ACLU Vermont

Testimony on Public Records Reform Draft Bill 1-24-18

Thank you for the opportunity to speak to you about public records reform and the draft bill. I want to recognize and thank Secretary Condos, Chris Winters, Helena Gardner, the chairwoman, and others who have worked so diligently on this issue.

The ACLU supports the draft bill, and is particularly pleased about certain provisions. For example, we are thrilled that the bill clarifies that agencies and local governments cannot charge fees for record inspection. We support the provision that bars collection of fees for staff time for searching and are pleased with the definition of 'promptly.' In our experience, agencies and local governments regularly do not provide records within 3 days and instead take until the 10-day mark to provide responses. Finally, we appreciate the care that went into drafting the ombudsman/ombudsperson section, and are glad both that the ombudsman will have subpoena power and the ability to issue advisory opinions and mediate disputes, as well as that the use of the ombudsman is optional, and requesters can opt to proceed directly to court after a second denial.

We believe, however, that more can be done to safeguard government transparency. Our suggestions are as follows:

- 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.
- 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.
- 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.
- 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.