January 20, 2026

RE: Public Comment on VLCT proposal: Modernization of Vermont Public Records Act

Dear Chair Birong, Vice Chair Hango, Ranking Member Evans and Members of the House Committee on Government Operations and Military Affairs:

Please accept this correspondence as a public comment on the on the Committee's review of Vermont's Public Records Act (PRA) and more specifically, the January 8 memorandum of the Vermont League of Cities & Towns (VLCT) regarding the Modernization of Vermont Public Records Act.

My main concern is that VLCT's proposal would create an unprecedented paywall for public records that contradicts Vermont's constitutional principles that government officers are "accountable" to citizens and the PRA's express policy of "free and open" access to public records.

While municipalities face legitimate administrative challenges, the cost shifting proposed would limit public access to those with the ability to pay.

It is a step back from open government, a bedrock principle of small-town democracy. A much more targeted approach is appropriate to remedy abuses.

A. Constitutional and Statutory Framework

Vermont's Constitution mandates that government officers are "trustees and servants" of the people, and "at all times … accountable to them" (Vermont Constitution, Ch. I, Art. 6). The PRA implements this principle, declaring in 1 V.S.A § 315 that access to public records should be "free and open" regardless of "inconvenience or embarrassment."[i] The statute specifically places the burden of proof on government to justify withholding records.[ii]

Accountability that depends on ability to pay is not meaningful accountability. Nor is access "free and open."

B. VLCT Misspoke on Response Time

VLCT testified on January 8 that municipalities have only 3 business days to respond to public record requests. This is incorrect. Vermont law currently allows up to 10 business days for unusual circumstances (1 V.S.A. § 318(b)(5)) - including voluminous records or necessary consultations.

Parties can also agree to extend deadlines.

VLCT's proposal for an across-the-board extension to the 14 business days is not supported by facts or a comparison to laws in other states.

C. Cost Shifting Creates Unprecedented Paywall

VLCT proposes complete cost-shifting of staff and attorney time onto the person requesting public records, creating a paywall. But it only provides anecdotal evidence in support.

Here are some questions that need consideration:

- How many municipalities are incurring significant out-of-pocket costs (VLCT suggests some have costs exceeding $100,000 on an annual basis);
- Is the problem traceable to particular requesters (suggesting vexatious curbs are appropriate);
- What proportion of requesters are no shows that don't want to pay copying costs (suggesting a deposit in advance is appropriate);
- Are the requesters local residents or commercial entities;
- What was the nature of the records requested that were problematic;
- Who does the redaction work for municipalities;
- What type of redactions requires the assistance of counsel;
- What existing statutory tools (consultation with requester to narrow requests, advice from state on compliance and on records management[iii]) were effective or ineffective; and
- Would municipalities benefit from procedures or records management tools currently in use by state agencies?

Without this information, wholesale changes are difficult to justify.

Notably, VLCT does not reference any other state that shifts costs of staff or attorney time to requesters. Indeed, the materials submitted to the Committee by William Clark of the National Conference of State Legislatures indicate that no state has taken this approach.

D. Eliminate the Municipal Deliberative Exemption

One particular cost concern cited by the VLCT representative at the January 8 meeting was attorney time to redact "deliberations" from emails. This is apparently a reference to the exemption for internal department communications at 1 V.S.A. § 317(c)(17), sometimes referred to as the deliberative process privilege.

However, that exemption should not exist. In 2005, the Legislature eliminated this privilege for itself and for state agencies. 1 V.S.A. § 317(c)(4).[iv] The Legislature determined that deliberative

materials should be public. Eliminating this exemption for municipalities would reduce the attorney redaction costs VLCT complains about, while increasing transparency.

There is no justification for municipalities to enjoy secrecy that the Legislature and state agencies do not have.

E. Other Considerations

To briefly touch on other issues raised at the January 8 meeting, it is worth noting that:

Act of denial (VLCT Recommendation #2). Eliminating deemed denials without clear accountability would allow indefinite delays. It's important to keep existing provisions that set bright-line deadlines. There is no penalty for a late response, which provides pragmatic flexibility.

Ombudsman. A number of states have ombudsmen to resolve disputes without litigation (per the NCSL presentation). Vermont could establish a similar process through the Secretary of State's office.

Administrative remedies. The Legislature may wish to consider authorizing the Secretary of State to make decisions regarding disputes involving the PRA (as well as the Open Meeting Law). An intermediate step before engaging the Courts has benefits.

Vexatious requests. VLCT's statutory remedy to address genuinely vexatious requests makes sense in concept, although it involves court proceedings. An ombudsman or administrative remedy may be preferable as an initial step.

Conclusion

A core principle of the Public Records Act is "free and open" access. The VLCT proposal would depart from this principle, creating a paywall to access, without sufficient data analysis or review of other state approaches. The more appropriate course is targeted, evidence-based reform, not measures that constrain public accountability or condition access based on ability to pay.

Thank you in advance for your consideration of my comments.

Sincerely,

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[i] The purpose section of the PRA, 1 V.S.A § 315, provides in relevant part:

> *(a) 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. Consistent with these principles, the General Assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed to implement this policy, and the burden of proof shall be on the public agency to sustain its action.*
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> *(b) The General Assembly finds that public records are essential to the administration of State and local government. Public records contain information that allows government programs to function, provides officials with a basis for making decisions, and ensures continuity with past operations. Public records document the legal responsibilities of government, help protect the rights of citizens, and provide citizens a means of monitoring government programs and measuring the performance of public officials. Public records provide documentation for the functioning of government and for the retrospective analysis of the development of Vermont government and the impact of programs on citizens.*

[ii] The Vermont Supreme Court has said: "In relying on an exception to disclosure, the agency cannot discharge this burden by conclusory claims or pleadings; it must make the specific factual record necessary to support the exception claim." (Internal quote marks and citations excluded.) Trombley v. Bellows Falls Union High School, 60 Vt. 101, 624 A.2d 857, 861 (1993). See also, e.g., US RIGHT TO KNOW v. Univ. of Vermont, 2021 VT 33 ¶ 9, 255 A. 3d 719 (2021).

[iii] The PRA seemingly provides means to address problematic requests. Under 1 V.S.A § 318(d), the public agency "shall consult" with the person making the request and may ask the person to "narrow the scope" of a request. In addition, the Secretary of State "shall provide municipal public agencies [with] information and advice." 1 V.S.A § 318(g). Further, in connection with the encouragement in § 317a that public records be "systematically managed to provide ready access to vital information," public agencies "may seek services from the Statewide Records and Information Management Program."

[iv] The exemptions to public records at 1 V.S.A § 317(c) include:

> (4) Records that, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to the General Assembly and the Executive Branch agencies of the State of Vermont.
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> …
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> (17) Records of interdepartmental and intradepartmental communications in any county, city, town, village, town school district, incorporated school district, union school district, consolidated water district, fire district, or any other political subdivision of the State to the extent that they cover other than primarily factual materials and are preliminary to any determination of policy or action or precede the presentation of the budget at a meeting held in accordance with section 312 of this title.

(Emphasis added.)