

Senate Government Operations Committee: Public Records Discussion

Tanya Marshall, State Archivist & Chief Records Officer
Vermont State Archives & Records Administration, Office of the Secretary of State

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BACKGROUND

The Vermont State Archives and Records Administration (VSARA) is charged with administering the Statewide Records and Information Management (RIM) Program for all Vermont public agencies in accordance with Generally Accepted Recordkeeping Principles and other industry standards and best practices. The Statewide RIM Program, which calls for the sound and effective management of public records and information, regardless of format, by all public agencies, is cross-referenced in the Vermont Public Records Act (PRA) in 1 V.S.A. § 317a.

If not familiar with Generally Accepted Recordkeeping Principles, they are listed in the table below. There is also an industry standard for measuring the proficiencies or “maturity” of a public agency in each Principle on a scale of “1” (sub-standard) to “5” (transformative). These measurements provide great insight into an agency’s capabilities for fulfilling requirements under the PRA as well as the state’s broader records and information management laws.

Accountability	Transparency	Integrity	Protection
Compliance	Availability	Retention	Disposition

As Vermont’s State Archivist, Chief Records Officer and the state official who is responsible for directing VSARA and the Statewide RIM Program, which includes the state archives, I am in a unique position to discuss many aspects of the PRA including, but not limited to: the legislative intent behind the PRA based on the General Assembly’s own records in the state archives as well the records of other public bodies and public officials, particularly around the public’s right to inspect, or request an agency to provide copies of, public records and the public policy of “actual cost;” and the interrelatedness and dependencies between the management of public records by public agencies and the ability for agencies to effectively respond to public record requests.

1 V.S.A. § 316 AND ACTUAL COST: WHAT CAN THE STATE ARCHIVES TELL US?

The Vermont State Archives consists of state public records that have continuing value to the State of Vermont and its citizens. Vermont archival records document the rights of citizens, the decisions of government and the history of the State of Vermont. These critical public assets also provide context for the decisions and actions of Vermont public officials and agencies as well as the means for measuring the effectiveness of public policy over time.

VSARA has a *Continuing Issue Series* for the [Vermont Public Records Act](#) on its website. This series contains the legislative history of the PRA from 1976 through the present. The records in the Vermont State Archives go well beyond the legislative acts and their historical notes and therefore offer greater context for understanding the history of the PRA, including 1 V.S.A. § 316 and the public's right to inspect, or request an agency to provide copies of, public records as well as the State of Vermont's public policy of "actual cost." This includes the *Uniform Schedule of Public Record Charges for State Agencies* rule, first adopted by the Secretary of State in 1996 following amendments to 1 V.S.A. § 316 (Act 159) and last revised in 2003 following the passage of Act 158, which establishes "the actual cost of providing a copy of a public record that may be charged by State agencies."

Context is important as the Secretary of State's rule was adopted based not only on the legislative intent of the General Assembly but also the Interagency Committee on Administrative Rules (ICAR) and the Legislative Committee on Administrative Rules (LCAR) and their understanding of intent. In addition to the administrative records of these Committees and those of the Secretary of State, the Governor and other officials, the Vermont State Archives also has newspapers of record. Legislative coverage by the press on this subject provides even greater clarity on the legislative intent of 1 V.S.A. § 316, the public's right to inspect, or request an agency to provide copies of, public records, and the public policy of "actual cost," including the Secretary of State's rule.

I am happy to provide additional research and copies of records in the state archives that will help the Committee understand its (and the State's) decisions and actions regarding 1 V.S.A. § 316 or any other aspect of the PRA.

THE ROLE & VALUE OF RECORDS & INFORMATION MANAGEMENT

I entered the field of archives, records and information management at a pivotal time in government recordkeeping. Decisions in Federal cases like *Armstrong vs. the Executive Office of the President* and *Public Citizen vs. John Carlin, Archivist of the United States* had forced a mind shift in government recordkeeping practices, particularly around electronically stored records and information. As a result, I was given the extraordinary opportunity to study under a multidisciplinary team of national leaders in the areas of business, technology, records, and legal, including Lee Strickland, long-time Freedom of Information Act Officer for the Central Intelligence Agency and former Director of Information Policy at the University of Maryland.

Public records and information and the interrelatedness among public records laws, information policy, information technology, and the willfulness of public agencies to actively participate in their own information governance has been the focus of my career for more than 20 years – even though, sometimes, it feels more like being fully immersed in a longitudinal public records social science study or experiment than a career. With that in mind, as you take testimony on the PRA, I suggest keeping the following in mind:

- It is not only expected, but required, for public agencies to manage their records and information in a responsible and effective way. *But we shouldn't have to rely on laws to tell us to manage our records and information with purpose. As public servants, we are here to serve the public and our actions and decisions should be based on the right information being given to the right people at the right time – including citizens.*
- The Principles of “Availability” and “Protection” go hand in hand. If unable to efficiently provide nonexempt records and information when requested, there are also equal inefficiencies for protecting exempt records and information as required. *It is not a legal issue. This is an information governance and information security issue.*
- The “struggle is real” when it comes to public record requests, but it is a symptom of a systemic problem within the State of Vermont – not the cause of one. *As a state, we silo our expertise in information management, information policy, and information technology with*

bureaucratic and superficial, including sometime personal, divides that make failure in performance, processes and technologies almost inevitable. In Vermont, records and information management professionals are often underutilized and undervalued.

I am happy to provide additional information regarding the Statewide Records and Information Management Program, VSARA's analyses of the "maturity" of internal records and information management programs within state and local government, and how and where I allocate VSARA's five records and information management specialists to public agencies at the state and local government.

VERMONT STATE ARCHIVES AND RECORDS ADMINISTRATION

The Vermont State Archives and Records Administration has 18 full-time employees. As part of the Statewide Records and Information Management Program, we operate three enterprise or statewide enterprise record repositories and systems for state government: the State Records Center, the State Archives (vaults), and the Digital State Archives. We also manage a public reference room for the inspection or copying of records in the State Archives or, if requested and authorized by a state entity, the inspection or copying of records in the State Records Center.

In addition, we issue certified copies of vital records on behalf of the Vermont Department of Health, manage filings related to Administrative Procedure Act filings and Legislative Acts and Resolves, record several statutorily required instruments, and provide archival management assistance to the State of Vermont's historical record repositories (colleges and universities, historical societies and museums, and private business). We are also charged with administering the future Boards and Commission Registry.

In calendar year 2019, we performed more than 69,000 record related transactions. This statistic includes fulfilling:

- 3,356 requests to inspect (or download) archival records in the Digital State Archives
- 3,142 requests to inspect archival records in the State Archives (vaults)
- 614 requests to inspect records in the State Records Center (by agency request)
- 573 requests to provide copies of archival records in the State Archives (vaults)