

# VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

December 2010

## PACIF KEEPS DISTINGUISHING ITSELF

The VLCT-administered Property and Casualty Intermunicipal Fund (PACIF) had a good 2010, and several improvements are in store for 2011.

In the area of Underwriting, PACIF's coverage document has been enhanced to give members more awareness of and options for what is covered. "Property Out in the Open" refers to outdoor objects such as light poles, athletic fields, public benches, monuments, and parking meters, which aren't buildings but which members can now choose to cover on an item-by-item basis. The "Inland Marine" category describes machinery and equipment that have typically been covered in the past, but are now being named specifically to help members know they are covered. Examples of Inland Marine items are lawn mowers, chain saws, bunker gear, and police gear.

PACIF's Loss Control Division has several improvements in store for 2011. One is the expansion of the PACIF Equipment Grant Program. Originally called simply the PACIF Grant Program, it got off to a great start in 2010, distributing \$100,000 in the form of 50/50 matching grants to members who made compelling cases for needing help to make capital purchases of safety-related equipment. (See sidebars for lists of 2010 grant winners and equipment purchased.) In 2011, the list of approved equipment will be expanded, and the money available will be



*Instructor Allen Sands explains advanced use of wedges to a Level 3 Game of Logging chain saw class.*

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## VLCT WANTS TO KNOW ...

### HOW DO YOU HEAR ABOUT OUR WORKSHOPS?

We are working to streamline the way we announce our workshop dates and times. For now, we will continue to send you brochures via surface mail, and via email if we have your electronic address on file.

Please take a moment to let us know how you hear about workshops and events (or how you *would like to hear* about workshops and events). You can email Jessica Hill, Manager of Administrative Services at [jhill@vlct.org](mailto:jhill@vlct.org).

Starting in 2011, we will surface-mail a much smaller number of brochures and convert our general event mailings to a post-card format. These will be sent along with the email notices. We want to be sure that we reach all of you!

As always, you can find the most up to date workshop information on our website at [www.vlct.org/eventscalendar/](http://www.vlct.org/eventscalendar/).

## IS EMAIL CORRESPONDENCE A PUBLIC RECORD UNDER THE PUBLIC RECORDS ACT?

It can be. The Vermont Public Records Act attempts to balance the constitutional requirement for government accountability with the competing goal of shielding certain private and confidential information in the custody of state and local government from public disclosure. In order to achieve this balance, the Act sets a broad definition of a municipal public record: "any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of [municipal] business." 1 V.S.A. § 317(b). Generally, any person has the right to inspect a municipal public record during customary office hours. 1 V.S.A.

§ 316(a). If a request for a public record is made, the custodian must promptly produce the record for inspection unless it falls within one of the Act's 39 exemption categories. 1 V.S.A. § 317(c).

All electronic mail software programs record information both at the time the information is created and at the time it is received. The information may also be recorded at intermediate points in the delivery system. As a consequence, all email messages clearly fit the first part of the definition of a public record under the Act. As to any spe-

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## 2011 WELLNESS INITIATIVES

Feedback from 2010 Healthy Lifestyle Rewards participants has helped us improve the program for 2011 by making it more flexible and rewarding. It will still encourage exercising and eating healthily, but it will offer rewards for doing this at any time of the year, not just during the winter months. The program begins with having a health screening and completing My Health Assessment at [myCIGNA.com](http://myCIGNA.com), for which every subscriber and covered spouse will earn \$50. Next, subscriber and spouse can each set and work toward their health goals to earn an additional \$25 for 12 weeks of daily pedometer use (or other exercise) plus another \$25 for 12 weeks of a weight loss/maintenance regimen. That's up to \$100 for an individual and a new maximum of **up to \$200 for a couple!**

Wellness coordinators can get creative in 2011 and use any pedometer program that interests them and their employees. Plenty of options are available online, including the state's "Get Moving Vermont" at [www.getmoving.vermont.gov](http://www.getmoving.vermont.gov) – or design your own! Alternatively, participants can simply record the minutes they spend doing whatever exercise they like on the Healthy Lifestyle Challenge form that we will distribute in January. The individual goal is to get or stay active during any 12 weeks of the year, even if there is a break between weeks, and give the record to the wellness coordinator so VLCT can verify participation. Participants who complete their 12 weeks will also help improve their employer's VLCT Wellness Leader score.

The weight loss/maintenance portion of Healthy Lifestyle Rewards is largely the same as in previous years – we will provide weekly nutrition and weight tips, and participants will track their progress. But people who were serious about becoming more fit last year told us that improvement showed more in their body shape than on the scale, and it was more encouraging for them to track loss of inches (for waist, hips, thighs, upper arms, or a combination of these) rather than pounds. (Muscle weighs more than fat inch-for-inch, so losing fat and gaining muscle can make people thinner even if they don't lose much weight.) That's why we changed the Healthy Lifestyle Challenge form to show changes in either pounds or inches.

One more change involves the Grand Prize Raffle. In 2011, there will be two winners who will design their own escapes (with friends if they choose) to the Vermont spa of their choice. The 2010 winner, Debbie Woodward of Fairfax, had her name drawn at Town Fair in October. We haven't heard yet where she plans to go, but we bet she's glad she qualified to enter!

Please refer to the RMS Calendar in the center of this newsletter for the days and locations of our 2011 Wellness Initiatives Workshops. We'll hand out pre-ordered pedometers and other supplies, share ideas for activities and incentives, and discuss a range of wellness-related resources. These workshops are open to all interested managers, selectboard members, Safety and Health committee members, Health Trust contacts, and wellness coordinators of Health Trust members. Having two or more people attend from an organization is a great way to get set for creating excitement and increasing participation among all employees.

*Heidi Joyce, Senior Health Promotion Consultant*

### 2010 Wellness Leader Top Performer Awards

Award	Member	Score
Highest Score Overall	Windham Regional Planning Comm.	82%
Highest Score of New Members	Lamoille Solid Waste District	59%
Highest Score of Medium Members	Town of Killington	77%
Highest Score of Large Members	Vermont League of Cities and Towns	79%
Most Improved of Small Members	Town of Proctor (final results)	14% → 43%
Most Improved of Small Members	Town of Burke	44% → 67%
Most Improved of Medium Members	Town of Pittsford	22% → 54%
Most Improved of Large Members	Town of Shelburne	55% → 67%



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# LEGAL AND REGULATORY NOTES



## VERMONT SUPREME COURT ADDRESSES EMERGENCY AID EXCEPTION TO SEARCH WARRANT REQUIREMENT

In a 3-2 decision rendered earlier this year, the Vermont Supreme Court held that evidence obtained by a warrantless search by a State trooper responding to an emergency call be suppressed. *State v. Ford*, 998 A.2d 684 (2010).

The facts of the case begin with a 9-1-1 call by someone identifying himself as Stephen Ford who claimed he had been in an automobile accident and was trapped in his car on the Hartford-Quechee Road in Hartford. After searching the area and finding neither a damaged car nor Mr. Ford, a Vermont state police trooper was called upon to con-

duct a welfare check at his last known address in Williamstown, some 40 miles from the scene of the reported accident. The trooper arrived at the residence at 6 a.m. and witnessed only one snow-covered car in the driveway and no fresh tire tracks, but did see footprints leading to the basement. No lights were on in the home. Believing Mr. Ford lived in the basement, the trooper knocked on the basement door next to the driveway and announced her presence. Receiving no response, the trooper proceeded to the back of the house where she saw lights coming out of the basement windows. Peering in

for a closer look, the trooper wasn't able to locate Ford or anyone else, but she did notice several marijuana plants growing under some lights in an aquarium. The trooper subsequently obtained a search warrant to search the house owned by Ford's mother. Upon seizing the plants, oxycodone tablets and other materials, the police learned that the basement was occupied not by Stephen Ford but by his brother, Justin.

Justin Ford (hereinafter "defendant") was charged with two misdemeanor counts of possession of marijuana and narcotics. At trial, the defendant moved to suppress the evidence seized on state constitutional grounds that the search emanated from a warrantless entry of his grounds. The district court denied his motion, resulting in a guilty plea conditioned upon the outcome of his appeal to the Vermont Supreme Court.

Article 11 of the Vermont Constitution, like its federal analogue, the Fourth Amendment, protects people from unreasonable searches of their homes and other property. The difference, as noted by the Vermont Supreme Court, is "we have ... long held that our traditional Vermont values of privacy and individual freedom – embodied in Article 11 – may require greater protection than that afforded by the federal Constitution." *State v. Bauder*, 2007 VT 16. The scope of this protection covers all corners of the home and its curtilage – those areas adjoining a home that are "intimately tied to the privacies of life." Invasions upon these spaces are presumptively unreasonable and exceptions to them are narrowly drawn. The emergency aid exception, for instance, allows for warrantless entries to private property to prevent an imminent threat to life or property. Since this type of entry is still technically an invasion of one's

*(continued on next page)*

### VLCT FINANCIAL CONSULTING AVAILABLE

**VLCT's Senior Financial Consultant, Bill Hall, is available to assist towns and cities on a wide range of financial topics, including:**

- Basic governmental accounting
- Preparing for an outside audit
- Internal fraud risk assessment/internal control review
- Financial reporting
- Implementing VLCT's Model Financial Policies
- Debt management
- Complying with audit recommendations
- Management of cash and investments
- Capital improvement program planning
- GASB 34 implementation



*Bill Hall*

**FOR MORE INFORMATION ON FINANCIAL CONSULTING AND POSSIBLE DISCOUNTS FOR PACIF MEMBERS, PLEASE CALL ABBY FRIEDMAN AT 1-800-649-7915.**



## LEGAL AND REG.

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privacy, any associated searches must be “circumscribed by the emergency which serves to justify it and should not be used to support a general exploratory search.”

The Court conducted a three-part analysis (the “Mountford/Mitchell test”) to determine whether the trooper’s visual inspection of the defendant’s home through his basement window fell within this emergency aid exception to the search warrant requirement. This test requires that:

- 1) the trooper have “reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property”;
- 2) the entry not be “primarily motivated by intent to arrest and seize evidence”; and
- 3) the area actually searched was in some way associated to the emergency.

The Court held the trooper’s search failed the first and third parts of the test and therefore constituted an illegal warrantless search in violation of the Vermont Constitution. The first part failed because there was no indication of an immediate need for emergency police assistance at the defendant’s home. No accident was discovered. No report of physical injuries was made. The trooper was dispatched to Williamstown to conduct a welfare check at the defendant’s last known address, but she testified to nothing that would indicate the defendant was even there, much less justify the existence of an emergency. The Court, aware of the potentially chilling effect its opinion could have on law enforcement conducting welfare checks, drew an important distinction between those parts of curtilage afforded full constitutional protection for search purposes and those that are only “semiprivate areas.” “(T)he trooper’s presence in his driveway and dooryard, and her knock upon his door, did not constitute an unlawful search ... Had she discovered evidence supporting a reasonable belief that there was an immediate need for emergency assistance in those areas, she could have continued her search.” A majority of the Court felt that footprints and an unlit house on their own, far removed from the scene of a reported accident, weren’t enough to establish an emergency justifying a further invasion of one’s privacy. The Court held that the search failed

the third part of the test because it exceeded the scope of the emergency, which was limited to the scene of the reported accident in Hartford. Without any evidence that anyone had been hurt or even that an accident had occurred, the State lacked any reasonable basis for expanding the search area to the defendant’s home. Because the search failed two-thirds of the test, the Court felt it unnecessary to assess the continued applicability of the second part, which the United State Supreme Court had previously invalidated. (See “U.S. Supreme Court Affirms Officers’ Right to Enter Property” in the July 2006 edition of the *VLCT News* for the Court’s holding that an officer’s intent entering a home is irrelevant.) All evidence obtained during the search was suppressed and the case was remanded back to the district court for further proceedings.

The dissent, which itself characterizes this as a “close case,” writes of the potential chilling impact this decision could have on law enforcement rendering emergency assistance. It warns that “(u)nder the majority’s limited interpretation of the emergency aid exception, police officers are now asked to ignore this general obligation (search for persons in distress) and risk leaving injured people undiscovered rather than briefly and logically investigating the situation further.” The majority notes, however, that its decision doesn’t prevent welfare checks in response to emergency calls, but there must be a reasonable belief that a warrantless entry is necessary to protect life. In this case, there just wasn’t enough to link the area searched and the emergency reported.

*Garrett Baxter, Staff Attorney  
VLCT Municipal Assistance Center*

## MAC WORKSHOP CALENDAR

**November 30, Middlebury Inn, Middlebury**  
**December 2, Hotel Coolidge, White River Junction**  
**Effective Delinquent Tax Collection**

This half-day workshop will examine the legal and practical requirements of collecting delinquent property taxes. We will review the municipal property tax system, the role of the delinquent tax collector in local government, and the development of a collection philosophy and policy. We will also discuss delinquent tax collection methods, focusing on the tax sale process.

**December 7, Middlebury Inn, Middlebury**  
**December 9, Holiday Inn Express, Springfield**  
**Basic Governmental Accounting I**

This half-day workshop features an introduction to the principles of fund accounting and a discussion of the various fund types and activities of local government. Participants will also explore examples of various accounting transactions commonly encountered in their jobs.

**December 15, Capitol Plaza, Montpelier**  
**Preparing for a Successful Town Meeting**

In this workshop, participants will learn the legal requirements and best practices for drafting articles and preparing the warning, handling petitions and social service agency requests, and preparing the town report. We will also review post-Town Meeting requirements, including preparing meeting minutes, taking oaths of office, bonding, and making appointments.

### SAVE THE DATES

**January 11, Holiday Inn Express, Springfield**  
**January 13, Middlebury Inn, Middlebury**  
**Basic Governmental Accounting II** *(Sponsored by the VLCT Municipal Assistance Center)*

**February 23, Elks Club, Montpelier**  
**Town Meeting Tune-Up** *(Sponsored by the VLCT Municipal Assistance Center)*

For registration and other information, please visit [www.vlct.org/eventscalendar/upcomingevents/](http://www.vlct.org/eventscalendar/upcomingevents/) or call 1-800-649-7915 or email [info@vlct.org](mailto:info@vlct.org).



# ASK THE LEAGUE

## ADVISORY COMMISSION QUORUM REQUIREMENT; “ON THE RECORD” REVIEW

*Is an advisory commission established under 24 V.S.A. § 4433 required to have a quorum to meet and take action?*

Yes, a quorum of members of an advisory commission is required in order for that body to meet and take action. An advisory commission as enabled in 24 V.S.A. § 4433 is a public body as defined in the law. A public body includes state government commissions, boards, and councils; municipal government boards, commissions, and councils; and any ad hoc committees or subcommittees of state or municipal government created by charter, motion, or resolution. 1 V.S.A. § 310 (3). In order for a public body to discuss its business or take action, a meeting must occur, which includes the requirement for a quorum to be present. 1 V.S.A. § 310 (2). All the requirements of the open meeting law, including providing notice and taking minutes, apply to the advisory commission.

*Stephanie Smith, AICP, Senior Associate  
VLCT Municipal Assistance Center*

*Is a development review board required for “on the record” review?*

No. According to 24 V.S.A. § 4471, a municipality, acting under one of the two development review models (either the planning commission and zoning board of adjustment model or development review board model), may direct that appeals to the Environmental Court be heard on the record.

The law does require the municipality to determine which appropriate municipal panel's appeals are heard on the record and to define the “magnitude and nature of development proposal[s]” that will be heard on the record. For example, the municipality can choose that only planning commission appeals are heard on the record and further

single out only those development proposals for subdivision. In this scenario, the Environmental Court would continue to hear all appeals of the zoning board of adjustment decisions and possible planning commission site plan review decisions de novo. The municipality must also adopt and operate under the Municipal Administrative Procedure Act (MAPA) for those specifically defined hearings. 24 V.S.A. § 4471(b). Adopting MAPA generates additional requirements, including swearing in interested persons and ensuring that the proceedings are recorded. 24 V.S.A. §§ 1205, 1206.

For more information, please see the Municipal Assistance Center's Technical Paper #4, On The Record Review, March 2008, in the VLCT Resource Library, <http://resources.vlct.org/>.

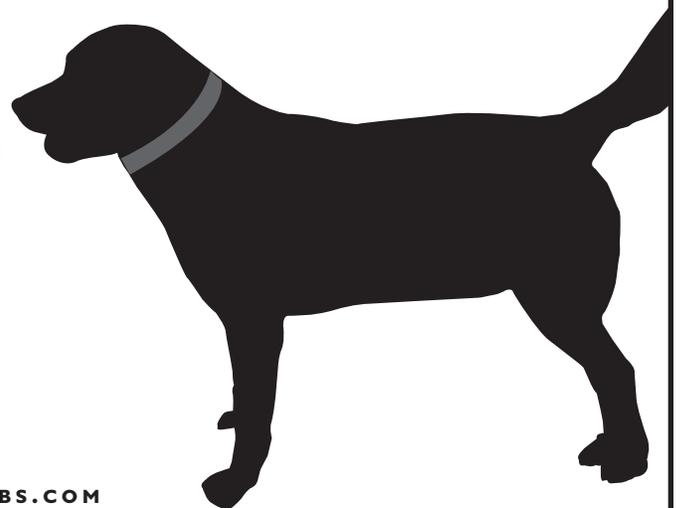
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VLCT Municipal Assistance Center*

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# PREPARING FOR A SUCCESSFUL TOWN MEETING WORKSHOP

WEDNESDAY, DECEMBER 15, 2010, MONTPELIER

Snow is just beginning to fall, so why think about Town Meeting now? Because there are many dates, deadlines, and requirements that precede and closely follow the first Tuesday in March that you may not know about, not to mention the ins and outs of local elections and votes. This workshop is designed for all local officials involved in their annual meeting, including municipal clerks, moderators, selectboard members, town and city managers, and town administrators. Register today at: [www.vlct.org/eventscalendar/upcomingevents/?event=358](http://www.vlct.org/eventscalendar/upcomingevents/?event=358) or contact us at [info@vlct.org](mailto:info@vlct.org) or 800-649-7915 for more information.

Workshop sessions will include:

- Counting Down to the Big Day: Important Technical and Legal Details  
*Jim Barlow, Senior Staff Attorney, VLCT Municipal Assistance Center*
- Conducting Local Australian Ballot Votes and Elections  
*Kathy DeWolfe, Vermont Director of Elections and Campaign Finance*
- Starting Off on the Right Foot: Post-Town Meeting Requirements and Helpful Suggestions  
*Garrett Baxter, Staff Attorney, VLCT Municipal Assistance Center*



# 2011 LEGISLATIVE PREVIEW

Would you like a preview of the upcoming legislative session? The VLCT advocacy team is available to visit selectboards and town officials this December and January to discuss issues that will affect Vermont municipalities in 2011. We'll also talk about VLCT priorities and leave time for you to share your perspectives with us. To set up a meeting in your town, email Karen Horn ([khorn@vlct.org](mailto:khorn@vlct.org)) or Cory Gustafson ([cgustafson@vlct.org](mailto:cgustafson@vlct.org)) or call (802) 229-9111.

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Main Street Reconstruction, Barre City



Lake Champlain Basin Wetland Restoration Plan



City Center, South Burlington



## ARE FIREFIGHTER STIPENDS CONSIDERED WAGES?

*As we approach the season for workers' compensation audits, the VLCT Underwriting team advises municipalities to reconsider a common bookkeeping practice that might not be serving towns and volunteer firefighters well.*

### DECEMBER TRIVIA

Whither the triviaphiles? For the second consecutive month, the Trivia question [How many bridges in Vermont have at any time in their history collected tolls?] generated nary a response. And this time, a Google query would have turned up the answer: five (Bellows Falls, Walpole-Westminster, Windsor-Cornish, Brattleboro-Hinsdale, Chimney Point, and Rouse's Point).

Here's another question for any history devotees: **The grantee of one Vermont town wanted to name it "Elysiana," a reference to Elysium, the legendary Greek home of the virtuous dead. The Vermont legislators of the day (i.e., the late 18th century) balked and instead named it ... well, you tell me.**

Email your answer to [dgunn@vlct.org](mailto:dgunn@vlct.org). Then watch this space in the tastefully transcendent January issue for the answer.

Most Vermont towns receive their fire protection and other emergency response services from local volunteer fire departments. First response volunteers generally do not receive hourly wages for their services, but they often *do* receive some form of financial compensation, such as a small payment for each service call or training. These volunteers perform services for qualified volunteer emergency response organizations, organized entities that provide firefighting or emergency medical services for a municipality.

Some municipalities pay volunteer firefighters directly, recording and reporting the payments via payroll. However, some volunteer fire departments receive a lump sum payment from the municipality and use it for various expenses that may include paying volunteer firefighters for their services. Often, municipalities think of the lump sum payment as a budget line item. They don't consider that at least some of it is actually reportable wages. PACIF workers' comp auditors have noticed that some municipalities report that the volunteer firefighters are not compensated. In fact, part of the lump sum annual payment *has* been distributed as wages and should be given special consideration, whether for calculating the town's workers' comp contribution, for report-

ing taxable wages as required by federal law, or both. Inaccurate reporting of payments to volunteer firefighters can backfire on both towns and volunteers.

Any payment that an individual receives for performing services is generally considered income. Therefore, if firefighters are paid a stipend for each training session or fire call they attend, the money is actually compensation for services, even if the stipend is less than minimum wage. This means that the organization making the payments must both report the income to the town's insurance carrier as part of the annual workers' comp payroll audit and withhold taxes according to IRS law. Simply putting all volunteer emergency personnel on payroll can satisfy the IRS and workers' comp payroll reporting requirements. Some municipalities will need to request payroll information from their volunteer fire department for the annual workers' comp payroll audit.

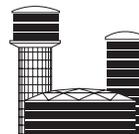
For 2008-2010, there are certain situations in which some first responders' income can legally be excluded from taxable income for IRS purposes. According to the Mortgage Forgiveness Debt Relief Act of 2007 and the Heroes Earnings Assistance and Relief Tax Act of 2008, volunteer firefighters

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# RISK MANAGEMENT AT TOWN FAIR 2010

## PACIF AND UI TRUST JOINT ANNUAL MEETING

The 2010 combined annual meeting of PACIF and the Unemployment Insurance Trust (held at Town Fair 2010) was well attended. Ken Canning, Director of VLCT's Risk Management Services Department, discussed the power of pooling in his opening remarks, emphasizing the long-term value of municipal risk sharing pools compared to commercial insurance options. After comments from each pool's current board president, normal business was conducted: approving the previous year's meeting minutes, hearing the auditors' reports on financial status, learning about rates for 2011 renewals, hearing a summary of this year's new programs, and electing directors for 2011.

The Unemployment Insurance Trust currently has a \$926,000 budget with 210 members and has provided financial stability despite recent economic challenges. The 2009 financial report shows that very high claims accounted for a decrease in assets and an increase in liability. David Sichel, Deputy Director of VLCT Risk Management Services, discussed the state of the fund and 2011 renewal plans. Claims have increased more in recent years than could have been anticipated when funds began being put aside for this period, but claims seem to have hit their peak, with the Vermont economy improving gradually and unemployment rates here dropping. Even so, current UI Trust claims are historically high, and rates will have to be increased in 2011 to meet the continuing funding needs of the Trust. Technically, the increase will be an average of 2.8 percent, but that will be compounded by the state's recent raise in the base wage (from \$10,000 to \$13,000) for a total effective increase of 27 percent. (This is comparable to the 2010 increase, when the state raised the base wage

from \$8,000 to \$10,000.) Note that 2.8 percent is an average. Each member's actual rate will vary depending on the municipality's specific payroll and unemployment claim experience.

PACIF currently has an \$18 million budget. Its 328 members include more than 90 percent of Vermont's 251 cities and towns as well as 22 villages and 81 special purpose municipal districts. Funds distributed back to members total over \$13.5 million to date, including \$800,000 from 2010 for credit in 2011.

According to the 2009 financial report by Johnson Lambert & Co., while PACIF claims payouts stayed in the normal range,

the fund generally became stronger due to investment growth (i.e., the recovering stock market). The financial audit included specific analyses of the Claims and Underwriting divisions as well as of the Actuarial report. The auditors noted deficiencies in certain controls, but they have been corrected since the time of the report.

All in all, PACIF is doing well. Workers' compensation claims are down, in part because members are acting on recommendations from the Loss Control team to foster a culture of safety and health, and municipal employees are having fewer accidents. However, property and casualty claims are up

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## FIREFIGHTER STIPENDS

(continued from page 8)

and emergency responders may exclude certain benefits from income they received for performing volunteer services. This refers to any reductions or abatements of a person's state or local property taxes in recognition of his or her emergency volunteer work – that is, these volunteers may subtract the value of the reductions from their income before calculating their income, social security, and Medicare taxes. Note that any amounts excluded from income under these provisions cannot be included on Schedule A as deductible taxes. The law also provides that the value of other benefits received by qualifying volunteers – up to \$30 for each month of service during a calendar year – may be excluded from income for the purposes of income tax as well as social security and Medicare taxes. If the volunteer is compensated more than \$30 in each month of a year, the exclusion for these benefits will add up to \$360 for that year. The town's obligation to withhold federal taxes for each individual begins each month after the first \$30 of excludable benefits has been paid.

Reimbursements to a volunteer for expenses that he or she paid in the first place are not considered income for either workers' comp or the IRS. They need to be labeled clearly in the payroll report so they will not be included in the workers' comp payroll audit. To satisfy IRS requirements, (1) all expenses must have a business connection and be reasonable, (2) an employee must provide a timely account of all reimbursements, and (3) any excess amounts must be promptly reimbursed. Moreover, the IRS requires that reimbursements be made under a town's accountable plan, an expense reimbursement plan that complies with IRS regulations.

Additional information about IRS reporting can be found in IRS Publication 15, *Employer's Tax Guide*, or at [www.irs.gov/govt/fs-lg/article/0,,id=184221,00.html](http://www.irs.gov/govt/fs-lg/article/0,,id=184221,00.html). If you have further questions about the federal tax regulations that relate to this issue, contact Bill Hall at [whall@vlct.org](mailto:whall@vlct.org) or (800) 649-7915, ext. 1968. For questions about reporting wages for workers' compensation, please contact your Member Relations representative or a member of the PACIF Underwriting team at (800) 649-7915.

*Bill Hall, Senior Financial Consultant  
Pam VanDeursen, Risk Management Associate*

## 2010 RMS CALENDAR

**Work Life Balance and Stress Management Workshop.** Tuesday, Dec. 7, 2010, 8:30 a.m. through lunch, Charles Carter Facility, Lyndonville Industrial Park. Presented by the NEK Chapter of the Vermont Safety and Health Council. This workshop will show companies how to help employees manage a successful work-life balance. Speakers include Dennis Casey (Casey & Assoc.), Maureen Johnson and Erma Stough (IBM), and Dan Whipple (VOSHA). **Free** for VSHC members; \$20.00 for non-members (waived if you become a member). Register by Dec. 3, 2010 with Sue Murray at [smurray@cabotcheese.com](mailto:smurray@cabotcheese.com).

**VLCT Health Trust 2011 Open Enrollment Deadline Extended.** Wednesday, December 8. Add or change medical or vision coverage without a qualifying event. For more information, call your Member Relations representative at 800-649-7915.

**VLCT Claims Team Implementing New Software.** Monday, December 13 through Wednesday, December 15. PACIF members: throughout December the Claims team is switching to a new, more streamlined computerized claim system. We will strive to make this transition as smooth as possible; even so, some interruptions will be inevitable during this process, especially in the middle of the month. We appreciate your patience while we get up and running with new software that will link Claims and Underwriting in a single database.

**VLCT Health Trust's 2011 Wellness Initiatives Workshops.** Two Wednesdays and three Thursdays in January at the locations listed below. For wellness coordinators, safety and wellness committee members, Health Trust contacts, selectboard members, and municipal managers. Learn how your municipality can earn back as much as four percent of its health insurance premium while fostering healthy behaviors among employees and their covered family members. Also pick up pre-ordered pedometers and other materials and learn about the range of health and wellness resources available through the VLCT Health Trust. If you don't have the sign-up form that Heidi Joyce emailed in November, please reserve your place before December 10 by downloading the form from [www.vlct.org/insuranceriskservices/programs/wellnessinitiatives/](http://www.vlct.org/insuranceriskservices/programs/wellnessinitiatives/) and faxing it to Heidi Joyce at 802-229-2211.

Thursday, January 13, 9am to noon, VLCT Office, Montpelier  
Thursday, January 13, noon to 4pm, VLCT Office, Montpelier  
Wednesday, January 19, 9am to noon, Holiday Inn, Brattleboro  
Thursday, January 20, 9am to noon, Holiday Inn, Rutland  
Wednesday, January 26, 9am to noon, Hampton Inn, Colchester  
Thursday, January 27, 9am to noon, Lyndon Industrial Park

**Combustible Dust Training.** January 25, 1:00 p.m. to 4:30 p.m., 81 Demeritt Place (Green Mountain Coffee Roasters), Waterbury. Presented by Vermont Partnership in Safety. Combustible dusts are fine particles that present an explosion hazard when suspended in air under certain conditions. A dust explosion can be catastrophic and cause employee deaths or injuries and destruction of entire buildings. Representatives from FM-Global® will discuss the hazards of combustible dust in work areas and help attendees understand how and why dust explodes, recognize potential dust explosion hazards at your facility, and understand the damage potential as well as proven methods of prevention and protection. **Free** to all. To register, email [pcrawford@vtc.edu](mailto:pcrawford@vtc.edu).

# MENT SERVICES

## CIGNA MOBILE GOES LIVE

CIGNA recently announced a new tool for accessing its online services when the CIGNA Online Experience Program launched the first version of CIGNA Mobile. CIGNA subscribers who have a smartphone can now access CIGNA's Health Care Professional Directory and Prescription Drug Price Quote Tool from any mobile device with Internet access (assuming Internet coverage is available) by going to [www.myCIGNA.com](http://www.myCIGNA.com) from their smartphone browser. This new smartphone service might provide access to some of CIGNA's services for members in areas without high-speed Internet.

CIGNA Mobile is powered by Usablenet, a service that extends CIGNA's web content into a view that is customized and dynamic based on the mobile device. Now CIGNA customers can use their smartphones to get immediate answers (in both English and Spanish) that are specific to their health plan.

The benefits available through a smartphone include:

- Locating CIGNA's in-network physicians, specialists, dentists, hospitals, medical facilities, and pharmacies using CIGNA Mobile GPS (when their device is GPS enabled);
- Searching real-time prescription prices at 60,000 pharmacies nationwide, finding the closest pharmacy locations using GPS (when enabled on their phone), and speed-dialing directly to CIGNA's Home Delivery Pharmacy to place medication orders or get answers to pharmacy plan questions;
- Quickly finding Urgent Care Centers for immediate care that's not serious enough to warrant a visit to an emergency room; and
- Speed-dialing CIGNA's 24/7/365 service centers to speak with CIGNA's nurses and clinicians.

The CIGNA Mobile tool is another way CIGNA is helping improve the health, well-being, and sense of security of the people they serve. Check out the mobile capability yourself from your Blackberry, iPhone, or whatever mobile phone you have – and spread the word!

*Jim Nastri, VP, eBusiness, CIGNA HealthCare*

## NOT IN THE HEALTH TRUST? TRY BUYING HEALTH SCREENINGS À LA CARTE

Do you have employees who boast about not having had a checkup in years? Early detection is crucial for keeping many medical problems from becoming catastrophic (physically and financially). On-site health screenings are available even to VLCT municipalities that are not in the Health Trust, and these convenient screenings are a proven way to get people to take the first step in becoming aware of how healthy or unhealthy they really are. People who have an annual screening can track their progress year to year. For the cost of set-up and travel plus \$45 per person screened, you can buy into this turnkey operation. When you've scheduled a date with Heidi Joyce, she will take everything to your site and be ready to screen whomever you send. In each 15-minute individual session, she tests for cholesterol (total, LDL, HDL, LDL:HDL ratio, and TC:HDL ratio), glucose, triglycerides, body composition, hemoglobin, blood pressure, and bone density (for women, in whom osteoporosis is a risk). For an additional fee, she will also administer blood tests for PSA (for men over 50, in whom prostate cancer is a risk), thyroid, and A1c (for people who have diabetes). She provides a record of the results for the employee with an intrinsic coaching approach. If any results indicate that the person might have a serious medical condition, Heidi will advise seeing a doctor to look into it. The rest is up to the individual, because the screening is also completely confidential. Interested members should call Joe Damiata at 800-649-7915 or email [jdamiata@vlct.org](mailto:jdamiata@vlct.org).

## TWO NEW VENDORS

The Health Trust Board of Directors announced two new member benefits for 2011 at its Annual Meeting held on November 12, 2010. **EyeMed Vision Care** is replacing VSP and will provide vision coverage at costs that are on average 30 percent less than current costs. **Health Advocate, Inc.** offers subscriber problem-solving assistance such as coverage denials and billing and coding mistakes, which has in the past come directly from VLCT's Member Relations team. Member Relations will provide details about these services through upcoming emails and meetings.

## ATTENTION PACIF MEMBERS:

**Volunteer Fire Department Workers' Comp Audit Docs are due by Friday, January 8, 2011**

You will soon receive an email requesting the following for calendar year 2010:

- VFD payroll/roster form (provided in the email) for all firefighters who served in 2010.
- 2010 payroll report for **VFD only**, by employee. Include stipends for officers, training wages, and all paid fire fighters. (This report should be an annual summary for 2010 by firefighter.)
- Copies of all four quarterly 941s for the municipality for 2010 (first page only).

Please note:

- If your VFD has **paid compensation, but not through payroll**, we need you to provide documentation and an explanation.
- If your VFD **is not paid at all**, indicate this on the VFD Payroll/Roster form provided in the email.



## RISK MANAGEMENT

(continued from page 9)

compared to 2009. As a result, PACIF members will have a 1.2 percent premium increase trust-wide. To close out 2010, PACIF board members approved both increasing reserved funds and setting aside \$1 million to be returned to members. Increasing the reserves is critical, as David Sichel pointed out, to be able to pay claims that are already "in the mill" and also to invest toward future payments. The money earmarked for members will be distributed in two ways: \$800,000 as credits toward 2011 premiums (mentioned above) and \$200,000 to fund the 2011 PACIF Equipment Grant program. (See "PACIF Keeps Distinguishing Itself" on pages 1 and 14.)

This annual meeting was characterized by positive, upbeat news and discussion, and was adjourned with attendees clearly feeling that their municipal risk sharing pools are serving them well.

## PREVENTING FRAUD THROUGH GOOD FINANCIAL CONTROLS

Among the seminars presented at Town Fair 2010 was "Preventing Fraud through Good Financial Controls," in which VLCT's Kelly Kindestin (Manager, Property and Casualty Claims) and Bill Hall (Senior Financial Consultant) explained what can happen if a municipality is the victim of embezzlement, fraud, or even honest but costly book-keeping errors, and what can be done to prevent these crimes in the first place.

First, the attendees – primarily municipal treasurers and clerks – were told of real Vermont cases involving deliberate misuse or egregious errors in the handling of municipal funds. Then Bill defined fraud and embezzlement while Kelly explained the nature and extent of coverage provided by PACIF. In order to file most claims involving financial misdeeds, the municipality must have documentation showing that money was lost, which in itself requires practices that record financial transactions. ("Financial" refers to *all* forms of money: coin or paper currency, unused postage, money orders, checks, promissory notes, stocks, bonds, etc.)

According to Bill's short list of recommended financial controls:

- Policies and procedures for proper handling of accounts should be documented, in place, and implemented fastidiously.
- A system of internal controls should be used consistently.
- Audits should be performed routinely.
- Accounting records should be reviewed regularly by independent outside agents.

Bill gave various examples of how certain behaviors can cross the line between legitimate use of public funds and fraudulent

## THE FIVE ESSENTIAL ELEMENTS OF INTERNAL CONTROLS

1. A sound control environment
2. Regular ongoing assessment of risk
3. Design and implementation of control-related policies and procedures
4. Effective communication
5. Ongoing monitoring of control-related policies and procedures

use. He explained the types of controls that municipalities can put in place to help protect themselves, including segregating duties, having one staff member confirm another's actions, keeping financial assets and records in a secure place, and periodically reconciling accounts and verifying data. There's no simple list because municipalities need to tailor their protections to their particular needs, and that may depend on factors such as the number of employees involved and the volume and complexity of transactions. Moreover, municipalities need to review and update their internal systems whenever factors beyond their control develop or change –

(continued on next page)



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## RISK MANAGEMENT

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for instance, when a new employee is hired, computer software is changed, new services are implemented, or when it becomes clear that a procedure is out of date.

Questions and comments from attendees were insightful. Q: Most people don't believe that their neighbors and co-workers would be dishonest. How do we convince the municipal powers-that-be of this possibility? A: Show them the headlines of actual problems in Vermont communities featured at the beginning of this presentation. Q: Hiring outside agents to perform audits can be expensive. How can we afford it? A: Always be on the lookout for qualified people who might

lower their rates for the public good, but beware of possible collusion with a municipal staff member. Q: How do we get a newly elected auditor up to speed with municipal issues? A: Have him or her attend VLCT's *Auditors' Workshop* and the *Municipal Budgeting and Financial Management* workshop.

Attendees Katie Buckley, Guilford Town Administrator and Treasurer, and Penny Marine, Guilford Town Clerk and Assistant Treasurer, deemed the presentation worthwhile because it went beyond theory (which they had heard before) into examples of controls that would catch inadvertent errors and prevent intentional misdeeds. "The protection works both ways," said Katie. "Having [financial control] systems in place means that if the treasurer is ever questioned about the validity of a transaction, the answers and

proof are ready." Moreover, clear policies and consistent procedures reassure citizens when they see that the town's government is performing due diligence in protecting taxpayers' money.

VLCT members who missed the presentation can find a PDF of it on our website at [www.vlct.org/eventscalender/townfair/](http://www.vlct.org/eventscalender/townfair/). For more information on recommended financial controls or PACIF coverage for financial crimes and losses, please email Kelly Kindestin at [kkindestin@vlct.org](mailto:kkindestin@vlct.org) or call her at 800-649-7915.



Bill Hall, VLCT's Senior Financial Consultant, explaining why financial controls need to be kept up to date.

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## MUNICIPAL LAW ENFORCEMENT ISSUES

Two meetings that took place at Town Fair 2010 were of particular interest to Vermont's municipal law enforcement officials. In the morning, Jack Ryan of Legal & Liability Risk Management Institute (LLRMI) spoke on Identifying and Reducing Contemporary Risks in Law Enforcement. In the afternoon, the Vermont Police Chiefs Association held its annual meeting. Nancy Sheehan of McNeill, Leddy & Sheahan in Burlington, VLCT's principal law enforcement defense lawyer, attended both sessions.

LLRMI is a national organization that employs several lawyers who, like Jack, served for years as law enforcement officers and are now not only expert witnesses in defending officers but also trainers helping law enforcement professionals learn how to minimize their risk of being sued. Jack listed the 12 critical tasks (see sidebar) that police officers must perform but which are statistically most likely to expose them to lawsuits. For each one he either gave a case example or described a typical scenario in

(continued on next page)



## RISK MANAGEMENT

(continued from previous page)

which an officer can be sued for his or her handling of a situation. Jack spoke knowledgeably, checking with attendees to see if their experience agreed with his. The solutions to these issues, he explained, involve six layers (sometimes called pillars): policy, training, supervision, discipline, review and revision, and legal update. Starting with a valid policy is crucial. Then training officers so they understand the policy and how to implement it, supervising to make sure they adhere to the policy, disciplining with remedial action when a policy is flouted, reviewing and revising the policy when appropriate, and updating the policy when legal guidelines change – all are important for decreasing the risk of law enforcement-related lawsuits.

The VLCT Town Fair normally hosts the annual meeting of the Vermont Police Chiefs Association. This year, most of the afternoon meeting was dedicated to continuing the review of VLCT PACIF's forthcoming model law enforcement policy manual. The manual was written by Jack Ryan and his associates at LLRMI. The review process began in August at the Vermont Police Academy and resumed in Essex with 23 law enforcement officials attending. When complete, the manual (introduced to *VLCT News* readers in the October 2010 issue) will provide municipalities with core policies that account for Vermont law as well as Federal Second Circuit

case law. The topic of law enforcement policies dovetailed well with the morning session, because having sound policies is the first step in preventing lawsuits against a law enforcement agency.

The afternoon meeting elicited input from various attendees who shared their experiences and concerns about particular wording and perspectives used in the draft version of the policy manual. For example, where the manual refers to an Internal Affairs *department*, a small agency would adjust the wording to Internal Affairs *process*. Similarly, if a night shift only has one officer, a report that would otherwise require a second officer's immediate review would necessarily wait until the other officer arrived to begin his or her shift. A question arose as to why the manual says that a photograph be taken

of evidence when the evidence itself is to be retained. Jack's answer – that the photograph records the condition of the evidence when collected, which might need to be proven at some point – elicited a few "aha"s from attendees.

The final Vermont model law enforcement policy manual will be available both in a binder and as electronic files in the next month or so. It will only be distributed to those law enforcement agencies of PACIF members that have at least one trainer complete the initial train-the-trainer course with Jack. LLRMI is on contract with PACIF to keep the manual up to date for three years, so revisions will be made available periodically. If you have questions about the manual, please contact Joe Damiata at 802-229-9111 or [jdamiata@vlct.org](mailto:jdamiata@vlct.org).

### THE TWELVE CRITICAL TASKS OF LAW ENFORCEMENT

Use of Force (a.k.a. Response to Resistance)

Pursuit

Emergency Vehicle Operation and Control

Search, Seizure, and Arrest

Care, Custody, Control, and Restraint of Prisoners

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## PACIF

(continued from page 1)

doubled to \$200,000.

Another improvement for 2011 is the introduction of the PACIF Scholarship Program, which will help members pay for safety-related training for individuals or groups. Scholarship money can also be used to cover travel expenses or the cost of training materials, even if the training itself is free. There are annual per-member award limits that are specified in the scholarship description. Interested members will find more information at [www.vlct.org](http://www.vlct.org).

In the area of vehicle-related safety, Stevens Advanced Driver Training courses will continue to be offered to municipal drivers, fire departments can sign up for specialized fire truck backup training, the driving simulator is available to be used at member locations, and municipal road crews can receive on-site f agger training.

Perhaps most significantly, PACIF member police departments will be able to enter 2011 with the Law Enforcement Model Policies and Procedures Manual, which has been developed specifically for Vermont municipalities with input from interested chiefs of police. Departments that implement the manual's policies will be at a great advantage for avoiding or mitigating costly lawsuits.

For more information about the range of PACIF's coverages, speak with a member of the Underwriting or Claims teams. For more information on safety or loss control, speak with Joe Damiata or your Loss Control consultant. In either case, you can start by calling 800-649-7915.

### EQUIPMENT BOUGHT WITH 2010 PACIF GRANTS

- body armor
- bullet proof vests
- fall protection
- fire alarm systems
- fireproof storage cabinets
- gas detectors
- hydraulic tailgate lifts
- manhole buddies
- motion lights
- power cots
- security systems
- sewer cameras
- tank boss vertical lifts
- trench box
- truck crane
- truck crane and electric winch

### PACIF MEMBERS THAT RECEIVED 2010 EQUIPMENT GRANTS

- Addison County Solid Waste Management District
- Burke
- Canaan
- Castleton
- Clarendon
- Cold Brook Fire District No. 1
- Danby
- Derby Line Village
- Enosburgh
- Fair Haven
- Grand Isle Volunteer Fire Department
- Hardwick
- Hartford Fire Department
- Hartford Public Works
- Jericho
- Johnson Town and Village
- Lamoille Regional Solid Waste Management District
- Ludlow
- Maidstone
- Manchester
- Milton
- Mount Tabor
- New Haven
- Newport City Police Department
- Northeast Kingdom Waste Management District
- Northfield
- Northfield Emergency Medical Services
- Norwich
- Norwich Fire District
- Poultney Town
- Proctor
- Randolph
- Richmond
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- Wallingford Fire District No. 1.
- West Rutland
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- Woodstock Ambulance



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## PUBLIC RECORD

(continued from page 1)

cific piece of email, however, the question must also be answered whether it was “produced or acquired in the course of” municipal business. If this second part of the definition is not met, the email message is not a public record.

There are very few reported Vermont court decisions addressing whether recorded information was “produced or acquired in the course of” public agency business. In the leading case, *Herald Association v. Dean*, 174 Vt. 350 (2002), several newspapers request-

automatically record information the user enters or receives. They also may record data about the recorded information. This meta-data may often fit the statutory definition of a public record and could be a public record, even though the user of the application had no intention of recording the information or knew that it was being recorded.

It is also noteworthy that there is no location limitation in the definition of a public record. Email messages may still be public records even though they are recorded outside of a municipal office on a computer not owned or controlled by the municipality. Depending on an email message’s content and

unless it falls within one of the Act’s 39 exemption categories. According to the *Legislative Council Staff Report on Public Records Requirements in Vermont*, one of the exemption categories— records that by law are designated confidential – effectively encompasses 169 other exemptions found elsewhere in Vermont law, bringing to 208 the total number of possible state law exemptions to which a public record may be subject.

Through these exemption categories, the Vermont Legislature has identified the types of private and confidential information to be shielded from public disclosure. Generally, the Vermont Supreme Court has recognized that the Public Records Act favors a policy of access to public records, and to this end Vermont courts construe the Act “liberally in favor of disclosure.” They also construe exemptions narrowly against the custodians of records and resolve any doubts in favor of disclosure.

While any Public Record Act exemption may be applicable to any particular public record, given that email is most often used as a method of correspondence, a number of exemptions may specifically apply to email correspondence between municipal officials or municipal board members. These include:

- 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 Title 1. 1 V.S.A. § 317(c)(17).
- Records that would cause the custodian to violate the common law deliberative process privilege which protects information of an advisory or deliberative nature that relates to the governmental decision or policy-making process and allows government officials freedom to debate alternative approaches in private. *Bethel v. Bennington School District and Mount Anthony School District*, 403-10-07 Bncv; *Munson Earth Moving Corp v. City of South Burlington*, So 805-08 Cnc.

“ Given that the determination of whether a particular email message is a public record or potentially subject to an exemption is determined by the content and context of the message, all email messages produced or acquired by a municipal electronic message system should be retained and managed as public records. ”

ed copies of former Governor Howard Dean’s daily schedule under the Public Records Act. Governor Dean refused the request, arguing that portions of his schedule not directly related to duties as governor – in particular, information related to his developing presidential campaign – was not covered by the definition of a public record.

In rejecting this argument, the Vermont Supreme Court noted the circumstances surrounding the creation of the Governor’s calendar and the role it played in the functioning of the Governor’s office led to the conclusion that it was produced or acquired in the course of the Governor’s business. According to the Court, nothing in the Public Records Act “intimates that records of official acts alone are subject to public inspection.” The Court also emphasized that “the Legislature did not limit the statutory right of access to public documents to those reflecting official governmental acts only.” This being the case, the Governor’s entire calendar, including those portions of the calendar related to his presidential aspirations, was held to be a public record.

Significantly, under the Public Records Act an individual does not have to intend to record information, nor does an individual have to know he or she is recording information, in order for the recorded information to be a public record. Many computer applications – including email programs, Internet message boards and social media programs –

context, the message may be a public record even if it is sent or received by a local official or employee at his or her home or place of business. The same would apply to information recorded by computer applications such as word processing programs, databases and spreadsheets, Internet message boards, listserves and social media applications.

While the facts in *Herald Association* may not readily transfer to the much more mundane information that municipal governments typically records, there are nevertheless some important insights and principles to be derived from the decision – namely that public records are not limited to the official actions of government, and that whether a particular item of recorded information is a public record depends upon its content and the context in which it was produced or acquired. Thus in most instances, the determination whether a particular document or email message is a public record must be made on a case-by-case basis. An email message may be a public record regardless of the creator or recipient’s knowledge or intent and regardless of the location in which it is produced or acquired.

### **Do any Public Records Act exemptions apply to email correspondence?**

Some may. As stated above, if a request for a public record is made, the custodian must promptly produce the record for inspection

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# Classifieds

Please visit the VLCT website [www.vlct.org/marketplace/classifiedads/](http://www.vlct.org/marketplace/classifiedads/) to view more classified ads. You may also submit your ad via an email link on this page of the site.

## VLCT NEWS ADVERTISING POLICY

The *VLCT News* welcomes classified advertisements from municipal entities, public agencies, businesses and individuals. This service is free for VLCT members (regular, contributing and associate); the non-member rate is \$41 per ad.

Classified ads are generally limited to 150 words and run for one issue. These ads are also placed on the VLCT website for up to one month.

The *VLCT News* is published eleven times per year (the August and September issues are combined) and reaches readers during the first week of the month.

The deadline for submitting advertisements is the first Friday of the month prior to the issue date. Space is sometimes available for late additions; please feel free to check with the editor for availability.

For more information on placing classified ads in the *VLCT News*, contact [classifieds@vlct.org](mailto:classifieds@vlct.org). For details on display advertising, email [vlctnews@vlct.org](mailto:vlctnews@vlct.org). Information on ad requirements may also be downloaded at [www.vlct.org/aboutvlct/vlctnewsletter/advertisinginformation/](http://www.vlct.org/aboutvlct/vlctnewsletter/advertisinginformation/).

## HELP WANTED

**Town Manager.** The Town of Wilmington, Vermont seeks an experienced leader for the position of town manager. Wilmington (pop. 2300) is a rural community located in Southern Vermont's Green Mountains near the Mount Snow ski area.

With more than 1,600 vacation homes, Wilmington has seasonal and weekend increases in population. The manager reports to a five-member selectboard and supervises all town departments. The town has employed a town manager since 1967. The current operating budget is \$3.74 million with 24 full-time employees and four part-time employees. The manager is the town's chief administrative officer and is responsible for the day-to-day operations of the town. Responsibilities include financial management and budgeting, community and intergovernmental relations, and personnel administration. A full job description is available at [www.wilmingtonvermont.us](http://www.wilmingtonvermont.us). A working knowledge of municipal practices, budgeting, finance, personnel administration, and public relations is essential. A bachelor's degree and five years of management experience are required; a master's degree in an appropriate discipline is preferred. Hiring range is \$60,000 to \$65,000 with an excellent benefit package. To apply, please send a confidential cover letter, resume, and three references to Wilmington Manager Search, c/o VLCT, 89 Main Street, Montpelier, VT 05602. You may also email to [charl-rington@vlct.org](mailto:charl-rington@vlct.org) with Wilmington in the subject line. **Resume review will begin on December 20, 2010.** The Town of Wilmington is an Equal Opportunity Employer. (11-12)

**Water Plant Operator.** The Vergennes Panton Water District is seeking a Water Plant Operator to maintain records, analyze water quality through testing, adjust chemical dosages, handle chemicals and follow safety procedures associated with their use. Daily duties include the general maintenance of water plant equipment such as pumps, generator, monitoring and chemical feed equipment. Other job duties include reading meters and maintaining the water distribution system, including hydrants and valves. Requirements: Basic electrical knowledge; ability to perform strenuous activities; on-call duty on a rotating schedule; operator must live close enough to respond

to alarm calls within 20 minutes; operator must have or be able to pass the State certification for Class IV water operator and have a valid driver's license. Competitive pay and benefits package. To apply, please submit cover letter, resume, three references and salary requirements to: Vergennes-Panton Water District, PO Box 152, Vergennes, VT 05491. Position open until filled.(11-10)

**Assistant City Attorney.** The City of Burlington seeks an experienced, highly motivated Assistant City Attorney to assist the City Attorney in representing the City in civil and criminal litigation cases and to provide general legal counsel. This position is also responsible for enforcing City ordinances and bylaws. A law degree and license to practice law in the State of Vermont are required. The City of Burlington offers a competitive salary commensurate with experience and excellent benefits. For a complete job description and City of Burlington application, visit our website, [www.hrjobs.ci.burlington.vt.us](http://www.hrjobs.ci.burlington.vt.us). To apply, please send resume, cover letter and City of Burlington application by December 3, 2010 to Human Resources Department, 131 Church Street, 2nd floor, Burlington, VT 05401. Women, minorities and persons with disabilities are encouraged to apply. E.O.E. (11-2)

## FOR SALE

**Leaf Loader.** The Town of Guilford has for sale a 2008 Giant-Vac Municipal Leaf Loader Model TM6600JDT-HW in like-new condition (15 hours). Specifications: 85 hp 4-cylinder, 276 cubic inch, John Deere diesel engine; 11.5" clutch; 30 gallon capacity fuel tank; 29.5" diameter blower impeller, 4 blades, 22,000 CFM; 10'-long, 18"-diameter intake hose and boom support; The 90-degree intake angle is mounted so that the intake hose and boom are on the curbside of unit, allowing the unit to vacuum debris on the right side of street; 12" square, telescopic discharge (additional sections may be

*(continued on page 19)*



## PUBLIC RECORD

(continued from page 16)

- Records concerning formulations of policy, where such would constitute a clearly unwarranted invasion of personal privacy if disclosed. 1 V.S.A. § 317(c)(12).
- Records of, or internal materials prepared for, the deliberations of any public agency acting in a judicial or quasi-judicial capacity.

While some of the record exemption categories are fairly clear on their face, others have been the source of repeated litigation. In interpreting one of the Act's more ambiguous exemption categories – personal documents relating to an individual – the Court has developed a balancing test to determine whether public interest in disclosure is outweighed by potential invasion of an individual's privacy interests. The Court has described the privacy interest as the “intimate details of a person's life, including any information that might subject the person to embarrassment, harassment, disgrace, or loss of employment or friends.” *Trombley v. Bellows Falls Union High School Dist. No. 27*, 160 Vt. 101 (1993). Even when this privacy concern is implicated, a public record may still be subject to disclosure if the public's interest in disclosure outweighs these privacy concerns. In balancing these interests, the significance of the public interest asserted, the nature, gravity, and potential consequences of the invasion of privacy occasioned by the disclosure and the availability of alternative sources for the requested information must all be considered. *Kade v. Smith*, 180 Vt. 554 (2006).

As with the determination of whether a particular document or email message is a public record, determining whether such document or email message is subject to one or more of these exemptions must be made on a case-by-case basis. This principle is especially important when the exemption being considered is “for personal documents relating to an individual” described above.

### Who is the custodian of email messages under the Public Records Act?

According to the Public Records Act, “Upon request the custodian of a public record shall promptly produce the record for inspection.” It also provides, “A custodian of public records shall not destroy, give away, sell, discard, or damage any record or records

“Municipal officials should also be conscious of the consequences and legal obligations arising from the use of the municipality's electronic communications systems and the importance of choosing a communication method appropriate to the message being conveyed.”

in his or her charge, unless specifically authorized by law or under a record schedule approved by the state archivist pursuant to subdivision 117(a)(5) of Title 3.” However, the Public Records Act does not itself designate who the immediate or permanent custodian of a particular public record is. Different municipalities are likely to have different practices and, in many cases, no formal designation of a permanent custodian may be made.

As with the definition of a public record and the determination of whether it may be subject to an exemption, identifying the immediate custodian of a particular record must be made on a case-by-case basis. In some instances, the immediate custodian of an email message may be the message's sender or recipient. The custodian could change as the record is transmitted to recipients or archived for retention. Along these lines, the Vermont State Archives and Records Administration (VSARA) recommends that when email messages and attachments are sent to multiple people, the sender should be responsible for maintaining the record, including subsequent responses, until the retention requirement specific to that document is met. *Electronic Messages Best Practices for All Public Agencies*, April 1, 2009. [vermont-archives.org/records/standards/pdf/ElectronicMessagesBestPractice\\_Eff.20090401.pdf](http://vermont-archives.org/records/standards/pdf/ElectronicMessagesBestPractice_Eff.20090401.pdf)

In 1893, the Vermont Supreme Court stated “The town clerk is the custodian of the permanent files and records of the town, either by express law making him such custodian, or by the immemorial usage in this state.” *State v. Buchanan*, 65 Vt. 445 (1893). In 1893, the volume of municipal public records was certainly much smaller than it is now and most of the information recording formats used today did not exist. To the extent that the modern law is not clear regarding who the permanent custodian of a particular public record should be, the selectboard is responsible for performing “all duties required of towns and town school districts not committed by law to the care of any particular officer.” 24 V.S.A. § 872.

In municipalities utilizing the town manager form of government, the manager is charged with “caus[ing] duties required of towns ... not committed to the care of any

particular officer, to be duly performed and executed.” 24 V.S.A. § 1236(1). Given this default status, for records other than those expressly in the custody of a particular officer or board, the selectboard or legislative body of a municipality and/or the municipal manager would likely be legally responsible for safe keeping of municipal records and ensuring Public Records Act compliance.

### How should email correspondence be managed?

The proper retention and management of all public records is vitally important to the operation of government. Vermont state agencies are required by law to establish and maintain a public record management program. Each agency program for public record management must be approved by VSARA and must meet certain statutory requirements. 3 V.S.A. § 218(b),(c).

While there is presently no legal requirement for a municipal government to have an approved public record management system, as noted above, it is unlawful to destroy, give away, sell, discard, or damage any public record unless specifically authorized by law or under a record schedule approved by the state archivist. 1 V.S.A. § 317a. A person who willfully destroys, gives away, sells, discards, or damages a public record without legal authority to do so may be fined up to \$1,000 for each offense. 1 V.S.A. § 320(c). Beyond these penalties, some effective system of municipal records management is certainly necessary, given the important role that records play in the administration of local government.

To guide the retention and management of emails messages, VSARA has published *Electronic Messages Best Practice for All Public Agencies*, the purpose of which is to “establish a set of statewide recommendations for the retention and disposition of electronic messages created with electronic communication systems (such as electronic mail systems).” It applies to “all electronic messages created or received by public agencies.” A municipality is a “public agency” for purposes of the document. 1 V.S.A. § 317(a).

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## PUBLIC RECORD

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Among the recommendations the *Electronic Messages Best Practice* document makes are “records created through electronic communication systems should be fully retrievable and available until retention requirements specified in their respective disposition orders or record schedules have been met,” and “[a]gencies should have policies and procedures that address how their agency will transfer records from their electronic communications systems to existing electronic recordkeeping systems or paper-based recordkeeping systems.” The document contemplates that all agencies, including municipal governments, have or will develop a system for retaining and managing email messages either in electronic or paper format.

Regardless of the statutory penalties for destroying a public record or failing to respond to a public records request, every municipality should be taking steps to manage electronic public records effectively, given their importance to the operation of municipal government and to citizens as a means of evaluating the performance of public officials. Municipal officials should review their electronic communication systems to determine what information being recorded could be a public record, keeping in mind that the definition of a public record is very broad and not limited to official government acts.

Municipal officials should also be conscious of the consequences and legal obligations arising from the use of the municipality’s electronic communications systems and the importance of choosing a communication method appropriate to the message being conveyed. All users of municipal electronic communications systems (both senders and recipients) should be advised that their email communication may be a public record and of their responsibility to retain and manage electronic communications in accordance with the Public Records Act. In other states, municipal officials routinely include statements in their email correspondence reminding recipients that any correspondence – whether by traditional method or email with municipal officials – with certain limited exceptions is public record and is available for review by any requesting party.

To summarize, municipal governments should adopt specific policies for the management of email messages as public records. These policies should identify the immediate and permanent custodians of email messages and outline procedures for transfer of email messages from immediate custodians (e.g., senders or recipients) to electronic recordkeeping systems or paper-based recordkeeping systems overseen by permanent custodians. Messages retained in the recordkeeping system should be retrievable and available until retention requirements specified in the applicable VSARA disposition order or record schedule have been met.

Given that the determination of whether a particular email message is a public record or potentially subject to an exemption is determined by the content and context of the message, all email messages produced or acquired by a municipal electronic message system should be retained and managed as public records. Ultimately, the determination of whether an email message is a public record or might be subject to an exemption must be made on a case-by-case basis, based on both the content and the context of the information. The determination of whether a particular email message is a public record and/or is subject to an exemption should be made by the permanent custodian at the time a request for production of a public record is made. This approach will help ensure consistency in the treatment of email messages as public records.

*Jim Barlow, Senior Staff Attorney  
Municipal Assistance Center*

## CLASSIFIEDS

(continued from page 17)

added) plus straight and curved right-angle sections; 6,000-pound trailer, Torflex axle, L.T. 700/15 10-ply tires, 3” Lunette eye hitch, adjustable jack with a 5” caster wheel, rear drop stand to support the unit when it is not coupled to the tow truck; Electric brakes with breakaway kit; Fenders, safety chains, stop and taillights, and front nozzle holders will be supplied. Price, \$15,000 (delivery included). For more information, contact Dan Zumbruski, Guilford Road Commissioner, at 802-254-2755 or 802-380-2233. (10-28)

## RFP

**Hazardous Waste Collection.** The Central Vermont Solid Waste Management District (CVSWMD) seeks RFPs for Conditionally Exempt Generator and Household Hazardous Waste Collections for 2011 from qualified hazardous waste contractors, transporters and event operators. The contractor is to furnish labor, equipment, and other work necessary for collection, identification, packaging, labeling, hauling, recycling, treating, incineration and/or disposal of HHW and CEG waste in accordance with all applicable federal, state, and local laws. **Deadline, December 10, 2010.** The full Request For Proposals is at [www.cvsmd.org/wp/rfp-for-hhw-collections/](http://www.cvsmd.org/wp/rfp-for-hhw-collections/). (11-8)

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# Calendar

*For more information about the following workshops or events, please contact Jessica Hill, Manager, VLCT Administrative Services, tel. (800) 649-7915, or email [jhill@vlct.org](mailto:jhill@vlct.org). Or visit [www.vlct.org](http://www.vlct.org)'s Events Calendar and select a workshop for more information or to register online. For non-VLCT events listed below, please contact the individuals directly. (The online registration option is available for VLCT workshops and events only.)*

**November 30, Middlebury Inn, Middlebury  
December 2, Hotel Coolidge, White River  
Junction**

**Effective Delinquent Tax Collection** *(Sponsored by the VLCT Municipal Assistance Center)*

This half-day workshop will examine the legal and practical requirements of collecting delinquent property taxes. We will review the municipal property tax system, the role of the delinquent tax collector in local government, and the development of a collection philoso-

phy and policy. We will also discuss delinquent tax collection methods, focusing on the tax sale process.

**December 7, Middlebury Inn, Middlebury  
December 9, Holiday Inn Express, Springfield**

**Basic Governmental Accounting I** *(Sponsored by the VLCT Municipal Assistance Center)*

This half-day workshop will introduce the principles of fund accounting and discuss the various fund types and activities of local government. Participants will also explore examples of various accounting transactions commonly encountered in their jobs.

**December 15, Capitol Plaza, Montpelier  
Preparing for a Successful Town Meeting** *(Sponsored by the VLCT Municipal Assistance Center)*

In this workshop, participants will learn the legal requirements and best practices for drafting articles and preparing the warning, handling petitions and social service agency re-

quests, and preparing the town report. We will also review post-Town Meeting requirements, including preparing meeting minutes, taking oaths of office, bonding, and making appointments.

**January 11, Holiday Inn Express, Springfield**

**Basic Governmental Accounting II** *(Sponsored by the VLCT Municipal Assistance Center)*

This half-day workshop session will concentrate on financial reporting, including a discussion of basic monthly financial reports, the financial reports in the annual audit report, and the comprehensive annual financial report (CAFR). Attendees will gain hands-on experience as they work on spreadsheets that will help them understand the accounting entries necessary to prepare the various financial reports discussed.

Visit our website [www.vlct.org/eventscalendar/upcomingevents/](http://www.vlct.org/eventscalendar/upcomingevents/) for the most up to date list of events.