

VERMONT'S PUBLIC RECORDS ACT (PRA)

Why do we have it?

“The General Assembly finds that public records are essential to the administration of State and local government. Public records contain information that allows government programs to function, provides officials with a basis for making decisions, and ensures continuity with past operations. Public records document the legal responsibilities of government, help protect the rights of citizens, and provide citizens a means of monitoring government programs and measuring the performance of public officials. Public records provide documentation for the functioning of government and for the retrospective analysis of the development of Vermont government and the impact of programs on citizens.” 1 VSA § 315(b)

What is the purpose of the PRA?

1. Provides FREE AND OPEN examination of public records.
2. Enables any person to REVIEW AND CRITICIZE THE DECISIONS of public officers and officials.
3. Establishes RIGHTS AND LIMITATIONS to access public records.
 - Distinguishes between PRIVATE (exempt) records and those which are needed to publicly review the action of a government officer.
4. Sets PENALTIES and RECOURSE FOR NONCOMPLIANCE.

What and to whom does the PRA apply?

“Any person may inspect or copy any public record of a public agency” 1 VSA § 316

A public record means:

- ANY WRITTEN OR RECORDED INFORMATION, REGARDLESS OF PHYSICAL FORM or characteristics, which is PRODUCED OR ACQUIRED in the course of public agency business.

A public agency means:

- any AGENCY, BOARD, DEPARTMENT, COMMISSION, COMMITTEE, BRANCH, INSTRUMENTALITY, OR AUTHORITY OF THE STATE or any agency, board, committee, department, branch, instrumentality, commission, or authority OF ANY POLITICAL SUBDIVISION of the State.

What does the PRA include?

Any record in **PHYSICAL OR ELECTRONIC FORMAT** that is not exempt (see below).

- This includes PAPER AND DIGITAL FILES, NOTES, EMAILS, TEXT MESSAGES, ONLINE POSTINGS, AUDIO AND VIDEO RECORDINGS, LOGS, BOOKS, SURVEYS, REPORTS, MEMORANDUMS, ETC.

- Individual SALARIES AND BENEFITS of and salary schedules relating to elected or appointed officials and employees of public agencies SHALL NOT BE EXEMPT from public inspection and copying.

What are Vermont's record management requirements?

- Public records should be systematically managed TO PROVIDE READY ACCESS to vital information, TO PROMOTE THE EFFICIENT AND ECONOMICAL OPERATION OF GOVERNMENT, and TO PRESERVE THEIR LEGAL, ADMINISTRATIVE, AND INFORMATIONAL VALUE.
- A custodian of public records MUST NOT DESTROY, GIVE AWAY, SELL, DISCARD, OR DAMAGE ANY RECORD OR RECORDS IN THEIR CHARGE, unless specifically authorized by law or under a record schedule that has been approved by the State Archivist.
 - A person who WILLFULLY destroys, gives away, sells, discards, or damages a public record without having authority to do so may be fined at least \$50.00 but not more than \$1,000.00 for each offense.

How are requests handled?

Upon request, the CUSTODIAN of a public record must PROMPTLY PRODUCE THE RECORD FOR INSPECTION OR A COPY OF THE RECORD.

- Promptly means “immediately and without delay” – but NOT MORE THAN THREE BUSINESS DAYS.
- A custodian who FAILS TO COMPLY WITH THE APPLICABLE TIME LIMITS FOR RESPONSE will be deemed to have DENIED the request.

Common scenarios that arise during public records requests include:

1. **RECORD UNAVAILABLE.** 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, the custodian must CERTIFY THE FOLLOWING IN WRITING TO THE REQUESTOR:
 - The reason the record is not immediately available and THE DATE AND HOUR, WITHIN ONE CALENDAR WEEK of the request, when the record will be available.
2. **RECORD CONSIDERED EXEMPT.** If the custodian considers the record to be exempt from inspection and copying, the custodian must promptly provide the following in writing:
 - identify the records withheld;
 - the statutory basis for denial (cite the exemption under 1 VSA 313(c)) and a brief statement of the reasons and supporting facts for denial;
 - the names and titles or positions of each person responsible for denying the request; and
 - provide the requestor with the details of their right to appeal to the head of the agency.

3. **RECORD DOES NOT EXIST.** If a record does not exist, the custodian must promptly certify in writing that the record does not exist under the name given to the custodian by the applicant or by any other name known to the custodian.
4. **PART OF THE RECORD MAY BE EXEMPT.** A public agency may not withhold any record in its entirety on the basis that it contains some exempt content if the record is otherwise subject to disclosure. Instead, it must REDACT THE INFORMATION IT CONSIDERS TO BE EXEMPT and produce the record accompanied by AN EXPLANATION OF THE BASIS FOR DENIAL of the redacted information.
5. **REQUEST IS TOO VAGUE, UNCLEAR, OR VOLUMINOUS.** In this case, a public agency must consult with the person making the request in order to clarify the request or to obtain additional information that will assist in fulfilling the request. A public agency may request that a person seeking a voluminous amount of separate and distinct RECORDS NARROW THE SCOPE of a public records request, to the extent reasonably necessary to the proper processing of the particular request.
6. **UNUSUAL CIRCUMSTANCES REQUIRE MORE TIME.** In unusual circumstances, the time limits for responding may be extended by written notice to the person making the request. The writing must set forth the reasons for the extension and the date on which a determination is expected to be made.
 - No extension may be for MORE THAN TEN BUSINESS DAYS from receipt of the request.
 - These unusual circumstances are limited to:
 - i. the need to search for and collect the requested records from FIELD FACILITIES or OTHER ESTABLISHMENTS THAT ARE 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 that are demanded in a single request; or
 - iii. THE NEED FOR CONSULTATION, which must be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest, or with the Attorney General.

USE OF EQUIPMENT. A public agency having the equipment necessary to copy its public records must use its equipment to make copies. If the public agency does not have such equipment, the law does not require:

- the public agency to provide or arrange for copying service,
- to use or permit the use of copying equipment other than its own,
- to permit operation of its copying equipment by other than its own personnel,
- to permit removal of the public record by the requesting person for purposes of copying, or
- to make its own personnel available for making handwritten or typed copies of the public record or document requested.

FORMAT OF RECORD. Standard formats for copies of public records are as follows:

- for copies in paper form, a PHOTOCOPY of a paper public record or a hard copy print-out of a public record maintained in electronic form;
- for copies in electronic form, the FORMAT IN WHICH THE RECORD IS MAINTAINED.

If an agency maintains public records in an electronic format, they must be available for copying in either the standard electronic format or the standard paper format, as designated by the party requesting the records.

NONSTANDARD FORMATS; CREATING OR CONVERTING RECORDS. Any format other than the formats described here is considered “a nonstandard format”. If requested by the party requesting the records, an agency may, but is not required to, provide copies of public records in a nonstandard format, create a public record, or convert paper public records to electronic format.

Are there records that are protected from disclosure?

- The EXISTENCE OF AN EXEMPT RECORD MUST GENERALLY BE DISCLOSED, even if it is lawfully withheld. However, a record may not be withheld SOLELY because part of the information contained is exempt from public inspection. Instead, IT MUST BE REDACTED appropriately.
- The list of exemptions is UPDATED ANNUALLY and can be found at: <https://ago.vermont.gov/public-records-requests/public-record-act-exemptions>

What regulations can be placed on the process of responding to a request?

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.

- These should be in writing, approved by the body, and posted publicly.

Other regulations include:

1. **REQUIRED TIMES THAT RECORDS MAY BE INSPECTED.**

- a. STATE ENTITIES. A person may only inspect or copy a public record Mon-Friday (except legal holidays) from 9am-12pm and 1pm-4pm.
- b. NON-STATE ENTITIES. A person may inspect a public record during customary business hours.

2. CHARGING THE REQUESTOR FOR COSTS.

- a. **COPYING.** The agency may charge and collect from the requestor the ACTUAL COST of providing the copy and the COSTS ASSOCIATED WITH MAILING or transmitting the record.
 - b. **STAFF TIME.** The agency may charge and collect the cost of staff time associated with complying with a request for a copy of a public record as follows:
 - i. the time directly involved in complying with the request, AFTER THE FIRST 30 MINUTES;
 - ii. the time spent CREATING a public record (in the case that the agency agrees to create it); or
 - iii. the time spent providing the public record in a NONSTANDARD FORMAT.
3. **REQUESTS MADE IN WRITING.** The agency may require that REQUESTS SUBJECT TO STAFF TIME charges under this subsection be made in writing.
4. **COSTS PAID IN ADVANCE.** The agency may require that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency must provide an estimate of the charge.

How are charges determined and handled?

After public hearing, the legislative body of a political subdivision may establish actual cost charges for copies of public records and establish the amount that may be charged for staff time.

- If a legislative body fails to establish a uniform schedule of charges, the charges for that political subdivision must be the uniform schedule of charges established by the Secretary of State until the local legislative body establishes such a schedule.
- A schedule of public records charges must be posted in prominent locations in the town offices.

How are accommodations for individuals with disabilities handled?

If a person making the request has a disability that requires accommodation to gain equal access to the public record sought, THE PERSON MUST NOTIFY THE PUBLIC AGENCY OF THE TYPE OF ACCOMMODATION REQUESTED.

- The public agency MUST GIVE PRIMARY CONSIDERATION TO THE ACCOMMODATION CHOICE EXPRESSED by the requestor but may propose an alternative accommodation so long as it achieves equal access.

- The public agency must provide an accommodation to the person making the request unless the agency can demonstrate that the accommodation would result in a fundamental alteration in the nature of its service, programs, activities, or in undue financial and administrative burden.

What is the appeal process and how is it handled?

ANY DENIAL of access by the custodian of a public record may be appealed to the HEAD OF THE AGENCY.

- The head of the agency must make a WRITTEN determination on an appeal within FIVE BUSINESS DAYS after the receipt of the appeal.
- If the head of the agency UPHOLDS the denial of a request for records, in whole or in part, the written determination must include:
 - the asserted statutory basis for upholding the denial;
 - a brief statement of the reasons and supporting facts for upholding the denial; and
 - notification of the provisions for judicial review of the determination.
- If the head of the agency REVERSES the denial of a request for records, the records must be promptly made available to the person making the request.
 - Promptly means immediately, or not more than three days, unless one of the “unusual circumstances” apply as described above, in which case no more than ten business days.
- A head of the agency who fails to comply with the limit provisions will be DEEMED TO HAVE DENIED THE REQUEST UPON THE EXPIRATION OF THE TIME LIMIT.

How is the PRA enforced?

Any person aggrieved by the denial of a request for public records may apply to the Civil Division of the Superior Court in the county in which the complainant resides, or has his or her personal place of business, or in which the public records are situated, or in the Civil Division of the Superior Court of Washington County, TO ENJOIN THE PUBLIC AGENCY FROM WITHHOLDING RECORDS and to ORDER THE PRODUCTION OF ANY AGENCY RECORDS IMPROPERLY WITHHELD from the complainant. The court may assess against the public agency REASONABLE ATTORNEY’S FEES and other litigation costs reasonably incurred in any case in which the complainant has substantially prevailed.

CONTEMPT. If the responsible employee or official fails to comply with the court's order, the court may punish them for contempt.