

1 V.S.A. § 317

Current through Act Nos. 104 and M-21 of the 2023 Adjourned Session of the 2023-2024 Vermont General Assembly

Vermont Statutes Annotated > Title 1 General Provisions (Chs. 1 — 25) > Chapter 5. Common Law; General Rights (Subchs. 1 — 5) > Subchapter 3. Access to Public Records (§§ 315 — 320)

§ 317. Definitions; public agency; public records and documents; exemptions

(a) As used in this subchapter:

- (1) “Business day” means a day that a public agency is open to provide services.
- (2) “Public agency” or “agency” means any agency, board, department, commission, committee, branch, instrumentality, or authority of the State or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the State.

(b) As used in this subchapter, “public record” or “public document” means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying.

(c) The following public records are exempt from public inspection and copying:

- (1) Records that by law are designated confidential or by a similar term.
- (2) Records that by law may only be disclosed to specifically designated persons.
- (3) Records that, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the State.
- (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.
- (5)
 - (A) Records dealing with the detection and investigation of crime, but only to the extent that the production of such records:
 - (i) could reasonably be expected to interfere with enforcement proceedings;
 - (ii) would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecution if such disclosure could reasonably be expected to risk circumvention of the law;

(vi) could reasonably be expected to endanger the life or physical safety of any individual.

(B) Notwithstanding subdivision (A) of this subdivision (5), records relating to management and direction of a law enforcement agency; records reflecting the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, as that term is defined in 23 V.S.A. § 2302; and records reflecting the charge of a person shall be public.

(C) It is the intent of the General Assembly that in construing subdivision (A) of this subdivision (5), the courts of this State will be guided by the construction of similar terms contained in 5 U.S.C. § 552(b)(7) (Freedom of Information Act) by the courts of the United States.

(D) It is the intent of the General Assembly that, consistent with the manner in which courts have interpreted subdivision (A) of this subdivision (5), a public agency shall not reveal information that could be used to facilitate the commission of a crime or the identity of a private individual who is a witness to or victim of a crime, unless withholding the identity or information would conceal government wrongdoing. A record shall not be withheld in its entirety because it contains identities or information that have been redacted pursuant to this subdivision.

(6) A tax return and related documents, correspondence, and certain types of substantiating forms that include the same type of information as in the tax return itself filed with or maintained by the Vermont Department of Taxes or submitted by a person to any public agency in connection with agency business.

(7) Personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote, or discipline any employee of a public agency; information in any files relating to personal finances; medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his or her designated representative.

(8) Test questions, scoring keys, and other examination instruments or data used to administer a license, employment, or academic examination.

- (9) Trade secrets, meaning confidential business records or information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that is not patented, which a commercial concern makes efforts that are reasonable under the circumstances to keep secret, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it, except that the disclosures required by 18 V.S.A. § 4632 are not exempt under this subdivision.
- (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 that are by law made available to the public, or to lists of professional or occupational licensees.
- (11) Student records, including records of a home study student; provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, as may be amended.
- (12) Records concerning formulation of policy where such would constitute a clearly unwarranted invasion of personal privacy if disclosed.
- (13) Information pertaining to the location of real or personal property for public agency purposes prior to public announcement of the project and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts thereof.
- (14) Records that are relevant to litigation to which the public agency is a party of record, provided all such matters shall be available to the public after ruled discoverable by the court before which the litigation is pending, but in any event upon final termination of the litigation.
- (15) Records relating specifically to negotiation of contracts, including collective bargaining agreements with public employees.
- (16) Any voluntary information provided by an individual, corporation, organization, partnership, association, trustee, estate, or any other entity in the State of Vermont, which has been gathered prior to the enactment of this subchapter, shall not be considered a public document.
- (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.
- (18) Records of the Office of Internal Investigation of the Department of Public Safety, except as provided in 20 V.S.A. § 1923.
- (19) Records relating to the identity of library patrons or the identity of library patrons in regard to library patron registration records and patron transaction records in accordance with 22 V.S.A. chapter 4.
- (20) Information that would reveal the location of archaeological sites and underwater historic properties, except as provided in 22 V.S.A. § 761.

(21) [Repealed.]

(22) [Repealed.]

(23) Any data, records, or information produced or acquired by or on behalf of faculty, staff, employees, or students of the University of Vermont or the Vermont State Colleges in the conduct of study, research, or creative efforts on medical, scientific, technical, scholarly, or artistic matters, whether such activities are sponsored alone by the institution or in conjunction with a governmental body or private entity, until such data, records, or information are published, disclosed in an issued patent, or publicly released by the institution or its authorized agents. This subdivision applies to, but is not limited to, research notes and laboratory notebooks, lecture notes, manuscripts, creative works, correspondence, research proposals and agreements, methodologies, protocols, and the identities of or any personally identifiable information about participants in research. This subdivision shall not exempt records, other than research protocols, produced or acquired by an institutional animal care and use committee regarding the committee's compliance with State law or federal law regarding or regulating animal care.

(24) Records of, or internal materials prepared for, the deliberations of any public agency acting in a judicial or quasi-judicial capacity.

(25) Passwords, access codes, user identifications, security procedures, and similar information, the disclosure of which would threaten the safety of persons or the security of public property.

(26) Information and records provided to the Department of Financial Regulation by a person for the purposes of having the Department assist that person in resolving a dispute with any person regulated by the Department, and any information or records provided by a person in connection with the dispute.

(27) Information and records provided to the Department of Public Service or the Public Utility Commission by an individual for the purposes of having the Department or Commission assist that individual in resolving a dispute with a utility regulated by the Department or Commission, or by the utility or any other person in connection with the individual's dispute.

(28) Records of, and internal materials prepared for, independent external reviews of health care service decisions pursuant to 8 V.S.A. § 4089f and of mental health care service decisions pursuant to 8 V.S.A. § 4089a.

(29) The records in the custody of the Secretary of State of a participant in the Address Confidentiality Program described in 15 V.S.A. chapter 21, subchapter 3, except as provided in that subchapter.

(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.

(31) Records of a registered voter's month and day of birth, driver's license or nondriver identification number, telephone number, e-mail address, and the last four digits of his or her Social Security number contained in a voter registration application or the statewide voter checklist established under 17 V.S.A. § 2154 or the failure to register to vote under 17 V.S.A. § 2145a.

(32) With respect to publicly owned, managed, or leased structures, and only to the extent that release of information contained in the record would present a substantial likelihood of jeopardizing the safety of persons or the security of public property, final building plans, and as-built plans, including drafts of security systems within a facility, that depict the internal layout and structural elements of buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by an agency before, on, or after the effective date of this provision; emergency evacuation, escape, or other emergency response plans that have not been published for public use; and vulnerability assessments, operation, and security manuals, plans, and security codes. For purposes of this subdivision, "system" shall include electrical, heating, ventilation, air conditioning, telecommunication, elevator, and security systems. Information made exempt by this subdivision may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to a licensed architect, engineer, or contractor who is bidding on or performing work on or related to buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by the State. The entities or persons receiving such information shall maintain the exempt status of the information. Such information may also be disclosed by order of a court of competent jurisdiction, which may impose protective conditions on the release of such information as it deems appropriate. Nothing in this subdivision shall preclude or limit the right of the General Assembly or its committees to examine such information in carrying out its responsibilities or to subpoena such information. In exercising the exemption set forth in this subdivision and denying access to information requested, the custodian of the information shall articulate the grounds for the denial.

(33) The account numbers for bank, debit, charge, and credit cards held by an agency or its employees on behalf of the agency.

(34) Affidavits of income and assets as provided in 15 V.S.A. § 662 and Rule 4 of the Vermont Rules for Family Proceedings.

(35) [Repealed.]

(36) Anti-fraud plans and summaries submitted for the purposes of complying with 8 V.S.A. § 4750.

(37) Records provided to the Department of Health pursuant to the Patient Safety Surveillance and Improvement System established by 18 V.S.A. chapter 43a.

(38) Records that include prescription information containing data that could be used to identify a prescriber, except that the records shall be made available upon request for medical research, consistent with and for purposes expressed in 18 V.S.A. § 4622 or 9410, 18 V.S.A. chapter 84 or 84A, and for other law enforcement activities.

(39) Records held by the Agency of Human Services or the Department of Financial Regulation, which include prescription information containing patient-identifiable data, that could be used to identify a patient.

(40) Records of genealogy provided in an application or in support of an application for tribal recognition pursuant to chapter 23 of this title.

(41) Documents reviewed by the Victims Compensation Board for purposes of approving an application for compensation pursuant to 13 V.S.A. chapter 167, except as provided by 13 V.S.A. §§ 5358a(b) and 7043(c).

(42) Except as otherwise provided by law, information that could be used to identify a complainant who alleges that a public agency, a public employee or official, or a person providing goods or services to a public agency under contract has engaged in a violation of law, or in waste, fraud, or abuse of authority, or in an act creating a threat to health or safety, unless the complainant consents to disclosure of his or her identity.

(43) Records relating to a regulated utility's cybersecurity program, assessments, and plans, including all reports, summaries, compilations, analyses, notes, or other cybersecurity information.

(d)

(1) On or before December 1, 2015, the Office of Legislative Counsel shall compile lists of all Public Records Act exemptions found in the Vermont Statutes Annotated, one of which shall be arranged by subject area, and the other in order by title and section number.

(2) On or before December 1, 2019, the Office of Legislative Counsel shall compile a list arranged in order by title and section number of all Public Records Act exemptions found in the Vermont Statutes Annotated that are repealed or are narrowed in scope on or after January 1, 2019. The list shall indicate:

(A) the effective date of the repeal or narrowing in scope of the exemption; and

(B) whether or not records produced or acquired during the period of applicability of the repealed or narrowed exemption are to remain exempt following the repeal or narrowing in scope.

(3) The Office of Legislative Counsel shall update the lists required under subdivisions (1) and (2) of this subsection no less often than every two years. In compiling and updating these lists, the Office of Legislative Counsel shall consult with the Office of Attorney General. The lists and any updates thereto shall be posted in a prominent location on the websites of the General Assembly, the Secretary of State's Office, the Attorney General's Office, and the State Library and shall be sent to the Vermont League of Cities and Towns.

(e)

(1) For any exemption to the Public Records Act enacted or substantively amended in legislation introduced in the General Assembly in 2019 or later, in the fifth year after the effective date of the enactment, reenactment, or substantive amendment of the exemption, the exemption shall be repealed on July 1 of that fifth year except if the General Assembly reenacts the exemption prior to July 1 of the fifth year or if the law otherwise requires.

(2) Legislation that enacts, reenacts, or substantively amends an exemption to the Public Records Act shall explicitly provide for its repeal on July 1 of the fifth year after the effective date of the exemption unless the legislation specifically provides otherwise.

(f) Unless otherwise provided by law, a record produced or acquired during the period of applicability of an exemption that is subsequently repealed or narrowed in scope shall, if exempt during that period, remain exempt following the repeal or narrowing in scope of the exemption.

History

Added 1975, No. 231 (Adj. Sess.), § 1; amended 1977, No. 202 (Adj. Sess.); 1979, No. 156 (Adj. Sess.), § 6; 1981, No. 227 (Adj. Sess.), § 4; 1989, No. 28, § 2; 1989, No. 136 (Adj. Sess.), § 1; 1995, No. 46, §§ 23, 58; 1995, No. 159 (Adj. Sess.), § 2; No. 167 (Adj. Sess.), § 29; No. 182 (Adj. Sess.), § 21, eff. May 22, 1996; No. 180 (Adj. Sess.), § 38; No. 190 (Adj. Sess.), § 1(a); 1997, No. 159 (Adj. Sess.), § 12, eff. April 29, 1998; 1999, No. 134 (Adj. Sess.), § 3, eff. Jan. 1, 2001; 2001, No. 28, § 9, eff. May 21, 2001; 2001, No. 76 (Adj. Sess.), § 3, eff. Feb. 19, 2002; No. 78 (Adj. Sess.), § 1, eff. Apr. 3, 2002; 2003, No. 59, § 1, eff. Jan. 1, 2006; 2003, No. 63, § 29, eff. June 11, 2003; 2003, No. 107 (Adj. Sess.), § 14; 2003, No. 146 (Adj. Sess.), § 6, eff. Jan. 1, 2005; 2003, No. 158 (Adj. Sess.), § 2; 2003, No. 159 (Adj. Sess.), § 12; 2005, No. 132 (Adj. Sess.), § 1; 2005, No. 179 (Adj. Sess.), § 3; 2005, No. 215 (Adj. Sess.), § 326; 2007, No. 80, § 18; 2007, No. 110 (Adj. Sess.), § 3; 2007, No. 129 (Adj. Sess.), § 2; 2009, No. 59, § 5; 2009, No. 107 (Adj. Sess.), § 5, eff. May 14, 2010; 2011, No. 59, § 3; 2011, No. 78 (Adj. Sess.), § 2, eff. April 2, 2012; 2011, No. 145 (Adj. Sess.), § 8, eff. May 15, 2012; 2013, No. 70, § 1; 2013, No. 129 (Adj. Sess.), § 1; 2013, No. 194 (Adj. Sess.), § 1, eff. June 17, 2014; 2015, No. 23, § 2; 2015, No. 29, §§ 2, 3, 6, 23; 2015, No. 30, § 3, eff. May 26, 2015; 2015, No. 80 (Adj. Sess.), § 6, eff. July 1, 2017; 2017, No. 50, § 5; 2017, No. 128 (Adj. Sess.), § 2, eff. May 16, 2018; 2017, No. 166 (Adj. Sess.), § 3, eff. Jan. 1, 2019; 2019, No. 31, § 16; 2021, No. 54, § 2; 2023, No. 3, § 59, eff. March 20, 2023.