Public Records Management

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General Information

Town clerks are responsible for recording and preserving the town's land records, meeting minutes, permits, survey plats, vital records, licenses, and election and tax information. As explained below, there are also public records created while performing their duties and daily business operations that the town clerk must manage in accordance with the law. The town office contains various types of public records – many of which are stored in the vault – and there are different statutes that govern them depending on their type. The following information is broken down into general information about the town clerk's role in providing access to and managing public records; recording land use, vital, and other miscellaneous records; and indexing records.

Town officials must comply with the Public Records Act's (PRA) requirements. The PRA details the clerk's responsibilities for making the records publicly available. See 1 V.S.A. § 315–320(opens in a new tab). We have developed PRA related resources for all local officials found online at Public Records(opens in a new tab), including FAQs that provide details about the law's requirements.

All municipalities must comply with federal and state laws that prescribe how public records and information are created, used, managed, stored, and destroyed. This includes records schedules approved by the State Archivist for the retention and disposition of public records and information, as well as information management standards and best practices issued by the Vermont State Archives and Records Administration (VSARA), a division of the Vermont Secretary of State's Office. See 1

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V.S.A. § 317a(opens in a new tab) and Vermont Secretary of State - Vermont State Archives & Records Administration(opens in a new tab).

The Vermont Local Records Program (VLRP), a program under the umbrella of the Statewide Records and Information Management Program(opens in a new tab) administered by VSARA, assists town clerks with compliance and offers a broad range of records and information management services. For assistance with compliance and other records and information management questions, please contact VLRP at sos.localrecords@vermont.gov(opens in a new tab) or call VSARA's main phone line at 802-828-3700. VSARA's online series called *Issues and Government and Governance* (opens in a new tab) also includes an overview of the Vermont Public Records Act (opens in a new tab) and its legislative history.

Access To Public Records

Law's Purpose

Transparency is an essential element of open and democratic government. In Vermont, the primary means of providing transparency are the Access to Public Records Law (referred to as the Public Records Act or "PRA")(opens in a new tab), specifically 1 V.S.A. §§ 315-320, and the Open Meeting Law, 1 V.S.A. §§ 310-314(opens in a new tab). These laws implement the command of Chapter I, Article 6 of the Vermont Constitution(opens in a new tab) that officers of government are "trustees and servants" of the people and are "at all times, in a legal way, accountable to them." Therefore, the PRA attempts to balance the constitutional requirements for government accountability with competing needs to protect certain private and personal information.

Inspection and Copying

The definition of a "public record" is 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)(opens in a new tab). Under this definition, any paper document, email, computer database, or other digital document, image, or recording produced or acquired in doing town business would likely qualify as a public record. This ranges from everything like town officers' emails to documents composed by town employees, to written complaints submitted by the public, to Grand Lists, to tax bills, and more. This applies regardless of where the record is stored (e.g., personal email accounts or devices included).

A town's public records must be available for public inspection during customary business hours. The principal requirement of the Act is that any person is authorized to inspect or copy an existing "public record" of a "public agency." A "public agency" is defined as "any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the State." 1 V.S.A. § 317(a)(2)(opens in a new tab). A "public agency" at the local level would include the town clerk's office, other offices and departments, and all other sub-entities of town government.

The PRA imposes obligations on 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, each managing its own catalogue of records. In many cases, practically speaking, the town clerk will serve as the custodian for their own records as well as the custodian for other departments or public bodies, especially if a town has only a few employees.

Requests to copy or inspect a record – by anyone, regardless of identity, or motivation – must be managed by the custodian in accordance with the procedure prescribed by the PRA. See 1 V.S.A. 318(opens in a new tab). The PRA requires that towns make their public records accessible to the public "promptly" for copying and inspection during "customary business hours." It defines "promptly" to mean "immediately, with little or no delay, and, unless otherwise provided…not more than three business days from receipt of a request…" 1 V.S.A. § 318(a)(1)(opens in a new tab). The law does not require the town to create a public record that doesn't exist, nor does it require transmission of a record by any means (including U.S. mail, email, fax, etc.). Nevertheless, local officials may choose to create and/or transmit a public record upon request.

These details can change when the Legislature decides to revise them, so the best source of up to date information is the law and our Public Records Act FAQs.(opens in a new tab)

Exemptions

Access to a public record must be provided unless the record is exempt from inspection or copying under the PRA. General exemptions are listed in 1 V.S.A. § 317(c)(opens in a new tab) and include other records "designated by law as confidential." The Office of Legislative Counsel compiles the list of all PRA exemptions found in the Vermont Statutes Annotated and publishes this information on the General Assembly's Reports and Research(opens in a new tab) webpage. While there are many possible exemptions, the Vermont Supreme Court has made clear that exemptions are strictly construed against the custodian and any doubt as to whether an exemption applies must be resolved in favor of disclosure.

There are some records for which disclosure is prohibited by law. For most records, however, it is up to the custodian to decide whether to disclose records that are declared exempt by statute. In other words, and 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 departments, this policy presumes that all records deemed "exempt" under the PRA 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**.**

The burden of showing that a record falls within one of the statutory exemptions is on the municipality. The custodian must provide access to a public record or respond as to why access to that record cannot be provided (e.g., it meets one of the allowable statutory exemptions). Interpretation of many of the exemptions listed in 1 V.S.A. § 317(b)(opens in a new tab) is straightforward, such as those dealing with criminal investigation, tax returns, etc. However, others, such as personnel records, contract negotiations, litigation, intra- and inter-departmental memos are not so clear. These require careful reading of the statute and of the annotations following the statute which indicate how courts have interpreted the exemption in rulings (i.e., case law). Specific determinations on whether a record or portion of a record is exempt and, therefore, not subject to public disclosure may also require consultation with an attorney before releasing the record.

Note that the E-911 emergency response system created under 30 V.S.A. Chapter 87 (opens in a new tab) poses a special problem for towns regarding access to public records and exemptions; Section 7059(opens in a new tab) addresses confidentiality of information collected for E-911 purposes. It says in subsection (d):

"If a municipality has adopted conventional street addressing for Enhanced 911 addressing purposes, the municipality shall ensure that an individual who so requests

will not have [their] street address and name linked in a municipal public record, but the individual shall be required to provide a mailing address. The request required by this subsection shall be in writing and shall be filed with the town clerk. Requests under this subsection shall be confidential. A form shall be prepared by the Board and made generally available to the public by which the confidentiality option established by this subsection may be exercised."

The exact meaning of the statute is somewhat unclear and, since violations of it may result in penalties, a certain amount of anxiety has been generated by it. Some documents which municipalities have kept for decades – such as lister cards, tax maps, and voter lists – provide "locatable" information regarding property sites and their owners. However, the provision appears to mean only that any municipal document created for E-911 purposes must, if the person requests, show an alternative mailing address (e.g., a post office box number) so that the person and the E-911 location are not linked in that document.

Appeals and Reasonable Rules

The denial of access to a public record, or a portion of it, by its custodian may be appealed to the head of the custodian's "agency" (department, committee, commission, instrumentality, etc.). The PRA fails to account for the actual structure of municipal government where some "custodians" of public records are also the heads of their "agencies." For instance, the town clerk is the custodian of certain public records and is also the head of their "agency." To account for this oversight, and to avoid the appearance of impropriety that may arise when a town official sits in appeal of their own decision, we recommend adopting a policy that allows all independently elected town officials to delegate appeals of their initial public records determinations to the town manager, administrator, or legislative body chairperson, as applicable. For the sake of consistency in the processing of all public records requests and clear

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expectations for the public, it would be in the best interests of the municipality for all independently elected town officials to sign off on the same policy.

Finally, a municipality is authorized under 1 V.S.A. § 316(j)(opens in a new tab) to adopt and enforce reasonable rules to prevent disruption of operations in responding to records requests, to preserve the security of public records, and to protect public records from damage. We have developed a model policy with guidance for towns that wish to adopt such rules in a uniform public records inspection, copying, and transmission policy; it is online at Model Public Records Policy(opens in a new tab).

Copying of and Charges for Records

The PRA provides direction on what the town can allow or prohibit in terms of its copying equipment. Generally, the town does not have to purchase equipment for the public to make copies but, if it has one, then it must be used to provide a requested copy. The town can adopt reasonable rules to protect town equipment, such as that a town employee must be the one to use their equipment, inspection must be done within the town clerk's view, etc.

The PRA details what fees a town can charge for accessing the town's vault for records research and inspection, copies of a record, and staff time spent working on the request in some cases. See, e.g., Vermont Town Clerk Fee Schedule(opens in a new tab). The town can recoup the "actual cost" of providing a copy on town copiers, and the costs of transmitting a record (e.g., by mail or email) if they choose to send it. 1 V.S.A. § 316(b)(opens in a new tab). The town can charge for costs of staff time associated with complying with a request for a copy in certain circumstances, as specified in 1 V.S.A. § 316(c)(opens in a new tab). General guidelines for selectboards to use when setting the actual cost of copying are also set out in the law. They include staff time, cost of paper or electronic media, a prorated amount for

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maintenance and replacement of equipment, and utility costs of copying. If the selectboard fails to set a uniform schedule, and unless the public record is governed by a fee(s) otherwise established by law, the cost from the Secretary of State's Uniform Charges Schedule will apply. 1 V.S.A. § 316 (d-e)(opens in a new tab); see Uniform Charges Schedule(opens in a new tab).

Note that, if the document to be copied is one for which a statutory fee may be charged, then the town clerk must charge only that fee and no extra copying charge. It is advisable to post a list of the established copying costs in the clerk's office, along with the other usual and/or statutory fees. Note also that 1 V.S.A. § 316(opens in a new tab) deals with cost of making a copy of a ***public record*** only. Copies of other materials presumably may or may not be copied on town equipment at the discretion of the town and may be charged for at a rate set by the selectboard. A policy should be set in writing and posted in the office, which lists what documents may be copied and the cost for copying. Everyone who wishes to take advantage of the copying must be treated the same to avoid a constitutional challenge based on equal protection and due process.

Storing And Destroying Public Records

VSARA is charged with administering the Statewide Records and Information Management (RIM) Program(opens in a new tab) in accordance with generally accepted record-keeping principles and industry standards and best practices to assure public agencies, including municipalities, are systematically managing their records in accordance with the law. The PRA suggests municipalities take advantage of the services of the Statewide RIM Program, which are listed in 3 V.S.A. § 117(c) (opens in a new tab). The PRA also provides that a custodian of public records cannot destroy, give away, sell, discard, or damage any record or records in their charge, unless specifically authorized by law or under a record schedule approved by the

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state archivist pursuant to 1 V.S.A. § 317a(b)(opens in a new tab). For assistance with compliance and other records and information management questions, please contact VLRP at sos.localrecords@vermont.gov(opens in a new tab) or call VSARA's main phone line at 802-828-3700..

All towns are required to have fireproof safes or vaults big enough to adequately protect files and records which are in the town clerk's office or which may accumulate there. 24 V.S.A. § 1178(opens in a new tab). Since most town records are important and many are irreplaceable, this is not an unreasonable requirement. Land records, tax information, and birth and death records are vitally important to individuals and to the town. Survey plats which are filed with the clerk must be stored and maintained as required by 27 V.S.A. Chapter 17(opens in a new tab); see below for more information on plats.

Vital Records

Vital records refer to reports of birth, death, fetal death, or induced termination of pregnancy, or a preliminary report of death; a vital event certificate; a marriage or civil union license; or a burial-transit permit. 18 V.S.A. § 4999(10)(opens in a new tab). The law requires town clerks to be responsible for filing and preserving all vital records received by their office; these include all marriage and civil union certificates, burial-transit permits, and paper copies of birth and death certificates registered prior to July 1, 2019. Birth and death records registered after that date are maintained electronically in a statewide registration system maintained by the State Registrar. The law has specific instructions for filing and indexing vital records, and they are based on the type of record received. Town clerks are authorized to issue certified copies of vital records. Certified copies of vital event certificates must be issued on unique, antifraud paper available from the Office of Vital Records and stored in the town's fireproof safe or vault. 18 V.S.A. § 5001(opens in a new tab). Fees for recording

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and certified copies are set by statute, and can be found at Vermont Municipal Clerk Fee Schedule(opens in a new tab).

All town clerks should refer to the Vermont Department of Health's webpage for Information for Town and City Clerks | Vermont Department of Health(opens in a new tab) which contains manuals and other helpful resources. The General Instruction Manual(opens in a new tab) contains the relevant statutory requirements and duties that clerks must fulfill, so it and the other manuals should be consulted regularly. Any questions can be directed to Vital Records at 800-439-5008 (within Vermont) or 802-863-7275. Or, you can contact them at vitalrecords@vermont.gov(opens in a new tab). Due to the specific nature of the legal requirements for managing these records, we recommend seeking guidance from the department directly.

Indexing Systems

Effective July 1, 2022, the General Assembly enacted legislation initiating the first phase of land records modernization in the State of Vermont. See Act 171 of 2022 (opens in a new tab). Land records modernization is a multi-phase and multi-year legislative initiative that requires consistency in the recording of deeds and other instruments or evidence respecting real estate and compliance with standards and best practices issued by VSARA to ensure consistency. See 27 V.S.A. § 625(opens in a new tab). For assistance with modernization, compliance with standards and best practices, and other land records management questions, please contact VLRP at sos.localrecords@vermont.gov(opens in a new tab) or call VSARA's main phone line at 802-828-3700. This will impact how records are received, recorded, and indexed in the future.

For now, under current law, the clerk must keep indices of various public records; they may be kept in either book or, with the selectboard's consent, card form. 24

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V.S.A. § 1153(opens in a new tab). All land records received by the town clerk listed in 24 V.S.A. § 1154(opens in a new tab) must be recorded. Those documents must then be indexed by the name of each grantor and grantee, whether a person or a corporation, with reference to the book and page where the document is recorded. 24 V.S.A. § 1161(opens in a new tab). This statute also defines "grantor" and "grantee" for purposes of land records. Likewise, a town clerk must keep a book containing the alphabetized index of all attachments of personal property. That index must list the names of the parties to the lawsuits, the amount of debt or damage being claimed, and other information pertinent to the case. 24 V.S.A. § 1163(opens in a new tab).

All these indices must be kept by the clerk in the town office. Any neglect on the part of the clerk or the town could result in a fine. 24 V.S.A. § 1162(opens in a new tab). It may also result in a lawsuit, although annotations under 24 V.S.A. § 1154(opens in a new tab) indicate that the lack of an index does not invalidate the document. The purpose of the index, then, is to provide relatively easy access to documents rather than to invalidate them.

Daily Index/Chronological Document Register

The daily index contains essentially the same information as the general index but set forth in chronological order. While some clerks use a daily register, it is not required by statute. Many towns use such a chronological document register for ***all*** documents received for recording or filing, not just land records. The index or register is usually in the form of a loose-leaf book and includes:

- the date and time the instrument was received for recording or filing;
- the name of the person from whom it was received;

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- the nature of the instrument;
- the names of the grantors and grantees;
- fees received and the date they were received; and
- the name of the person to whom the document was returned, the date on which it was returned, and how it was returned (by hand or mail).

Basically, the register functions as a log so that all land-related (or other) documents which pass through the town clerk's office are documented and can be located at any time upon request.

> Continue to Miscellaneous Records

>>> Skip to Land Records

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