

VLCT MUNICIPAL ASSISTANCE CENTER FAQs:

VERMONT PUBLIC RECORDS ACT

PLEASE NOTE: This is not a comprehensive discussion of the Vermont Public Records Act. For assistance with the response to a specific public records request, contact your town attorney or the VLCT Municipal Assistance Center at (800) 649-7915 or info@vlct.org.

This FAQ document provides general information about the Public Records Act. For guidance about how to respond to a request to inspect, copy or transmit public records, please see our [Model Public Records Inspection, Copying, and Transmission Policy](#). Municipal officials may find it helpful to use these two documents in conjunction with each other. The Model Policy provides guidance for municipal officials as well as template documents to be used when responding to a request for records.

For information and guidance regarding the management, retention, and disposition of public records, please contact the [Vermont State Archives and Records Administration](#) at (802) 828-3897.

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FAQS ABOUT VERMONT'S PUBLIC RECORDS ACT

1. WHAT IS THE VERMONT PUBLIC RECORDS ACT?

Vermont's Public Records Act, 1 V.S.A. §§ 315-320, is a law that identifies what is a public record and when it must be made available for public inspection and copying. It requires that "...certain public records shall be made available to any person as hereinafter provided..." and that any person is authorized to inspect or copy an existing "public record."

2. WHAT IS A PUBLIC RECORD?

The definition of a "public record" is very 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 or electronic document, including email, computer files, or other digital document, image or recording produced or acquired by a municipality or a municipal officer in the course of municipal business is generally a public record. Information that fits into the above statutory definition is public record even if it is sent from a personal email address, texted to a personal iPhone, or stored on a personal computer. *Toensing v. The Attorney General of Vermont*, 2017 VT 99.

3. WHO IS THE "CUSTODIAN" OF A PUBLIC RECORD?

The "custodian" of a public record is the person within the municipality 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/commission of the municipality.

4. CAN I DISCARD A PUBLIC RECORD?

Public records shall not be destroyed, given away, sold, discarded, or damaged, except as specifically authorized by law or by a record schedule approved by the Vermont State Archivist. 1 V.S.A. § 317a. A person who willfully destroys, gives away, sells, discards, or damages a public record without having authority to do so can be fined at least \$50.00, but not more than \$1,000.00 for each offense. 1 V.S.A. § 320(c).

5. HOW LONG DO I HAVE TO RETAIN A PUBLIC RECORD?

It depends on what kind of information is contained in that record. The Vermont State Archives and Records Administration (VSARA) classifies records based on their content and provides direction for how long those records must be retained. Consult VSARA's General Record Schedules at <https://www.sec.state.vt.us/archives-records/records-management/records-retention/general-record-schedules.aspx> or contact them at (802) 828-3897.

6. WHO HAS THE LEGAL RESPONSIBILITY TO PROVIDE ACCESS TO A PUBLIC RECORD?

The custodian must provide access to a public record or respond as to why access to that record cannot be provided (see explanation of the term "custodian" in #3 above).

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7. HOW FAST DO I HAVE TO RESPOND TO A REQUEST FOR RECORDS?

The Act requires a “prompt” response but does not specifically define the word “prompt.” As a very general matter, MAC advises that if you have a record in your possession, and it can be produced for inspection or copying without undue burden, then it should be made available as soon as practical. There are some instances in which you have additional time to respond. Here are some timelines for responding to a request depending on whether a public record is exempt, in active use or in storage, or there are unusual circumstances preventing the prompt production of a public record:

- a) You have up to 3 business days to respond if you consider the record exempt from inspection. However, you must notify the requestor in writing that you consider the record to be exempt. That writing must reference the statute that makes the record exempt, and must include a brief statement of the reasons and supporting facts for the denial. The writing must also notify the requestor of the right to appeal your denial of access to the record. 1 V.S.A. § 318(a)(2).
- b) You have up to 7 calendar days to make the record available if the record is in active use or in storage and therefore not available for use at the time the person asks to examine it. However, you must notify the requestor in writing that this is the case and set a date and hour within one calendar week of the request when the record will be available for examination. 1 V.S.A. § 318(a)(1).
- c) Any of the preceding timeframes for responding to a public records request can be extended by written notice up to 10 business days from the date of the request to make the record available if there are “unusual circumstances” which are defined exclusively as:
 - (i) the need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request;
 - (ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
 - (iii) the need for consultation with the municipal attorney or other municipal officers or departments having a substantial interest in the determination of the request.

However, you must notify the requestor in writing of the reasons for the extension and the date on which you expect to respond (which date must be within ten business days from receipt of the request). 1 V.S.A. § 318(a)(5).

8. DO I HAVE TO RESPOND TO EVERY RECORDS REQUEST THAT I RECEIVE?

Yes. A municipal official or municipal employee must respond to every records request that he or she receives, even if just to say that he or she is not the “custodian” of the record. *Pease v. Town of Windsor*, 190 Vt. 639 (2011). If you are not complying promptly in whole or in part to the request, then you must respond in writing. The Act generally requires written notification to the requestor that includes notification of the right to appeal. 1 V.S.A. § 318. The [VLCT Model Public Records Policy](#) contains templates for written responses.

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9. MAY I CONSIDER THE MOTIVE OF THE REQUESTOR?

No. Generally speaking, State law does not allow you to consider or ask the purpose of a records request; the requestor's identity and motive are irrelevant in responding to a public records request.

10. WHAT IF I DON'T UNDERSTAND A REQUEST FOR RECORDS? CAN I IGNORE OR DENY IT?

No. If you are uncertain as to what is being requested of you, the law requires that you consult with the requestor in order to facilitate the production of the record(s). 1 V.S.A. § 318(d). You may also ask the requestor to provide a specific written request, but the requestor is not obligated by law to put the request in writing.

11. WHAT IF THERE IS A REQUEST FOR A RECORD THAT DOES NOT ALREADY EXIST?

The Act does not require the creation of a public record that does not already exist. 1 V.S.A. §§ 316(i), (g). Nevertheless, a municipal official may choose to create a public record upon request. If a custodian chooses not to create a record, he or she must certify in writing that the record does not exist under the name give or by any other name known to the custodian. 1 V.S.A. § 318(a)(4).

12. WHAT IF A REQUEST IS MADE FOR A LARGE VOLUME OF RECORDS?

MAC suggests doing one or more of the following:

- Asking the requestor to narrow the scope of the request;
- Providing the requestor with an estimate for the cost of the records (see # 23 below); or
- Asking for advance payment for the cost of the copies (see #23 below).

13. WHAT IF THE TOWN OFFICE IS ONLY OPEN A FEW DAYS A WEEK OR HOURS A DAY? DO WE HAVE TO EXTEND THOSE DAYS OR HOURS TO ALLOW INSPECTION?

No. The Act requires that a municipal public agency makes its public records accessible to the public for copying and inspection during "customary business hours." This likely means the hours that the particular municipal office is open to provide services to the public.

14. CAN WE IMPOSE RULES ABOUT PUBLIC ACCESS TO PUBLIC RECORDS?

Yes. "A public agency may make reasonable rules to prevent disruption of operations, to preserve the security of public records or documents, and to protect them from damage." The VLCT Model Public Records Policy provides a template for such rules. 1 V.S.A. § 316(j).

15. DO WE HAVE TO USE THE TOWN'S EQUIPMENT TO COPY A PUBLIC RECORD?

Yes. The Act provides that a "public agency having the equipment necessary to copy its public records shall utilize its equipment to produce copies." 1 V.S.A. § 316(g).

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16. DO WE HAVE TO LET THE REQUESTOR USE TOWN EQUIPMENT TO COPY A PUBLIC RECORD?

No, you may insist on making the copies yourself. "Nothing in this section shall be construed to require the public agency ... to permit operation of its copying equipment by other than its own personnel." 1 V.S.A. § 316(g).

17. WHAT IF THE TOWN DOES NOT HAVE THE EQUIPMENT NECESSARY TO COPY A PUBLIC RECORD?

There is no requirement to provide or arrange for copying service, to use or permit the use of copying equipment other than town equipment, or to permit removal of the record for copying or to have staff make handwritten or typed copies of the record requested. However, there is an obligation to provide the means for inspection of the record. 1 V.S.A. § 316(g).

18. ARE WE REQUIRED TO TRANSMIT (MAIL, EMAIL, OR FAX) RECORDS UPON REQUEST?

No. The Act merely requires that you make public records available for inspection and copying during customary business hours, it does not state that you must transmit those records to the requestor. However, a custodian may choose (or a Town Public Record Policy may impose the obligation) to transmit records.

19. WHAT IF THE RECORD IS IN ELECTRONIC FORMAT (STORED ON A COMPUTER OR OTHER DEVICE)? CAN WE GIVE THE PERSON A PRINT-OUT?

Only if they ask for one. If the record is in electronic format you must provide the kind of copy requested. 1 V.S.A. §§ 316(h), (i).

20. WHAT IF THE RECORD IS A PAPER RECORD AND THE REQUESTOR WANTS AN ELECTRONIC COPY? DO WE HAVE TO MAKE AN ELECTRONIC COPY?

No. There is no legal obligation to convert a paper record into an electronic record. However, you may choose to do so at your discretion. 1 V.S.A. §§ 316(h), (i).

21. ARE WE REQUIRED TO CONVERT A PUBLIC RECORD THAT EXISTS IN ELECTRONIC FORMAT TO A DIFFERENT ELECTRONIC FORMAT (E.G., EXCEL TO WORD)?

No. There is no legal obligation to convert a public record in electronic format to an electronic format other than that in which the record is maintained (e.g., Excel to Word). However, you may choose to do so at your discretion. 1 V.S.A. §§ 316(i), (h).

22. CAN WE CHARGE AND COLLECT FEES FOR A REQUEST?

Only when copies are provided. Specifically, the following fees may be charged and collected:

- a) A person may be charged for the "actual cost" of the copy of the public record that he or she requests. 1 V.S.A. 316(b). The "actual cost" means either: (1) the fee that is set in state statute, if applicable (such as the cost of copying a deed in 32 V.S.A. § 1671); (2) the fee that has been set by the legislative body of the municipality in accordance with 1 V.S.A. §§ 316(d), (e); or (3)

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the fee established by the VT Secretary of State on its Uniform Schedule of Fees (available on the Secretary of State's website).

- b) A person may be charged for the cost of staff time associated with complying with the request for a copy of a public record if any of the following apply: (a) the time directly involved in responding to the request for copying exceeds 30 minutes; or (b) the custodian has voluntarily agreed to create a record that did not already exist; or (c) the custodian agrees to provide the record in nonstandard format and the time directly involved in complying with the request exceeds 30 minutes. 1 V.S.A. 316(c)(1).
- c) A person may be charged for the cost of mailing or transmitting public records in situations where the custodian voluntarily agrees to mail or transmit those records. 1 V.S.A. § 316(b).

23. CAN WE DEMAND PAYMENT FOR COPIES IN ADVANCE?

Yes, but only if the request is subject to charges for staff time (see #22b, above). If requested, the custodian must provide an estimate for the charges. "The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge." 1 V.S.A. 316(c).

24. WHAT IF THE REQUESTOR HAS A DISABILITY THAT REQUIRES ACCOMMODATION?

The requestor must notify you regarding the type of accommodation sought. You must give primary consideration to the requestor's choice of accommodation, but may propose an alternative so long as it achieves equal success. Otherwise, the accommodation must be provided unless it can be shown that doing so would result in a fundamental alteration in the nature of your services, programs, activities, or in an undue financial and administrative burden. 1 V.S.A. § 318(f).

25. WHAT RECORDS ARE EXEMPT FROM (NOT SUBJECT TO) PUBLIC INSPECTION?

Vermont law articulates almost 250 types of records (or parts of records) that are exempt from public inspection and copying. The exemptions are listed in the published Vermont Statutes at the end of 1 V.S.A. § 317. A list of public records exemptions can also be found online at the Vermont Secretary of State's "Right to Know Database," <https://www.sec.state.vt.us/archives-records/records-management/legal-requirements/right-to-know/right-to-know-database.aspx>. The burden of showing that a record falls within one of the statutory exemptions is on the municipality. Exemptions are strictly construed against the custodian of the record so any doubts are resolved in favor of disclosure.

26. WHAT DO WE DO WHEN A RECORD IS EXEMPT FROM (NOT SUBJECT TO) INSPECTION?

If you consider a record to be exempt from inspection, you must "certify" (notify the requestor) in writing. 1 V.S.A. § 318(a)(2). Such "certification" (written notice) must identify the records withheld, the statutory basis for the denial, reasons, and supporting facts. It must also notify the person of the

right to appeal the denial to the “head of the agency” (see explanation of “head of agency” in #28, below). The VLCT Model Public Records Policy contains a sample response form.

27. IF SOME INFORMATION IN A RECORD IS EXEMPT FROM (NOT SUBJECT TO) INSPECTION IS THAT GROUNDS TO REFUSE THE REQUEST?

No. A public record may not be withheld in its entirety merely because some of its contents are exempt from disclosure. The record must still be made available, but the information that is exempt must be redacted (crossed out, whited out, or otherwise covered up). The record produced must be accompanied by “an explanation of the basis for the denial of the redacted information” which should include the statutory basis for the denial, reasons, and supporting facts. 1 V.S.A. § 318(e). Such explanation must also notify the person of the right to appeal the partial denial to the “head of the agency” (see explanation of “head of agency” in #28, below). The VLCT Model Public Records Policy contains a sample response form.

28. WHAT IF THE PERSON WHO MADE THE REQUEST IS NOT HAPPY WITH THE RESPONSE THAT I GIVE THEM?

The denial of access to a public record by its custodian may be appealed to the head of the custodian's “agency.” Just as there are multiple “custodians” within a municipality (see #3), there are likely multiple “agencies” within a municipality such as departments, committees, commissions, etc. The Public Records Act fails to account for the actual structure of municipal government where some “custodians” of public records (such as a town clerk) are also the head of their “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, MAC recommends that all independently-elected municipal officials delegate the appeal of their public records determinations to the municipal manager, administrator, or selectboard chairperson, as applicable. The VLCT Model Public Records Policy allows for such delegation.

29. WHAT HAPPENS WHEN THERE IS AN APPEAL TO THE “HEAD OF THE AGENCY”?

The “head of the agency” must respond in writing within 5 business days after the receipt of the appeal. The response must include “the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial” and must notify the person of the right to appeal to Superior Court. 1 V.S.A. § 318(c).

30. CAN A REQUESTOR APPEAL THE HEAD OF THE AGENCY'S DECISION?

Yes. Any person aggrieved by the denial of a public records request can apply appeal the head of the agency's decision to Superior Court. 1 V.S.A. § 319(a).

31. WHAT ARE THE PENALTIES AGAINST A MUNICIPALITY THAT IMPROPERLY WITHHOLDS A PUBLIC RECORD?

If the complainant substantially prevails, the court must assess litigation costs and reasonable attorney's fees. If the municipality concedes the contested records are public and provides them to the complainant, the court may still assess these penalties. 1 V.S.A. § 319(c).

32. WHAT ARE MAC'S RECOMMENDATIONS IN REGARD TO PUBLIC RECORDS?

MAC recommends the following:

- a) All municipal officials and staff that respond to public records requests should receive training about public records and how to respond to a public record request;
- b) Municipalities should adopt written policies that limit the use of personal electronic accounts such as email and texting to conduct municipal business;
- c) Municipalities should adopt written policies that encourage elected officials to use an official email account rather than a personal one;
- d) Custodians of municipal public records should adopt and follow a written policy regarding responses to public records requests (see VLCT Model Public Records Policy for a template);
- e) Consult with a private attorney or MAC staff on individual records requests as needed; and
- f) Keep a written record of all communication to and from a requestor of public records. See the VLCT Model Public Records Policy for template request and response forms.

MAC offers services and resource documents to assist members with these recommendations. For information call (800) 649-7915.