



# VLCT Model Public Records Policy with Guidance

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## Introduction

The Vermont Public Records Act, 1 V.S.A. §§ 315-320, attempts to balance the constitutional requirements for government accountability with 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 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) (emphasis added). A “public agency” at the municipal level would necessarily include the office of the municipal clerk and treasurer; planning commission; municipal library; police and fire department; and all other sub-entities of municipal government.

The definition of a “public record” is similarly 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). Under this definition, any paper document, email, computer database, or other digital document, image or recording produced or acquired by a municipality or a municipal officer in the course of business would likely qualify as a public record.

The Public Records Act requires that municipal public agencies make their public records accessible to the public “promptly” for copying and inspection during “customary business hours” (e.g. the hours that the municipal public agency is open to provide services to the public). “Promptly” is defined by the Act 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). The Act does not require the creation of a public record nor does the Act require transmission of a record by any means (including U.S. mail, email, fax, etc.). Nevertheless, municipal officials may choose to create and/or transmit a public record upon request.

Access to a public record must be provided unless that record is exempt under one of the 42 general exemptions listed in 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 201 public records designated by statute as confidential or otherwise exempt, bringing the total number of possible exemptions to 243. While there are a large number of possible exemptions, the Vermont Supreme Court has made clear any doubt as to whether an exemption applies must be resolved in favor of disclosure. A list of the public records exemptions can also be found online at the Vermont Secretary of State’s Right to Know Database, <https://www.sec.state.vt.us/archives-records/records-management/legal-requirements/right-to-know/right-to-know-database.aspx>.

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 Act 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 Act 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, one for each sub-entity or department/board/commission of the municipality.

The denial of access to a public record by its custodian may be appealed to the head of the custodian's “agency” (department, committee, commission, instrumentality, etc.). The Act 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 municipal clerk is the custodian of certain public records and is also the head of his/her “agency.” To account for this oversight, and to avoid the appearance of impropriety that may arise when a municipal official sits in appeal of his or her own decision, this policy has been developed to allow all independently elected municipal officials to delegate appeals of their initial public records determinations to the municipal manager, administrator, or legislative body chairperson as applicable.

**For the sake of consistency in the processing of all public records requests, it would be in the best interests of the municipality for all independently elected municipal officials, to sign off on the same policy.** In order to avoid the potential complexity and confusion resulting from one municipality having multiple public records policies and appeals to multiple heads of agencies, a municipality’s legislative body should sign this policy, direct all appointed or employee agency heads (e.g. fire/police/highway department heads/chiefs; municipal library directors; zoning administrators/planning and zoning directors; chairpersons of appointed committees, boards, and commissions) to adhere to it and educate them as to its administration.

Your municipality is responsible for editing this policy to reflect the actual practices of your municipality in conformance with the Public Records Act. Opportunities for editing this policy are marked with “guidance” and are accompanied by bolded text and the option to choose whether the Custodian “will” or “will not” be required to ascribe to a particular course of conduct. This guidance language must either be deleted if the Custodian is not to undertake the particular duty or replaced with the language in italics reflecting how the municipality will respond in these given circumstances. **Please note that the time frames outlined in this policy are based on deadlines that are imposed by the Act and as such, should not be extended without consultation from an attorney.**

Finally, a municipality is authorized under 1 V.S.A. § 316(j) of the 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. Note that the Act provides that a custodian



of public records shall not destroy, give away, sell, discard, or damage any record or records in his or her charge, unless specifically authorized by law or under a record schedule approved by the state archivist pursuant to 3 V.S.A. § 117(a)(5). For information and guidance as to the management, retention, and disposition of public records under the Act, please contact the Vermont State Archives and Records Administration Division of Records Management at (802) 828-3897.

**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 public records policy before adoption. Contact the Municipal Assistance Center for information about our legal review service at 1-800-649-7915 or [info@vlct.org](mailto:info@vlct.org).**

**VLCT thanks the attorneys at Stitzel, Page & Fletcher, PC for their assistance with this model policy.**

## Model Public Records Inspection, Copying, and Transmission Policy

Town of \_\_\_\_\_, Vermont

### Public Record Inspection, Copying and Transmission Policy

**PURPOSE.** The Vermont Public Records Act, 1 V.S.A. §§ 315-320, provides access to a town's public records for inspection and copying unless the records are exempt by law from public access. The Town 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 Custodian of the office of [*insert title of office of independently-elected official*]. Other public records may be in the custody of other officers or employees of the Town.

**DEFINITIONS.** For purposes of this policy, the following words and/or phrases shall apply:

1. "Agency" means an agency, board, committee, department, branch, instrumentality, commission, or authority of any town.
2. "Custodian" means the person that has charge or custody of a public record.
3. "Promptly" means immediately, with little or no delay, and not more than three business days.

**PUBLIC RECORD REQUEST FORMS.** Not every public record request will necessitate the use of a written request form. However, when a request is made for a public record that is not readily accessible, may be exempt from public access, or may not exist, the requestor will be asked to complete, but is not required to do so except as stated below, a Public Records Request Form designated by the Custodian. If the requestor declines to complete the Public Records Request Form, the Custodian may complete such form. Where a request is likely to result in charges for copying or staff time, the requestor is required to submit a completed Request Form. The Custodian shall retain the original copy of all requests and written responses (if applicable).

**INSPECTION OF PUBLIC RECORDS.** In responding to a request to inspect or copy a record, the Custodian will consult with the requestor if necessary in order to clarify the request or to obtain additional information that will assist the Custodian in responding to the request and in facilitating production of the requested record for inspection or copying. When a requestor seeks a voluminous amount of separate and distinct records, the Custodian may ask the requestor to narrow the scope of the public records request.

Upon receipt of a request to inspect a public record, the Custodian will promptly produce the record for inspection except that:

1. The Custodian will inform the requestor in writing if the record does not exist under the name given by the requestor or by any other name known to the Custodian.
2. If the Custodian withholds the record as exempt from public access, the Custodian will promptly certify this fact in writing to the requestor. The Custodian will identify the record or portion of record withheld, the statutory basis for withholding the record, a brief statement of the reasons and supporting facts for denial, and provide the names and titles or positions of each person responsible for denial of the request. The Custodian will also inform the requestor of the right to appeal this determination to the [*insert "Town Manager," "Town Administrator," or "Selectboard Chair" as applicable*]. It is the policy of the Town that all exempt records will be withheld from disclosure.
3. If the record is in active use or in storage and therefore not readily available at the time of the request, the Custodian will promptly certify this fact 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.

For the purpose of this policy, a "business day" means a day that the Custodian's office is open to provide services.

The time limits described above may be extended in writing up to ten business days from receipt of the records request based on:

- a. The need to search for and collect requested records from field facilities or other establishments that are separate from the Town Office; or
- 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; or
- c. The need for consultation with the Town attorney or other Town officers or departments having a substantial interest in the determination of the request.

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

The Custodian will 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, the Custodian will redact the information he or she considers to be exempt and produce the record accompanied by an explanation of the basis for denial of the redacted information.

**PROTECTION OF PUBLIC RECORDS REQUESTED FOR INSPECTION.** In order that all public records in the custody of the Custodian may be protected from damage or loss, such records may only be inspected in locations in the Town Office designated by the Custodian. 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 Custodian 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 Custodian.

When inspection of an electronic record is requested and the inspection of the original electronic record would create a disruption in operations of the Town or would jeopardize the security or condition of the original record, the Custodian will provide an electronic copy of the original record in the format in which the record is maintained, less any exempt information redacted from the record, at no cost to the requestor.

**COPIES OF PUBLIC RECORDS.** Upon receipt of a request to make a copy of a public record, the Custodian will make and produce a copy subject to the following:

1. **Charges.** Except where otherwise provided by law, the Custodian 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 if the Selectboard fails to establish a uniform schedule of charges; and
  - 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 that cost is 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 Selectboard fails to establish a uniform schedule of charges.

All charges for copies and staff time must be paid in full prior to delivery of the requested copies. Upon request, the Custodian will provide an estimate of the cost of making a copy of a public record prior to complying with the request.

2. **Standard formats.** The Custodian will make a copy of a public record in the following standard format:
  - a. For any public record maintained by the Custodian in paper form, the Custodian will make a paper copy of the record;
  - b. For any public record maintained by Custodian in electronic form, the Custodian will make either a paper printout of the record or an electronic copy of the record in the format in which the record is maintained, as directed by the requestor.

A request for a copy in a format other than those mentioned above is “non-standard.” The Custodian [*insert “will” or “will not”*] provide a copy of a public record in a non-standard format (e.g., conversion of a paper public record to electronic format). [**Guidance: Only include the following if the Custodian decides that it will be the policy of his or her office to provide copies of public records in non-standard 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 Selectboard fails to establish a uniform schedule of charges.*]

**CREATION OF PUBLIC RECORDS.** The Custodian [*insert “will” or “will not”*] create a public record that does not exist. [**Guidance: Only include the following if the Custodian decides that it will be the policy of his/her office to create a public record that does not exist:** *The Custodian 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 Custodian will provide an estimate of the cost of creating a public record prior to complying with the request.*]

**TRANSMISSION OF PUBLIC RECORDS.** The Custodian [*insert “will” or “will not”*] transmit a public record. [**Guidance: Only include the following if the Custodian decides that it will be the policy of his/her office to transmit public records:** *Custodian 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 Custodian 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 Custodian denies a public record request in whole or in part, the denial may be appealed to the [*insert “Town Manager,” “Town*

Administrator," or "Selectboard Chair" as applicable]. In accordance with 1 V.S.A. § 318(c)(1), the [insert "Town Manager," "Town Administrator," or "Selectboard Chair" as applicable] will make a written determination on the appeal within five business days after receipt of the appeal. A decision of the [insert "Town Manager," "Town Administrator," or "Selectboard Chair" as applicable] may be reviewable by the Vermont Superior Court pursuant to 1 V.S.A. § 319.

The foregoing Policy is hereby adopted by the [insert title of office of independently-elected official] of the Town of \_\_\_\_\_, Vermont, this \_\_\_ day of \_\_\_\_\_ [for town officials other than the selectboard, add the following: "as the Head of that Agency and in delegation of all appeal authority to the [insert "Town Manager," "Town Administrator," or "Selectboard Chair" as applicable] otherwise conferred upon my office."]

This Policy is effective as of this date until amended or repealed.

\_\_\_\_\_  
Office of [insert title of office]  
Town of \_\_\_\_\_, Vermont

Date signed \_\_\_\_\_.



## MODEL REQUEST FOR INSPECTION OR COPYING

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**Town of \_\_\_\_\_, Vermont**  
**Request for Inspection or Copying of Public Record(s)**

Date \_\_\_\_\_

Dear Custodian:

Pursuant to the Vermont Public Record Act, 1 V.S.A. §§ 315-320, I hereby request to inspect the following public record(s):

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_

(If applicable) I hereby request a copy of the above record(s) in the following format:

\_\_\_\_\_  
\_\_\_\_\_. I agree to pay reasonable and customary costs for these copies.

(Complete this section if you have a disability requiring an accommodation): I request the following accommodation(s) in order to access the public record(s) I seek:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you have questions about this request, please call me at \_\_\_\_\_.

Thank you for your help.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

The Custodian for the Office of *[insert title of office]* shall retain the original of this form for record keeping purposes and provide the requestor with its copy.

## MODEL CERTIFICATION OF DENIAL OF ACCESS

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**Town of \_\_\_\_\_, Vermont**  
**Certification of Denial of Access to Public Record(s)**  
**1 V.S.A. § 318(b)(2)**

On \_\_\_\_\_, the Custodian for the Office of *[insert title of office]* of the Town of \_\_\_\_\_, Vermont, received a request from \_\_\_\_\_ for access to public record(s). Certain records determined to be subject to the request have been withheld in whole or in part as exempt from disclosure under 1 V.S.A. § 317. Such withheld records are as follows:

Title or Other Description of Public Record Withheld	All or Partial	Reasons for Withholding and Supporting Facts	Statutory Exemption(s)	Name and Title of Person Responsible for Denial

You may appeal any or all of the withholding of these public records to the Town of \_\_\_\_\_ *[insert "Town Manager," "Town Administrator," or "Selectboard Chair" as applicable]*. In accordance with 1 V.S.A. § 318(c)(1), the *[insert "Town Manager," "Town Administrator," or "Selectboard Chair" as applicable]* will make a written determination on the appeal within five business days after receipt of the appeal. A decision of the *[insert "Town Manager," "Town*



Administrator," or "Selectboard Chair" as applicable] may be reviewable by Vermont Superior Court under 1 V.S.A. § 319.

\_\_\_\_\_  
Custodian for the Office of [office]

Town of \_\_\_\_\_, Vermont

Date signed \_\_\_\_\_.

The Custodian for the Office of [insert title of office] shall retain the original of this form for record keeping purposes and provide the requestor with its copy.

## MODEL RESPONSES TO REQUEST FOR PUBLIC RECORDS

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**Town of \_\_\_\_\_, Vermont**  
**Response to Request for Public Record(s)**  
**1 V.S.A. § 318**

On \_\_\_\_\_, the Custodian for the Office of *[insert title of office]* of the Town of \_\_\_\_\_, Vermont, received a request from \_\_\_\_\_ for access to public record(s).

In response to this request (check all that apply):

- The Custodian is not producing some or all of the record(s) requested for inspection because:
- the record(s) do not exist under the name given by the requestor or by any other name known to the Custodian. 1 V.S.A. § 318(a)(4);
  - the Town is not required to provide copies of public records in their non-standard format. 1 V.S.A. § 316(i);
  - the record(s) does not already exist and the Town is not required to create a public record(s). 1 V.S.A. § 316(i);
  - the Town is not required to convert paper public record(s) to electronic format. 1 V.S.A. § 316(i).

Record(s) requested: \_\_\_\_\_

- The record(s) requested below are in active use or in storage and therefore not available for use at the time of this request. The record(s) requested will be available for examination within one calendar week of the request on \_\_\_\_\_ (date) at \_\_\_\_\_ (hour). 1 V.S.A. § 318(b)(1).

Record(s) requested: \_\_\_\_\_

- The following “unusual circumstances,” as that term is defined by 1 V.S.A. § 318(b)(5), exist with respect to the record(s) requested below:
- the need to search for and collect the requested record(s) from field facilities or other establishments that are separate from the office processing the request;
  - the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct record(s) which are demanded in a single request;
  - the need for consultation with the Town’s attorney or with other Town officers or departments having a substantial interest in the determination of the request.

Record(s) requested: \_\_\_\_\_

The non-exempt record(s) requested will be available for examination not more than ten business days from receipt of this request on \_\_\_\_\_ (date). 1 V.S.A. § 318(b)(5).

- The record(s) requested below are subject to one or more of the following staff time charges:
- charges for the time directly involved in complying with the request that exceeds 30 minutes;
- charges incurred because the Town agreed to create a public record(s) that did not already exist;
- charges incurred because the Town agreed to provide the public record(s) in a non-standard format and the time directly involved in complying with the request exceeds 30 minutes.

Record(s) requested: \_\_\_\_\_

Because this request is subject to staff time charges, the Custodian hereby requires that the request be made in writing and that all charges be paid [in whole/in part] prior to delivery of the copies. Upon request, the Town will provide an estimate of the charge.

This denial of access, whether temporary or permanent, may be appealed to the Town of \_\_\_\_\_ [*insert "Town Manager," "Town Administrator," or "Selectboard Chair" as applicable*]. In accordance with 1 V.S.A. § 318(c)(1), the [*insert "Town Manager," "Town Administrator," or "Selectboard Chair" as applicable*] will make written determination on the appeal within five business days after receipt of the appeal. A decision of the (*Town Manager/Town Administrator/Selectboard Chair*) may be reviewable by Vermont Superior Court under 1 V.S.A. § 319.

\_\_\_\_\_  
Custodian for the Office of [*office*]

Town of \_\_\_\_\_, Vermont

Date signed \_\_\_\_\_.

The Custodian for the Office of [*insert title of office*] shall retain the original of this form for record keeping purposes and provide the requestor with its copy.