

2014 Acts and Resolves: New and Repealed/Replaced PRA Exemptions

I. New PRA Exemptions in 2014 Acts and Resolves

1. 1 VSA 317(c)(42) (identity of whistleblowers) (Added by Act No. 129 (H.863))
2. 8 V.S.A. § 7112(c) (information in a legacy insurance transfer plan identifying policyholders and reinsurance counterparties) (Added by Act 93 (H.198))
3. 13 V.S.A. § 5259(d) (Defender General investigations of issues related to the health, safety, and welfare of inmates in correctional facilities; investigation sources, inmate communications) (Added by Act No. 110 (S.296))
4. 13 V.S.A. § 7554c(d) (information obtaining during a pretrial risk assessment and pretrial needs screening) (Added by Act No. 195 (S.295))
5. 32 V.S.A. § 163 (draft audit reports until the audit is completed) (Added by Act No. 108 (H.543))
6. 2014 Acts and Resolves No. 179, Sec. E.100.5 (Vermont Enterprise Fund; proprietary business information and materials or other confidential financial information) (Added by Act No. 179 (H.885))

***** The full text of the new exemptions starts on p.2 *****

II. Repealed and Replaced Exemptions

- 3 V.S.A. § 2222b(c) (plans submitted to Secretary of Administration for construction or installation of cables, wires, or telecommunications facilities) is repealed July 1, 2015, and in effect replaced with 3 V.S.A. § 2225 effective July 1, 2015, via Act No. 190, Sec. 12 (information subject to nondisclosure agreement voluntarily submitted to Director of Connectivity of information regarding deployment of broadband, telecommunications facilities, or advanced metering infrastructure that is not publicly funded).
- 17 V.S.A. § 2904(a) (Attorney General or State's Attorney records of investigations of campaign finance violations) (Added by Act 90 (S.82)). Act 90 repealed 17 V.S.A. § 2806a, which likewise addressed these records.

III. Candidates for Removal from Table of Exemptions

- 18 VSA § 8728 (Developmental Disability Patients Rights Act; all persons who receive services for developmental disability have right to privacy and confidentiality). According to the response of the Department of Aging and Independent Living to the Act 23 questionnaire, DAIL does not consider 18 V.S.A. §8728(a)(2) or (b)(2) to create a PRA exemption. Instead, it sets forth a very general policy statement. DAIL would rely upon numerous other specific exemptions to withhold release of records relating to persons who receive services for a developmental disability.

IV. Full Text of New Exemptions¹

1. 1 VSA 317(c)(42) (identity of whistleblowers) (Added by Act No. 129 (H.863))

(c) The following public records are exempt from public inspection and copying:

* * *

(42) except as otherwise provided by law, information that could be used to identify a complainant who alleges that a public agency, a public employee or official, or a person providing goods or services to a public agency under contract has engaged in a violation of law, or in waste, fraud, or abuse of authority, or in an act creating a threat to health or safety, unless the complainant consents to disclosure of his or her identity.

2. 8 V.S.A. § 7112(c) (information in a legacy insurance transfer plan identifying policyholders and reinsurance counterparties) (Added by Act 93 (H.198))

(c)(1) Information in the plan identifying policyholders and reinsurance counterparties shall be exempt from public inspection and copying under the Public Records Act.

(2) The plan shall include a statement of the information and documentation included in the plan that the assuming company or the transferring insurer requests be given confidential treatment. The Commissioner shall determine whether information designated in the statement, including any information designated as trade secrets, is exempt from public inspection and copying under the Public Records Act. If such information is exempt, it shall not be subject to subpoena and shall not be made public by the Commissioner or by any other person; provided, however, the Commissioner may in his or her discretion grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, to public officers of a foreign or alien financial regulatory authority, or to state or federal law enforcement officers pursuant to a validly issued subpoena or search warrant; provided that such officers receiving the information agree in writing to hold it in a manner consistent with this subsection.

3. 13 V.S.A. § 5259(d) (Defender General investigations of issues related to the health, safety, and welfare of inmates in correctional facilities; investigation sources, inmate communications) (Added by Act No. 110 (S.296))

§ 5259. DUTY TO INVESTIGATE

(a) The Defender General shall investigate issues related to the health, safety, and welfare of inmates in correctional facilities and shall receive the cooperation of all State agencies in carrying out this duty. Issues that require an investigation by the Defender General shall, at a minimum, include:

- (1) the death of an inmate;
- (2) a suicide attempt that requires more than 24 hours of emergency hospitalization; and
- (3) a critical incident that results in injury to an inmate from an assault, use of force, or accident in a correctional facility that requires more than 24 hours of emergency hospitalization.

(b)(1) When an incident enumerated in subdivisions (a)(1)–(3) of this section occurs, the Department of Corrections shall notify the Defender General as soon as reasonably practicable.

¹ The text that appears on pp. 2–4 is UNOFFICIAL, as the 2014 cumulative V.S.A. supplements have not yet been published.

(2) The Commissioner shall report weekly to the Defender General regarding any critical incident that negatively impacts the health, safety, or welfare of an inmate, the conditions of confinement, or the adequacy of care provided to inmates.

(c) In carrying out the duties under this section, the Defender General:

(1) Shall be given reasonable unaccompanied access to the correctional facility and inmates and is authorized to speak with any relevant personnel from the Department of Corrections and other State agencies subject to the individual's constitutional rights and to legitimate law enforcement concerns regarding preservation of a criminal investigation, if any.

(2) Shall be given broad access to records concerning the incident and any inmates involved in the incident. In response to a request for records from the Defender General, the Commissioner of Corrections shall provide the records promptly and no subpoena or public records request shall be required. Records subject to this section include video or audio recordings.

(d) The Defender General is authorized to protect the confidentiality of sources in the course of an investigation pursuant to this section. Work product generated in the course of representation of a client that contains confidential communication between an inmate and the Defender General shall not be discoverable and records of communications between inmates and the Defender General may be redacted.

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4. 13 V.S.A. § 7554c(e) (information obtaining during a pretrial risk assessment and pretrial needs screening) (Added by Act No. 195 (S.295))

(e)(1) Information obtained from the person during the risk assessment or needs screening shall be exempt from public inspection and copying under the Public Records Act and, except as provided in subdivision (2) of this subsection, only may be used for determining bail, conditions of release, and appropriate programming for the person in the pending case. The immunity provisions of this subsection apply only to the use and derivative use of information gained as a proximate result of the risk assessment or needs screening.

5. 32 V.S.A. § 163 (draft audit reports until the audit is completed) (Added by Act No. 108 (H.543))

§ 163. DUTIES OF THE AUDITOR OF ACCOUNTS

In addition to any other duties prescribed by law, the Auditor of Accounts shall:

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(4) From time to time, as audits are completed, report his or her audit findings first to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, then to the Governor, the Secretary of Administration, the Commissioner of Finance and Management, and the head of the department, institution, or agency covered by the report. The audit reports shall be public records and a copy of each report shall be furnished to and kept in the State Library for public use. Draft audit reports, working papers, correspondence, and other materials relied on by the Auditor of Accounts to produce the draft audit report shall be confidential and exempt from public inspection and copying under the Public Records Act until the audit is completed, but shall be provided to the audited entity upon request unless the record is exempt from public inspection and copying under another provision of law. Draft audit reports, working papers, correspondence, and other materials received by an audited entity prior to completion of the audit shall remain confidential until completion of the audit, and shall not be further disclosed by the audited entity until completion of the audit.

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6. 2014 Acts and Resolves No. 179, Sec. E.100.5 (Vermont Enterprise Fund; proprietary business information and materials or other confidential financial information) (Added by Act No. 179 (H.885))

(f)(1) Proprietary business information and materials or other confidential financial information submitted by a business to the State, or submitted by the Governor to the Emergency Board, for the purpose of negotiating or approving economic and financial resources under this section shall not be subject to public disclosure under the State's public records law in 1 V.S.A. chapter 5, but shall be available to the Joint Fiscal Office or its agent upon authorization of the Chair of the Joint Fiscal Committee, and shall also be available to the Auditor of Accounts in connection with the performance of duties under 32 V.S.A. § 163; provided, however, that the Joint Fiscal Office or its agent, and the Auditor of Accounts, shall not disclose, directly or indirectly, to any person any proprietary business or other confidential information or any information which would identify a business except in accordance with a judicial order or as otherwise specifically provided by law.

(2) Nothing in this subsection shall be construed to prohibit the publication of statistical information, rulings, determinations, reports, opinions, policies, or other information so long as the data are disclosed in a form that cannot identify or be associated with a particular business.