

No fees for inspection and fee waiver for public interest and indigence

§ 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS

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

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

(1) Actual cost of providing copies.

If copying equipment maintained for use by a public agency is used by the agency to copy the public record or document requested, the agency may charge and collect from the person requesting the copy the actual cost of providing the copy. The agency may also charge and collect from the person making the request, the costs associated with mailing or transmitting the record by facsimile or other electronic means.

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(f) After public hearing, the legislative body of a political subdivision shall establish actual cost charges for copies of public records. The legislative body shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine actual cost charges, the legislative body shall use the same factors used by the Secretary of State. If a legislative body fails to establish a uniform schedule of charges, the charges for that political subdivision shall be the uniform schedule of charges established by the Secretary of State until the local legislative body establishes such a schedule. A schedule of public records charges shall be posted in prominent locations in the town offices.

(g) "The agency or official having custody or control of a public record subject to a request under this section shall [or may] waive part or all of the total fee charged if

(1) The requester is indigent; or

(2) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

(h) State agencies shall provide receipts for all monies received under this section. Notwithstanding any provision of law to the contrary, a State agency may retain monies collected under this section to the extent such charges represent the actual cost incurred to provide copies under this subchapter. Amounts collected by a State agency under this section for the cost of staff time associated with providing copies shall be deposited in the General Fund, unless another disposition or use of revenues received by that agency is specifically authorized by law. Charges collected under this section shall be

deposited in the agency's operating account or the General Fund, as appropriate, on a monthly basis or whenever the amount totals \$100.00, whichever occurs first.

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Waiver of fees after denial reversed by head of agency

§ 318 PROCEDURE

(c)(1) Any denial of access by the custodian of a public record may be appealed to the head of the agency. The head of the agency shall make a written determination on an appeal within five business days after the receipt of the appeal. A written determination shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial.

(2) If the head of the agency reverses the denial of a request for records, the records shall be promptly made available to the person making the request. A failure by the agency to comply with any of the time limit provisions of this section shall be deemed a final denial of the request for records by the agency.

(3) Any fees assessed for the searching, compiling, redacting, and production of the public record shall be waived if the head of the agency reverses the denial of a request for records.

(d) In responding to a request to inspect or copy a record under this subchapter, a public agency shall consult with the person making the request in order to clarify the request or to obtain additional information that will assist the public agency in responding to the request and, when authorized by this subchapter, in facilitating production of the requested record for inspection or copying. In unusual circumstances, as that term is defined in subdivision (a)(5) of this section, a public agency may request that a person seeking a voluminous amount of separate and distinct records narrow the scope of a public records request.

Waiver of fees after petitioner is successful in court case

§ 319 ENFORCEMENT

(d)(1) Except as provided in subdivision (2) of this subsection, the court shall assess against the public agency reasonable attorney's fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed. **In such a case, the court shall order the agency to waive any fees associated with searching, compiling, redacting, and otherwise producing the record.**

Penalties for willful violations of the PRA

§ 319 PENALTIES

(a) Whenever the court orders the production of any public agency records, improperly withheld from the complainant and assesses against the agency reasonable attorney's fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether the agency personnel acted arbitrarily or capriciously with respect to the withholding, the Department of Human Resources if applicable to that employee, shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Department, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his or her representative. The administrative authority shall take the corrective action that the Department recommends. **If the court finds that an officer, employee, or other official of a public body or public agency has violated any provision of this subchapter willfully or in bad faith, the court shall impose against such person a civil penalty of not less than \$250 and not more than \$2,000.**

Exemption review and sunset

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

(d) On or before December 1, 2015, the Office of Legislative Council shall compile a list of all Public Records Act exemptions found in the Vermont Statutes Annotated. In compiling the list, the Office of Legislative Council shall consult with the Attorney General's office. The list shall be updated no less often than every two years, and shall be arranged by subject area, and in order by title and section number. The list, and any updates thereto, shall be posted on the websites of the General Assembly, the Secretary of State's Office, the Attorney General's Office, and the State Library, and shall be sent to the Vermont League of Cities and Towns

(e) In the 5th year after enactment of a new exemption or substantial amendment of an existing exemption to the Public Records Act, the exemption shall be repealed on July 1 of the 5th year, unless the Legislature acts to reenact the exemption. A law that enacts a new exemption or substantially amends an existing exemption must state that the record or meeting is repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.