

The Vermont Public Records Act in Practice

A practical compliance guide on statutory duties, response timelines, exemption analysis, and defensible municipal recordkeeping.



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Public Records Fundamentals

1 V.S.A. §317

! The Core Rule: Discretion

"Everything you write, type, say in a public meeting, and transmit related to municipal business **IS A PUBLIC RECORD** — regardless of whether you use your own personal computer, personal email, or private mobile device."

Public records follow the *content and nature of the business*, never the device or location where they are created.

🔹 Consider Before Hitting Send

Always exercise prudence by evaluating communications against these 6 touchstones:

💬 Tone

🎯 Relevancy

🛡️ Sensitivity

🔒 Confidentiality

📄 Publicity

📋 Necessity

💡 **Practice Pointer:** If you wouldn't feel comfortable seeing your email printed on the front page of the local newspaper or read aloud in court, revise the message before transmitting.

Records Organization

Operational Target

3 DAYS

Statutory Determination Clock

You must determine responsiveness and issue a written notice or release within three business days.

30 MINS

Transmission Benchmark

Records should be indexed and filed so that responsive files can be located and transmitted within 30 minutes.

 **Organizational Strategy:** Organize all paper files, electronic mail folders, text archives, and cloud documents systematically. Disorganized records turn routine compliance requests into catastrophic time sinks that invite litigation.

Municipal Policy Guidelines

Operational Standards



Standard Intake

Develop a clear municipal public records intake form and intake email address to immediately timestamp every receipt.



Calendar Deadlines

Calculate deadlines upon arrival. Track the standard 3 business-day deadline or the certified 10-day extension immediately.



Record Staff Time

Log all minutes expended locating, reviewing, redacting, and duplicating records to justify cost billing.



Adopt Fee Rules

Formally approve the town cost schedule in accordance with the Secretary of State's Uniform Fee Schedule.



Standard Operating Procedure: Maintain a central master public records log. Document every phone call, clarify scope in writing, record search custodians, and preserve all final correspondence.

The 10-Day Rule: Unusual Grounds

1 V.S.A. §318(b)(5)



1. Separate Facilities

Need to search for and collect requested records from field facilities or establishments physically separate from the primary office.



2. Voluminous Demand

Need to search for, collect, and examine a voluminous amount of separate and distinct records demanded in a single request.



3. Consultation Needed

Need for consultation, conducted with all practicable speed, with legal counsel or other interested municipal agencies.



Practice Pointer: Never simply notify the requester: *"We need more time because this is burdensome."* You must provide formal written notice identifying the exact statutory ground and certifying the specific date of determination.

Clarify: Talk to the Requester

1 V.S.A. §318(d)

Clarify ≠ Deny

When a request is overly broad, ambiguous, or unclear, the PRA specifically directs the agency to consult directly with the requester to clarify scope.

Key Principle: Consultation must be collaborative. The municipality may not unilaterally rewrite, narrow, reject, or ignore requests without interactive dialogue.

Narrowing Voluminous Files

In cases involving voluminous distinct records, invite the requester to reasonably narrow their scope, specify keywords, or select defined date windows.

Compliance Clock Alert: While clarification saves dozens of wasted hours, reaching out does not stop or toll the statutory response clock unless explicitly agreed in writing.



Learning Moment: Resident requests: *"Send me everything about the highway department."*

Defensible Response: Contact the requester immediately. Proactively propose specific topics, defined key personnel, or reasonable date boundaries.

Search Defensibility



WHO?

Identify every municipal official, board member, clerk, and contractor reasonably likely to hold responsive files.



WHERE?

Search town server directories, official inboxes, paper archives, text threads, and private devices if used for town work.



WHAT?

Apply objective keyword search strings, precise date windows, and relevant subject filters across all repositories.



DOCUMENT

Record who searched, what queries were executed, date boundaries checked, and file quantities reviewed.

 **Legal Tip:** Consider ... obtaining signed written certifications from all custodians verifying that responsive public records on personal accounts have been searched and disclosed.

Exemption Review Process

1 V.S.A. §§ 315 & 317(c)

Exemptions are strictly construed against the government. Every proposed withholding must satisfy this 4-step framework:

1. Public Record?

Confirm the record was produced or acquired in the course of agency municipal business.

2. Exact Exemption?

Pinpoint the precise statutory subsection under 1 V.S.A. § 317(c) that protects the content.

3. Whole or Part?

Determine whether the exemption shields the entirety of the document or only specific data points.

4. Redactable?

Segregate exempt data and produce all remaining nonexempt information without delay.



Practice Pointer: Never simply state: *"This record is confidential"* or *"This is a personnel file."* You must identify the explicit statutory sub-clause and articulate the precise factual basis supporting non-disclosure.

Common Municipal Exemptions

1 V.S.A. §317(c)

Statutory Basis	Protected Subject Matter	Key Municipal Scope & Limitations
§ § 317(c)(1)	State or Federal Secrecy	Records designated confidential by federal law or statute (HIPAA, tax, CJIS).
§ § 317(c)(4)	Evidentiary Privileges	Attorney-client legal advice, confidential communications, and work product.
§ § 317(c)(7)	Personnel & Medical Files	Protects intimate personal privacy; employee salaries and job titles are public.
§ § 317(c)(14)	Pending Litigation	Records relevant to active litigation to which the public agency is a party.
§ § 317(c)(15)	Contract Negotiations	Protects active vendor contract negotiations prior to final execution and award.
§ § 317(c)(17)	Policy Formulation Drafts	Pre-decisional internal opinions and recommendations; factual data is public.

Redaction Requirements

1 V.S.A. §318(e)

The Segregation Mandate

Exempt Content ≠ Exempt Record: An agency may not withhold an entire document merely because a portion contains sensitive or private information.

The record custodian has an affirmative duty to black out or redact exempt sentences, words, or clauses and release all remaining nonexempt public text.

Practical Application

Scenario: A 3-page town administrator memo contains two paragraphs of employee medical information, operational discussion, and a formal policy ruling.

Correct Protocol: Do not withhold the entire memo. Redact only the medical sentences under § 317(c)(7), cite the statute, and produce the remainder.

 **Redaction Standard:** Always conduct redactions at the most granular level possible. Provide a clear written log citing the corresponding statutory exemption for every redacted field.

Five Elements of a Denial

1 V.S.A. §318(b)(2)–(4)

A legally defensible denial or redaction letter must contain all five mandatory statutory components:



1. Records

Identify the specific documents or categories being withheld or redacted.



2. Citation

Cite the exact legal exemption authorizing withholding (e.g., § 317(c)(7)).



3. Facts

State the brief factual basis justifying how the exemption applies to the record.



4. Officials

State the names and official titles of every official responsible for the denial.



5. Appeals

Include written notice of the requester's right to appeal to the agency head.



Nonexistent Records: If the town possesses no responsive records, issue a prompt written certification certifying that the document does not exist under the name given or any other known name.

Cost & Electronic Format Rules

1 V.S.A. §316

Permissible Cost Recovery

Physical Duplication: An agency may charge for actual physical paper copies and authorized postal postage costs.

Staff Time Restrictions: Municipal staff time may be billed *only* after the first 30 minutes of labor.

Fee Schedules: All fees charged must conform to the town's adopted fee ordinance or the Vermont Secretary of State Uniform Fee Schedule.

Formats & Record Creation

Standard Formats: Disclose electronic records in the format normally maintained, or in standard paper printout at the requester's choice.

No Duty to Create Records: A municipality has zero legal obligation to create new spreadsheets, aggregate data, or summarize records.

Advance Estimates: Towns may require advance payment.

Appeals & Judicial Review

1 V.S.A. §§ 318(c) & 319

5 DAYS

Administrative Appeal Clock

The head of the municipal agency (e.g., Selectboard) must decide appeals within 5 business days of receipt.

The Review Procedure

Right of Administrative Appeal: Any citizen whose record request is denied or redacted may appeal in writing to the agency head.

Agency Head Determination: If the denial is upheld, written notice must set forth the statutory grounds and notify the requester of their right to file a complaint in Civil Court.

Fresh Review: Treat administrative appeals as an independent, fresh legal review, not a routine rubber stamp of the initial custodian decision.



Litigation Risk: If a court finds the municipality improperly withheld public records, the town may be held liable for the requester's reasonable attorney fees and litigation costs under 1 V.S.A. § 319.

Case Study: Complex Request

Practical Application

MONDAY, 9:07 AM • FORMAL REQUEST RECEIVED

"All emails, text messages, notes, and records since Jan 1 between Town Manager, Selectboard Chair, and Highway Foreman regarding: (1) employee discipline complaints; and (2) Acme Construction contract negotiations. Include messages on personal phones."



☰ Step-by-Step Response Protocol

1. Calendar & Scope

Clock starts Monday. If voluminous, issue 10-day notice immediately citing § 318(b)(5).

2. Execute Custodian Search

Search official server, inboxes, and obtain signed device certifications under *Toensing*.

3. Segregate & Redact

Redact discipline records under § 317(c)(7); evaluate Acme contract draft status under § 317(c)(15).

4. Production & Redaction Notice

Release nonexempt emails with a 5-element denial letter specifying appeal rights.

Compliance Principles

[Summary](#)

1. Act Promptly

Do not wait until the third day. Immediately log incoming requests, calendar deadlines, and initiate search efforts.



2. Search Defensibly

Check all official servers, files, and verify in writing whether town business resides on personal accounts or devices.



3. Cite the Statute

Strictly identify the exact statutory subsection. Never withhold based on vague assertions of "confidentiality."



4. Redact & Log

Black out only the exempt sentences, produce the nonexempt balance, and document every step in your log.

The Golden Rule: Follow the statutory process every single time. A well-documented, reasonable search and a legally sound response are your town's ultimate legal protection.



Questions & Discussion

Thank you for your service to Vermont municipalities!

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