

STATE OF VERMONT
AGENCY OF NATURAL RESOURCES

PROCEDURES ON ACCESS TO PUBLIC RECORDS

Effective: December 22, 2016

A handwritten signature in black ink, appearing to read "Deborah Markowitz".

Deborah Markowitz, Secretary
Agency of Natural Resources

§ 1 Purpose and Applicability

- (a) Purpose. It is the purpose of this procedure to:
 - (1) Make the fullest disclosure of public records as required by law;
 - (2) Prevent disclosure of records that are exempt pursuant to law; and
 - (3) Provide guidance to the Agency on the administration of the Vermont Public Records Law, 1 V.S.A. Chapter 5, Subchapter 3.

- (b) Applicability.
 - (1) This procedure applies to all records produced or acquired in the course of public agency business.
 - (2) This procedure supersedes and replaces any and all previous procedures related to requests for access to public records under the Vermont Public Records Law.

- (c) Prohibition on Destruction of Records.
 - (1) Agency employees “shall not destroy, give away, sell, discard, or damage” any public record(s) unless authorized to do so by law or pursuant to a record scheduled approved by the State Archivist. 1 V.S.A. § 117(a)(5).
 - (2) “A person who willfully destroys, gives away, sells, discards, or damages a public record without having to do so shall be fined at least \$50.00 but not more than \$1,000.00 for each offense.” 1 V.S.A. § 320(c).

- (d) This document does not create any rights or privileges for the public, or obligations on the part of the Agency of Natural Resources.

§ 2 Definitions

- (a) As used in this Procedure:
 - (1) “Agency” means the Agency of Natural Resources.
 - (2) “Records liaison” means an individual charged with the responsibility of receiving, coordinating, and responding to requests for access to public records.
 - (3) “Records officer” means an individual designated by the Secretary with the responsibility of overseeing all aspects of record management, record schedules and requests for access to public records in an organization unit (i.e. Department, Division).
 - (4) “Public record” or “public document” means 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).
 - (5) “Standard formats” for copies of public records shall be 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. Any format other than the formats described in this subsection is a nonstandard format. 1 V.S.A. §316(h).

§ 3 Records Officer and Liaison; Duties

- (a) Each Department shall identify major organizational units and designate a records officer (RO). The RO may designate records liaisons (RL) for each unit with approval from Department management.
- (b) Records Liaison.
 - (1) The RL shall be the individual responsible for receiving, coordinating, and responding to requests for access to public records within the organizational unit.
 - (2) A RL shall ensure:
 - (A) access to public records within their organizational unit as appropriate;
 - (B) internal coordination and compliance with the statutory timelines as described in § 5;
 - (C) that the public has received access to public records as described in § 6;
 - (D) public records are appropriately screened and, if necessary, there has been legal review of public records prior to public disclosure;
 - (E) oversight of inspections of public records;
 - (F) all public records requests and responses are tracked in accordance with State and Agency reporting requirements; and
 - (G) that invoicing and tracking receipts are prepared as described in § 7(c).
- (c) Records Officer.
 - (1) In addition to the duties outlined in subsection (b), an RO shall:
 - (A) oversee all aspects of agency record management, record schedules and requests for access to public records and
 - (B) periodically review guidance and policies related to public records to ensure that they are consistent with the policy established by this procedure and by 1 V.S.A. Chapter 5, Subchapter 3.
 - (2) With respect to public records requests that apply to more than one organizational unit within a Department, the RO for the Department (Department RO) shall:
 - (A) receive a public records request from the member of the public;
 - (B) act as the Department point of contact for the requestor for questions and responses to the request for public information; and
 - (C) coordinate with the organizational unit RLs to provide a response to the requestor.
 - (3)

- (4) With respect to public records requests that apply to more than one Department within the Agency, the RO for the Agency's Central Office (Agency RO) shall:
 - (A) receive a public records request from the member of the public;
 - (B) act as the Agency point of contact for the requestor for questions and responses to the request for public information; and
 - (C) coordinate with the Department ROs to provide a response to the requestor.

§ 4 Making a request for access to public records

- (a) A request for access to public records may be verbal or in writing.
- (b) A request for access to public records should be filed with the appropriate RL.
- (c) If the requestor does not know the appropriate RL of a public record, or the request describes records from multiple programs, the requestor may address the request for records to the Agency or Department RO.

§ 5 Processing a Request for Access to Public Records

- (a) The Office of General Counsel shall develop additional guidance for Agency employees on processing and responding to public records requests as appropriate.
- (b) If an Agency employee that is not an RL receives a public records request, the Agency employee shall immediately forward the request to the appropriate RL.
- (c) Coordination of responses to a request.
 - (1) Upon receipt of a written request, the RL shall mark the request with the date of receipt.
 - (2) The RL shall consult with the Compliance and Enforcement Division and Office of General Counsel to determine whether the public records request relates to a pending enforcement or litigation matter. If so, the RL shall immediately notify the environmental enforcement officer or litigation attorney assigned to the matter that a request for access to records related to the enforcement or litigation matter has been filed with the Agency.
 - (3) The RL shall promptly forward the request to Agency employees that may have records that are responsive to the public records request and note whether the public records request relates to a pending enforcement or litigation matter.
 - (4) Agency employees shall promptly review and provide responsive records to the RL.
- (d) Clarification of a public records request.
 - (1) If a request for public records is unclear, the RL should contact the requestor to clarify the scope of the request or notify the requestor of the scope of records requested and potential cost associated with the request under the fee schedule established under § 7(c).

- (2) The RL shall make a reasonable effort to assist in the identification and description of records sought and to assist the requestor in formulating his or her request. Efforts should be made to contact the requestor by telephone or email when practicable.
- (e) Timelines for a response.
- (1) General requirement. Pursuant to 1 V.S.A. § 318(a)(2), a record shall be produced for inspection or a certification shall be made that a record is exempt within 3 business days of receipt of the request. If clarification is required pursuant to 5(c), the records shall be produced or a certification shall be made that a record is exempt within 3 business days of the clarified request.
 - (2) Records in use or in storage. If the record is in active use or in storage and not available, the RL shall certify this in writing to the requestor and set a date and hour within one calendar week of the request when the record will be available for inspection, or when copies can be made.
 - (3) Unusual Circumstances. In an unusual circumstance, the RL may extend the deadline to make records available for inspection. All extensions shall be for ten or fewer business days from the date of receipt of the request. Unusual circumstances means to the extent reasonably necessary to the proper processing of the particular request:
 - (A) 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;
 - (B) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request. This includes the need to have the files reviewed to ensure that no records exempt from disclosure are present; or
 - (C) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the requests or among two or more components of the Agency having substantial subject matter interest therein, or with the attorney general.
 - (4) Mutual Agreement of the Parties. When there is a request that spans multiple departments, divisions, or programs or is voluminous, an RL is encouraged to contact the requestor to reach an agreed upon or phased response. All such agreements should be confirmed by e-mail or otherwise in writing.
 - (5) If a record does not exist, the RL shall respond to the requestor in writing that the record does not exist based upon the information provided to him or her by the requestor.
 - (6) The agency is not required to create new records in response to a request.

- (7) As appropriate, a request for an existing digital copy of a public record may be responded to by an authorized staff person with access to the requested information.
- (8) The RL shall maintain a record of all public record requests and ensure all requests are tracked in accordance with State and Agency reporting requirements.

§ 6 Providing Access to Public Records

- (a) Access to Records in an Electronic Format.
 - (1) General Policy. It is the policy of the Agency of Natural Resources to manage its records and provide the public with access to records in an electronic format.
 - (2) Electronic delivery of requested material. Unless the requestor asks to have material provided to them on a compact disk or other physical means of providing records, the Agency shall transfer all requested material either by ftp site, website, or through other electronic means.
 - (3) Standard Format. Requests for electronic data shall be provided in a standard format unless the RL agrees to produce the data in a different format. If digital records are requested in a nonstandard format, the RL may consult the IT Helpdesk to determine the feasibility of accommodating the request. Any production of a record in a non-standard format is solely at the discretion of the RL.
- (b) Physical inspection of records.
 - (1) Hours of operation. The hours for inspection and copying public records are between 9:00 AM and 12:00 PM and 1:00 PM and 4:00 PM, with the exception of weekends and state and federal holidays.
 - (2) Appointment required. To review records, a requestor shall make an appointment with the appropriate RL. The RL may waive the requirement for an appointment. Factors to be considered in waiving the requirement for an appointment may include the time needed to locate and make available requested records, other duties or responsibilities of Agency staff at the time of the request, and whether or not the files have been reviewed to ensure that no records that are exempt from disclosure are available to the requestor.
 - (3) No person has free and open access to Agency files. The RL may require that the RL or other Agency employee be present at all times during the requestor's review of the records.
 - (4) When reviewing the files, the requestor may not remove any records from the files, may not modify or add to the file in any way and may not remove any of the files from the area designated for file review.
- (c) Copies of public records

- (1) All copying must be conducted or supervised by the RL or other Agency employee, and may be delayed until someone can be reasonably made available.
 - (2) When an invoice is provided for a request, the RL shall reference the request by date, and provide a bill for services. The RL shall provide a receipt for any payment of funds.
 - (3) If the requestor seeks copies of records that are copyrighted by a third party, the RL should inform the requestor that the copyright may not authorize reproductions of the record and provide the requestor with an opportunity to make such copies himself or herself.
- (d) Public Records Charges
- (A) Fees for copies are established by the Secretary of State under 1 V.S.A. § 316 and can be found on the Secretary of State's website.
 - (B) Fees not covered by the Secretary of State's fee schedule shall be reasonably and directly related to their costs. Costs may include the actual costs of making the copies and cost associated with the mailing or transmitting of records.
 - (C) Payments shall be by check, or postal or other money order made payable to "State of Vermont".
 - (D) Payments for copies of public records shall be received before or at the time of delivery.
 - (E) Failure to pay fees may result in the denial of future services until the total amount outstanding is paid in full.
 - (F) The Secretary has the discretion to exempt fees when deemed appropriate. Unless otherwise directed by the Secretary, fees will be waived in the following cases:
 - (i) Requests made by Vermont municipalities, other Vermont state agencies, federal government agencies, and agencies of other states;
 - (ii) The Division has not provided the public with any means of obtaining a free copy of a document intended for public distribution (e.g. rules and brochures);
 - (iii) The Department finds the administrative cost for processing the fees is greater than the fee collected. The following thresholds are guidance: cases where fifty or fewer pages are requested; cases where the total bill for staff time and copies are less than five dollars (e.g. \$4.95 for 55 pages copied on double-sided paper).
 - (iv) Copies of records needed by an ANR contractor, subcontractor or grantee to perform the work required by the contract or grant; and
 - (v) Copies provided to public interest groups as provided by federal law or grant agreement.
- (e) The RL shall return the file and all records to their proper location.

§ 7 Final Response to Records Requestor

- (a) If the RL determines that there are no records responsive to the request, the RL shall document this in a written communication to the requestor.
- (b) If the RL determines that there are records responsive to the request, the RL shall provide all non-exempt responsive records pursuant to § 6 and prepare a written response to the requestor to close the public records request.
 - (1) The RL shall document in writing that all records responsive to a request have been produced and/or that responsive records have been withheld as exempt from public disclosure pursuant to 1 V.S.A. § 317 (c) or other state statutes.
 - (2) If the RL determines that responsive records are exempt and denies access to the exempt records, the RL shall document in writing the basis for the exemption pursuant to § 7(e).
- (c) Exempt Public Records
 - (1) Records or documents that are exempt from disclosure pursuant to 1 V.S.A. § 317 (c) or other state statutes shall not be made available for inspection unless specifically authorized by the Secretary.
 - (2) If the RL, or any other Agency employee, has any question as to whether a record is exempt from disclosure or a question relating to the scope and interpretation of the Act, the RL should consult with the Office of General Counsel.
 - (3) Confidential business information and trade secrets. If responsive records are marked as confidential business information or trade secrets, the RL shall provide the business entity claiming the information is exempt from disclosure with ten business days to substantiate its claim. The RL, in consultation with the Office of General Counsel, shall review the information provided by the business entity and make a determination as to whether the records are exempt from disclosure under 1 V.S.A. § 317 (c). The RL shall notify the business entity of the Agency's determination.
 - (4) Documents that are determined to be exempt from public disclosure after review in response to a request shall be segregated from non-exempt responsive records and identified as exempt from public disclosure.
 - (5) If a requested public record contains both exempt and nonexempt materials, the exempt materials shall be separated and withheld or redacted prior to disclosure of the nonexempt documents.
- (d) Discretionary Release of Records
 - (1) When the Agency releases requested records despite the applicability of one or more of the exemptions set forth in 1 V.S.A. § 317 (c), such discretionary release shall not constitute a waiver of any exemption applicable to any other records.
- (e) Denial of Access

- (1) If the RL considers the record to be exempt from inspection, the RL shall generally identify the records withheld by the Secretary and the basis for the denial in writing. The written response shall be made within three business days, unless the response deadline has been extended. The RL shall also notify the requestor of the right to appeal any adverse determination to the Secretary. 1 V.S.A. § 318(2).
- (2) The RL shall copy the Agency General Counsel and legal counsel assigned to the public records request on all denial of access letters.

§ 8 Appeals

- (a) A requestor may appeal an RL's denial of access to public records to the Secretary of the agency. When a denial is appealed, the Secretary shall make a written determination within five business days after the receipt of the appeal. A written determination shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial. 1 V.S.A. § 318(c).
- (b) If an appeal or the denial of records is in whole or in part upheld by the Secretary, the Secretary shall notify the person making such request of the provisions for judicial review of that determination in 1 V.S.A. § 319. 1 V.S.A. § 318(3).