

1 Introduced by Representative Townsend of South Burlington

2 Referred to Committee on

3 Date:

4 Subject: Open Meeting Law; Public Records Act

5 Statement of purpose of bill as introduced: This bill proposes to:

6 (1) clarify and amend what activities constitute a “meeting” under the  
7 Open Meeting Law;

8 (2) amend provisions related to fees that a public agency may charge in  
9 connection with responding to a Public Records Act request;

10 (3) clarify and update provisions related to time periods for responding  
11 to a Public Records Act request and specify an obligation of records officers of  
12 State agencies and departments to be accountable for the processing of requests  
13 for public records; and

14 (4) establish a position for an Open Government Ombudsman and  
15 authorize the Ombudsman to investigate and adjudicate acts of public bodies  
16 and public agencies alleged to violate the Open Meeting Law and the Public  
17 Records Act and to carry out other activities related to these laws.

18 .

19 An act relating to the Open Meeting Law and the Public Records Act

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 \* \* \* Open Meeting Law \* \* \*

3 Sec. 1. 1 V.S.A. § 310 is amended to read:

4 § 310. DEFINITIONS

5 As used in this subchapter:

6 \* \* \*

7 (2)(A) “Meeting” means a gathering of a quorum of the members of a  
8 public body for the purpose of discussing the business of the public body or for  
9 the purpose of taking action. “Meeting” includes each communication within a  
10 series of communications of any kind involving a quorum of the members,  
11 directly or through intermediaries, to discuss or take action on any business of  
12 the public body, even if the individual communication does not involve a  
13 quorum of the public body.

14 (B) “Meeting” shall not mean written correspondence or an  
15 electronic communication, including e-mail, telephone, or teleconferencing,  
16 between members of a public body for the purpose of scheduling a meeting,  
17 organizing an agenda, or distributing materials to discuss at a meeting,  
18 provided that such a written correspondence or such an electronic  
19 communication that results in written or recorded information shall be  
20 available for inspection and copying under the Public Records Act as set forth  
21 in chapter 5, subchapter 3 of this title.

1           (C) As long as a quorum of the members of a public body does not  
2           discuss the body’s business or take action, “meeting” does not include a  
3           gathering of a quorum of the public body at:

4                   (i) a conference or meeting open to the public, or to which  
5                   members of the public are invited, that involves a discussion of general or local  
6                   interest to the public or to the public bodies attending the conference or  
7                   meeting;

8                   (ii) a duly warned meeting of another public body, including a  
9                   meeting of a committee of a public body;

10                   (iii) a ceremonial, social, or community event; or

11                   (iv) a virtual gathering on an electronic platform as long as the  
12                   platform is open and accessible to all members of the general public without  
13                   obstacles such as fees or special permissions.

14           (D) The list in subdivision (C) of this subdivision (2) is not intended  
15           to be exhaustive, but instead is intended to provide examples of gatherings that  
16           do not fall under the definition of “meeting.”

17           (3) “Public body” means any board, council, or commission of the State  
18           or one or more of its political subdivisions, any board, council, or commission  
19           of any agency, authority, or instrumentality of the State or one or more of its  
20           political subdivisions, or any committee of any of the foregoing boards,  
21           councils, or commissions, except that “public body” does not include councils

1 or similar groups established by the Governor for the sole purpose of advising  
2 the Governor with respect to policy.

3 \* \* \*

4 \* \* \* Public Records Act \* \* \*

5 Sec. 2. 1 V.S.A. § 316 is amended to read:

6 § 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS; CHARGES;

7 FORMAT OF RECORDS

8 \* \* \*

9 (b) Unless otherwise provided by law, a public agency shall not charge or  
10 collect a fee in response to a request to inspect a public record.

11 (c) If an individual requests a copy of a public record, a public agency may  
12 charge and collect a fee as follows:

13 (1) Actual cost of providing copies. If copying equipment maintained  
14 for use by a public agency is used by the agency to copy the public record or  
15 document requested, the agency may charge and collect from the person  
16 requesting the copy the actual cost of providing the copy. The agency may  
17 also charge and collect from the person making the request; the costs  
18 associated with mailing or transmitting the record by facsimile or other  
19 electronic means. ~~Nothing in this section shall exempt any person from paying~~  
20 ~~fees otherwise established by law for obtaining copies of public records or~~

1 ~~documents, but if such fee is established for the copy, no additional costs or~~  
2 ~~fees shall be charged.~~

3 ~~(e)~~(2) Staff time.

4 (A) Unless otherwise provided by law, in the following instances an  
5 agency may also charge and collect the cost of staff time associated with  
6 complying with a request for a copy of a public record:

7 ~~(1)~~(i) to the extent that the time directly involved in complying with the  
8 request exceeds 30 minutes, provided that an agency shall not charge or collect  
9 a fee for staff time spent searching for a public record or otherwise include this  
10 time when calculating fees;

11 ~~(2)~~(ii) if the agency agrees to create a public record; or

12 ~~(3)~~(iii) if the agency agrees to provide the public record in a nonstandard  
13 format and the time directly involved in complying with the request exceeds 30  
14 minutes.

15 (B) The agency may require that requests subject to staff time  
16 charges under this ~~subsection~~ subdivision (2) be made in writing and that all  
17 charges be paid, in whole or in part, prior to delivery of the copies. Upon  
18 request, the agency shall provide an estimate of the charge.

19 (3) Fees otherwise provided by law. Nothing in this section shall  
20 exempt any person from paying fees otherwise established by law for obtaining

1 copies of public records or documents, but if such fee is established for the  
2 copy, no additional costs or fees shall be charged.

3 \* \* \*

4 Sec. 3. 1 V.S.A. § 317 is amended to read:

5 § 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND  
6 DOCUMENTS

7 (a) As used in this subchapter:

8 (1) “Business day” means a day that a public agency is open to provide  
9 services.

10 (2) “Public agency” or “agency” means any agency, board, department,  
11 commission, committee, branch, instrumentality, or authority of the State or  
12 any agency, board, committee, department, branch, instrumentality,  
13 commission, or authority of any political subdivision of the State.

14 (b) As used in this subchapter, “public record” or “public document” means  
15 any written or recorded information, regardless of physical form or  
16 characteristics, ~~which~~ that is produced or acquired in the course of public  
17 agency business. Individual salaries and benefits of and salary schedules  
18 relating to elected or appointed officials and employees of public agencies  
19 shall not be exempt from public inspection and copying.

20 \* \* \*

1 Sec. 4. 1 V.S.A. § 318 is amended to read:

2 § 318. PROCEDURE

3 (a)(1) As used in this section, “promptly” means immediately, with little or  
4 no delay, and, unless otherwise provided in this section, not more than three  
5 business days:

6 (A) from receipt of a request under this subchapter; or

7 (B) in the case of a reversal on appeal by a head of the agency  
8 pursuant to subsection (c) of this section, from the date of the determination on  
9 appeal.

10 (2) A custodian or head of the agency who fails to comply with the  
11 applicable time limit provisions of this section shall be deemed to have denied  
12 the request or the appeal upon the expiration of the time limit.

13 (b) Upon request, the custodian of a public record shall promptly produce  
14 the record for inspection or a copy of the record, except that:

15 (1) If the record is in active use or in storage and therefore not available  
16 for use at the time the person asks to examine it, the custodian shall ~~so~~  
17 promptly certify this fact in writing to the applicant and, in the certification, set  
18 a date and hour within one calendar week of the request when the record will  
19 be available ~~for examination~~.

20 (2) If the custodian considers the record to be exempt from inspection  
21 and copying under the provisions of this subchapter, the custodian shall

1 ~~promptly so certify in writing. Such certification shall identify the records~~  
2 ~~withheld and the basis for the denial. A record shall be produced for~~  
3 ~~inspection or a certification shall be made that a record is exempt within three~~  
4 ~~business days of receipt of the request, unless otherwise provided in~~  
5 ~~subdivision (5) of this subsection. The certification shall:~~

6 (A) identify the records withheld;

7 (B) include the asserted statutory basis for denial and a brief  
8 statement of the reasons and supporting facts for denial. ~~The custodian~~  
9 ~~shall also;~~

10 (C) provide the names and titles or positions of each person  
11 responsible for denial of the request; and

12 (D) notify the person of his or her right to appeal to the head of the  
13 agency any adverse determination.

14 ~~(3) If appealed to the head of the agency, the head of the agency shall~~  
15 ~~make a determination with respect to any appeal within five business days after~~  
16 ~~the receipt of such appeal. If an appeal of the denial of the request for records~~  
17 ~~is in whole or in part upheld, the agency shall notify the person making such~~  
18 ~~request of the provisions for judicial review of that determination under section~~  
19 ~~319 of this title. [Repealed.]~~

1           (4) If a record does not exist, the custodian shall promptly certify in  
2 writing that the record does not exist under the name given to the custodian by  
3 the applicant or by any other name known to the custodian.

4           (5) In unusual circumstances as herein specified, the time limits  
5 prescribed in this ~~subsection~~ section may be extended by written notice to the  
6 person making ~~such~~ the request setting forth the reasons for ~~such~~ the extension  
7 and the date on which a determination is expected to be dispatched. No such  
8 notice shall specify a date that would result in an extension for more than ten  
9 business days from receipt of the request or, in the case of a reversal on appeal  
10 by a head of the agency pursuant to subsection (c) of this section, from the date  
11 of the determination on appeal. As used in this subdivision, “unusual  
12 circumstances” means to the extent reasonably necessary to the proper  
13 processing of the particular request:

14           (A) the need to search for and collect the requested records from field  
15 facilities or other establishments that are separate from the office processing  
16 the request;

17           (B) the need to search for, collect, and appropriately examine a  
18 voluminous amount of separate and distinct records ~~which~~ that are demanded  
19 in a single request; or

20           (C) the need for consultation, which shall be conducted with all  
21 practicable speed, with another agency having a substantial interest in the

1 determination of the request or among two or more components of the agency  
2 having substantial subject matter interest therein, or with the Attorney General.

3 ~~(b) Any person making a request to any agency for records under~~  
4 ~~subsection (a) of this section shall be deemed to have exhausted the person's~~  
5 ~~administrative remedies with respect to each request if the agency fails to~~  
6 ~~comply within the applicable time limit provisions of this section. Upon any~~  
7 ~~determination by an agency to comply with a request for records, the records~~  
8 ~~shall be made available promptly to the person making such request. Any~~  
9 ~~notification of denial of any request for records under this section shall set~~  
10 ~~forth the names and titles or positions of each person responsible for the denial~~  
11 ~~of such request.~~

12 (c)(1) Any denial of access by the custodian of a public record may be  
13 appealed to the head of the agency. The head of the agency shall make a  
14 written determination on an appeal within five business days after the receipt  
15 of the appeal.

16 (2) A If the head of the agency upholds the denial of a request for  
17 records, in whole or in part, the written determination shall include:

18 (A) the asserted statutory basis for upholding the denial and;

19 (B) a brief statement of the reasons and supporting facts for  
20 upholding the denial; and



1 serve at the pleasure of the State Ethics Commission. The Ombudsman is  
2 empowered to investigate Public Records Act and Open Meeting Law  
3 complaints, to adjudicate the acts of public bodies and public agencies alleged  
4 to have violated the Open Meeting Law and the Public Records Act, and to  
5 recommend appropriate changes in these laws in order to promote  
6 accountability consistent with Chapter I, Article 6 of the Vermont Constitution.

7 (c) The Ombudsman shall be:

8 (1) an attorney licensed to practice law in Vermont;

9 (2) a person of recognized judgment, objectivity, and integrity; and

10 (3) a person who is qualified to analyze problems of law, administration,  
11 and public policy.

12 (d) An individual serving as Ombudsman shall not:

13 (1) be actively involved in political party activities or publicly endorse,  
14 solicit funds for, or make contributions to political parties or candidates for  
15 elective office;

16 (2) be a candidate for or hold any other elective or appointive public  
17 office; or

18 (3) engage in any other occupation, business, or profession likely to  
19 detract from the performance of his or her duties as Ombudsman or to result in  
20 a conflict of interest or an appearance of impropriety or partiality.

1     § 326. DUTIES

2             The Open Government Ombudsman shall:

3             (1) As he or she deems necessary, provide information to the public,  
4             public agencies, public bodies, and others regarding requirements of the Public  
5             Records Act and of the Open Meeting Law.

6             (2) In his or her discretion, issue advisory opinions interpreting the  
7             Open Meeting Law and the Public Records Act as may be needed to inform the  
8             public, public agencies, public bodies, and others.

9             (3) Receive and investigate complaints on behalf of persons seeking  
10            compliance with the Open Meeting Law after the public body has had the  
11            opportunity to respond under section 314 of this chapter, or on behalf of  
12            persons seeking records under the Public Records Act following a  
13            determination on appeal by the head of the public agency under section 318 of  
14            this chapter. The Ombudsman shall have authority to compel, by subpoena,  
15            the attendance and testimony of witnesses and the production of books and  
16            records, and 3 V.S.A. §§ 809a and 809b shall apply to all subpoenas issued  
17            under this subdivision.

18            (4) Upon request, attempt to mediate disputes between a public body  
19            and a person alleging an Open Meeting Law violation or between a public  
20            agency and a person alleging an unlawful denial of records under the Public  
21            Records Act.

1           (5)(A) For disputes under the Open Meeting Law, after the public body  
2           has had the opportunity to respond under section 314 of this chapter, and for  
3           disputes under the Public Records Act, following a determination on appeal by  
4           the head of the public agency under section 318 of this chapter, if mediation  
5           has been attempted under subdivision (4) of this section and is not successful,  
6           the Ombudsman shall, upon request of all parties to the dispute, adjudicate  
7           questions of compliance by issuing a binding written determination.

8           (B) Except as otherwise provided in this subdivision (5), the  
9           contested case provisions of 3 V.S.A. §§ 809–815 shall apply to proceedings  
10          under this subdivision (5).

11          (C) Within 30 days after the Ombudsman issues a written  
12          determination under this subdivision (5), a party may appeal to the Superior  
13          Court in Washington County, which shall review the matter de novo.

14          (D) A party to an Open Meeting Law or a Public Records Act dispute  
15          is entitled to refuse to participate in mediation under subdivision (4) of this  
16          section and to refuse to submit to an adjudication under this subdivision (5).

17          (6) Establish policies and procedures for receiving, investigating,  
18          mediating, and adjudicating Open Meeting Law and Public Records Act  
19          complaints and disputes.

20          (7) Develop and implement a reporting system to collect and analyze  
21          information relating to complaints.

1           (8) On or before January 15 of each year, submit to the House and  
2           Senate Committees on Government Operations a report on the work performed  
3           by the Ombudsman during the previous calendar year.

4           Sec. 6. CREATION OF OPEN GOVERNMENT OMBUDSMAN POSITION

5           One part-time exempt Open Government Ombudsman position is created as  
6           set forth in Sec. 5 of this act by using an existing position in the position pool.

7           Sec. 7. OPEN GOVERNMENT OMBUDSMAN FUNDING SOURCE

8           (a) Surcharge.

9           (1) In addition to the surcharge authorized under 2017 Acts and  
10          Resolves No. 79, Sec. 13, and notwithstanding the provisions of 3 V.S.A.  
11          § 2283(c) setting forth the purpose and rate of charges collected in the Human  
12          Resource Services Internal Service Fund, in fiscal year 2019 and thereafter, a  
13          surcharge of up to [##] percent, but not greater than the cost of the activities of  
14          the Open Government Ombudsman authorized in Sec. 5 of this act, on the per-  
15          position portion of the charges authorized in 3 V.S.A. § 2283(c)(2) shall be  
16          assessed to all Executive Branch agencies, departments, and offices and shall  
17          be paid by all assessed entities solely with State funds.

18          (2) The amount collected shall be accounted for within the Human  
19          Resource Services Internal Service Fund and used solely for the purposes of  
20          funding the activities of the Open Government Ombudsman authorized in  
21          Sec. 5 of this act.

