

## Testimony RE: H.585 (An Act Related to Records Management)

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Suggestions for possible addition to H. 585, in further response to issues raised by Rep. Giambatista regarding public agencies and policies within the context of availability of records and the Vermont Public Records Act.

### **SUGGESTION NO. 1:** Cross-Reference 3 V.S.A. § 117 in 1 V.S.A. § 317a

#### § 317a. MANAGEMENT ~~DISPOSITION~~ OF PUBLIC RECORDS

(a) A custodian of public records shall not destroy, give away, sell, discard, or damage any record or records in his or her charge, unless specifically authorized by law or under a record schedule, as defined in 3 V.S.A. § 117(a)(6), that has been approved by the State Archivist ~~pursuant to 3 V.S.A. 11 § 117(a)(5)~~.

(b) The head of each public agency shall establish, maintain, and implement an active and continuing records and information management program in accordance with the statewide records and information management program, as defined in 3 V.S.A. § 117(b) and administered by the Vermont State Archives and Records Administration, for the effective life cycle management, retention, and disposition of records, regardless of their physical form or characteristics, for which that head is responsible.

### **SUGGESTION NO. 2:** Cross-Reference 3 V.S.A. § 117 and carry forward language in [3 V.S.A. § 218](#) (Agency/Department Records Management Program) in 1 V.S.A. § 317a

#### § 317a. MANAGEMENT ~~DISPOSITION~~ OF PUBLIC RECORDS

(a) The General Assembly finds that public records are essential to the administration of State and local government. Public records contain information which allows government programs to function, provides officials with a basis for making decisions, and ensures continuity with past operations. Public records document the legal responsibilities of government, help protect the rights of citizens, and provide citizens a means of monitoring government programs and measuring the performance of public officials. Public records provide documentation for the functioning of government and for the retrospective analysis of the development of Vermont government and the impact of programs on citizens. Public records in general and archival records in particular need to be systematically managed to provide ready access to vital information, to promote the efficient and economical operation of government, and to preserve their legal, administrative, and informational value.

- (b) (a) A custodian of public records shall not destroy, give away, sell, discard, or damage any record or records in his or her charge, unless specifically authorized by law or under a record schedule, as defined in 3 V.S.A. § 117(a)(6), that has been approved by the State Archivist pursuant to ~~3 V.S.A. 11 § 117(a)(5)~~.
- (c) (b) The head of each public agency shall establish, maintain, and implement an active and continuing records and information management program in accordance with the statewide records and information management program, as defined in 3 V.S.A. § 117(b) and administered by the Vermont State Archives and Records Administration, for the effective life cycle management, retention, and disposition of records, regardless of their physical form or characteristics, for which that head is responsible.

## Historical Context

Although through separate bills, 3 V.S.A. § 218 (Agency/Department Records Management Program) and the 1 V.S.A. § 315-320 originated from the same 1975-1976 legislative session. Their paths crossed again with the passing of Act 202 of 1978 (Access to Public Records) and Act No. 56 (Public Records Management) shortly thereafter in 1979.

The latter amended several other records management related statutes, most of which were consolidated under Act No. 96 of 2008 (An Act to Relating to Consolidating Management of Public Records), which created the Vermont State Archives and Records Administration (VSARA). The origin of 1 V.S.A. § 317a, for example, dates back to Act 229 of 1937 and the creation of the Public Records Commission, one of the predecessors to VSARA:

*“A custodian of public records shall not destroy, give away, sell, discard, or damage any record or records in his or her charge, unless specifically authorized by law, without having first submitted to the commission a list thereof, with accurate descriptions; and the commission, within sixty days after receipt of such lists, and description, with an application for permission to destroy, cancel or dispose of such records, such order the destruction, cancellation, disposal, thereof, or the preservation thereof, in whole or in part, which order shall be duly recorded by the custodian, and shall be binding on him and his successors.”* Sec. 3 of Act 229 of 1937

Act 96 of 2008 was also the first time the General Assembly created a cross-reference between access to public records laws and public records management laws. Prior to that time, the General Assembly articulated a connection between the two in 2003. 3 V.S.A. § 218(a) was added by Act No. 3 of 2003 (An Act Related to the Management of Archival Records):

*“The General Assembly finds that public records are essential to the administration of State and local government. Public records contain information which allows government programs to function, provides officials with a basis for making decisions, and ensures continuity with past operations. Public records document the legal responsibilities of government, help protect the rights of citizens, and provide citizens a means of monitoring government programs and measuring the performance of public*

*officials. Public records provide documentation for the functioning of government and for the retrospective analysis of the development of Vermont government and the impact of programs on citizens. Public records in general and archival records in particular need to be systematically managed to preserve their legal, historic, and informational value, to provide ready access to vital information, and to promote the efficient and economical operation of government.”*

## **Rationale for Suggestions No. 1 and No. 2**

The statewide records and information management program, through the current statute (3 V.S.A. § 117), is applicable to all public agencies and addresses all aspects of the lifecycle management of records and information – not just disposition – and it is done so within the context of Generally Accepted Recordkeeping Principles: Accountability; Transparency; Integrity; Protection; Compliance; Availability; Retention; and Disposition. (See January 17, 2018 testimony for more details).

Providing a cross-reference to the statewide records and information management program in 1 V.S.A. § 317a, as part of H.585, is logical as it ties together not only the long-standing records management requirement related to “disposition” but also those the broader requirements related to “public records management.” This cross-reference clearly signifies the nature relationship between records and information management and the availability of records. If, through H.585, the legislature wishes to make this cross-reference, it will set the stage for improvements within public agencies beginning July 1<sup>st</sup> and will help inform additional or more comprehensive legislation that could be introduced next year.

To address Rep. Giambatista’s concerns directly, it is very difficult for an agency to effectively and efficiently respond to public records requests when it lacks comprehensive documentation of its records and information, the mandates the records and information supports, and related recordkeeping requirements, including exemptions – and does not know how they are all connected. This has been a known issue and is documented in legislative reports leading up to Act 96 of 2008.

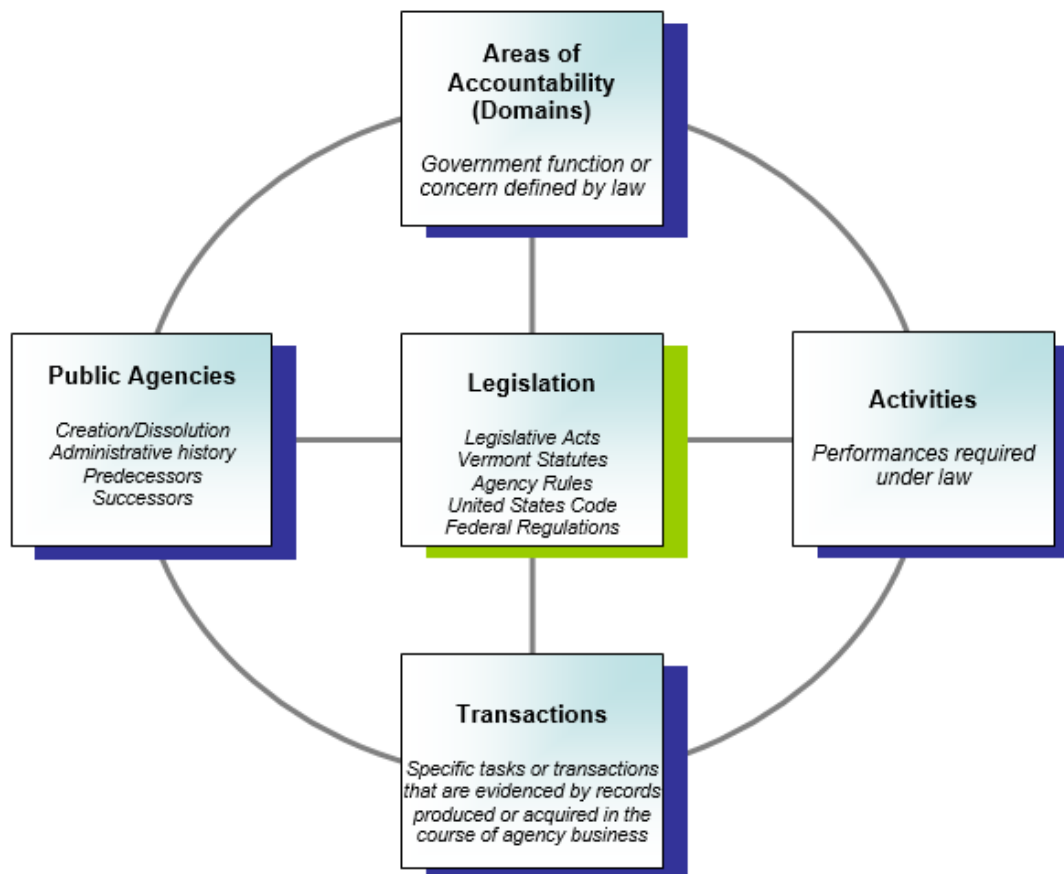
## **The Statewide Records and Information Management Program**

The Vermont State Archives and Records Administration uses functional analysis in all aspects of its work with public records. Functional analysis, by definition, is the study of a system through an understanding of its parts. It is a way to see the big picture from different angles and every undertaking of state and local government and the records and information produced or acquired in the course of public agency business can be described using functional classification.

The Vermont Functional Classification System (VCLAS) was developed by VSARA as a balanced approach for inventorying, appraising and scheduling government records and information. VCLAS also provides a mechanism for uniformly and systematically defining, describing and managing public records within the State of Vermont by breaking down business functions and their supporting documentation into basic concepts (facets).

VCLAS is used to break down the complexities of government into its basic parts: legislation; public agencies; areas of accountability; activities; and transactions. Within VCLAS, descriptive information about each part and its relationship and dependencies to other parts is collected, analyzed and reported using standardized terminology. As a result, VCLAS also serves as an objective documentation strategy of government functions, legislation and agencies over time. It also conforms to national and international standards and best practices for records and information management.

### The VCLAS Model



#### **More information:**

- VCLAS: [https://www.sec.state.vt.us/archives-records/records-management/standards-best-practices/classification-\(vclas\).aspx](https://www.sec.state.vt.us/archives-records/records-management/standards-best-practices/classification-(vclas).aspx)
- State of Vermont Recordkeeping Metadata Guideline: [https://www.sec.state.vt.us/media/67296/vermont\\_recordkeepingmetadataguideline.pdf](https://www.sec.state.vt.us/media/67296/vermont_recordkeepingmetadataguideline.pdf)
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