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MEMORANDUM

To: Municipal Officials

From: Abigail Friedman, Director, VLCT Municipal Assistance Center
Jim Barlow, Senior Staff Attorney

Date: October 27, 2009

RE: Model Public Records Inspection, Copying and Transmission Policy

The Vermont Public Records Act, 1 V.S.A. §§ 315 – 320, attempts to balance the constitutional requirements for government accountability against competing needs to protect certain private and personal information. The principal requirement of the Act is that any person is authorized to inspect or copy a public record or document of a public agency. A public agency is defined broadly as any agency, board, department, commission, branch, instrumentality, or authority of the state or any political subdivision of the state. This definition includes all state agencies and all municipal governments.

A public record is defined as “all papers, documents, machine readable materials, computer databases, or any other written or recorded matters, regardless of their physical form, that are produced or acquired in the course of agency business.” Under this definition, any paper document, e-mail, computer database, or other digital document produced or acquired by a municipality in the course of its business would likely qualify as a public record.

The Act requires municipalities to provide access to public records for inspection and copying unless a record is exempt under one of the 39 general exemptions found at 1 V.S.A. § 317(c). One of the § 317(c) exemptions from public inspection is for records “designated by law as confidential.” There are at least 169 public records designated by statute as confidential or otherwise exempt, bringing the total number of possible exemptions to 208. While there are a large number of possible exemptions, the Vermont Supreme Court has made clear that all of the exemptions must be strictly construed and any doubt as to whether an exemption applies must be resolved in favor of disclosure.

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Center

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A list of the public records exemptions can be found in the Legislative Council Staff Report on Public Records Requirements in Vermont, available at:

<http://www.leg.state.vt.us/REPORTS/07PublicRecords/Public%20Records%20Requirements%20in%20Vermont.pdf>

A municipality is authorized under 1 V.S.A. 316(j) of the Public Records Act 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. This model policy has been developed for adoption by municipal clerks but can be modified for adoption for other officials who may be custodians of municipal records.

This model policy has been developed for illustrative purposes only. VLCT makes no express or implied endorsement or recommendation of any policy, nor does it make any express or implied guarantee of legal enforceability or legal compliance, nor does VLCT represent that any policy is appropriate for any particular municipality. Your legal counsel should review any proposed financial policy before adoption.

**Town of _____, Vermont
Office of the Town Clerk**

Public Record Inspection, Copying and Transmission Policy

PURPOSE. The Vermont Public Records Act, 1 V.S.A. §§ 315-320, provides that the Town of _____ is required to provide access to public records for inspection and copying unless the records are exempt by law from public access. The _____ Town Clerk is authorized under section 316(j) of the Public Records Act 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. This policy is intended to provide for timely action on requests for public records without unreasonable interruption of operations and to protect the integrity of the Town's public records.

APPLICABILITY. A public record is defined as any written or recorded information, regardless of physical form or characteristic, which is produced or acquired in the course of Town business. Public records, regardless of format, are available for inspection and copying unless there is a specific statute exempting the record from public disclosure. Those records exempt from public inspection and copying are set out at 1 V.S.A. § 317(c).

This policy applies only to requests for public records in the custody of the Town Clerk. Other public records may be in the custody of other officers or employees of the Town. In such cases where a public records request is made for a document that is not in the custody of the Town Clerk, the Town Clerk will promptly forward the request to the proper custodian and inform the requestor who that custodian is. This policy does not apply to the Town's land records, which are subject to the Town of _____ Land Records Policy.

PUBLIC RECORD REQUEST FORMS. It is not intended that every public record request require the requestor complete a form. However, when a request is made for a public record that is not readily accessible, may be exempt from public access, may not exist, or may result in charges for copying or staff time, the requestor will be required to complete a Public Records Request Form designated by the Town Clerk.

INSPECTION OF PUBLIC RECORDS. Upon receipt of a request to inspect a public record, the Town Clerk will produce the record for inspection within two business days, subject to the following:

1. If the record does not exist under the name given by the requestor or by any other name known to the Town Clerk, the Town Clerk will inform the requestor of this fact in writing.
2. If the Town Clerk considers the record to be exempt from public access, the Town Clerk will inform the requestor of this fact in writing. The Town Clerk will identify the record or portion of record withheld, the basis for withholding the record, and inform the requestor of the right to appeal this determination.
3. If the record is in active use or in storage and therefore not readily available at the time of the request, the Town Clerk will inform the requestor of this fact in writing and set a date and hour within one calendar week of the request when the record will be available for inspection.

In the following circumstances, the time limits described above may be extended up to ten days:

1. The need to search for and collect requested records from field facilities or other establishments that are separate from the Town Clerk's office;
2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;
3. The need for consultation with other Town officers or departments having a substantial interest in the determination of the request; or
4. The need for consultation with the Town's attorney.

If the time limits described above must be extended, the Town Clerk will inform the requestor of such fact in writing, setting forth the reasons for the extension and specifying the date upon which the Town Clerk will respond to the request.

COPIES OF PUBLIC RECORDS. Upon receipt of a request to make a copy of a public record, the Town Clerk will make and produce a copy within 5 business days, subject to the following:

1. **Charges.** Except where otherwise provided by law, the Town Clerk will charge and collect the following costs for making a copy of a public record:
 - a. The actual cost charge for a copy of a public record [as determined by the selectboard under 1 V.S.A. § 316(e) or the uniform schedule of charges established by the Secretary of State].
 - b. The cost of staff time associated with complying with a request for a copy of a public record when the time exceeds 30 minutes [as determined by the _____ selectboard under 1 V.S.A. § 316(e) or the uniform schedule of charges established by the Secretary of State.].

A copy of the actual cost charge and staff time rate schedule is attached. Upon request, the Town Clerk will provide an estimate of the cost of making a copy of a public record prior to complying with the request. All charges for copies and staff time must be paid in full prior to delivery of the requested copy.

2. **Standard formats.** The Town Clerk will make a copy of a public record in the following standard format:

- a. For any public record maintained by the Town Clerk in paper form, a paper copy of the record.
- b. For any public record maintained in Town Clerk in electronic form, either a hard copy print out of the record or an electronic copy of the record in the format in which the record is maintained, as directed by the requestor.

Any other format is non-standard and the Town Clerk is not required to comply with the request. If the Town Clerk agrees to provide a copy of a public record in a non-standard format (e.g., conversion of a paper public record to electronic format), the requestor will be charged the time involved in producing the record in a non-standard format when the time exceeds 30 minutes as such costs are determined by the _____ selectboard under 1 V.S.A. § 316(e) or the uniform schedule of charges established by the Secretary of State.

If the time limit set forth above must be extended, the Town Clerk will inform the requestor of such fact in writing, setting forth the reasons for the extension and specifying the date upon which the Town Clerk will produce the copy.

PROTECTION OF PUBLIC RECORDS REQUESTED FOR INSPECTION. In order that all public records in the custody of the Town Clerk may be protected from damage or loss, such records may only be inspected in locations in the Town Office designated by the Town Clerk. No public record may be removed from a designated location, marked, altered, defaced, torn, damaged, destroyed, disassembled, or removed from its proper location or order. The Town Clerk or other staff person may be present during the inspection of a public record. No person shall be allowed to copy a public record using copying equipment other than that owned by the Town unless approved by the Town Clerk.

CREATION OF PUBLIC RECORDS. The Town Clerk is not legally obligated to create a public record that does not otherwise exist. If the Town Clerk agrees to create a public record that does not exist, the Town Clerk will charge the requestor the cost associated with creating the record. Requests for creating a record must be made in writing and all charges must be paid prior to delivery of the record. Upon request, the Town Clerk will provide an estimate of the cost of creating a public record prior to complying with the request.

TRANSMISSION OF PUBLIC RECORDS. The Town Clerk is not legally obligated to transmit any public record by mail, facsimile, e-mail or any other means. If the Town Clerk agrees to transmit a public record, the Town Clerk will charge the requestor the costs associated with doing so. Requests for transmission of a record must be made in writing and all charges

must be paid prior to delivery of the record. Upon request, the Town Clerk will provide an estimate of the cost of transmitting a public record prior to complying with the request.

DENIAL OF A PUBLIC RECORD REQUEST. If the Town Clerk denies a public record request in whole or in part, the denial may be appealed to the Town of _____ selectboard. In accordance with 1 V.S.A. § 318(c)(1), the selectboard will make written determination on the appeal within five business days after receipt of the appeal.

The foregoing Policy is hereby adopted by the Town Clerk of the Town of _____, Vermont, this ___ day of _____ and is effective as of this date until amended or repealed.

Town Clerk

**Town of _____, Vermont
Request for Public Record Copies**

Date _____

Dear Town Clerk:

Pursuant to the Vermont Public Record Act, 1 V.S.A. §§ 315-320, I hereby request copies of the following public records:

- a. _____
- b. _____
- c. _____

I am addressing this request to you in the belief that you are the custodian of such documents. If you are not the custodian, please forward my request to the proper custodian of such documents and inform me of who that person is.

I hereby agree to pay reasonable and customary costs for these photocopies.

If the law does not allow me to have access to some of these records, please so inform me within two business days, as provided by law, and inform me of the specific exemption that applies to each record or portion of a record being withheld. If an otherwise public record has a portion that is exempt from disclosure, I request that you block out the exempt portion and release a copy of the rest of the document together with a notation of the specific exemption that applies to the portion withheld.

If some or all of my request is denied, please tell me the title and name of the person responsible for the denial and, as the law requires, please inform me of the appeal procedures available to me and the name of the person to whom appeal may be made.

If you have questions about this request, please call me at _____

Thank you for your help.

Signed,

**Town of _____, Vermont
Office of the Town Clerk**

**Certification of Denial Access to Public Records
1 V.S.A. § 318(a)(2)**

On _____, the Town Clerk of the Town of _____, Vermont received a request from _____ for access to the following public record(s):

- a. _____
- b. _____

In response to this request, the Town Clerk is withholding the following record(s):

- a. _____
- b. _____

These records are being withheld pursuant to [insert exemption citation]. This exemption applies to the record withheld because

_____.

Therefore, the request for access to the above-described record(s) is denied.

This denial may be appealed to the Town of _____ selectboard. In accordance with 1 V.S.A. § 318(c)(1), the selectboard will make written determination on the appeal within five business days after receipt of the appeal.

Town Clerk
Town of _____, Vermont

Date signed _____.

**Town of _____, Vermont
Office of the Town Clerk**

**Certification of Partial Denial Access to Public Records
1 V.S.A. § 318(a)(2)**

On _____, the Town Clerk of the Town of _____, Vermont received a request from _____ for access to the following public record(s):

- a. _____
- b. _____

In response to this request, the Town Clerk is making available the following record(s):

- a. _____
- b. _____

Certain portions of this record(s) have been withheld pursuant to [insert exemption citation]. This exemption applies to the record withheld because

_____.

Therefore, the request for access to the above-described record(s) is partially denied.

This denial may be appealed to the Town of _____ selectboard. In accordance with 1 V.S.A. § 318(c)(1), the selectboard will make written determination on the appeal within five business days after receipt of the appeal.

Town Clerk
Town of _____, Vermont

Date signed _____.