

Open Meeting Law and Public Records Act Overview Capitol Complex Security Working Group

I. OPEN MEETING LAW

Overview

- The Vermont Open Meeting Law (OML), 1 V.S.A. §§ 310–314, requires that, subject to certain exceptions, meetings of public bodies be open to the public.
- The OML defines “public body” in relevant part as:
“any board, council, or commission of the State or one or more of its political subdivisions, any board, council, or commission of any agency, authority, or instrumentality of the State or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils, or commissions...”
- The Capitol Complex Security Working Group (Group) likely is a “public body” subject to the OML.
- The OML establishes requirements with regard to:
 - ✓ electronic attendance and participation at meetings;
 - ✓ public notice of meetings;
 - ✓ the keeping and posting of minutes;
 - ✓ the posting of agendas, and how agendas can be changed; and
 - ✓ the process and grounds for a public body to enter into executive session.

Executive Sessions

- A public body may only enter into executive session—*i.e.* exclude the public from a meeting—upon a two-thirds vote if it is a State body, on a motion made during an open meeting that indicates the reason for going into executive session.¹
- The grounds for entering into executive session are limited by law at 1 V.S.A. § 313(a). Highlighted below in yellow are the grounds most likely to be relevant to the work of the Group:

A public body may not hold an executive session except to consider one or more of the following:

(1) after making a specific finding that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage:

- (A) contracts;
- (B) labor relations agreements with employees;
- (C) arbitration or mediation;
- (D) grievances, other than tax grievances;
- (E) pending or probable civil litigation or a prosecution, to which the public body is or may be a party;

¹ The result of the vote on the motion to enter executive session must be recorded in the minutes. § 313(a).

(F) confidential attorney-client communications made for the purpose of providing professional legal services to the body;

- (2) the negotiating or securing of real estate purchase or lease options;
- (3) the appointment or employment or evaluation of a public officer or employee, provided that the public body shall make a final decision to hire or appoint a public officer or employee in an open meeting and shall explain the reasons for its final decision during the open meeting;
- (4) a disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;
- (5) a clear and imminent peril to the public safety;
- (6) records exempt from the access to public records provisions of section 316 of this title; provided, however, that discussion of the exempt record shall not itself permit an extension of the executive session to the general subject to which the record pertains;
- (7) the academic records or suspension or discipline of students;
- (8) testimony from a person in a parole proceeding conducted by the Parole Board if public disclosure of the identity of the person could result in physical or other harm to the person;
- (9) information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c);
- (10) municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety.

- *Under 1 V.S.A. § 313(a)(6) shown above, a public body may enter into executive session to consider a record that is exempt under the Public Records Act.*
- No formal or binding action may be taken in executive session except relating to securing real estate options. § 313(a).
- Minutes need not be taken during executive sessions; if they are, they are exempt from public inspection and copying. § 313(a).

II. PUBLIC RECORDS ACT

Overview

- The Public Records Act (PRA), 1 V.S.A. §§ 315–320, requires that a public record be open to public inspection and copying unless it is exempt from the PRA.
- The PRA defines “public record” in relevant part as “any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business.”
- The PRA defines “public agency” in relevant part as “any agency, board, department, commission, committee, branch, instrumentality, or authority of the State” or of any political subdivision thereof.
- The Group likely qualifies a “public agency” and thus any record that it produces or acquires in the course of its work likely meets the definition of “public record.”
- However, as noted above, a “public record” may be “exempt” from public inspection and copying.

Exemptions to the PRA

- Approximately 248 exemptions to the PRA are found in the Vermont Statutes Annotated. Additional PRA exemptions are found in other sources of law.
- Below is an excerpt of 1 V.S.A. § 317(c) showing PRA exemptions most likely to be relevant to the work of the Group. Some material is in bold for emphasis.

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

* * *

(3) Records which, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the State.

(4) Records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to the General Assembly and the Executive Branch agencies of the State of Vermont.

[NOTE: Exemptions 317(c)(3)&(4) may exempt a record produced or acquired by Becky Wasserman or another attorney in providing legal assistance to the Group, unless the Group has waived confidentiality with respect to the record.]

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(15) Records relating specifically to negotiation of contracts including collective bargaining agreements with public employees.

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(25) Passwords, access codes, user identifications, **security procedures, and similar information the disclosure of which would threaten the safety of persons or the security of public property.**

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(32) With respect to publicly owned, managed, or leased structures, and **only to the extent that release of information contained in the record would present a substantial likelihood of jeopardizing the safety of persons or the security of public property**, final building plans, and as-built plans, including **drafts of security systems** within a facility, that depict the internal layout and structural elements of buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by an agency before, on, or after the effective date of this provision; **emergency evacuation, escape, or other emergency response plans that have not been published for public use; and vulnerability assessments, operation and security manuals, plans, and security codes.** For purposes of this subdivision, "system" shall include electrical, heating, ventilation, air conditioning, telecommunication, elevator, and security systems. **Information made exempt by this subdivision may be disclosed** to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; **to a licensed architect, engineer, or contractor who is bidding on or performing work on or related to buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by the State.** The entities or persons receiving such information shall maintain the exempt status of the information....

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[NOTE: As previously mentioned, a public body subject to the Open Meeting Law may vote to enter into executive session to consider a record exempt from public inspection and copying under the PRA, including any record that is exempt as shown immediately above.]