



TO: House Government Operations Committee
FROM: Allen Gilbert, executive director, ACLU-VT
DATE: Jan. 27, 2015
RE: H. 18, omnibus public records bill

We're grateful for the immense amount of time the members of the Legislative Public Records Study Committee invested in reviewing the state's public records law and its myriad exemptions. While not all goals may have been met, many were, and the committee is to be thanked for that.

The ACLU supports the provisions of the study committee's final public records omnibus bill -- save for one. That one is the provision (Sections 20 and 21) dealing with exemption 1 VSA 317 (c)(7), the personal records exemption. The (c)(7) exemption should be left as it is.

We feel no revisions are needed because the exemption is working. It's working largely because more case law has been developed through court decisions around this exemption than any other exemption in the Public Records Act, and because the case law is not difficult to apply. There is much guidance, therefore, in interpreting the statute.

Revising the exemption as proposed will push this guidance aside. The result will be that the public's access to many records will become unnecessarily more difficult. That is because all records containing any personal information, however trivial, will be subjected to a balancing test.

The ACLU believes strongly in protecting legitimate privacy interests. But there are many records containing personal information that surely no one disputes should be easily accessible. One example is each town or city's voter checklist. The checklist of eligible voters contains names, which are personal information. A second example is a city or town's grand list. It also contains names, along with residents' street addresses and house values. Names, addresses, and house values are all personal information -- they are information relating to a specific person.

Twenty-two years ago, the Vermont Supreme Court held that applying Exemption (c)(7) to all "personal records" would create a "vague and potentially limitless" hole in the Public Records Act. So, in keeping with the act's promise that public records be freely available, the Supreme Court held that Exemption 7 is best understood as covering those personal records that would reveal intimate details of a person's life. It is only those personal records to which a balancing test -- a balancing of an individual's justifiable right to privacy vs. the public's right to know -- is applied. For other records with personal information that don't contain intimate details about a person's life, the court said, no balancing test is needed.

The proposed revisions would be a return to a "vague and potentially limitless" exemption. Personal information in public records is, when justified, being protected now. We at the ACLU are not aware of public agencies misinterpreting the meaning of "intimate" and wrongfully releasing deeply personal records in the years since the Supreme Court's decision. We ask the committee to drop Sections 20 and 21 from H. 18.