

# Public Records and the Vermont General Assembly

NOVEMBER 20, 2024

---

TUCKER ANDERSON, LEGISLATIVE COUNSEL AND RECORDS OFFICER

A solid green horizontal bar at the bottom of the slide.

# TOPICS

---

- (1) Background on the Public Records Act (PRA)
- (2) What exemptions may apply to legislative records?
- (3) What happens if a legislator or committee receives a public records request?
- (4) Records management starter kit

# Background on the PRA

---

- The PRA creates a general right to public inspection and copying of public records.
- A “public record” is any written or recorded information, *regardless of physical form or characteristics*, produced or acquired “in the course of public agency business.” 1 V.S.A. § 317(b).
- A “public agency” means any “agency, board, ... committee, branch, instrumentality, or authority of the State” or of a political subdivision of the State. 1 V.S.A. § 317(a)(2).

# Physical Form or Characteristics

---

Public records may take the form of:

- e-mails and attachments, including e-mails in personal or work accounts;
- a text message;
- an instant chat or voicemail;
- a letter or memorandum, whether printed in hard copy or not; or
- a hand-written note, audio recording, etc.

# What Does a Request Look Like?

---

The PRA does not require the requestor to follow specific guidelines for the submission of a request.

A request may take any form, provided that the public agency has enough notice and information to understand that a record is being requested.

Example: “When you have a chance, can you send me a copy of the H.111 draft?”

# Basic Mechanics of the PRA

---

- A member of the public makes a request. The motive of the requester is irrelevant.
- The custodian must respond within three business days. Under certain circumstances, the custodian may have seven calendar or ten business days to respond.
- If withholding a record under an exemption, the custodian must identify the record withheld and state the basis for the withholding.
- The requester may be responsible for copying costs, or staff expenses if compliance time exceeds 30 minutes (if copies are requested).

# Exemptions Generally

---

The PRA recognizes numerous exemptions to the right of public inspection and copying, which may:

- (1) appear in the PRA itself;
- (2) appear elsewhere in law, including the V.S.A., the Vermont Constitution, federal law, or regulation; or
- (3) be grounded in the common law (for example, the attorney-client privilege).

# What Exemptions to the PRA Apply to Legislative Records?

---

- Under 2 V.S.A. § 403(b), requests submitted to the Office of Legislative Counsel for legal assistance, information, and advice, and information received in connection with those requests, are confidential.
- Members hold this statutory privilege and may waive it.



# Other Exemptions

---

- The attorney-client privilege (largely coextensive with 2 V.S.A. § 403(b)).
- Requests for fiscal assistance and information provided in connection with such requests. (See 2 V.S.A. § 523(b).)
- The following may be exempt, provided that a privilege applies to:
  - (1) correspondence with constituents; and
  - (2) records comprising deliberation, including information collection, within the sphere of legislative business.

# What Happens if You Receive a PRA Request?

---

- Legislative counsel can provide assistance in complying with the PRA's requirements and deadlines.
- Please notify me (Tucker Anderson) as soon as possible if you receive a request for records.
- We can discuss the best process to search your records, how to review for any exemptions that may apply, the pros and cons of claiming exemptions, and how to prepare a certified response.

# Records Management

---

- Legislative records, including e-mails, should be kept on your legislative account. Political and personal records should be kept on your personal accounts.
- Within your legislative e-mail, it is a best practice to organize your e-mail by subject or retention period. Please contact me or an IT representative if you would like to discuss how to create and organize e-mail folders within Outlook.
- Documents should be saved with uniform and consistent file names so that you can easily retrieve them in the future.

# Final Points

---

- If you receive a records request, please be prepared to act promptly. Based on the statutory deadlines for a response, time will be of the essence.
- The General Assembly and its members are subject to litigation holds (see handouts).

## QUESTIONS?

Tucker Anderson, [tanderson@leg.state.vt.us](mailto:tanderson@leg.state.vt.us)