

## Attorney General's Office Report on Data Privacy

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### BACKGROUND

Public records are defined in the Vermont Public Records Act as “any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business” (1 V.S.A. § 317) and the Act requires *all* public agencies to manage their records and information, including data, in accordance with the records and information management laws of the State of Vermont. Executive branch agencies and departments have an additional mandate (3 V.S.A. § 218) to maintain an active and continuing records management programs, including keeping an accurate inventory of all their records.

The statutory program that directs and manages compliance with the records and information management laws of this State is the Statewide Records and Information Program (3 V.S.A. § 117), which is administered by the Vermont State Archives and Records Administration, a division within the Office of the Secretary of State. The Program is grounded in generally accepted record-keeping principles, industry standards and best practices to support compliance the Public Records Act, 3 V.S.A. § 117, and, where applicable, 3 V.S.A. § 218.

#### *Participation in Privacy Working Group Hearings*

In the fall of 2018, I actively participated in two hearings conducted by the Office of the Attorney General in coordination with the Department of Public Service. While most of the discussion focused on the private sector and consumer data, some questions were raised regarding “privacy” and public records. Words such as “privacy” and “sensitive,” while often used in Federal and state laws, are not defined as a separate category of records in the Vermont Public Records Act.

Understanding the context in which records and information are produced and acquired by public agencies – and the specific legal requirements that surround them – provides the necessary framework for acquiring actionable knowledge to develop, implement and sustain operable

internal controls, particularly in terms of compliance, within an agency or department's records and information management program.

Therefore, at the hearings, I reframed the public records discussion to how agencies and departments are required to manage their records and information and, more directly, how agencies and departments are expected to manage records and information that are exempt from public inspection and use to assure an appropriate level of protection. Overviews of generally accepted record-keeping principles and information governance maturity were also included in the discussion.

### **RECOMMENDATION OF THE SECRETARY OF STATE'S OFFICE**

We appreciate the work conducted by the Attorney General's Office in response to Act 66 of 2017 and Act 171 of 2018 and the recommendations outlined in the Attorney General's Office Report on Data Privacy to:

- Place a Chief Privacy Officer in the Vermont State Archives and Records Administration in the Secretary of State's Office; and
- Conduct a privacy audit of the State of Vermont's handling of citizen data.

For the government sector, Vermont State Government in particular, there are defined roles and responsibilities in existing statutes and under the Statewide Records and Information Management Program for managing records and information, including data. This includes scheduling records and information so they are retained only for as long as needed and protecting records and information that are exempt from public inspection and copying.

Legislation to bolster and support public officials such as myself, Chief Records Officer, and the Chief Data Officer – as well as appointed and elected officials – in directing, managing and supporting compliance with the Vermont Public Records Act and the records management laws of this state are welcome. Our recommendation, as it involves public records and the internal management and operations of public agencies, is to refer the report to the Senate and House Government Operations Committees.

In regards to public records specifically, we also support the addition of a position within the Vermont State Archives and Records and Information, under the Chief Records Officer, to collaborate with the Chief Data Officer and public agencies to balance privacy interests, records management requirements and the public's right to know. This position, as we see it, effectively would serve as an ombudsman role in regards to public records exemptions, a much needed role that has been often discussed but has not come to fruition.

We do not, however, support the creation a Chief Privacy Officer as described in the report. Conflating or merging the State obligations to educate and provide citizens with tools and resources to protect their data within the private sector with public agencies' statutory mandates to effectively and efficiently manage their records and information in accordance with Federal and state laws introduces unnecessarily conflict with the legislative intent of the Statewide Records and Information Management Program and existing roles and responsibilities for the effective and efficient management of public records.