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STATE OF VERMONT
House

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House Committee on Government Operations

AGENDA

Room 49

February 13, 2018 - February 16, 2018

Last Updated 2/8/2018 11:11 AM

Tuesday, February 13, 2018

9:00 AM H. 700 - An act relating to the Open Meeting Law and meeting minutes

Introduction/brief discussion

Rep. Timothy Briglin

Rep. James Masland

9:30 AM H. 385 - An act relating to the jurisdiction of the Human Rights Commission

Rep. Kathleen C. Keenan

Karen L. Richards, Executive Director, Vermont Human Rights Commission

10:00 AM FLOOR

15 Minutes After the Floor Adjourns H. 624 - An act relating to the protection of information in the statewide voter checklist

Three Amendments

Will Senning, Director, Elections and Campaign Finance,
Secretary of State's Office

BetsyAnn Wrask, Legislative Counsel, Office of Legislative
Council

Joshua Diamond, Deputy Attorney General, Attorney
General's Office

Donna Kinville, Clerk-Treasurer/President of Town Clerks'
and Treasurers' Association, City of South Burlington

Karen Richard, Town Clerk - Treasurer, Colchester Town
Clerk's Office

12:00 PM

Lunch and Caucuses

2:30 PM

Policy Committee Reference of Budget Review

*Draft Budget: Sec. B. 1101 (a) and (c); Sec. C. 100.3; Sec. D. 101
B. (3); Sec. E. 100 (a) (1) (A); (2) (A); Sec/ E/ 100.1 Acts and
Resolves No. 50, Sec. E. 100(b)(2); Sec. E. 316.1 3V.S.A. Sec.
1101*

Adam Greshin, Commissioner, Department of Finance &
Management

Matt Riven, Deputy Commissioner, Department of Finance &
Management

4:00 PM

Draft FY2019 Budget Sections

Sec. B.1101 (a); Sec. C.100.3; Sec. D.101 (b)(3)

Hon. James Condos, Secretary of State

Chris Winters, Deputy Secretary, Secretary of State's Office

Dear members of the House Government Operations Committee,

As you continue to discuss reforms to the public records statute, and as it has been a few weeks since my testimony to you, I wanted to resend the ACLU's recommendations regarding the bill. We think the bill is a great start, but would make the following suggestions:

- Ensure consequences for PRA violations, including wrongful denials, improper redactions, and unlawful delays. There are currently penalties for members of public bodies who knowingly and intentionally violate the open meeting law, but none exist for agency staff who violate the Public Records Act. Penalties and/or fee waivers for intentional violations would help to ensure compliance with the law. Other New England states have adopted such consequences: in Maine, New Hampshire, Massachusetts, and Rhode Island, willful violations of their public records act or a finding that an employee or agency has acted in bad faith can result in civil penalties or punitive damages from \$250 to \$5,000, depending on the state.
- Clarify the attorney's fees and litigation costs section, 1 V.S.A. §319(d)(1), to ensure that 'case' is defined as the beginning of the attorney's/attorneys' involvement in the request

through settlement and resolution of the litigation, including the negotiations for fees themselves.

- Ensure that denials from agencies in 1 V.S.A. §318(a)(2) and (c)(1) conform or are akin to the style of Vaughn Indexes: an itemized index, correlating each withheld or redacted document or portion with the applicable PRA exemption the agency is claiming for that withholding or redaction, and explaining how disclosure would damage the interests protected by the cited exemption.
- Waive requesting fees for indigence and for when release of the records in question is in the public interest and for a non-commercial purpose. The federal government already does this for FOIA requests, as do Maine, Massachusetts, and Connecticut.
- Charge fees only for the cost of copying, not for compiling or redacting. This is currently the practice in New Hampshire and should be a model for Vermont – too high of fees can effectively be a denial of records. In the alternative, a sliding scale for larger requests may be effective in reducing fees and barriers.
- Limit or abolish agency directives and policies that limit access to public records; or in the alternative, ensure such rules are subject to the Administrative Procedures Act so as to secure public notice and comment.
- Consolidate all public records exemptions (of which there are over 260) under the PRA, and ensure that all future exemptions are placed under the PRA. This should be done with an eye towards one day minimizing the exemptions. If exemptions are not dealt with, we could one day have 300 or 500 exemptions that will all be scattered across Vermont statutes.
- Make all exemptions subject to a five-year sunset. The validity and necessity of exemptions should be reviewed to ensure that they still serve a compelling government interest.

Finally, I wanted to bring to your attention the ACLU's recent victory in a public records case. As you will see in the attached release, we prevailed in a case regarding records from the Agency of Education. In the settlement agreement, the AoE has agreed to pay the ACLU \$30,500 for attorney fees and litigation costs. This is yet another example of how a 'deny first' culture has cost the state time and money.

Please let me know if you have any comments or concerns.

Sincerely,

Chloé White

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Chloé White

Pronouns: she/her

Policy Director

American Civil Liberties Union of Vermont

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