

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.” 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(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. § 316 (Access to public records)

- Subsection (a) provides the general right to inspect public records: “Any person may inspect or copy any public record of a public agency[.]”
- Subsection (b) authorizes a public agency to charge for the costs of using 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 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) provides the bases for charging and collecting the cost of staff time:

“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.”

- Subsection (d) directs the Secretary of State to establish a uniform schedule of actual costs that may be charged by a State agency.

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

- Subsec. (a) defines “‘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.”

- Certain 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).
- Subsection (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).
- Subsection (c) lists the enumerated exemptions within the Public Records Act. However, there are at least 271 exemptions within the Vermont Statutes Annotated.
 - The PRA exemption lists may be viewed on the website of the General Assembly and are listed [in order](#), [by subject](#), and [by year of review for repeal](#).
 - 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.
- Subsection (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)

- Subsection (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.”

1 V.S.A. § 318 (Procedure)

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

- 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.]”
- Subsection (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.”
 - Subdivision (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.”
- Subsection (d) allows a public agency 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.”
- Subsection (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)

- Subsection (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.
- Subsection (d) authorizes the court to assess attorney’s fees.

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.”