

May 27, 2021

Overview of Vermont Public Records Act

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- Background of PRA
- Cannabis Control Board as “public agency”
- What is a “public record”?
- Personal devices & accounts
- Transitory documents
- Statutory time frame
- Common exemptions to the PRA
- Q&A

Outline



Provide for “free and open
examination of records”



In the public interest to be able
to review and criticize
government decisions



PRA is to be “liberally construed”
to implement this policy

Statement of Policy of PRA

1 V.S.A. § 315

DEFINITION OF “PUBLIC AGENCY”

“[A]ny agency, board, department, commission, committee, branch, instrumentality, or authority of the State [or political subdivision thereof].” 1 V.S.A. § 317(a)(2)

DEFINITION OF “PUBLIC RECORD” OR “PUBLIC DOCUMENT”

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



Must Relate to Functioning of Government

Only records integral to
functioning of
government are public.

U.S. Right to Know v. UVM , No. 2020-110,
2021 VT 33 (2021).

Factors Showing a Record Integral to Functioning of Government



Contains information bearing on government function



Provides government officials with bases for making decisions



Serves to ensure continuity with past government operations



Documents the responsibilities of government actors

USE OF PERSONAL DEVICES AND ACCOUNTS



Use of Personal Devices and Accounts

The Public Records Act
applies to public records
that are stored in private
accounts or on personal
devices.

Toensing v. Attorney General of Vermont ,
206 Vt. 1 (2017).

“[O]nly needed for a limited period of time in order to complete a routine action or prepare or update a formal or ongoing record.”

*General Records Schedule
1000.1000*

Transitory Records

Public records must be
produced “promptly” upon
request.

“Prompt” means 3 business
days.

1 V.S.A. § 318 (a)

Statutory Timeframe

Calculating the Deadline

TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1
4	5	6	7	8
	1	2	3	
11	12	13	14	15



Records which, if made public, would cause the custodian of the record to violate any statutory or common law privilege.

1 V.S.A. § 317(c)(4)

Exemption: Attorney- Client Privilege

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When Is a Communication Protected by Attorney-Client Privilege?

Carnelli v. State of Vermont, No. 395-6-14
Wncv (J. Teachout, July 7, 2015) (Decision:
Cross Motions for Summary Judgment)



Existence of attorney-client relationship



Communication made for the purpose of facilitating the rendition of professional legal services



Client sought lawyer's "skill and training"



Client reasonably would have expected communications to be confidential

When Is a Communication Protected by Attorney-Client Privilege?

Personal documents
relating to an individual.

1 V.S.A. § 317(c)(7)

Exemption:
Personal
Documents

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What Makes a Document “Personal”?

Trombley v. Bellows Falls Union High School

Dist. No. 27, 160 Vt. 101 (1993)



Privacy of an individual is involved



Reveal intimate details of a person's life



Might subject individual to "embarrassment, harassment, disgrace, or loss of employment or friends."



Information is personal if it would normally not be shared with strangers

What Makes a Document "Personal"?

Records designated by law
as “confidential” or by a
similar term.

1 V.S.A. § 317(c)(1)

Exemption:
Documents
Designated
Confidential



Another statute designates records as confidential, e.g., sealing of criminal records statute



Construed narrowly to implement the strong policy in favor of disclosure



Sometimes by invoking § 317(c)(1) you would reveal the nature of the docs (e.g., expunged criminal records)



Example: An operating plan

When is a record designated “confidential”?

Q & A