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January 6, 2020

For immediate release

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New Year's Resolution: Protecting Access to Public Records

By Vermont Secretary of State Jim Condos

The start of the new year provides an opportunity to reflect and set out our intentions for the months ahead. This year, I am asking all Legislators to join me in committing to protect and expand access for Vermonters who are seeking access to public records.

The bottom line is: open government is good government!

Vermonters shouldn't have to pay for access to inspect public records their government creates in the course of agency business. Navigating who to ask, and how to request public records is enough of a hurdle for most Vermonters. They shouldn't also be charged an arm and a leg to inspect those records.

Remember, public records access isn't merely a courtesy that Vermont government extends to the public. These records actually belong to the public. Government agencies and staff are merely the custodians in possession of them.

Generous access to public records is rooted in the Vermont Constitution, and the Vermont statutes:

"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. ..." (1 V.S.A. § 315(a)).

Recent discussions around public records access in Vermont has me concerned, and with the start of the legislative session right around the corner, there is no doubt this issue may be brought before the Legislature.

I want to widen our focus and remind us that access to public records lies at the very core of government transparency and accountability.

Government should not be shutting Vermonters out, and operating behind closed doors - instead the doors should be opened, letting the sunshine in.

With trust in government at an all time low, I truly believe that sunshine is the best disinfectant.

The legal apparatus that ensure records access, the Public Records Act, makes clear that government agencies may not charge the public for access to inspect, and that the identity or motive of the requestor cannot be a factor when deciding on whether to grant access.

The Vermont Supreme Court (2019) decision in *Doyle v. Burlington Police Department* states clearly that the law does not allow charging for inspection of documents.

Additionally, the law says when charges are applicable, government can only charge for the actual cost incurred. This is critical to a functioning government, allowing the public to audit, criticize, and ultimately develop trust.

I know it isn't easy. Redacting information that shouldn't be broadly released, like personal medical information, or personal identification information from a record, can be onerous and take up staff time and resources.

To be frank, at times it can be a burden. As a government by and for the people, that is our burden to shoulder.

I hope that if our Legislature considers proposals to change Vermont's public records laws, they will join me in looking forward to strengthening the law, and not seek to move us backwards.

We should expand access by consolidating or clarifying the many exemptions spread across statute, and by creating a public records ombudsperson to support and enable the law to work effectively not only for the public, but also for the agencies wishing to follow the law and comply.

We should not be creating new lockboxes or throwing up curtains to further obscure the public's much-needed windows into the inner workings of state government.

I hope our Legislators will join me in making it our shared New Year's Resolution to protect and expand access to public records in 2020. Let's start the decade off with an open book and clear vision looking forward.

Happy New Year!

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