

## **New Model Public Records Act Policy Available for Municipalities**

The Vermont Public Records Act, 1 V.S.A. §§ 315-320, requires that municipalities make their public records accessible to the public for copying and inspection during “customary business hours” (i.e., the hours that the municipality is open to provide services to the public). The definition of a public record is similarly broad and includes “any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business.” 1 V.S.A. § 317(b). Under this definition, any paper document, email, computer database, or other digital document, image, or recording produced or acquired by a municipality or a municipal officer in the course of business would likely qualify as a public record.

To aid municipalities in responding to requests for inspection and copying of public records VLCT’s Municipal Assistance Center has created the Model Public Records Inspection, Copying, and Transmission Policy. This policy helps municipalities manage the process of responding to requests for inspection and copying of public records and facilitates compliance with the Public Record Act’s legal requirements.

Access to a public record must be provided unless that record is exempt under one of the 42 general exemptions listed in 1 V.S.A. § 317(c) or is designated by law as confidential or is otherwise exempt. (There are at least 201 records designated by statute as confidential or otherwise exempt.) Note: In most instances, just because a public record *can* be withheld from disclosure, does not mean that it *must* be withheld.

For the purposes of achieving administrative consistency in the processing of public records requests across all municipal departments, our policy presumes that all records deemed “exempt” under the Public Records Act will be withheld. Please note, however, that a public record may not be withheld in its entirety merely because it contains information that is exempt from disclosure. Instead, the exempt information must be redacted (covered or crossed out) and the remainder of the record disclosed. 1 V.S.A. § 318(e).

The Public Records Act does not require the creation of a public record nor does it require *transmission* of a record by any means (including U.S. mail, email, fax, etc.). Nonetheless, our policy gives municipal officials the choice to create and/or transmit a public record upon request.

The Public Records Act imposes obligations on the custodian of a public record, who is the person in municipal government that has charge or custody of that record. Municipalities will have at least one custodian and will likely have multiple custodians, one for each sub-entity or department, board, or commission of the municipality.

The denial of access to a public record may be appealed to the head of the custodian’s agency (e.g., municipal department, committee, commission, etc.). Unfortunately, the Public Records Act fails to account for the actual structure of municipal government where some custodians of

public records are also the heads of their agencies. (For example, a municipal clerk is, by statute, the custodian of certain public records and is also the head of his or her agency.) To account for this oversight, and to avoid the appearance of impropriety that may arise when a municipal official sits in appeal of his or her own decision, we developed our policy to allow all independently-elected municipal officials to delegate appeals of their initial public records determinations to the municipal manager, administrator, or legislative body chairperson as applicable.

Our policy includes the following form templates which should be used in conjunction with it:

1. A Request for Inspection or Copying of Public Record(s) form. This document should be provided to the individual making the public records request for copying or inspection. Note: The law does not require that an individual's request for public records copying or inspection be in writing, but the municipality may require a written request if the request for copying is subject to staff time charges.
2. A Response to Request for Public Record(s) form. The custodian of the public record(s) should use this document for responding to requests for copying or inspection, returning it to the requestor while also keeping a copy for him or herself.
3. A Certification of Denial of Access to Public Record(s) form. If a custodian of a public record finds that a record – in whole or in part – is exempt from disclosure, he or she should complete this form and return it to the requestor while also retaining a copy for him or herself.

We strongly recommend that either the town's own legal counsel or a MAC attorney review any proposed public records policy before adoption. VLCT's Model Public Records Inspection, Copying, and Transmission Policy is available [online](#). For information about our legal review service, please email [info@vlct.org](mailto:info@vlct.org) or call 800-649-7915.

Join us for training on Complying with Vermont's Public Records Act on December 7 at the Lake Morey Resort in Fairlee. Registration and related information are available on VLCT's [Event Calendar webpage](#).

For information and guidance regarding the management, retention, and disposition of public records under the Public Records Act, please contact the Vermont State Archives and Records Administration Division of Records Management at 802-828-3897.

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