

Helena Gardner

From: Kuehl, Kurt <Kurt.Kuehl@vermont.gov>
Sent: Tuesday, February 14, 2017 2:27 PM
To: Helena Gardner
Cc: Aaron Adler
Subject: RE: 16-P64 (Inmate/offender records)

Those look fine; we can support those changes. Thanks for all of your help with this Rule (and the legislation last year). Maybe I'll see you on Thursday.

Take care,
Kurt

From: Helena Gardner [mailto:HGardner@leg.state.vt.us]
Sent: Tuesday, February 14, 2017 2:01 PM
To: Kuehl, Kurt <Kurt.Kuehl@vermont.gov>
Cc: Aaron Adler <AAdler@leg.state.vt.us>
Subject: RE: 16-P64 (Inmate/offender records)

Ok, thank you again. In summary, would DOC support the following changes to the rule:

- (1) on p.3, line 15, replace "may request a complete copy" with "may request up to a complete copy";
- (2) on p.3, line 30, replace "could unreasonably interfere with DOC's ability to perform its functions" with "would unreasonably interfere with DOC's ability to perform its functions" in order to match the rule with the language of 28 VSA § 107(b)(5)(B); and
- (3) on p.3, lines 39-41, replace "Except where prohibited by law, the Commissioner or Deputy Commissioner of DOC may release records for reasons related to public safety, institutional security, or when it is in the best interest of the inmate/offender or a victim" with "Except where prohibited by law, in addition to the public use file, the Commissioner or Deputy Commissioner of DOC shall disclose records to any person when the public interest served by disclosure of a record outweighs the privacy, security, or other interest in keeping the record confidential" in order to match the rule with the language of 28 VSA § 107(b)(5)(A).

From: Kuehl, Kurt [mailto:Kurt.Kuehl@vermont.gov]
Sent: Tuesday, February 14, 2017 1:51 PM
To: Helena Gardner
Cc: Aaron Adler
Subject: RE: 16-P64 (Inmate/offender records)

Hi Helena,

I probably wasn't very clear about #2 yesterday; let me try again.

#4 (p3, lines 39-41) was included because our existing directive (254.01 at § 4.1.4) permits the Commissioner or Deputy to disclose offender records for those reasons, provided disclosure is not otherwise prohibited by law. Including this provision in the Rule would allow the continuation of a policy we have had in effect since 1998 that, to my knowledge, has never been an issue. The authority under the directive is discretionary, but the statute is mandatory.

Perhaps the better approach to #4 would be to restate/paraphrase 107(b)(5)(A) and so that #4 states "Except where prohibited by law, the Commissioner or Deputy Commissioner of DOC shall disclose records to any person when the

public interest served by disclosure of a record outweighs the privacy, security, or other interest in keeping the record confidential.” Accountability of DOC, public safety, and institutional security are clearly the public’s interest so I suppose it is redundant to include them in #4.

Regarding the public use file, our conception is that it would include the following information about an offender:

- Last Name
- First Name
- Middle Name
- Current Age
- Booking Date
- Date Released (if applicable)
- Race
- Sex
- Town
- Active Agencies
- Probation Officer
- Caseworker
- Minimum Release Date
- Maximum Release Date
- Legal Status
- Charge Status
- Charge Description
- Bail Amount
- List sentence for each charge

Aside from the offender’s probation officer, this is information we receive from other sources (such as a mittimus, law enforcement officer affidavit, court orders, etc.) and is available from those sources. We frequently receive requests from the media for this information about offenders. Our idea was to eventually have this information available online and anyone could access it. It seemed to us that if we obtain the information from another source and that information isn’t exempt from disclosure by that source, we shouldn’t impose a barrier to its disclosure simply by virtue of being in our possession.

Finally, yes you are correct we meant “up to” a complete copy. Good catch. We certainly don’t want to encourage offenders to request their entire record if they are only after limited information.

I hope this has answered your questions and clarified our intent. If it hasn’t, please let me know and I’ll give it another shot.

Thanks,
Kurt

From: Helena Gardner [<mailto:HGardner@leg.state.vt.us>]
Sent: Tuesday, February 14, 2017 12:34 PM
To: Kuehl, Kurt <Kurt.Kuehl@vermont.gov>
Cc: Aaron Adler <AAlder@leg.state.vt.us>
Subject: RE: 16-P64 (Inmate/offender records)

Following up item 2, would the following language accord with DOC’s intent?

4. “Except where prohibited by law, the Commissioner or Deputy Commissioner of DOC shall disclose records for reasons related to **accountability of the Department**, public safety, institutional security, or when it is in the best interest

of the inmate/offender or a victim or another person, if the public interest served by disclosure of a record outweighs the privacy, security, or other interest in keeping the record confidential.

Also, I noticed that on p.3, line 15, with regard to an inmate/offender's access to his or her own records, the proposed rule states "An inmate/offender may request a complete copy of his/her record..." Am i correct in assuming you mean up to a complete copy?

From: Kuehl, Kurt [<mailto:Kurt.Kuehl@vermont.gov>]
Sent: Monday, February 13, 2017 4:10 PM
To: Helena Gardner
Cc: Aaron Adler
Subject: Re: 16-P64 (Inmate/offender records)

Hi Helena,

Regarding #1, ICAR requested we change it from would to could. We don't have any objection to changing it back to would to accurately reflect the statute.

Regarding #2, we wouldn't object to including the balancing test language in the Rule of the Committee would like it in the Rule.

Thanks
Kurt

Sent from my iPhone

On Feb 13, 2017, at 1:15 PM, Helena Gardner <HGardner@leg.state.vt.us> wrote:

Kurt,
I reviewed the proposed rule, and have a couple comments/questions:

(1) Under 28 VSA 107(b)(5)(B), subject to a safety-related redaction requirement, the Commissioner shall "provide an offender or inmate access to records relating to him or her if access is not otherwise guaranteed under this subsection, unless providing such access **would** reveal information that is confidential or exempt from disclosure under a law other than this section, **would** unreasonably interfere with the Department's ability to perform its functions, or **may** compromise the health, safety, security, or rehabilitation of the offender or inmate or of another person."

However, proposed rule p.3, lines 29-31 requires DOC to redact information that "could" unreasonably interfere with the Department's ability to perform its functions.

Would DOC object with replacing "would" with "could" to match the rule with the statute?

(2) Under 28 VSA 107(b)(5)(A), subject to a safety-related redaction requirement, "The Commissioner shall authorize release or inspection of offender and inmate records under these rules:

(A) When the public interest served by disclosure of a record outweighs the privacy, security, or other interest in keeping the record confidential."

The proposed rule defines a "public use file" and directs DOC to permit anyone to review its contents. At p.3, lines 39-41, the proposed rule also states that, "[e]xcept where prohibited by law, the

Commissioner ... may release records for reasons related to public safety, institutional security, or when it is in the best interest of the inmate/offender or a victim.”

Can you explain how this provision relates to/reflects application of the balancing test required under 28 VSA 107(b)(5)(A)? Do you think it would be helpful for (for DOC personnel, requesters) if the rule reflected the balancing test? If not, why not?

Thank you, and hope you are well!

Best,
Helena

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