Do we have to keep minutes of executive session? If we do keep minutes, are they public documents?

"No" to both questions. The statute specifically says "Minutes of an executive session need not be taken, but if they are, shall not be made public subject to [the public information law]." 1 V.S.A. § 313 (a). The caveat here is that if minutes of executive session **are** kept, they may be subject to disclosure by a court order if the matter is ever the subject of litigation.

The object of an executive session is to give the members an opportunity for a thorough and uninhibited discussion of certain things such as personnel matters, contract negotiations or public safety. Publicly available minutes could be a deterrent to plain speaking on sensitive issues.

The safest policy is to conduct discussion of sensitive matters in executive session, without taking minutes and without taking any formal action. Then, vote to go into open session. At that time, action may be taken as a result of the executive session discussion and that action must be recorded in the minutes of the open session. For example, after an executive session during which job applicants were discussed in depth and at length, the minutes of the open session might say, "The Board voted 3 to 1 to offer the position of road commissioner to Sam Sneed." So, even though the discussion was not public, the resulting decision will be a part of the public record.

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