

## Public Records Act- Introduction and Overview

### Vermont Constitution

Vt. Const. Chapter I, Art. 6

“That all power being originally inherent in and co[n]sequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them.”

- Article 6 is not self-executing. “To say that Article 6 is not self-executing is to say that the Legislature may select the means and details of executing the broad principles articulated in Article 6. Thus, the realization of Article 6’s philosophical vision is subject to those reasonable practical contours that the Legislature should set forth.”

“Because Article 6 provides general guiding principles rather than specific rights, direct judicial enforcement could occur only where the Legislature has acted so entirely contrary to the Article as to positively do violence to the vision of government described therein. The Legislature certainly may, in contrast, realize the general aims of Article 6 with more concrete rights by enacting legislation like the PRA.” Rutland Herald v. Vermont State Police, 49 A.3d 91, 104 (Vt. 2012).

### Federal Analogue

Freedom of Information Act, 5 U.S.C. § 552.

- FOIA preceded the Public Records Act by ten years. Provisions of FOIA were directly incorporated in the PRA, and courts have used FOIA as a touchstone for understanding the PRA.

### Vermont Public Records Act

1 V.S.A. chapter 3, subchapter 5.

*1 V.S.A. § 315 (Statement of policy)*

Subsec. (a) “It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought

to be protected unless specific information is needed to review the action of a governmental officer.”

- The Supreme Court of Vermont has interpreted this policy statement as an implied privacy proviso that requires the reviewing public agency to balance the public’s interest in disclosure with the individual’s interest in privacy. Rutland Herald v. City of Rutland, 48 A.3d 568, 579 (Vt. 2012); Kade v. Smith, 904 A.2d 1080 (Vt. 2006).

*1 V.S.A. § 316 (Access to public records)*

Subsec. (a) “Any person may inspect or copy any public record of a public agency[.]”

Subsec. (b) “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.”

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

- (1) the time directly involved in complying with the request exceeds 30 minutes;
- (2) the agency agrees to create a public record; or
- (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds 30 minutes.”

Subsec. (d) “The Secretary of State[...] shall establish the actual cost of providing a copy of a public record that may be charged by State agencies. The Secretary 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," the Secretary shall consider the following only: the cost of the paper or the electronic media onto which a public record is copied, a prorated amount for maintenance and replacement of the machine or equipment used to copy the record, and any utility charges directly associated with copying a record.”

Subsec. (g) “[...] If the public agency does not have [copying] equipment, nothing in this section shall be construed to require the public agency to provide or arrange for copying service, to use or permit the use of copying equipment other than its own, to permit operation of its copying equipment by other than its own personnel, to permit removal of the public record by the requesting person for purposes of copying[.]”

Subsec. (j) “A public agency may make reasonable rules to prevent disruption of operations, to preserve the security of public records or documents, and to protect them from damage.”

Doyle v. City of Burlington Police Department, 219 A.3d 326 (Vt. 2019).

- SCOV interpreted 1 V.S.A. § 316 based on the plain meaning of the statute.

“Section 316(c) authorizes an agency to ‘charge and collect the cost of staff time associated with complying with a request for a copy of a public record.’ 1 V.S.A. § 316(c) (emphasis added). By its plain language, this provision authorizes charges only for requests for copies of public records, not for requests for inspection. ‘We will not read an implied condition into a statute unless it is necessary in order to make the statute effective.’ If we interpret § 316(c) as also applying to requests to inspect, it would render ‘a copy of’ mere surplusage.” Id. at 328.

“[T]he plain language throughout § 316 indicates the Legislature's intent to distinguish requests to inspect public records from requests to copy them. Section 316 begins by providing that ‘[a]ny person may inspect or copy any public record.’ 1 V.S.A. § 316(a) (emphasis added). This disjunctive ‘or’ creates a distinction between requests to ‘inspect’ and to ‘copy’ that continues throughout the section. The statute specifies the times when a person may inspect public records in § 316(a)(1)-(2); authorizes charges associated with requests for copies in § 316(b) and § 316(c); and further addresses \*329 charges, equipment, monies, and formats for copies in § 316(d)-(i).” Id. at 329.

- State agencies may not charge for staff time spent responding to requests to inspect public records pursuant to the PRA.

*1 V.S.A. § 317 (Definitions; exemptions)*

Subsec. (a) “‘Public agency’” or ‘agency’ means any agency, board, department, commission, committee, branch, instrumentality, or authority of the State or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the State.”

- Some nonprofits may be subject to the Public Records Act when acting as the functional equivalent of a public agency. Whitaker v. Vermont Info. Tech. Leaders, Inc., No. 781-12-15 Wncv(Teachout, J., Oct. 28, 2016).

Subsec. (b) “‘public record’ or ‘public document’” means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business.”

- Includes digital documents stored in private accounts. Toensing v. Att’y Gen. of Vt., 178 A.3d 1000 (Vt. 2017).

Subsec. (c) lists the enumerated exemptions within the Public Records Act. However, there are at least 271 exemptions within the Vermont Statutes Annotated.

1	1 V.S.A. § 313(a): Minutes of executive sessions
2	1 V.S.A. § 317(c)(1): Records otherwise confidential by law
3	1 V.S.A. § 317(c)(2): Records which by law may only be disclosed to specifically designated persons
4	1 V.S.A. § 317(c)(3): Records the disclosure of which would violate professional ethics or conduct
5	1 V.S.A. § 317(c)(4): Records the disclosure of which would violate statutory/common law privilege
6	1 V.S.A. § 317(c)(5): Records of detection and investigation of crime that satisfy certain criteria
7	1 V.S.A. § 317(c)(6): Tax returns or tax records in possession of public agency
8	1 V.S.A. § 317(c)(7): Personal documents relating to an individual
9	1 V.S.A. § 317(c)(8): Test questions and exams for licensees, employment, or academic examination
10	1 V.S.A. § 317(c)(9): Trade secrets
11	1 V.S.A. § 317(c)(10): Lists of names, disclosure of which violates a right to privacy or produces public or private gain
12	1 V.S.A. § 317(c)(11): Student records
13	1 V.S.A. § 317(c)(12): Records concerning formulation of policy, where disclosure would violate a right to privacy
14	1 V.S.A. § 317(c)(13): Real estate information prior to state development
15	1 V.S.A. § 317(c)(14): Records relevant to litigation to which the public agency is a party of record
16	1 V.S.A. § 317(c)(15): Records relating to contract negotiations
17	1 V.S.A. § 317(c)(16): Voluntary information submitted by corporations to public agencies prior to enactment of Public Records Act
18	1 V.S.A. § 317(c)(17): Municipal inter- and intra-departmental communications preliminary to a policy determination
19	1 V.S.A. § 317(c)(18): Department of Public Safety internal investigations; see also 20 V.S.A. § 1923
20	1 V.S.A. § 317(c)(19): Identity of library patrons; see also 22 V.S.A. § 172
21	1 V.S.A. § 317(c)(20): Information regarding location of archaeological sites; ; see also 22 V.S.A. § 761
22	1 V.S.A. § 317(c)(21): Lists of names compiled by Vermont Life
23	1 V.S.A. § 317(c)(23): UVM and State Colleges research records
24	1 V.S.A. § 317(c)(24): Deliberations of agencies acting in judicial or quasi-judicial capacity
25	1 V.S.A. § 317(c)(25): Passwords, access codes, security procedures, and similar information, if disclosure would pose a safety or security threat
26	1 V.S.A. § 317(c)(26): Information submitted to the Department of Financial Regulation (DFR) regarding a dispute with a regulated entity
27	1 V.S.A. § 317(c)(27): Information submitted to the Department of Public Service regarding a dispute with a regulated utility
28	1 V.S.A. § 317(c)(28): Records of external review of health care and mental health service decisions; see also 8 V.S.A. §§ 4089a and 4089f
29	1 V.S.A. § 317(c)(29): Records of participant in Address Confidentiality Program; see also 15 V.S.A. § 1155

30	1 V.S.A. § 317(c)(30): State-controlled database structures and application code known only to certain State departments and that give the State a potential marketing advantage
31	1 V.S.A. § 317(c)(31): Voter information in voter registration application: DOB, license number, nondriver ID number, telephone number, e-mail address, and last four digits of SSN; see also 17 V.S.A. § 2154
32	1 V.S.A. § 317(c)(32): State building plans and layouts
33	1 V.S.A. § 317(c)(33): Account numbers for bank, credit, or debit cards held by a public agency
34	1 V.S.A. § 317(c)(34): Family court income affidavits
35	1 V.S.A. § 317(c)(36): Anti-fraud plans
36	1 V.S.A. § 317(c)(37) and 18 V.S.A. § 1917(a): records provided to the Department of Health pursuant to the Patient Safety Surveillance and Improvement System
37	1 V.S.A. § 317(c)(38): Records that include prescription information containing prescriber-identifiable data
38	1 V.S.A. § 317(c)(39): Records held by AHS or DFR that include prescription information containing patient-identifiable data
39	1 V.S.A. § 317(c)(40): Records of genealogy provided in an application or in support of an application for tribal recognition
40	1 V.S.A. § 317(c)(41) and 13 V.S.A. § 5358a: Documents reviewed by the Victim's Compensation Board for purposes of approving an application for compensation, and certain personal information of a victim
41	1 V.S.A. § 317(c)(42): Identity of whistleblowers
42	2 V.S.A. § 404(c): Requests by a member of the General Assembly to the Office of Legislative Council for legal assistance and information received in connection with research or drafting
43	2 V.S.A. § 502(b)(2): Requests by a member of the General Assembly to the Joint Fiscal Office for fiscal research and information
44	3 V.S.A. § 131: Complaints and other records produced or acquired in connection with the regulation of professions
45	3 V.S.A. § 163: Information gathered in the course of the juvenile diversion process and sealed records related to a juvenile court diversion proceeding
46	3 V.S.A. § 164: Information gathered in the course of the adult diversion process and sealed records related to an adult court diversion proceeding
47	3 V.S.A. § 241(h): Criminal history records and information received by certain State agencies in their initial background investigations of prospective personnel of who would be given access to federal tax information
48	3 V.S.A. § 316: Records of the Department of Human Resources where public policy properly requires them to be confidential
49	3 V.S.A. § 1223(c): Complaints regarding governmental ethics and related documents in the custody of the State Ethics Commission
50	3 V.S.A. § 1225(a): Guidance issued by the Executive Director of the State Ethics Commission, unless the receiving entity has publicly disclosed it
51	4 V.S.A. § 601(g), (h): Proceedings of the Judicial Nominating Board, including candidate information; exceptions
52	4 V.S.A. § 603: Names of candidates submitted by the Judicial Nominating Board to the Governor for judicial appointment when a candidate is not selected
53	4 V.S.A. § 608(c): Comments regarding judicial performance received by the Joint Committee on Judicial Retention
54	4 V.S.A. § 740: Supreme Court records; subject to confidentiality requirements
55	4 V.S.A. § 741: Credit card information while such information is in the possession of a court or the Judicial Bureau
56	5 V.S.A. § 1805: Records designated proprietary and furnished to the Agency of Transportation by certain companies under the Agency's supervision

57	5 V.S.A. § 3452: Information provided by railroads to the Agency of Transportation (AOT) or the Transportation Board
58	6 V.S.A. § 61: Identity of persons, households, or businesses providing agricultural information to the Agency of Agriculture, Food and Markets
59	6 V.S.A. § 366: Information concerning tonnage sales furnished by fertilizer distributors
60	6 V.S.A. § 484: Records acquired by the Agency of Agriculture, Food and Markets regarding the purchase and sale of maple products
61	6 V.S.A. § 1039: Information acquired by the Agency of Agriculture, Food and Markets regarding pesticide trade secrets or financial information
62	6 V.S.A. § 1152(g)(1): Records produced or acquired by the Secretary of Agriculture, Food and Markets in administering and enforcing the Livestock Disease Control Program, if the records would directly or indirectly disclose the identity of individual persons, households, or businesses
63	6 V.S.A. § 1815: Information acquired by the Northeast Dairy Compact Commission and its staff
64	6 V.S.A. § 2766: Any identifying information acquired by the Agency of Agriculture, Food and Markets or Attorney General regarding rbST inspection and reporting
65	6 V.S.A. § 2936(b): Reports from milk handlers acquired by the Vermont Milk Commission
66	8 V.S.A. § 15(b): The Commissioner of DFR can make public a portion of advisory interpretation and retain as confidential other portions
67	8 V.S.A. § 22: Information acquired by DFR pursuant to a confidentiality sharing agreement when the information is designated as confidential by the furnisher of the information
68	8 V.S.A. § 23: All records of investigations of banks and financial institutions licensed by DFR and all records and reports of examinations by the Commissioner of DFR
69	8 V.S.A. § 3316(h): Records related to corporate governance annual disclosure reports provided by insurers to the Department of Financial Regulation
70	8 V.S.A. § 3561: All market conduct annual statements and other information filed by insurance companies with DFR
71	8 V.S.A. § 3571: All financial analysis ratios and examination synopses concerning insurance companies that are submitted to DFR by the National Association of Insurance Commissioners' Insurance Regulatory Information System
72	8 V.S.A. § 3574(d): DFR examination reports of domestic insurance companies and foreign and alien insurance companies applying for admission or already admitted to do business in Vermont, and related records.
73	8 V.S.A. § 3577(l): Actuarial reports, actuarial opinion summaries, work papers, and any other information provided to DFR in connection with the actuarial report, work papers, or actuarial opinion summary
74	8 V.S.A. § 3588: Insurer's Own Risk and Solvency Assessment (ORSA) summary report filed with DFR
75	8 V.S.A. § 3683(a)(2): Notices of divestitures, acquisitions, and mergers related to domestic insurers
76	8 V.S.A. § 3683a(c): Preacquisition notification of any acquisition in which there is a change in control of an insurer licensed to do business in this State, but not domiciled in this State.
77	8 V.S.A. § 3687: Records obtained in the course of an examination or investigation of an insurance holding company system; registration statements and enterprise risk report of insurers part of a holding company system; prior notification of certain transactions involving a domestic insurer and a person in holding company system. See also 8 V.S.A. § 3696(f)(4).
78	8 V.S.A. § 3791q: Confidential information submitted under the insurance Standard Valuation Law
79	8 V.S.A. § 3839: Trade secret information included in a life settlement provider's annual statement to DFR

80	8 V.S.A. § 3840: Investigation and examination reports related to financial condition or market conduct of life settlement provider
81	8 V.S.A. § 4164(b): Records of negotiations or meetings of the Vermont Life and Health Insurance Guaranty Ass'n in carrying out its powers
82	8 V.S.A. § 4488(5): Notice to DFR from a fraternal benefits society of termination of appointment of an insurance agent
83	8 V.S.A. § 4813m(f): Any document or other information acquired by DFR that is furnished by an insurer, producer, or employee when obtained by DFR in an investigation of an insurer's termination of the appointment, employment, contract, or other business relationship with a person licensed as an insurance producer
84	8 V.S.A. § 6002(c): Information submitted to DFR in captive insurance company applications for licenses
85	8 V.S.A. § 6008(c): Any reports, information, or documents acquired by DFR in the course of an examination of captive insurance company
86	8 V.S.A. § 6048o: Records of special purpose financial captive insurance company obtained in the course of an examination
87	8 V.S.A. § 6049m: Information submitted by affiliated reinsurance companies to the Department of Financial Regulation
88	8 V.S.A. § 6052: Proprietary information submitted to DFR by risk retention groups
89	8 V.S.A. § 6074: Reports, work papers, recorded information, and documents produced or acquired by DFR in the course of the examination of a risk retention managing general agent
90	8 V.S.A. § 7041(e): Records of a DFR delinquency hearing of domestic insurer
91	8 V.S.A. § 7043: Records produced in the course of insurance delinquency proceedings
92	8 V.S.A. § 7112(c): Information in a legacy insurance transfer plan identifying policyholders and reinsurance counterparties.
93	8 V.S.A. § 8308: Risk-based capital reports and risk-based capital plans of insurers filed with DFR
94	9 V.S.A. § 2440(d),(f): General prohibition on disclosing Social Security numbers to the public; request for redacted record
95	9 V.S.A. § 2440(g): Records of investigation of violations of provisions related to Social Security number protection
96	9 V.S.A. § 2460: Attorney General or State's Attorney civil investigation records
97	9 V.S.A. § 4100b: Pre-hearing settlement communications of parties before the Transportation Board
98	9 V.S.A. § 4113(b): Petroleum storage facility reports filed with the Department of Public Service
99	9 V.S.A. § 4555: Complaint and investigation files of the Human Rights Commission
100	9 V.S.A. § 5607: Securities documents acquired by DFR, including records related to audits, inspections, and trade secrets
101	10 V.S.A. § 7(b): 90-day confidentiality of benchmark reports submitted to the ACCD by recipients of economic development assistance
102	10 V.S.A. § 123: Vermont Geographic Information Service; individual identifiers of persons supplying data
103	10 V.S.A. § 531(i): Employee-specific personal identifying information collected in connection with evaluating the Employment Training Program and the Workforce Education and Training Fund
104	10 V.S.A. § 563: Records or other information concerning an air contaminant source, other than emissions data and emission monitoring data, that qualifies as a trade secret
105	10 V.S.A. § 1259(b): Reports submitted to ANR as part of a water pollution control permit when disclosure would divulge a trade secret
106	10 V.S.A. § 4132(f): Records produced or acquired in the study or research of fish, wildlife, wild plants, or habitat when designated by the Commissioner of Fish and Wildlife as confidential if release of the record would present a threat of harm to a species

107	10 V.S.A. § 5410: Information regarding the specific location of threatened or endangered species sites; exceptions
108	10 V.S.A. § 6628(a): Toxic use reduction and hazardous waste reduction plans
109	10 V.S.A. § 6632: Trade secrets included in hazardous waste generator reports submitted to ANR
110	10 V.S.A. § 6678: Data reported to the Secretary of Natural Resources by a producer or stewardship organization pursuant to the Paint Stewardship Program
111	10 V.S.A. § 7153: Sales data and other confidential business information submitted to ANR by manufacturers of mercury-containing lamps
112	10 V.S.A. § 7553(b)(1)(D): Estimates of the aggregate total weight of a manufacturer's covered electronic devices sold during the previous program year submitted to the Secretary of Natural Resources under the Electronic Waste and Recycling Program
113	10 V.S.A. § 7592: Information protected under the Uniform Trade Secrets Act or 1 V.S.A. § 317(c)(9) that is submitted under a primary or rechargeable battery stewardship program
114	11 V.S.A. § 3058(g): LLCs; member right to information limited in the case of trade secrets or other information the disclosure of which the managers in good faith believe is not in the best interest of the company
115	12 V.S.A. § 1612: Health professional may not disclose a patient's privileged information in court procedure or court documents
116	12 V.S.A. § 1613: Attorney-client communications when client is a corporation
117	12 V.S.A. § 1614: Confidential communications made by a victim of sexual or domestic assault to a crisis worker
118	12 V.S.A. § 1705: Court records and court proceedings that involve personally identifiable HIV-related information
119	12 V.S.A. § 4634: Report filed in connection with mandatory mediation program in mortgage foreclosure actions
120	12 V.S.A. § 7012: Written and oral communications related to medical malpractice pre-suit mediation
121	13 V.S.A. § 3504(g): Information required to be reported, and information that is collected in support of investigations, of illness, disease, or death likely to have been caused by a weapon of mass destruction
122	13 V.S.A. § 4824: Report to National Instant Criminal Background Check System following a finding that an individual is a person in need of treatment
123	13 V.S.A. § 5259(d): Defender General investigations of issues related to the health, safety, and welfare of inmates in correctional facilities; investigation sources, inmate communications
124	13 V.S.A. § 5305(a): Address or telephone number of crime victim who requests notification of release or escape of a defendant
125	13 V.S.A. § 5322: Name or identifying information of an applicant to the Victim's Compensation Program, or a victim named in a restitution judgment order, or a recipient of the Domestic and Sexual Violence Survivor's Transitional Employment Program
126	13 V.S.A. §§ 5402, 5411, and 5411a: Sex Offender Registry information may only be disclosed in accordance with law
127	13 V.S.A. §§ 5402(b), 5411(b)(1), and 5411a(d): The identity of a victim of an offense that requires registration on the Sex Offender Registry
128	13 V.S.A. § 5411(d): Information about requesters of Sex Offender Registry records
129	13 V.S.A. § 7041: Records or files related to an expunged deferred sentence; special index of deferred sentences for sex offenses that require registration
130	13 V.S.A. § 7554c(e): Information obtaining during a pretrial risk assessment and pretrial needs screening
131	13 V.S.A. § 7606(d): Index of cases that have been expunged and expungement orders and certificates
132	13 V.S.A. § 7607: Criminal records subject to a sealing order



133	14 V.S.A. § 2: Wrapped wills until delivered to a person entitled to receive it or until disposed of according to law; index of wills
134	14 V.S.A. § 3067(e): Records of evaluation in proceedings for guardianship of mentally disabled person
135	14 V.S.A. § 3068(e): Records of hearing in response to a petition for guardianship of mentally disabled person when the court dismisses the petition
136	15 V.S.A. § 307: Voluntary acknowledgement of parentage forms; records on file with the court in parentage action that contain Social Security numbers
137	15 V.S.A. § 788: Address of parent, or name and address of employer of parent, subject to child support or parental rights and responsibilities order
138	15 V.S.A. § 1140: Records of the Domestic Violence Fatality Review Commission
139	15A V.S.A. § 2-105(d): Adoption Act; name of persons who provide information for or are the subject of a background report provided to prospective adoptive parent
140	15A V.S.A. § 6-102: Adoption Act; records on file with court or in the possession of an agency or provider in connection with an adoption; exceptions
141	15A V.S.A. § 6-104: Adoption Act; release of nonidentifying information from confidential adoption records
142	15A V.S.A. § 6-106: Adoption Act; identifying information of former parent of an adopted child who files a request for nondisclosure with adoption registry
143	15B V.S.A. § 1312: Family Support Act; address or identifying information, when disclosure would create an unreasonable risk to the health, safety, or liberty of a party or child
144	16 V.S.A. §166(b)(8)(C). Financial information submitted to the State Board of Education by an approved independent school, if the information is not already in the public domain
145	16 V.S.A. § 253: Criminal records or criminal record information received in background check of a person seeking educator license; a person offered a school superintendent or headmaster position; or prospective employees, certain persons under contract or employees of contractors, or student teachers
146	16 V.S.A. § 1708: Confidentiality of educator licensing matters
147	16 V.S.A. § 2827: Information that identifies applicants, recipients, beneficiaries, and participants in programs administered by the Vermont Student Assistance Corporation
148	17 V.S.A. § 2150(d)(7): Board of Civil Authority records relating to person's decision not to register to vote or to the identity of the voter registration agency through which any particular voter registered
149	17 V.S.A. § 2904(a): Attorney General or State's Attorney records of investigations of campaign finance violations
150	18 V.S.A. § 154: All information reported to the State Cancer Registry and all identifying information
151	18 V.S.A. § 157: Data and identifying information received by the Vermont Mammography Registry is confidential and privileged
152	18 V.S.A. § 1001: All communicable disease reports and information collected in support of investigations and studies to determine the nature or cause of any disease outbreak; records relating to HIV or AIDS that may identify a person
153	18 V.S.A. § 1094: Petition for a restraining order, and order, to prevent venereal disease testing
154	18 V.S.A. § 1099: All information received in infectious venereal disease reports
155	18 V.S.A. § 1129: Immunization Registry information
156	18 V.S.A. § 1141: Results of communicable disease testing
157	18 V.S.A. § 1552(c): Maternal mortality information collected and analyzed by the Northern New England Perinatal Quality Improvement Network
158	18 V.S.A. § 1554: Maternal Mortality Review Panel records and opinions
159	18 V.S.A. § 1852(a)(7): A person admitted to a hospital on an inpatient basis has right to expect all communications and records pertaining to his or her care shall be treated as confidential

160	18 V.S.A. § 4211: Prescriptions of regulated drugs and orders and records required by state law regarding regulated drugs
161	18 V.S.A. § 4284: Data collected under the Vermont Prescription Monitoring Program and all related information and records
162	18 V.S.A. § 4473(b)(5)(A): Records of appeal before the Medical Marijuana Review Board
163	18 V.S.A. § 4474d: Records of persons registered as medical marijuana patients or dispensaries or persons registered as a caregiver of a medical marijuana patient
164	18 V.S.A. § 4474i: Records of all registered medical marijuana patients and registered caregivers within a medical marijuana dispensary's records in the Department of Public Safety
165	18 V.S.A. § 4635(b)(1)(C)(ii). Information submitted to the Attorney General by health insurers with more than 5,000 covered lives in VT regarding the percentage by which the net cost to their plans for 10 prescription drugs has increased and their actual net expenditure for each of those drugs during the most recent calendar year
166	18 V.S.A. § 4635(e). Information submitted to the Attorney General by drug manufacturers, except for information prepared for release to the public
167	18 V.S.A. § 5083: Birth certificates; address and town of residence of participants in the Address Confidentiality Program
168	18 V.S.A. § 5088: Birth Information Network information
169	18 V.S.A. § 5112(c): Records related to the issuance of a new birth certificate in connection with a change of sex
170	18 V.S.A. § 5132: Marriage certificates; address and town of residence of participant in Address Confidentiality Program
171	18 V.S.A. § 5205(g): Autopsy reports for a person committed to the supervision of the Department of Corrections (DOC)
172	18 V.S.A. § 5222(d): Fetal death reports
173	18 V.S.A. § 5293: Information collected regarding compliance with law governing Patient Choice at End of Life
174	18 V.S.A. § 7103: Mental health records, other than records ordered or authorized to be disclosed
175	18 V.S.A. § 7257a: Records of the Mental Health Crisis Response Commission
176	18 V.S.A. § 7617a: Report to National Instant Criminal Background Check System following issuance of hospitalization order or nonhospitalization order
177	18 V.S.A. § 8713: Records related to proceedings regarding sterilization of adults with an intellectual disability
178	18 V.S.A. § 9306(c): Developmental disabilities evaluation is confidential unless disclosed with party consent
179	18 V.S.A. § 9309(b): Records of proceedings of guardianship hearing for developmentally disabled unless disclosed with party consent
180	18 V.S.A. § 9333(c): Genetic testing information
181	18 V.S.A. § 9382(b)(3), (d): Confidential or proprietary information provided to the Office of the Health Care Advocate in connection with Accountable Care Organization (ACO) budget review; patient- or provider-identifiable information in ACO filings with Green Mountain Care Board
182	18 V.S.A. § 9391: Records of proceedings of Green Mountain Care Board Nominating Committee, information submitted by board candidates, and names of candidates submitted and not selected
183	18 V.S.A. § 9414(f)(3): Information made available in quality review of managed care organizations
184	18 V.S.A. § 9418f(d)(5): Information provided to health care providers in connection with health care provider network contracts
185	18 V.S.A. § 9457: Patient and health care practitioner identifying information in hospital financial and services reporting requirements
186	18 V.S.A. § 9719(b): Information in Advance Directives Registry

187	19 V.S.A. § 2603: Financial information, trade secrets, or other business information customarily regarded as confidential when submitted to AOT as part of an application for qualification for design-build contracts
188	19 V.S.A. § 2604: Conceptual submissions and responses in application for design-build contracts
189	19 V.S.A. § 2606(a): Technical and price proposals during evaluation of design-build contract applications
190	20 V.S.A. § 1923(d): Records of the Department of Public Safety's Office of Internal Investigation, provided that the State Police Advisory Commission shall have full access to the records and may report such information to the public
191	20 V.S.A. § 1941: All DNA samples submitted to the Department of Public Safety laboratory; DNA records
192	20 V.S.A. §§ 2056–2056h, 2060: Records of the Vermont Criminal Information Center (VCIC)
193	20 V.S.A. § 2064(h): Criminal information received by authorized persons as part of a subscription service with VCIC unless statute authorizes disclosure
194	21 V.S.A. § 516: Drug test results of employees or applicants for employment
195	21 V.S.A. § 710(c): Name or contact information of an individual who has alleged to the Department of Labor (DOL) that an employer has made a false statement or misclassified an employee
196	21 V.S.A. § 1035(c): Financial information submitted to DOL by employee leasing companies
197	21 V.S.A. § 1314: Information obtained by the DOL regarding the unemployment benefit rights of an individual
198	23 V.S.A. § 104: Motor vehicle records; photo images of person
199	23 V.S.A. § 707: Individually identifying information about students obtained by DMV from the records of driver training schools
200	23 V.S.A. § 1213(m): Images and other individually identifiable information in the custody of a public agency related to the use of an ignition interlock device; exceptions
201	23 V.S.A. § 1607(c): Access to data collected with automated license plate recognition systems
202	24 V.S.A. § 1974a(e): Sealed criminal conviction in District Court for a municipal parking violation committed before January 1, 2005
203	24 V.S.A. § 2786(a)(1): Regional development corporation contracts or agreements prior to final execution when such contract or agreement is in furtherance of the corporation's public purposes
204	24 V.S.A. § 3262(d): Personal financial information filed with a municipal clerk by a participating or potential participating property owner under a Property-assessed Clean Energy District written agreement
205	26 V.S.A. § 75(d): Information submitted for peer reviews of licensed public accountants
206	26 V.S.A. §§ 1317(c) and 1368(a)(6)(C): Disciplinary information reported by health care institutions, and judgments or settlements involving a claim of professional negligence reported by insurers; information about pending malpractice claims or actual amounts paid
207	26 V.S.A. § 1318: Disciplinary complaints, proceedings, or records of the Board of Medical Practice when not required to be released by statute; investigatory files of the Board which have not resulted in a charge of unprofessional conduct; and work product of Board attorney
208	26 V.S.A. § 1353(6) and (8): The results of a mental, physical, or medical knowledge and skill evaluation that the Board of Medical Practice requires a licensee to complete; criminal history records
209	26 V.S.A. § 1443: Proceedings, reports, and records of health services peer review committees
210	26 V.S.A. § 4190(b): Written comments related to peer reviews required by rules governing licensed midwives

211	27 V.S.A. § 1253(c): Information concerning owner of abandoned property or specific abandoned property
212	28 V.S.A. § 107: Offender and inmate records maintained by the Department of Corrections; exceptions
213	28 V.S.A. § 204(d): Presentence investigation report or parole summary prepared by DOC; exceptions
214	28 V.S.A. § 205(b): Confidential information of an offender convicted of a crime listed in 13 V.S.A. § 5310(7), when the information is revealed by the offender in connection with participation in a treatment program
215	28 V.S.A. § 403(4): Register of people who ask to be informed of the parole interview or review of an inmate
216	28 V.S.A. § 903: DOC shall adopt rules regarding confidentiality of communications by an inmate made for the purposes of treatment, assessment, evaluations, screening, or programming while an appeal is pending
217	29 V.S.A. § 505(b)(2): Oil and gas well logs, directional surveys, and reports for two years after filing with Natural Gas and Oil Resources Board
218	29 V.S.A. § 542: Oil or natural gas well operator geologic well report submitted to Natural Gas and Oil Resources Board
219	29 V.S.A. § 543(c): Operator identifying information in oil or natural gas well reports submitted to the Natural Gas and Oil Resources Board
220	30 V.S.A. § 202e(c): Information regarding deployment of broadband, telecommunications facilities, or advanced metering infrastructure that is not publicly funded and is disclosed by telecommunications service providers voluntarily under nondisclosure agreement
221	30 V.S.A. § 202f(k): Information submitted by a telecommunications service provider concerning confidential financial or proprietary information
222	30 V.S.A. § 518(d): Commercial broadcasting station reports of fees charged for program content retransmitted on cable networks under a retransmission consent agreement
223	30 V.S.A. § 7055(b): Confidential information provided by local exchange telecommunications providers to the enhanced 911 Board or the Administrator of the 911 Database
224	30 V.S.A. § 7059: Individually identifiable information of a person in the 911 database; 911 customer information held by the 911 Board, the entity administering the enhanced 911 database, or emergency service providers; requests to municipalities to de-link name and street address
225	31 V.S.A. § 674(L11): Financial, tax, trust, or personal records filed, received, maintained, or produced by the Tri-state Lottery Commission in connection with payment of a prize
226	31 V.S.A. § 1205(c): Records and reports filed by licensed distributors and manufacturers relating to the distribution and sale of break-open tickets
227	32 V.S.A. § 163: Draft audit reports until the audit is completed
228	32 V.S.A. § 983: The books of registry held by the State Treasurer or other designated registrar
229	32 V.S.A. § 3102: Tax return, tax return information, and other tax records, unless disclosure authorized by statute
230	32 V.S.A. § 3341: Vermont Employment Growth Incentive Program; information and materials submitted by a business concerning its income taxes and other confidential financial information; exceptions [eff. 1/1/17]
231	32 V.S.A. § 3411(4): Information obtained by Division of Property Valuation and Review from local officials are subject to same confidentiality rules that apply to local officials under 32 V.S.A. § 4009
232	32 V.S.A. § 4009: Taxpayer inventories of taxable property, unless disclosure authorized by statute
233	32 V.S.A. § 5930a(h): Information submitted by a business to the Economic Progress Council regarding tax information or confidential business information [repealed eff. 1/1/17; see 32 V.S.A. § 3341 eff. 1/1/17]

234	32 V.S.A. § 5939(b): Taxpayer records or information released to a state claimant agency under the Vermont Setoff Debt Collection Act
235	33 V.S.A. § 105(g): Information about a case of child abuse or neglect that results in the fatality or near fatality of a child, when the Attorney General or State's Attorney investigating the matter requests that disclosure be withheld
236	33 V.S.A. § 111: Information pertaining to applicants for or recipients of assistance from DCF, except for administration by the Department or when required by law
237	33 V.S.A. § 1902a: Medicaid applications and records concerning any applicant for or recipient of Medicaid; exceptions
238	33 V.S.A. § 2002(c): Company identifiable trade secrets obtained by the Department of Health from pharmaceutical companies when negotiating, including rebate and supplemental rebate amounts, and manufacturer's pricing for Medicaid and other public assistance health benefit plans
239	33 V.S.A. § 2010(e): Pharmaceutical pricing data
240	32 V.S.A. § 3755(e): Any documents submitted by an applicant as evidence of income under the Agricultural and Managed Forest Land Use Value Program
241	33 V.S.A. § 4105: Information obtained by the Office of Child Support to establish, modify, or enforce a child support or parental rights order, unless disclosure is authorized by statute
242	33 V.S.A. § 4305: State Board of Education and Departments of Mental Health and for Children and Families shall jointly adopt rules regarding confidentiality of children and adolescents with severe emotional disturbance
243	33 V.S.A. § 4913(e): Name of person filing a child abuse report; and name of person mentioned in report, unless disclosure authorized by statute
244	33 V.S.A. § 4919: Child Abuse Registry records; limitations on authorized disclosure
245	33 V.S.A. § 4921: DCF records of child abuse investigations, assessments, reviews, and responses, unless disclosure authorized by law
246	33 V.S.A. § 5117(a), (c), (e): Court and law enforcement reports and files concerning a person subject to juvenile judicial proceedings, unless the statute allows disclosure; files of juvenile proceedings released in divorce proceedings; prohibition on redissemination by receiving persons unless authorized by law
247	33 V.S.A. § 5118(e): Written notice that a child has conducted a "delinquent act requiring notice" that is provided by a court to superintendent or head of school in which the child is a student
248	33 V.S.A. § 5119: Sealing of juvenile delinquency and care or supervision records, unless statute authorizes disclosure; special index of files or records that have been sealed, unless statute authorizes disclosure; motion by law enforcement or DCF to unseal juvenile judicial records; and victim's information retained by state's attorney unless disclosure authorized by statute
249	33 V.S.A. § 5201: All files related to withdrawn delinquency petition shall be sealed
250	33 V.S.A. § 5204(h) and (i): Court records and files of a person under the age of 16 who is tried as an adult but acquitted; records of hearing regarding transfer of a person from juvenile court unless disclosure authorized by statute
251	33 V.S.A. § 5205: Fingerprint files of children under the jurisdiction of the Family Division
252	33 V.S.A. § 5234: Notice to victim in delinquency proceeding prior to juvenile release; name of facility from which juvenile shall be discharged shall not be released
253	33 V.S.A. § 5282: Report from DCF as to whether a defendant under the age of 18 should be treated as a youthful offender, unless disclosure authorized by statute
254	33 V.S.A. § 5287: All court records of a youthful offender shall be expunged or sealed when the youth successfully completes probation and offender status is terminated
255	33 V.S.A. § 5309: All files related to a withdrawn petition that a child is in need of care or supervision shall be sealed
256	33 V.S.A. § 6321(c): Information received or compiled by Department of Disabilities, Aging, and Independent Living with respect to individuals using attendant care services

257	33 V.S.A. § 6705: Medical treatment records obtained by the Department of Vermont Health Access or designee when subrogated to the rights of an individual to which the Department provided medical assistance
258	33 V.S.A. § 6903(c): Identity of person reporting suspected abuse of a vulnerable adult, unless disclosure authorized by statute
259	33 V.S.A. § 6906(e): Records related to unsubstantiated reports of abuse, neglect, and exploitation of a vulnerable adult
260	33 V.S.A. § 6911: Information obtained through reports and investigations of allegations of abuse of vulnerable adults, unless disclosure authorized by statute; Vulnerable Adult Abuse Registry, unless disclosure authorized by statute
261	33 V.S.A. § 7112: Commissioner of Disabilities, Aging, and Independent Living is authorized to develop guidelines to ensure confidentiality and privacy of persons who file complaints of abuse to person receiving care from nursing facilities

1 V.S.A. § 317(c)(27): Information submitted to the Public Utility Commission regarding a dispute with a regulated utility
6 V.S.A. § 564(f): Records produced or acquired by the Agency of Agriculture, Food and Markets related to the location of parcels where hemp will be grown, including coordinates, maps, and parcel identifiers
6 V.S.A. § 1152(g)(1): Records produced or acquired by the Secretary of Agriculture, Food and Markets in administering and enforcing the Livestock Disease Control Program, if the records are confidential under federal law
6 V.S.A. § 1470(b): Records produced or acquired by the Secretary of Agriculture, Food and Markets in administering and enforcing the livestock movement program, if the records are confidential under federal law or would directly or indirectly disclose the identity of persons, households, or businesses
8 V.S.A. § 2117(k): All information obtained during an examination or investigation under 8 V.S.A. chapter 72
8 V.S.A. § 2126(3): All privileged or confidential material provided to the Nationwide Multistate Licensing System and Registry
10 V.S.A. § 1530(e): Data reported to the Secretary of Natural Resources or Commissioner of Taxes by a deposit initiator
18 V.S.A. § 1910: Information relating to the licensure of hospitals received by the State Board of Health through filed reports, inspections, or as otherwise authorized by law
18 V.S.A. § 2157: Information relating to the licensure of ambulatory surgical centers received by the Department of Health through filed reports, inspections, or as otherwise authorized by law

- In some instances, agencies are granted the authority to adopt PRA exemptions as part of rulemaking authority. The Administrative Procedures Act specifically requires agencies to provide notice of a new PRA exemption on the cover page submitted to LCAR. LCAR will send these rules to the House and Senate Committees on Government Operations for review.

Subsec. (e) “For any exemption to the Public Records Act enacted or substantively amended in legislation introduced in the General Assembly in 2019 or later, in the fifth year after the effective date of the enactment, reenactment, or substantive amendment of the exemption, the exemption shall be repealed on July 1 of that fifth year except if the General Assembly reenacts the exemption prior to July 1 of the fifth year or if the law otherwise requires.”

*1 V.S.A. § 317a (Management of public records)*

Subsec. (a) States the policy that public records “should 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.”

“Any public agency may seek services from 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[.]”

*1 V.S.A. § 318 (Procedure)*

Three timelines: “Promptly;” within one calendar week; and not more than ten business days.

Subsec. (b) provides “Upon request, the custodian of a public record shall promptly produce the record for inspection or a copy of the record[.]”

Subsec. (a) defines “promptly” as immediately, with little or no delay, and, unless otherwise provided in this section, not more than three business days [from receipt of the request.]”

Subsec. (b) further provides “If the record is in active use or in storage and therefore not available for use at the time the person asks to examine it, the custodian shall promptly certify this fact in writing to the applicant and, in the certification, set a date and hour within one calendar week of the request when the record will be available.”

Subdiv. (b)(5) states that in “unusual circumstances[...] the time limits prescribed in this section may be extended by written notice to the person making the request setting forth the reasons for the extension and the date on which a determination is expected to be dispatched.” The notice shall not specify a date “that would result in an extension for more than ten business days from receipt of the request[.]”

“Unusual circumstances” means:

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

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

(C) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein, or with the Attorney General.”

Subsec. (d) “[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[...] In unusual circumstances, as that term is defined in subdivision (b)(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.”

Subsec. (e) “A public agency shall not withhold any record in its entirety on the basis that it contains some exempt content if the record is otherwise subject to disclosure; instead, the public agency shall redact the information it considers to be exempt and produce the record accompanied by an explanation of the basis for denial of the redacted information.”

*1 V.S.A. § 319 (Enforcement)*

Subsec. (a) Allows any person aggrieved by the denial of a request to apply to enjoin the public agency from withholding the public records. Records are reviewed in camera.

Subsec. (d) Authorizes the court to assess attorney’s fees.

“(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.

(2) The court may, in its discretion, assess against a public agency reasonable attorney's fees and other litigation costs reasonably incurred in a case under this section in which the complainant has substantially prevailed provided that the public agency, within the time allowed for service of an answer under V.R.C.P. 12(a)(1):

- (A) concedes that a contested record or contested records are public; and
- (B) provides the record or records to the complainant.”



TA; 1/9/2020

*1 V.S.A. § 320 (Penalties)*

Subsec. (a) Authorizes the Department of Human Resources, upon the issuance of a written finding from the court that agency personnel acted arbitrarily, to initiate a proceeding to determine if disciplinary action is warranted against agency personnel.

Subsec.(c) “A person who willfully destroys, gives away, sells, discards, or damages a public record without having authority to do so shall be fined at least \$50.00 but not more than \$1,000.00 for each offense.”