

From: Diamond, Joshua <Joshua.Diamond@vermont.gov>
Sent: Tuesday, February 27, 2018 7:17 AM
To: Helena Gardner
Cc: Maida Townsend; Silver, Natalie
Subject: RE: direction House Gov Ops is headed on the PRA issues we discussed

Helena,

My apologies if this e-mail is a duplicate, but the legislative intent language looks fine.

Our office still has concerns about draft 2.1. It appears the language would only allow for charges of staff time under the following circumstances:

1. Actual cost of providing copies.
2. Unless otherwise provided by law, in the following instances an agency may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record:
 - (i) the time directly involved in complying with the request that exceeds 30 minutes;
 - (ii) if the agency **agrees to create a public record**; or (iii) if the agency agrees to provide the public record in a nonstandard format.

First, we're not sure what the phrase "agrees to create a public record" means. If staff time is needed to determine whether documents are privileged and unable to be produced, would this permit charging time for such efforts? If not, this could be quite problematic for the reasons articulated in my testimony several weeks ago.

Second, does the phrase, "agrees to provide the public record in a nonstandard format" encapsulate the redaction process?

Third, if a requestor wants to only inspect, and the agency needs to engage in a significant redaction process, will this language permit the agency to charge for such efforts?

Unfortunately, I'm out of state through Wednesday at a legal conference. Happy to connect upon my return.

Best, Josh

Joshua R. Diamond, Deputy Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, Vermont 05609
802-828-3175
joshua.diamond@vermont.gov

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From: Helena Gardner [<mailto:HGardner@leg.state.vt.us>]
Sent: Friday, February 23, 2018 12:21 PM
To: Diamond, Joshua <Joshua.Diamond@vermont.gov>
Cc: Maida Townsend <MTownsend@leg.state.vt.us>
Subject: direction House Gov Ops is headed on the PRA issues we discussed

Josh,
In lieu of creating a new posting and data entry obligation for all Executive Branch public agencies, the Committee is taking a different direction. They directed me to draft language to codify the 2011 Acts & Resolves No. 59, Sec. 13(a)&(b) (available at <http://www.leg.state.vt.us/DOCS/2012/ACTS/ACT059.PDF>) governing the Public Records Request System, updated to (1) require the Sec'y of Admin to post the System information on AoA's website and (2) require Exec Branch agencies to link to the AoA's website where the System info is posted. I've also made a few wording changes and reorganized the text. The info laid out below in (b)(1)(A)-(H) is identical to that required under 2011 Acts & Resolves

No. 59, Sec. 13(b), but it is arranged to make clear that it the individual agency's obligation to furnish that information. Because of these changes of codification, I've drafted a section to repeal 2011 Acts & Resolves No. 59, Sec. 13.

In addition, I've drafted some "intent" language to address your concerns about the rearrangement of language in 1 V.S.A. § 318 – **it is highlighted in yellow** below. Does it address your concerns?

The C'ee plans to review this language (and other changes to the draft) this afternoon starting around 1:30 or 2:00, but not to vote it out until Tuesday afternoon.

If you have any comments, can you provide them by COB Monday?

Thank you!

-Helena

Sec. 7. 1 V.S.A. § 318a is added to read:

§ 318a. EXECUTIVE BRANCH AGENCY PUBLIC RECORDS REQUEST SYSTEM

(a) The Secretary of Administration shall maintain and update the Public Records Request System established pursuant to 2006 Acts and Resolves No. 132, Sec. 3 and 2011 Acts and Resolves No. 59, Sec. 13 with the information furnished under subsection (b) of this section and post the information on the website of the Agency of Administration.

(b) All public agencies of the Executive Branch of the State:

(1) that receive a written request to inspect or copy a record under this subchapter shall catalogue the request in the Public Records Request System established and maintained by the Secretary of Administration by furnishing the following information:

(A) the date the request was received;

(B) the agency that received the request;

(C) the person that made the request, including a contact name;

(D) the status of the request, including whether the request was fulfilled in whole, fulfilled in part, or denied;

(E) if the request was fulfilled in part or denied, the exemption or other grounds asserted as the basis for partial fulfillment or denial;

(F) the estimated hours necessary to respond to the request;

(G) the date the agency closed the request; and

(H) the elapsed time between receipt of the request and the date the agency closed the request.

(2) shall post in a conspicuous location on its website a link to the location on the Agency of Administration's website where Public Records Request System information is maintained.

Sec. 8. REPEAL

2011 Acts and Resolves No. 59, Sec. 13 is repealed.

Sec. 5. LEGISLATIVE INTENT

In rearranging the text of existing law in 1 V.S.A. § 318(b)–(c) within Sec. 6 of this act, the General Assembly intends to make the text more organized and clear, and does not intend to effect any substantive changes through the rearrangement of existing text.

Helena M. Gardner
Legislative Counsel and Records Officer
Vermont Office of Legislative Council
hgardner@leg.state.vt.us
W: 802-828-5950
Fax: 802-828-2424