



State of Vermont
Office of the Secretary of State
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James C. Condos, Secretary of State
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PROGRAM: *The Vermont Transparency Tour*

PROJECT LEAD: Chris Winters, Deputy Secretary of State

SUBJECT AREA: Open Government; Public Service; Municipal Assistance

DESCRIPTION: *The Transparency Tour* is a statewide presentation of the Secretary of State's office. The Secretary and his team travel to a dozen locations across the state every other year to talk to Vermonters in their hometowns about Vermont's public records and open meeting laws. These discussions with municipal and state officials and citizens who serve on local government boards provide a unique educational opportunity for these community volunteers. It helps local officials and the citizens who interact with them understand the importance of transparency and the trust and accountability that comes with open government.

EXECUTIVE SUMMARY:

The Vermont Transparency Tour has occurred every other Fall since 2011. Each election off-year, the Secretary of State team has made at least 12 stops across the State of Vermont to present information to local citizens and municipal officials about the ever-changing open meeting law and public records act. With more than 36 stops and thousands reached, *the Transparency Tour* has earned a following both in person and through our online materials and people have come to love and expect the program to come to a town near them.

Local government in Vermont is largely supported by elected volunteers. *The Tour* has helped to make our local government officials more effective in their roles as public servants as they interact with sometimes complicated open meeting and public record laws.

Secretary of State Jim Condos ran and was elected in 2010 on a platform of transparent and accountable government. The Office of the Vermont Secretary of State has a mission of promoting trust and confidence in government through excellence in transparency, customer service, innovation, and accountability.

We believe that better government equals better lives, and we work hard every day to prove it. Our core values include ensuring TRANSPARENCY through honesty, fairness, consistency, and follow-through; delivering responsive, reliable and user-friendly CUSTOMER SERVICE in every government interaction; connecting citizens to their government through INNOVATION that is fueled by talent, technology and transformation; and, creating ACCOUNTABILITY by prudently managing the resources placed within our care.

The Transparency Tour embodies all of these values and allows us to engage with our constituents in a personal and positive way, promoting and strengthening positive state-local interactions by providing information, assistance, and educational materials related to municipal and open government laws. This approach has also helped to foster greater faith and trust in government in a time when that is sorely needed.



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October 7, 2015

For Immediate Release

Contact: Liz Kane, 828-2148

For more information, visit [our website](#).

PRESS RELEASE

Secretary of State Jim Condos Announces Third Statewide Transparency Tour

Montpelier, VT—Secretary of State Jim Condos is pleased to announce the start of his third biennial Transparency Tour. The tour will stop at 12 locations across the state to discuss Vermont's public records and open meeting laws with municipal and state employees and citizens who serve on local government boards. The public is invited and encouraged to attend.

Secretary Condos states, "Good government is open and transparent government! This tour will not only allow me to assist Vermont's public officials who must abide by these open meeting and public records laws every day, but also explain these laws to citizens who are looking to hold their governments accountable."

After a presentation, there will be a chance for Q&A and a general discussion with the audience. Secretary Condos welcomes the chance to answer any questions attendees may have regarding the nuances of these laws.

"I look forward to the opportunity to engage Vermonters in a thoughtful discussion on open and transparent government this fall," Secretary Condos noted.

All events will be held from 6-8pm. Dates and locations are as follows:

Tues., Oct 13 th	Newport	Goodrich Memorial Library, Assembly Room, 202 Main St.
Thurs., Oct 15 th	White River Jct.	Hartford Town Hall, 171 Bridge St.
Mon., Oct 19 th	Montpelier	Kellogg Hubbard Library, Hayes Room, 135 Main St.
Wed., Oct 21 st	South Burlington	South Burlington City Hall, 575 Dorset St.
Tues., Oct 27 th	Springfield	Springfield High School Cafeteria, 303 South St.
Tues., Nov 3 rd	St. Albans Town	St. Albans Town Hall, 579 Lake Rd.
Wed., Nov 4 th	Stowe	Stowe Free Library, 90 Pond St.
Mon., Nov 9 th	Brattleboro	Brattleboro Town Hall, Selectboard Mtg Room, 230 Main St.
Tues., Nov 10 th	St. Johnsbury	St. Johnsbury Middle School Auditorium, 257 Western Ave.
Thurs., Nov 12 th	Middlebury	Ilseley Public Library, Community Room, 75 Main St.
Mon., Nov 16 th	Bennington	Bennington Fire Facility, 130 River St.
Tues., Nov 17 th	Rutland	Rutland Free Library, Fox Room, 10 Court St.

Published October 14, 2015 in the [Rutland Herald](#)

Government 'transparency tour' hits the road

By Josh O'Gorman
VERMONT PRESS BUREAU

MONTPELIER — State officials are touring Vermont to talk with municipal and elected officials, as well as the public, to encourage more open government.

Secretary of State James Condos is embarking on what he's calling a "Transparency Tour," which will make stops from Newport to Brattleboro. On it, he said, he'll address everything from open meetings law to public records access.

For Condos, who has held about 30 of these types of meetings since taking office in 2011 — with previous tours also happening during off-election years — the meetings boil down to two things: trust and respect.

"Vermont residents deserve to be able to trust their government, and our elected officials deserve to be respected by the public," Condos said Tuesday. "I've said it before and I'll say it again: Good government is open and transparent government."

The tour kicked off Tuesday night in Newport and continues Thursday at Hartford Town Hall in White River Junction.

Condos recalled one of the bigger issues from his tour two years ago, the availability of municipal meeting minutes. State law requires a board or commission to make minutes available within five days of a meeting, but at tour stops Condos heard from the public that municipal boards were not complying with the law.

"When I was doing the tour in October, I was hearing that the last meeting minutes that were available were from June," said Condos, noting subsequent legislative action in 2014 requiring municipalities to post the minutes on their websites.

Condos said he expects to hear more about the meeting minutes mandate during the upcoming tour. Although the law went into effect last year, it included a one-year grace period, meaning that not posting the minutes within five days did not become a violation of open meetings law until this year.

Another change borne out of past transparency tours is the tightening of regulations surrounding the warning of upcoming meetings.

Previously, state law only required a municipal board or commission to make an agenda available prior to the start of a meeting. Now, Boards must warn a regularly scheduled meeting 48 hours in advance, or a special meeting 24 hours in advance. All meetings will be held from 6 to 8 p.m. In addition to Thursday's gathering at the Hartford Town Hall, upcoming meetings include:

- Oct. 19 at Kellogg-Hubbard Library in Montpelier.
- Oct. 27 at Springfield High School.
- Nov. 4 at Stowe Free Library.
- Nov. 9 at Brattleboro Town Hall.
- Nov. 12 at Ilsley Public Library in Middlebury.
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- Nov. 17 at Rutland Free Library.



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Got Transparency?

2015 Transparency Tour



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Why Are We Here?

- **Democracy- Accountability-Openness**

- The public has a right to know!
- Comes from the Vermont Constitution.
- VT's open meeting and public records laws are some of our most important because they allow us direct access to the decisions that affect us.
- Understanding these laws makes everyone a better citizen.



In Government, the Ultimate Boss is the Public

Vermont Constitution - Chapter 1, Article 6.

That all power being originally inherent in and consequently 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.



In Government, the Ultimate Boss is the Public

Declarations of public policy

1 V.S.A. § 311. Declaration of public policy

... public commissions, boards and councils and other public agencies in this state exist to aid in the conduct of the people's business and are accountable to them pursuant to Chapter I, Article VI of the Vermont constitution.

1 V.S.A. § 315. 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...



What is a “Meeting?”

- A *gathering*
- of a *quorum*
- of the members of a *public body*
- For the purpose:
 - *of discussing the business of the public body*
 - *or for taking an action.*



What is a Quorum?

- A majority of the entire public body

1 V.S.A. § 172. Joint authority

When joint authority is given to three or more, the concurrence of a majority of such number shall be sufficient and shall be required in its exercise.



What is a “Public Body?”

- Any *board, council or commission of the state* or one or more of its *political subdivisions*;
- any *board, council or commission of any agency, authority or instrumentality of the state* or one or more of its *political subdivisions*;
- or any *committee of any of the foregoing boards, councils or commissions*.

...except that "public body" does not include councils or similar groups established by the governor for the sole purpose of advising the governor with respect to policy. (1 V.S.A. § 310(3))



What is “Discussing Business” or “Taking Action?”

- *Discussing anything that the public body has the authority to oversee.*
- *Open Meeting laws apply regardless of where a quorum of the public body is gathered.*



What is NOT a Meeting?

- “Meeting” shall not mean written correspondence or an electronic communication, including e-mail, telephone, or teleconferencing, between members of a public body for the purpose of:
 - o scheduling a meeting,
 - o organizing an agenda, or
 - o distributing materials to discuss at a meeting.
- Remember: the above correspondence or electronic communication will be subject to inspection and copying under the Public Records Act.



Meeting by Electronic Means

- ***As long as requirements of the open meeting laws are met***, one or more of members of a public body may attend a regular, special, or emergency meeting by electronic or other means without being physically present at a designated meeting location.
 - ***If one or more members attend a meeting by electronic or other means:***
 - *Such members may fully participate in discussing the business of the public body*
 - *May vote to take an action*
 - *However, any vote of the public body that is not unanimous shall be taken by roll call.*
 - ***Each member who attends a meeting without being physically present at a designated meeting location shall:***
 - *identify himself or herself when the meeting is convened;*
 - *be able to hear the conduct of the meeting, and*
 - *be heard throughout the meeting.*



Meeting by Electronic Means

- If a quorum or more of the members of a public body attend a meeting without being physically present at a designated meeting location, the following additional requirements shall be met:
 - o The required meeting agenda *shall designate at least one physical location* where a member of the public can attend and participate in the meeting.
 - o At least one member of the public body, or at least one staff or designee of the public body, *shall be physically present* at each designated meeting location.



Electronic Communications & Social Media

- **Group email**
 - Permissible for scheduling a meeting, creating an agenda, or distributing information for discussion at a meeting.
 - Permissible as part of quasi-judicial deliberations, after a public hearing and as part of producing a written decision.
 - Otherwise, group email should not be used by a quorum of a public body to discuss the body's business.
- **Google Docs and collective editing**
 - Permissible if a body is in deliberative session as part of a quasi-judicial proceeding.
 - Otherwise, we recommend that a quorum of a public body should not participate in collectively editing a business document outside of a duly-warned public meeting.

We strongly recommend that public bodies consult their own legal counsel for advice on handling electronic communications and social media.



Electronic Communications & Social Media

- **Social media groups**

- o Participation in a Facebook group, Front Porch Forum, or other online group by a quorum of a public body raises concerns any time the body's business is discussed.
- o Online groups with "closed" membership are especially problematic.
- o Even passive, non-posting membership of a quorum in a "open" group that discusses the body's business could be considered a "meeting" under a very strict reading of the law.
- o Bottom line: avoid gathering to discuss business at a time and place that has not been announced in advance or is not accessible to all.

Again, we strongly recommend that public bodies consult their own legal counsel for advice on handling electronic communications and social media as the case law is evolving.



Electronic Communications & Social Media

- **Text messaging**
 - During open meetings:
 - Texting between members who are present is not recommended (though not explicitly prohibited). May create appearance of impropriety.
 - Texting with members who are not physically present about the body's business is generally not appropriate. May not comply with electronic meeting requirements.
 - During executive session:
 - Texting about the business of the executive session with persons who are not permitted by statute to attend the session is not appropriate.
 - Texting with members who were absent from the open portion of the meeting is not recommended (though not explicitly prohibited). May work to generate public mistrust.

Legal counsel...



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To Whom or When Does the Open Meeting Law Not Apply?

- The **judicial branch** of the government of Vermont
- The **public service board**
- Any public body in connection with a **quasi-judicial proceeding**
- **Site inspections** for the purpose of assessing damage or making tax assessments or abatements
- **Clerical work or work assignments** of staff or other personnel
- **Routine day-to-day administrative matters** that do not require action by the public body. . .
 - provided that no money is appropriated, expended, or encumbered.



Meetings & Notices

The public must be given notice of meetings!

- **Regular Meetings**

- o A public body must adopt a resolution specifying its regular meeting schedule in this instance,
- o Post an agenda
- o Provide an agenda upon request

- **Special Meetings**

- o The time, place and purpose of a special meeting must be publicly announced at least 24 hours before the meeting,
- o Post an agenda
- o Requires a minimum of 3 public postings AND to each member of the public body.
- o JRP2 the news media or any person has provided a written request for notification of meetings, they must be notified.

- **Emergency Meetings**

- o Emergency meetings are called to respond to “an unforeseen occurrence or condition requiring immediate attention.”
- o May be held without public announcement, without posting of notices and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting.



Agendas

- **A meeting agenda shall be posted:**
 - At least 48 hours prior to a regular meeting, and
 - At least 24 hours prior to a special meeting,
- **Where?**
 - posted to a website, if one exists, that the public body maintains or designates as the official website of the body; and
 - in the case of a municipal public body, posted in or near the municipal office and in at least two other designated public places in the municipality.
- **A meeting agenda shall be made available to any person** prior to the meeting upon specific request.
- **Any addition to or deletion from the agenda** shall be made as the first act of business at the meeting.
- **Any other adjustment to the agenda** may be made at any time during the meeting.



Opportunity to be Heard!

- **All Public Bodies**

- *The public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained. (1 V.S.A. § 312(h))*
- *Public comment shall be subject to reasonable rules established by the chairperson.*



Minutes

Public bodies SHALL take minutes!

"The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting."

1 V.S.A. § 312 (b)

- **Minutes shall include at least the following:**
 - o All members of the public body present;
 - o All other active participants in the meeting;
 - o All motions, proposals and resolutions made, offered and considered, and what disposition is made of same; and
 - o The results of any votes, with a record of the individual vote of each member if a roll call is taken.
- **Minutes shall be matters of public record,**
 - o shall be kept by the clerk or secretary of the public body, and
 - o shall be available for inspection by any person and for purchase of copies at cost upon request after five days from the date of any meeting.



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Minutes- A New Requirement

- Meeting minutes shall be posted:
 - no later than five calendar days from the date of the meeting
 - to a website, if one exists, that the public body maintains or has designated as the official website of the body.
- **NEW:** Except for draft minutes that have been substituted with updated minutes, posted minutes shall not be removed from the website sooner than one year from the date of the meeting for which the minutes were taken.



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Additional Rights

- Upon request, the agendas of regular or special meetings must be made available to the public or news media prior to a meeting.
- A JRP3 person that wishes to be notified of special meetings must provide a written request to the public body.
 - A written request is good for the rest of the calendar year
 - If the request is made in December, it is good for the next calendar year
- Members of the public or news media have the right to attend meetings AND to tape or videotape meetings so long as it is not done in a manner that disrupts the meeting.
- The public or news media have the right to know the reason a board is going into executive session.



When Can a Board Meet in Private?

- A board may only go into executive session
 - upon a majority vote of the board,
 - on a motion made in an open meeting,
 - indicating the reason for going into executive session.
- The only permissible reasons for going into executive session are set forth in **1 V.S.A. § 313**.
- A board may invite into executive session its attorney, administrative staff and persons who are subjects of the discussion or whose information is needed.
- No decision may be made in executive session except...
Quasi-judicial decisions may be made in deliberative session so long as there is a written decision that is a public record.



What May Be Considered in Executive Session?

(1) After **making a specific finding** that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage involving:

- contracts;
- labor relations agreements with employees;
- arbitration or mediation;
- grievances, other than tax grievances;
- **pending or probable civil litigation or a prosecution**, to which the public body is or may be a party;
- **confidential attorney-client communications made for the purpose of providing professional legal services to the body;**

(2) The negotiating or securing of real estate purchase **or lease** options;

(3) The appointment or employment or evaluation of a public officer or employee, **provided that the public body shall make a final decision to hire or appoint a public officer or employee in an open meeting and shall explain the reasons for its final decision during the open meeting;**

(4) A disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;

(5) A clear and imminent peril to the public safety;



More Reasons for Entering Executive Session

- (6) Discussion or consideration of records or documents excepted from the access to public records provisions of subsection 317(b) of this title. Discussion or consideration of the excepted record or document shall not itself permit an extension of the executive session to the general subject to which the record or document pertains;
- (7) The academic records or suspension or discipline of students;
- (8) Testimony from a person in a parole proceeding conducted by the parole board if public disclosure of the identity of the person could result in physical or other harm to the person;
- (9) Information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c).
- (10) Municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety.**



Open Meetings

Meetings held without respecting the details of the law may be illegal, and the courts may regard any actions taken in those meetings as voidable.

More importantly, illegal meetings offend our notions of:

...openness,

...accountability,

...our democracy.

In Vermont, the people rule, sometimes directly, sometimes through elected or appointed representatives, but always with the benefit of public scrutiny.



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Are There Penalties?

1 V.S.A. § 314 - Penalty and enforcement

(a) A person who is a member of a public body and who knowingly and intentionally violates the provisions of this subchapter,
a person who knowingly and intentionally violates the provisions of this subchapter on behalf or at the behest of a public body,
or who knowingly and intentionally participates in the wrongful exclusion of any person or persons from any meeting for which provision is herein made,
shall be guilty of a misdemeanor and shall be fined not more than \$500.00.

(b) The attorney general or any person aggrieved by a violation of the provisions of this subchapter may apply to the superior court in the county in which the violation has taken place for appropriate injunctive relief or for a declaratory judgment.

- These proceedings take precedence on the docket and are to be expedited in every way.



GOT TRANSPARENCY? TOUR 2015

Pre-Enforcement Process

- Prior to instituting an action, the Attorney General or any person aggrieved by a violation shall provide the public body written notice that alleges a specific violation of this subchapter and requests a specific cure of such violation. The public body will not be liable for attorney's fees and litigation costs if it cures in fact a violation.
- Upon receipt of the written notice of alleged violation, the public body shall respond publicly to the alleged violation within 10 calendar days by:
 - (A) acknowledging the violation of this subchapter and stating an intent to cure the violation within 14 calendar days; or
 - (B) stating that the public body has determined that no violation has occurred and that no cure is necessary.
- Failure of a public body to respond to a written notice of alleged violation within 10 calendar days shall be treated as a denial of the violation for purposes of enforcement of the requirements of this subchapter.
- Within 14 calendar days after a public body acknowledges a violation, the public body shall cure the violation at an open meeting by:
 - (A) either ratifying, or declaring as void, any action taken at or resulting from:
 - i) a meeting improperly noticed under 1 V.S.A. § 312(c) (public announcement and posting of regular, special, and emergency meetings);
 - ii) a meeting that a person or the public was wrongfully excluded from attending; or
 - iii) an executive session, or portion of an executive session, that was not authorized by 1 V.S.A. § 313(a)(1)-(10); and
 - (B) adopting specific measures that actually prevent future violations.



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Pre-Enforcement Process, Continued

- Following an acknowledgment or denial of a violation and, if applicable, following expiration of the 14-calendar-day cure period for public bodies acknowledging a violation, the Attorney General or any person aggrieved by a violation of the provisions of this subchapter may bring an action in the Civil Division of the Superior Court in the county in which the violation has taken place for appropriate injunctive relief or for a declaratory judgment.
- An action may be brought under this section no later than one year after the meeting at which the alleged violation occurred or to which the alleged violation relates.
- The Court shall assess against a public body found to have violated the requirements of this subchapter reasonable attorney's fees and other litigation costs reasonably incurred in any case under this subchapter in which the complainant has substantially prevailed, unless the Court finds that:
 - (A) the public body had a **reasonable basis in fact and law** for its position; and
 - (B) the public body acted in **good faith**. In determining whether a public body acted in good faith, the Court shall consider, among other factors, whether the public body responded to a notice of an alleged violation of this subchapter in a timely manner under subsection (b) of this section; or
 - (C) the public body **cured the violation in accordance with subsection (b)** of this section.



OPEN MEETING LAW QUESTIONS?



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What is a “Public Record?”

- “Any written or recorded information,
- regardless of physical form or characteristics,
- which is produced or acquired in the course of public agency business.” (1V.S.A. § 317(b))

Remember! Records Are Not Limited to Paper!

All Government Records Are Public Records.

Some Public Records are Exempt from Disclosure.



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Public Records Policy

1 V.S.A. § 315. 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.

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.



When Can the Public Inspect and Copy?

- Any person may inspect or copy any public record of a *State agency* between 9 AM and 12 PM and 1 PM and 4 PM on any day other than Saturday, Sunday or a legal holiday. (1 V.S.A. § 316(a)(1))
- For *public agencies of municipalities and other political subdivisions of the State*, the right to inspect and copy applies during customary business hours. (1 V.S.A. 316(a)(2))



YOU CAN ASK, BUT...

“The identity and motive of the requestor cannot be considered when weighing access to public documents.”

*Vermont Supreme Court decision in
Shlansky v. City of Burlington and Burlington Police Department 2010 VT 90.*



Public Record Exemptions

Public agencies are required to produce records for inspection or copying unless the record is exempt from public inspection or copying.

While a list of public records exemptions is found in 1 V.S.A. § 317, additional specific exemptions are also found elsewhere in State and Federal laws and regulations.



Public Record Exemptions

Examples of commonly exempt records:

- *personal documents relating to*
 - *an individual,*
 - *medical information*
 - *Social Security numbers*
- *investigations,*
- *trade secrets,*
- *tax records*

Each agency should know and maintain a compilation of specific State and Federal laws and regulations that affect inspection and copying of records in their custody.



Burden of Proof

“The Public Records Act represents a strong policy favoring access to public documents and records. ...Exceptions to that general policy of disclosure are listed in 1 V.S.A. § 317(c).

We construe these exceptions strictly against the custodians of records and resolve any doubts in favor of disclosure...

The burden of showing that a record falls within an exception is on the agency seeking to avoid disclosure.”

Vermont Supreme Court decision in Wesco, Inc. v. Sorrell, 2004 VT 102 [internal citations omitted]



Right To Know Database

A tool for locating and identifying laws that affect access to VT public records is available on the Secretary of State's VSARA website.

You can search exemptions by agency, exemption type, or through a keyword search:

<http://vermont-archives.org/records/access/database>



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Complying with a Request

- *All public agencies are obligated to comply.*
- *Unless otherwise allowed by law, agencies must accept records requests in any manner or format.*
- *An agency may require requests to be made in writing if staff time will contribute to the cost of complying with the request. (1V.S.A §316(c))*
- *Upon receiving a record request, the custodian of the record must promptly produce the record for inspection. (1V.S.A. §318(a))*



Complying with a Request

If the record is in active use or in storage and not available for use at the time of the request,

- the custodian of the record must certify in writing that the records are not currently available and
- establish a day and time, within one week of the request, that the record will be available. (1V.S.A. § 318 (a)(1))

If a record does not exist, the record custodian must certify in writing that the record does not exist. (1V.S.A. § 318 (a)(1))



Complying with a Request

- *If the record custodian believes that the record is exempt from public access, the custodian of the record must certify in writing what records are exempt and the basis for the denial which exemption applies.*
- *Unless there are “unusual circumstances,” a certification must be made within 3 business days of receiving the request; the custodian of the record must inform the requester that she or he has a right to appeal to the head of the agency.*
- *If the denial of access is appealed and the agency head determines that the record custodian must comply with the request, the records must be made available promptly. (1V.S.A. § 318 (a)(2))*



Complying with a Request

“Unusual circumstances” means:

- The agency cannot comply with the time limits outlined in Public Records Law.
- If an agency needs an extension, it must submit a written notification to the individual making the request and specify the reason(s) why and the date when a determination will be made.

Extensions may not exceed 10 business days and are only allowed for the following reasons:

- (1) the need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request;
- (2) the need to search for, collect, and appropriately examine a voluminous amount of records;
- (3) the need for consultation with another agency having a substantial interest in the determination of the request or among 2 or more components of the agency having substantial subject matter interest therein, or with the attorney general.
(1V.S.A. § 318(a)(5))



Access Denied?

If access is denied by the record custodian and that denial is appealed to the agency head, the agency head must make a written determination within 5 business days.

The written determination shall include:

- the asserted statutory basis for denial, and
- a brief statement of the reasons and supporting facts for denial.
(1 V.S.A. § 318(c))



More on Denial

If the head of an agency upholds the denial of a request for records in whole or in part, the agency shall notify the person making such request of the provisions for judicial review of that determination under section 319 of Title 1. (1 V.S.A. § 318 (a)(3))

If the head of the agency reverses the denial of a request for records, the records shall be promptly made available to the person making the request. (1 V.S.A. § 318 (c))



Narrowing the Request

In responding to a request to inspect or copy a record under this subchapter,

- 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*
- and, when authorized by this subchapter, in facilitating production of the requested record for inspection or copying.*

In unusual circumstances, as that term is defined in subdivision (a)(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."

(1 V.S.A. § 318(d) as added by Act No. 59 of 2011)



Redacting Exempt Information

It has always been best practice, whenever possible, to redact exempt information and provide the remainder of a document.

NOW it is mandated by statute:

“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. § 318(e) as added by Act No. 59 of 2011)



Mandatory Attorney Fees

Under prior law...

judges had the option to make the State (or a municipality) pay the attorney and other legal costs of a party who successfully challenged an agency denial – but such impositions of fees against agencies were more the exception than the rule.

Under current law...

judges are required, except in narrow exceptions, to make an agency pay attorney and other legal costs to a successful challenger. (1 V.S.A. § 318(d) as added by Act No. 59 of 2011)



Do I Have To Gather New Information Or Create Documents In Order To Respond To A Records Request?

No!

A requestor cannot obligate the government to create a record which is not already in existence or required by law.

Vermont Supreme Court decision in Welch v. Seery, 138 Vt. 126, 129 (1980)



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Agencies May Charge To Create Documents That Don't Yet Exist

If an agency receives a request for a record that does not already exist, and is willing and able to develop the requested information, it may charge for that undertaking.

It should provide an estimate of the charges in writing in advance, and may require payment before it commences the effort.
(1 V.S.A. § 316(c)(2))



Fees for Copies of Public Records

Agencies' fees for copying of public records must follow standards that are established by law. Absent any particular statutory fee, public agencies must establish fees based on what is allowed by [1 V.S.A. § 316](#).

Agencies may only charge and collect from the public the actual cost of providing the copy, including mailing or transmission.

Staff time for complying with a public record request may not be charged or collected unless:

- *Staff time directly involved in complying with the request exceeds 30 minutes;*
- *The agency agrees to create a new record; or*
- *The agency agrees to provide the record in a non-standard format and the staff time involved exceeds 30 minutes.*

Upon request, an agency must provide an estimate of the charge. The agency may request that any requests subject to staff time charges be made in writing and that all charges be paid prior to delivery. Receipts must be provided.



Uniform Schedule of Public Record Charges for State Agencies

1 V.S.A. § 316: *the Secretary of State is mandated to establish the actual cost of providing a public record that may be charged by state agencies.*

The Secretary of State is also required to establish the amount that may be charged for staff time.

The Uniform Schedule of Public Record Charges for State Agencies may only consider the following factors set forth in 1 V.S.A. § 316(d):

- The cost of the paper or the electronic media onto which a record is copied;*
- A prorated amount for maintenance and replacement of the machine or equipment used; and*
- Utility charges directly associated with copying a record.*



Are There Penalties?

1 V.S.A. § 320. Penalties

(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.



QUESTIONS?



THANK YOU!

Please call or visit our office with any questions!

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