

## Public Records Act – Background

### 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.” Rutland Herald v. Vermont State Police, 49 A.3d 91, 104 (Vt. 2012).

### Public Records Act: Public Agency Duties and Procedure

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

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

- “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 a 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. § 317 (Definitions; exemptions)*

- “‘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.”

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- “‘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.”
- Subsection (c) lists the 42 enumerated exemptions within the Public Records Act. However, there are at least 271 exemptions within the V.S.A.
  - In some instances, agencies are granted the authority to adopt PRA exemptions as part of rulemaking authority. The Administrative Procedures Act requires agencies to provide notice of a new PRA exemption on the cover page submitted to LCAR.

*1 V.S.A. § 318 (Procedure)*

- Subsection (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.]”
- Subdivision (b)(5) states that in “unusual circumstances” the time limits may be extended to not more than ten business days from receipt of the request.”
- Subsection (d) authorizes public agencies to consult with the requestor to narrow the scope of the request:

“[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.”

**Public Records Act: Charge and Collection of Costs**

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

- Subsection (b) provides that a public agency may charge for the use of the agency’s copying equipment:

“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

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record by facsimile or other electronic means. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.”

- Subsection (c) establishes the instances in which a public agency may “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.”

- Subsection (g) states that a public agency shall use its own equipment to copy records, and that § 316 shall not be construed to require any public agency without copying equipment to allow the use of other equipment.

“A public agency having the equipment necessary to copy its public records shall utilize its equipment to produce copies. 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, or to make its own personnel available for making handwritten or typed copies of the public record or document requested.”

- Subsection (j) provides that public agencies may “adopt 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).

- The Supreme Court of Vermont interpreted 1 V.S.A. § 316 based on the plain language 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 [emphasis in original].

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“[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 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.