the same information. Therefore, the Committee recommended that your committees (as well as the Senate Committee on Economic Development, Housing and General Affairs) review the language of 32 V.S.A. § 5930a(h) for internal consistency.