

The Vermont Statutes Online

Title 1: General Provisions

Chapter 5: Common Law; General Rights

§ 271. Common law adopted

So much of the common law of England as is applicable to the local situation and circumstances and is not repugnant to the constitution or laws shall be laws in this state and courts shall take notice thereof and govern themselves accordingly.

§ 272. Equality of privilege

In cases proper for the cognizance of the civil authority and the courts of judicature in this state, citizens of the United States shall be equally entitled to the privileges of law and justice with citizens of this state.

§ 273. Eligibility to hold office

A person shall not be debarred on account of sex from holding any office or position of trust or responsibility under the state, including United States senator and representative to congress or any county, town, city, village, town school district or incorporated fire, lighting or school district office.

§ 310. Definitions

As used in this subchapter:

- (1) "Deliberations" means weighing, examining and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.
- (2) "Meeting" means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action.
- (3) "Public body" means any board, council or commission of the state or one or more of its political subdivisions, any board, council or commission of any agency, authority or instrumentality of the state or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils or commissions, except that "public body" does not include councils or similar groups established by the governor for the sole purpose of advising the governor with respect to policy.

(4) "Publicly announced" means that notice is given to an editor, publisher or news director of a newspaper or radio station serving the area of the state in which the public body has jurisdiction, and to any editor, publisher or news director who has requested under section 312(c)(5) of this title to be notified of special meetings.

(5) "Quasi-judicial proceeding" means a proceeding which is:

(A) a contested case under the Vermont Administrative Procedure Act; or

(B) a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority. (Added 1987, No. 256 (Adj. Sess.), § 1.)

§ 311. Declaration of public policy; short title

(a) In enacting this subchapter, the legislature finds and declares that public commissions, boards and councils and other public agencies in this state exist to aid in the conduct of the people's business and are accountable to them pursuant to Chapter I, Article VI of the Vermont constitution.

(b) This subchapter may be known and cited as the Vermont open meeting law. (Amended 1979, No. 151 (Adj. Sess.), § 1, eff. April 24, 1980.)

§ 312. Right to attend meetings of public agencies

(a) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under section 313(a)(2) of this title. A meeting may be conducted by audio conference or other electronic means, as long as the provisions of this subchapter are met. A public body shall record by audio tape, all hearings held to provide a forum for public comment on a proposed rule, pursuant to section 840 of Title 3. The public shall have access to copies of such tapes as described in section 316 of this title.

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:

(A) All members of the public body present;

(B) All other active participants in the meeting;

(C) All motions, proposals and resolutions made, offered and considered, and what disposition is made of same; and

(D) The results of any votes, with a record of the individual vote of each member if a roll call is taken.

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five days from the date of any meeting.

(c)(1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution or other determining authority of the public body and this information shall be available to any person upon request.

(2) The time, place and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting. Municipal public bodies shall post notices of special meetings in or near the municipal clerk's office and in at least two other public places in the municipality, at least 24 hours before the meeting. In addition, notice shall be given, either orally or in writing, to each member of the public body at least 24 hours before the meeting, except that a member may waive notice of a special meeting.

(3) Emergency meetings may be held without public announcement, without posting of notices and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting. Emergency meetings may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.

(4) Any adjourned meeting shall be considered a new meeting, unless the time and place for the adjourned meeting is announced before the meeting adjourns.

(5) An editor, publisher or news director of any newspaper, radio station or television station serving the area of the state in which the public body has jurisdiction may request in writing that a public body notify the editor, publisher or news director of special meetings of the public body. The request shall apply only to the calendar year in which it is made, unless made in December, in which case it shall apply also to the following year.

(d) The agenda for a regular or special meeting shall be made available to the news media or concerned persons prior to the meeting upon specific request.

(e) Nothing in this section or in section 313 of this title shall be construed as extending to the judicial branch of the government of Vermont or of any part of the same or to the public service board; nor shall it extend to the deliberations of any public body in connection with a quasi-judicial proceeding; nor shall anything in this section be construed to require the making public of any proceedings, records, or acts which are specifically made confidential by the laws of the United States of America or of this state.

(f) A written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record.

(g) The provisions of this subchapter shall not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements, clerical work, or work assignments of staff or other personnel. Routine day-to-day administrative matters that do not require action by the public body, may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.

(h) At an open meeting the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. This subsection shall not apply to quasi-judicial proceedings.

(i) Nothing in this section shall be construed to prohibit the parole board from meeting at correctional facilities with attendance at the meeting subject to rules regarding access and security established by the superintendent of the facility. (Amended 1973, No. 78, § 1, eff. April 23, 1973; 1979, No. 151 (Adj. Sess.), § 2; 1987, No. 281 (Adj. Sess.), § 2; 1997, No. 148 (Adj. Sess.), § 64, eff. April 29, 1998; 1999, No. 146 (Adj. Sess.), § 7.)

§ 313. Executive sessions

(a) No public body described in section 312 of this title may hold an executive session from which the public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of state government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session except actions relating to the securing of real estate options under subdivision (2) of this subsection. Minutes of an executive session need not be taken, but if they are, shall not be made public subject to subsection 312(b) of this title. A public body may not hold an executive session except to consider one or more of the following:

(1) Contracts, labor relations agreements with employees, arbitration, mediation, grievances, civil actions, or prosecutions by the state, where premature general public knowledge would clearly place the state, municipality, other public body, or person involved at a substantial disadvantage;

(2) The negotiating or securing of real estate purchase options;

(3) The appointment or employment or evaluation of a public officer or employee;

(4) A disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;

(5) A clear and imminent peril to the public safety;

(6) Discussion or consideration of records or documents excepted from the access to public records provisions of section 317(b) of this title. Discussion or consideration of the excepted record or document shall not itself permit an extension of the executive session to the general subject to which the record or document pertains;

(7) The academic records or suspension or discipline of students;

(8) Testimony from a person in a parole proceeding conducted by the parole board if public disclosure of the identity of the person could result in physical or other harm to the person;

(9) Information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c).

(b) Attendance in executive session shall be limited to members of the public body, and, in the discretion of the public body, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.

(c) The senate and house of representatives, in exercising the power to make their own rules conferred by Chapter II of the Vermont Constitution, shall be governed by the provisions of this section in regulating the admission of the public as provided in Chapter II, section 8 of the Constitution. (Amended 1973, No. 78, § 2, eff. April 23, 1973; 1979, No. 151 (Adj. Sess.), § 3, eff. April 24, 1980; 1987, No. 256 (Adj. Sess.), §§ 3, 4; 1997, No. 148 (Adj. Sess.), § 65, eff. April 29, 1998; 2005, No. 71, § 308a, eff. June 21, 2005.)

§ 314. Penalty and enforcement

(a) A person who is a member of a public body and who knowingly and intentionally violates the provisions of this subchapter or who knowingly and intentionally participates in the wrongful exclusion of any person or persons from any meeting for which provision is herein made, shall be guilty of a misdemeanor and shall be fined not more than \$500.00.

(b) The attorney general or any person aggrieved by a violation of the provisions of this subchapter may apply to the superior court in the county in which the violation has taken place for appropriate injunctive relief or for a declaratory judgment. Except as to cases the court considers of greater importance, proceedings before the superior court, as authorized by this section and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way. (Amended 1979, No. 151 (Adj. Sess.), § 4, eff. April 24, 1980; 1987, No. 256 (Adj. Sess.), § 5.)

§ 315. Statement of policy

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize

their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the general assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed with the view towards carrying out the above declaration of public policy. (Added 1975, No. 231 (Adj. Sess.), § 1.)

§ 316. Access to public records and documents

(a) Any person may inspect or copy any public record or document of a public agency, on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and twelve o'clock in the forenoon and between one o'clock and four o'clock in the afternoon; provided, however, if the public agency is not regularly open to the public during those hours, inspection or copying may be made during customary office hours.

(b) If copying equipment maintained for use by a public agency is used by the agency to copy the public record or document requested, the agency may charge and collect from the person requesting the copy the actual cost of providing the copy. The agency may also charge and collect from the person making the request, the costs associated with mailing or transmitting the record by facsimile or other electronic means. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

(c) In the following instances an agency may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record: (1) the time directly involved in complying with the request exceeds 30 minutes; (2) the agency agrees to create a public record; or (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds 30 minutes. The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge.

(d) The secretary of state, after consultation with the secretary of administration, shall establish the actual cost of providing a copy of a public record that may be charged by state agencies. The secretary shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine "actual cost" the secretary shall consider the following only: the cost of the paper or the electronic media onto which a public record is copied, a prorated amount for maintenance and replacement of the machine or equipment used to copy the record and any utility charges directly associated with copying a record. The secretary of state shall adopt, by rule, a uniform schedule of public record charges for state agencies.

(e) After public hearing, the legislative body of a political subdivision shall establish actual cost charges for copies of public records. The legislative body shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine

actual cost charges, the legislative body shall use the same factors used by the secretary of state. If a legislative body fails to establish a uniform schedule of charges, the charges for that political subdivision shall 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 shall be posted in prominent locations in the town offices.

(f) State agencies shall provide receipts for all moneys received under this section. Notwithstanding any provision of law to the contrary, a state agency may retain moneys collected under this section to the extent such charges represent the actual cost incurred to provide copies under this subchapter. Amounts collected by a state agency under this section for the cost of staff time associated with providing copies shall be deposited in the general fund, unless another disposition or use of revenues received by that agency is specifically authorized by law. Charges collected under this section shall be deposited in the agency's operating account or the general fund, as appropriate, on a monthly basis or whenever the amount totals \$100.00, whichever occurs first.

(g) A public agency having the equipment necessary to copy its public records shall utilize its equipment to produce copies. If the public agency does not have such equipment, nothing in this section shall be construed to 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.

(h) 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.

(i) If an agency maintains public records in an electronic format, nonexempt public records shall be available for copying in either the standard electronic format or the standard paper format, as designated by the party requesting the records. An agency may, but is not required to, provide copies of public records in a nonstandard format, to create a public record or to convert paper public records to electronic format.

(j) 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.

(k) Information concerning facilities and sites for the treatment, storage, and disposal of hazardous waste shall be made available to the public under this subchapter in substantially the same manner and to the same degree as such information is made available under the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. chapter 82, subchapter 3, and the Federal Freedom of Information Act, 5 U.S.C. section 552 et seq. In the event of a conflict between the provisions of this subchapter and the cited federal laws, federal law shall govern. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 1987, No. 85, § 5, eff. June 9, 1987; 1995, No. 159 (Adj. Sess.), § 1; 2003, No. 158 (Adj. Sess.), § 4.)

§ 317. Definitions; public agency; public records and documents

(a) As used in this subchapter, "public agency" or "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.

(b) As used in this subchapter, "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. 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.

(c) The following public records are exempt from public inspection and copying:

(1) records which by law are designated confidential or by a similar term;

(2) records which by law may only be disclosed to specifically designated persons;

(3) records which, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the state;

(4) records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to the general assembly and the executive branch agencies of the state of Vermont;

(5) records dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency; provided, however, records relating to management and direction of a law enforcement agency and records reflecting the initial arrest of a person and the charge shall be public;

(6) a tax return and related documents, correspondence and certain types of substantiating forms which include the same type of information as in the tax return itself filed with or maintained by the Vermont department of taxes or submitted by a person to any public agency in connection with agency business;

(7) personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his or her designated representative;

(8) test questions, scoring keys, and other examination instruments or data used to administer a license, employment, or academic examination;

(9) trade secrets, including, but not limited to, any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it;

(10) lists of names compiled or obtained by a public agency when disclosure would violate a person's right to privacy or produce public or private gain; provided, however, that this section does not apply to lists which are by law made available to the public, or to lists of professional or occupational licensees;

(11) student records, including records of a home study student, at educational institutions or agencies funded wholly or in part by state revenue; provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974 (P.L. 93-380) and as amended;

(12) records concerning formulation of policy where such would constitute a clearly unwarranted invasion of personal privacy, if disclosed;

(13) information pertaining to the location of real or personal property for public agency purposes prior to public announcement of the project and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts thereof;

(14) records which are relevant to litigation to which the public agency is a party of record, provided all such matters shall be available to the public after ruled discoverable by the court before which the litigation is pending, but in any event upon final termination of the litigation;

(15) records relating specifically to negotiation of contracts including but not limited to collective bargaining agreements with public employees;

(16) any voluntary information provided by an individual, corporation, organization, partnership, association, trustee, estate, or any other entity in the state of Vermont, which has been gathered prior to the enactment of this subchapter, shall not be considered a public document;

(17) records of interdepartmental and intradepartmental communications in any county, city, town, village, town school district, incorporated school district, union school district, consolidated water district, fire district, or any other political subdivision of the state to the extent that they cover other than primarily factual materials and are preliminary to any determination of policy or action or precede the presentation of the budget at a meeting held in accordance with section 312 of this title;

(18) records of the office of internal investigation of the department of public safety, except as provided in section 1923 of Title 20;

(19) records relating to the identity of library patrons or the identity of library patrons in regard to library patron registration records and patron transaction records in accordance with chapter 4 of Title 22;

(20) information which would reveal the location of archeological sites and underwater historic properties, except as provided in section 762 of Title 22;

(21) lists of names compiled or obtained by Vermont Life magazine for the purpose of developing and maintaining a subscription list, which list may be sold or rented in the sole discretion of Vermont Life magazine, provided that such discretion is exercised in furtherance of that magazine's continued financial viability, and is exercised pursuant to specific guidelines adopted by the editor of the magazine;

(22) any documents filed, received, or maintained by the agency of commerce and community development with regard to administration of 32 V.S.A. chapter 151, subchapters 11C and 11D (new jobs tax credit; manufacturer's tax credit), except that all such documents shall become public records under this section subchapter when a tax credit certification has been granted by the secretary of administration, and provided that the disclosure of such documents does not otherwise violate any provision of Title 32;

(23) any data, records or information developed, discovered, collected, or received by or on behalf of faculty, staff, employees or students of the University of Vermont or the Vermont state colleges in the conduct of study, research or creative efforts on medical, scientific, technical, scholarly, or artistic matters, whether such activities are sponsored alone by the institution or in conjunction with a governmental body or private entity, until such data, records or information are published, disclosed in an issued patent or publicly released by the institution or its authorized agents. This subdivision applies to, but is not limited to, research notes and laboratory notebooks, lecture notes, manuscripts, creative works, correspondence, research proposals and agreements, methodologies, protocols, and the identities of or any personally identifiable information about participants in research;

(24) records of, or internal materials prepared for, the deliberations of any public agency acting in a judicial or quasi-judicial capacity;

(25) passwords, access codes, user identifications, security procedures and similar information the disclosure of which would threaten the safety of persons or the security of public property;

(26) information and records provided to the department of banking, insurance, securities, and health care administration by an individual for the purposes of having the department assist that individual in resolving a dispute with any person or company regulated by the department, and any information or records provided by a company or any other person in connection with the individual's dispute;

(27) information and records provided to the department of public service by an individual for the purposes of having the department assist that individual in resolving a dispute with a utility regulated by the department, or by the utility or any other person in connection with the individual's dispute;

(28) records of, and internal materials prepared for, independent external reviews of health care service decisions pursuant to 8 V.S.A. § 4089f and of mental health care service decisions pursuant to 8 V.S.A. § 4089a;

(29) the records in the custody of the secretary of state of a participant in the address confidentiality program described in chapter 21, subchapter 3 of Title 15, except as provided in that subchapter;

(30) all code and machine-readable structures of state-funded and controlled database applications, which are known only to certain state departments engaging in marketing activities and which give the state an opportunity to obtain a marketing advantage over any other state, regional or local governmental or nonprofit quasi-governmental entity, or private sector entity, unless any such state department engaging in marketing activities determines that the license or other voluntary disclosure of such materials is in the state's best interests;

(31) records of a registered voter's month and day of birth, motor vehicle operator's license number, the last four digits of the applicant's Social Security number, and street address if different from the applicant's mailing address contained in an application to the statewide voter checklist or the statewide voter checklist established under section 2154 of Title 17;

(32) with respect to publicly-owned, -managed, or -leased structures, and only to the extent that release of information contained in the record would present a substantial likelihood of jeopardizing the safety of persons or the security of public property, final building plans and as-built plans, including drafts of security systems within a facility, that depict the internal layout and structural elements of buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by an agency before, on, or after the effective date of this provision; emergency evacuation, escape, or other emergency response plans that have not been published for public use; and vulnerability assessments, operation and security manuals, plans, and security codes. For purposes of this subdivision, "system" shall include electrical, heating, ventilation, air conditioning, telecommunication, elevator, and security systems. Information made exempt by this subdivision may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to a licensed architect, engineer, or contractor who is bidding on or performing work on or related to buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by the state. The entities or persons receiving such information shall maintain the exempt status of the information. Such information may also be disclosed by order of a court of competent jurisdiction, which may impose protective conditions on the release of such information as it deems appropriate. Nothing in this subdivision shall preclude or limit the right of the general assembly or its committees to examine such information in carrying out its responsibilities or to subpoena such information. In exercising the exemption set forth in this subdivision and denying access to information requested, the custodian of the information shall articulate the grounds for the denial;

(33) the account numbers for bank, debit, charge, and credit cards held by an agency or its employees on behalf of the agency;

(34) affidavits of income and assets as provided in section 662 of Title 15 and Rule 4 of the Vermont Rules for Family Proceedings;

(35) [Expired.]

(36) anti-fraud plans and summaries submitted by insurers to the department of banking, insurance, securities, and health care administration for the purposes of complying with 8 V.S.A. § 4750;

(37) records provided to the department of health pursuant to the patient safety surveillance and improvement system established by chapter 43a of Title 18;

(38) records held by the agency of human services, which include prescription information containing prescriber-identifiable data, that could be used to identify a prescriber, except that the records shall be made available upon request for medical research, consistent with and for purposes expressed in sections 4621, 4631, 4632, 4633, and 9410 of Title 18 and chapter 84 of Title 18, or as provided for in chapter 84A of Title 18 and for other law enforcement activities;

(39) records held by the agency of human services or the department of banking, insurance, securities, and health care administration, which include prescription information containing patient-identifiable data, that could be used to identify a patient. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 1977, No. 202 (Adj. Sess.); 1979, No. 156 (Adj. Sess.), § 6; 1981, No. 227 (Adj. Sess.), § 4; 1989, No. 28, § 2; 1989, No. 136 (Adj. Sess.), § 1; 1995, No. 46, §§ 23, 58; 1995, No. 159 (Adj. Sess.), § 2; No. 167 (Adj. Sess.), § 29; No. 182 (Adj. Sess.), § 21, eff. May 22, 1996; No. 180 (Adj. Sess.), § 38; No. 190 (Adj. Sess.), § 1(a); 1997, No. 159 (Adj. Sess.), § 12, eff. April 29, 1998; 1999, No. 134 (Adj. Sess.), § 3, eff. Jan. 1, 2001; 2001, No. 28, § 9, eff. May 21, 2001; 2001, No. 76 (Adj. Sess.), § 3, eff. Feb. 19, 2002; No. 78 (Adj. Sess.), § 1, eff. Apr. 3, 2002; 2003, No. 59, § 1, eff. Jan. 1, 2006; No. 63, § 29, eff. June 11, 2003; 2003, No. 107 (Adj. Sess.), § 14; No.

146 (Adj. Sess.), § 6, eff. Jan. 1, 2005; No. 158 (Adj. Sess.), § 2; No. 159 (Adj. Sess.), § 12; 2005, No. 132 (Adj. Sess.), § 1; 2005, No. 179 (Adj. Sess.), § 3; 2005, No. 215 (Adj. Sess.), § 326; 2007, No. 80, § 18; 2007, No. 110 (Adj. Sess.), § 3; 2007, No. 129 (Adj. Sess.), § 2.)

§ 317a. Disposition of public records

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 subdivision 117(a)(5) of Title 3. (Added 2007, No. 96 (Adj. Sess.), § 1.)

§ 318. Procedure

(a) Upon request the custodian of a public record shall promptly produce the record for inspection, except that:

(1) 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 shall so certify this fact in writing to the applicant and set a date and hour within one calendar week of the request when the record will be available for examination;

(2) if the custodian considers the record to be exempt from inspection under the provisions of this subchapter, the custodian shall so certify in writing. Such certification shall identify the records withheld and the basis for the denial. The certification shall be made within two business days, unless otherwise provided in subdivision (5) of this subsection. The custodian shall also notify the person of his or her right to appeal to the head of the agency any adverse determination;

(3) if appealed to the head of the agency, the head of the agency shall make a determination with respect to any appeal within five days, excepting Saturdays, Sundays, and legal public holidays, after the receipt of such appeal. If an appeal of the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under section 319 of this title;

(4) if a record does not exist, the custodian shall 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;

(5) in unusual circumstances as herein specified the time limits prescribed in this subsection may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subdivision, "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; 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 request or among two or more components of the agency having substantial subject matter interest therein, or with the attorney general.

(b) Any person making a request to any agency for records under subsection (a) of this section shall be deemed to have exhausted the person's administrative remedies with respect to each request if the agency fails to comply within the applicable time limit provisions of this section.

Upon any determination by an agency to comply with a request for records, the records shall be made available promptly to the person making such request. Any notification of denial of any request for records under this section shall set forth the names and titles or positions of each person responsible for the denial of such request.

(c)(1) 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 shall make a written determination on an appeal 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.

(2) If the head of the agency reverses the denial of a request for records, the records shall be promptly made available to the person making the request. A failure by the agency to comply with any of the time limit provisions of this section shall be deemed a final denial of the request for records by the agency. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 2005, No. 132 (Adj. Sess.), § 2; 2007, No. 110 (Adj. Sess.), § 1.)

§ 319. Enforcement

(a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the superior court in the county in which the complainant resides, or has his personal place of business, or in which the public records are situated, or in the superior court of Washington County, to enjoin the public agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 317 of this title, and the burden is on the agency to sustain its action.

(b) Except as to cases the court considers of greater importance, proceedings before the superior court, as authorized by this section, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(c) If the public agency can show the court that exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

(d) The court may assess against the public agency reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed. (Added 1975, No. 231 (Adj. Sess.), § 1.)

§ 320. Penalties

(a) Whenever the court orders the production of any public agency records, improperly withheld from the complainant and assesses against the agency reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances

surrounding the withholding raise questions whether the agency personnel acted arbitrarily or capriciously with respect to the withholding, the department of human resources if applicable to that employee, shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The department, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his or her representative. The administrative authority shall take the

corrective action that the department recommends.

(b) In the event of noncompliance with the order of the court, the superior court may punish for contempt the responsible employee or official, and in the case of a uniformed service, the responsible member.

(c) A person who willfully destroys, gives away, sells, discards, or damages a public record without having authority to do so shall be fined at least \$50.00 but not more than \$1,000.00 for each offense. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 2003, No. 156 (Adj. Sess.), § 15; 2007, No. 96 (Adj. Sess.), § 2.)

§ 331. Definitions

As used in this subchapter:

(1) "Deaf or hard of hearing person" means any person who has such difficulty hearing, even with amplification, that he or she cannot rely on hearing for communication.

(2) "Proceeding" means any judicial proceeding, contested case under chapter 25 of Title 3, or other hearing before an administrative agency not included under chapter 25 of Title 3.

(3) "Qualified interpreter" means an interpreter for a deaf or hard of hearing person who meets standards of competency established by the national or Vermont Registry of Interpreters for the Deaf as amended, by rule, by the Vermont commission of the deaf and hearing impaired. (Added 1987, No. 172 (Adj. Sess.), § 1; amended 2005, No. 167 (Adj. Sess.), § 11, eff. May 20, 2006.)

§ 332. Right to interpreter; assistive listening equipment

(a) Any deaf or hard of hearing person who is a party or witness in any proceeding shall be entitled to be provided with a qualified interpreter for the duration of the person's participation in the proceeding.

(b) Any deaf or hard of hearing person shall be entitled to be provided with a qualified interpreter upon five working days' notice that the person has reasonable need to do any of the following:

(1) Transact business with any state board or agency.

(2) Participate in any state-sponsored activity, including public hearings, conferences, and public meetings.

(3) Participate in any official state legislative activities.

(c) If a deaf or hard of hearing person is unable to use or understand sign language, the presiding officer or state board or agency or state legislative official shall, upon five working days' notice, make available appropriate assistive listening equipment for use during the proceeding or activity. (Added 1987, No. 172 (Adj. Sess.), § 1; amended 2005, No. 167 (Adj. Sess.), § 12, eff. May 20, 2006.)

§ 333. Appointment of interpreter

(a) The presiding officer in a proceeding shall appoint an interpreter after making a preliminary determination that the interpreter is able to readily communicate with the deaf or hard of hearing person, to accurately interpret statements or communications from the deaf or hard of hearing person, and to interpret the proceedings to the deaf or hard of hearing person.

(b) The presiding officer shall make findings when appointing an interpreter not designated as a qualified interpreter.

(c) It shall be a rebuttable presumption that the requirements of this section are met if the interpreter proposed for appointment is a qualified interpreter. It shall also be a rebuttable presumption that the requirements of this section are not met if the interpreter proposed for appointment is not a qualified interpreter. (Added 1987, No. 172 (Adj. Sess.), § 1; amended 2005, No. 167 (Adj. Sess.), § 13, eff. May 20, 2006.)

§ 334. Waiver

No privilege recognized by law may be deemed waived or made inapplicable by reason that a communication was made through an interpreter. (Added 1987, No. 172 (Adj. Sess.), § 1.)

§ 335. Compensation

An interpreter appointed under section 332 of this title is entitled to receive a reasonable fee for services, together with reimbursement of actual and necessary expenses, including travel and lodging expenses. In civil proceedings, the court may order that costs of the interpreter be paid by a party, as justice may require, or it may order that the costs be paid by the state. In criminal proceedings, costs of the interpreter shall be paid by the state. An interpreter used in connection with administrative proceedings, transacting state business or state-sponsored activities shall be provided at the expense of the agency involved. An interpreter used in connection with official state legislative activities shall be provided at the expense of the legislature. (Added 1987, No. 172 (Adj. Sess.), § 1.)

§ 336. Rules; information; list of interpreters

(a) The Vermont commission of the deaf and hearing impaired shall, by rule, establish factors to be considered by the presiding officer under section 333 of this title before appointing an interpreter who is not a qualified interpreter. Such factors shall encourage the widest availability of interpreters in Vermont while at the same time ensuring that the interpreter:

(1) is able to communicate readily with the deaf or hard of hearing person;

(2) is able to interpret accurately statements or communications by the deaf or hard of hearing person;

(3) is able to interpret the proceedings to the deaf or hard of hearing person;

(4) shall maintain confidentiality;

(5) shall be impartial with respect to the outcome of the proceeding;

(6) shall not exert any influence over the deaf or hard of hearing person; and

(7) shall not accept assignments the interpreter does not feel competent to handle.

(b) Rules established by the Vermont commission of the deaf and hearing impaired pursuant to subdivision 331(a)(3) of this title amending the standards of competency established by the national or Vermont Registry of the Deaf shall be limited to the factors set forth in subsection (a) of this section.

(c) The Vermont commission of the deaf and hearing impaired shall prepare an explanation of the provisions of this subchapter which shall be distributed to all state agencies and courts.

(d) The department of social and rehabilitation services shall maintain a list of qualified interpreters in Vermont and, where such information is available, in surrounding states. The list shall be distributed to all state agencies and courts. (Added 1987, No. 172 (Adj. Sess.), § 1; amended 2005, No. 167 (Adj. Sess.), § 14, eff. May 20, 2006.)

§ 337. Review

(a) A decision, order, or judgment of a court or administrative agency may be reversed on appeal if the court or agency finds that a deaf or hard of hearing person who was a party or a witness in the proceeding was deprived of an opportunity to communicate effectively, and that the deprivation was prejudicial.

(b) Any person denied a qualified interpreter under subsection 332(b) of this title, may appeal the denial through the administrative appeals process for the agency involved or, where no such administrative appeals process exists, through the superior court in the county in which the denial occurred or in Washington superior court. (Added 1987, No. 172 (Adj. Sess.), § 1; amended 2005, No. 167 (Adj. Sess.), § 15, eff. May 20, 2006.)

§ 338. Admissions; confessions

(a) An admission or confession by a deaf or hard of hearing person made to a law enforcement officer or any other person having a prosecutorial function may only be used against the person in a criminal proceeding if:

(1) The admission or confession was made knowingly, voluntarily, and intelligently and is not subject to alternative interpretations resulting from the person's habits and patterns of communication.

(2) The admission or confession, if made during a custodial interrogation, was made after reasonable steps were taken, including but not limited to the appointment of a qualified interpreter, to ensure that the defendant understood his or her constitutional rights.

(b) The provisions of subsection (a) of this section supplement the constitutional rights of the deaf or hard of hearing person. (Added 1987, No. 172 (Adj. Sess.), § 1; amended 2005, No. 167 (Adj. Sess.), § 16, eff. May 20, 2006.)

§ 339. Communications made to interpreters; prohibition on disclosure

(a) An interpreter, whether or not the interpreter is a qualified interpreter, shall not disclose or testify to:

(1) a communication made by a person to an interpreter acting in his or her capacity as an interpreter for a deaf or hard of hearing person or a person with limited English proficiency; or

(2) any information obtained by the interpreter while acting in his or her capacity as an interpreter for a deaf or hard of hearing person or a person with limited English proficiency.

(b) There is no prohibition on disclosure under this section if the services of the interpreter were sought or obtained to enable or aid anyone to commit or plan to commit what the deaf or hard of hearing person or the person with limited English proficiency knew or reasonably should have known to be a crime or fraud.

(c)(1) This section shall not be construed to limit or expand the effect of section 334 of this title.

(2) This section shall not be construed to alter or affect the mandatory reporting requirements of section 4913 of Title 33.

(d) As used in this section, "person with limited English proficiency" means a person who does not speak English as his or her primary language and who has a limited ability to read, write, speak, or understand English. (Added 2003, No. 142 (Adj. Sess.), § 1; amended 2005, No. 167 (Adj. Sess.), § 10, eff. May 20, 2006.)
