

S. 79 Overview of Privacy and Public Records

To: Senate Committee on Economic Development, Housing and General Affairs.

From: Shaun Gilpin. Housing Program Administrator, DHCD

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During testimony on S. 79 on February 26, a concern was raised about privacy of rental housing business owners and release of data from a Rental Registry. It is important to note that most of the information the registry is proposed to collect is already publicly available through the Tax Dept. Landlord Certificate in [32 V.S.A. § 6069 \(f\)](#) and is also available on municipal grand list and the public Dept of Health lead prevention registry for landlords.

§ 6069. Landlord certificate

(f) Annually, on or before October 31, the Department [of Tax] shall prepare and make available to a member of the public upon request a database in the form of a sortable spreadsheet that contains the following information for each rental unit for which the Department received a certificate pursuant to this section:

- (1) name of owner or landlord;
- (2) mailing address of landlord;
- (3) location of rental unit;
- (4) type of rental unit;
- (5) number of units in building; and
- (6) School Property

DHCD's General Counsel has done some further research regarding DHCD's responsibilities under the Vermont Public Records Act (PRA), 1 V.S.A. §§ 315-320, which has existing protections for information collected by the State. [Full Text of Public Records Law](#). Below are some of the built-in protections which may apply to the data collected by the Rental Registry.

1 V.S.A. § 315(a): Abridged Policy statement:

"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.**"

Summary: the purpose of public records requests is to gain information about how the State is functioning. An entity's request may potentially be denied if the purpose of said request is something other than a review of government function.

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Potential protections for rental registry information already built into Statute:

§ 316 “Access to Public Records and Documents.”

Summary: This section lays out how records requests are made and the process for fulfilling them. Any person may inspect/request public records, but the State does not need to create a record that does not exist. Further, the requesting entity must pay for the staff time used to respond to any request which exceeds 30 minutes to respond to. Payment must be made prior to the delivery of the records.

§ 317 (c)(10) “Lists of names compiled or obtained by a public agency when disclosure would violate a person's right to privacy or produce public or private gain; provided, however, that this section does not apply to lists which are by law made available to the public, or to lists of professional or occupational licenses.”

Summary: The State may restrict the release of records for purposes of public or private gain.

§ 317 (c)(30) All State-controlled database structures and application code, including the vermontvacation.com website and Travel Planner application, which are known only to certain State departments engaging in marketing activities and which give the State an opportunity to obtain a marketing advantage over any other state, regional, or local governmental or nonprofit quasi-governmental entity, or private sector entity, unless any such State department engaging in marketing activities determines that the license or other voluntary disclosure of such materials is in the State's best interests.

Summary: this theoretically covers all “State-controlled database structures.” The “structure” refers to the actual types and categories of data collected, as well as how they are organized. This does not refer to the data itself. However, the State may have reason to restrict releasing the entire database to ensure the “structure” is protected. While this section focuses on vermontvacation.com and similar tourism/marketing databases, it does not limit the exception to said databases and could be construed more broadly.

Another Available Protection:

§ 317 (c)(2) “Records which by law may only be disclosed to specifically designated persons.”

Summary: This section allows other statutes to designate that data collected pursuant to said statute is protected and may only be released to “specifically designated persons.” One such registry that takes this approach is the Child Protection Registry, which includes a section detailing “Disclosure of Registry Records” [33 V.S.A. § 4919](#).

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Sen. Clarkson is asking David Hall to draft language including a reference to § 317 (c)(2) and specifying desired limitation on information sharing from the Registry.

The list of identified information on the Registry starts on page 14 of the current draft of S. 79. The phone information is to support the work of Fire Safety as a governmental function and the intent of the email address in particular is to make sure we can notify landlords of a variety of programs and communicate with them as we have resources or the need for apartments as we did this year in the pandemic. We should note that Secretary of State does release email addresses of owners and licensees.

We can discuss this tomorrow, but please let me know if you have any further questions.