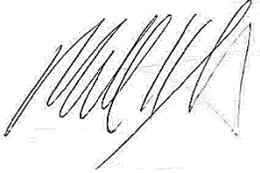


State of Vermont Agency of Human Services (AHS)

Policy Title: Agency of Human Services Public Records Policy	Policy No. 6.01 Revision Date: 5/1/20
Attachments/Related Documents:	Revision Number: 1
Name/Title of Authorizing Signature: Michael K. Smith, AHS Secretary	Effective Date: 2/3/09
<input checked="" type="checkbox"/> Trauma Informed Review	

Authorizing Signature: 

POLICY STATEMENT:

The purpose of this policy is to ensure that all departments, offices, and divisions of the Agency of Human Services are consistent, timely, and responsive in addressing public records requests. AHS staff will respond to public records requests and otherwise comply with the requirements of the State's public records law as promptly as possible.

BACKGROUND:

As a part of state government, any document produced or acquired, including handwritten notes, draft documents, text messages, and e-mail sent or received during agency business, is a public record and may be subject to public disclosure. Vermont's Public Records Act (PRA) appears at 1 V.S.A. § 315 – 320. The PRA affirms the public's right to see public records in an open and timely manner and includes requirements, exemptions, and processes involved in responding to a public records request.

This policy provides guidance for responding to requests for public records and includes information on who should respond, how to respond, when to respond, when to charge fees, and how to log the response in the Public Records Request System.

The following policy is not intended to restrict or delay AHS staff from responding immediately to requests for forms that are intended to be produced upon request (e.g. benefit applications, authorizations for release of information), or for information that is readily available (e.g., a published or legislative report, information about program requirements, minutes of public meetings). Staff should promptly direct the requestor to the online address of the requested information or forward published documents as requested. While these documents are all public records, for efficiency it is not required to respond through your Records Officer or to log the response into the Public Records Request System.

DEFINITIONS:

Promptly means immediately, with little or no delay, and, unless otherwise provided in the law, not more than three (3) business days from receipt of a request, or from the date of a determination of reversal on appeal. See 1 V.S.A. § 318 (a).

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.” See 1 V.S.A. § 317(b).

Public records request means a request for records of a public agency by phone, in person, email, or letter.

Records Exempt from Disclosure means public records that may be withheld in whole or in part from disclosure. A record may not be withheld in its entirety because it contains some exempt information; instead, the information exempted can be redacted. While AHS and Vermont law strongly favor access to public documents and records, exceptions to the general policy of disclosure are listed in 1 V.S.A. § 317(c). These exceptions include, but are not limited to:

- Records that are confidential by law (*e.g.*, protected health information, Adult Protective Services records, or child custody and support records)
- Records containing certain types of personal or financial information about individuals
- Records that are privileged (*e.g.*, attorney client privilege or executive privilege)
- Records that by law may only be disclosed to specifically designated persons
- Records relevant to active litigation
- Records relating to contract negotiations

Records Officer means the individual designated by the head of each state agency or department to be accountable for overseeing the processing of requests for public records. 1 V.S.A. § 318 (h)(1).

Unusual Circumstances means the circumstances that must exist to permit extending the time to respond to a request to up to ten (10) business days. Those circumstances are the need to search for and collect records from field facilities or other establishments separate from the office processing the request; the need to search for, collect and appropriately examine a voluminous amount of separate and distinct records; or the need for consultation with another agency or among two or more components of the agency, or with the attorney general.

SCOPE:

This document governs responses to public records requests and applies to all Agency departments, divisions, and offices.

GUIDELINES:

GENERAL PRINCIPLES:

1. Process all requests promptly.
2. Take all requests at face value. All requests are fulfilled consistent with the obligation under state law irrespective of potential intent.

3. Once the scope of a request has been determined, provide *all* relevant documents that are not otherwise exempt (*i.e.*, provide the document even if it appears to not be of interest to the requestor). Similarly, documents outside the scope should not be provided, (*i.e.*, if the request asks for all documents from January 1, 2015 to December 31, 2015, do not provide documents outside that timeframe even if it appears the documents may be of interest to the requestor).

WHAT TO DO IF YOU GET A REQUEST:

1. The Secretary and each Commissioner is responsible for ensuring that their department has a designated Records Officer responsible for public records requests.
2. Anyone receiving a request for public records should immediately forward the request to their department's designated Records Officer. Each department's Records Officer is responsible for ensuring the collection of responsive records, consultation with legal counsel for advice on exemptions, and a timely response to the request.
 - If you are one of multiple recipients of a public records request, do not assume that another recipient will handle the request. Send it to your Records Officer to ensure it receives a coordinated and timely response.
 - If the records request is for records kept by *multiple* departments, the Records Officer will provide the requestor with the names and contact information of the Records Officer(s) for the other departments and advise the requestor that s/he must contact the other departments directly.
 - Records requests can take nearly any form and include a verbal or email request. The request may contain text such as "*pursuant to the public records act*" or "*pursuant to the freedom of information act (FOIA)*." If you are unsure if you have received a request for records, consult with your Records Officer or legal counsel immediately. If you receive a verbal request for records, you should immediately forward the request to the Records Officer. The Records Officer will ask the requestor to put the request in writing or will confirm with the requestor, in writing, the Records Officer's understanding as to the nature and scope of the request.
 - The PRA statutory timeframes do not apply to requests for an individual's own client records that are confidential by law. Requests by individual department clients, or their authorized representative, for their own records should be responded to quickly and in accordance with the relevant governing law.
 - If the individual is requesting records containing their own Protected Health Information, you must follow procedures and timelines in the AHS Health Insurance Portability and Accountability Act (HIPAA) Standards and Guidelines on Access to Information posted at this link: <http://humanservices.vermont.gov/policy-legislation/policies/hipaa-standards-and-guidelines/hipaadocs/access.pdf/view> and 45 C.F.R. § 164.524 (b)(2).
 - Other laws may apply to other types of personal records. For example, if the individual is requesting their Supplemental Nutrition Assistance Program (SNAP) records. 7 C.F.R. § 272.1(c)(3).
3. *Requests are time sensitive.* By law, the Records Officer must produce the requested materials promptly, either:
 - by sending the requested materials by electronic or U.S. mail; or

- by making the materials available for inspection; or
- by certifying in writing that a record does not exist, including that it does not exist under the name given to the custodian or by any other name known to the custodian; or
- by certifying that a record is exempt, including specifying the applicable statutory exemption.

In unusual circumstances, the Records Officer may provide a written notice to the requestor within three (3) business days that the records will be provided no more than ten (10) business days from receipt of the request. See # 5 below.

4. The Records Officer will contact all staff that may be involved in the topic matter to ask them to conduct a search for documents responsive to the request so that the documents may be provided within the three (3) business days timeframe. It is always preferable to respond as soon as possible to meet the three (3) business days deadline.
5. If a ten (10) business day extension is applicable, the Records Officer, in consultation with legal counsel, should notify the requestor in writing to indicate why an extension is needed. This email or letter must be sent out promptly and explain that unusual circumstances that exist, as provided in 1 V.S.A. § 318(a)(5). By law, *any extension based on unusual circumstances cannot exceed ten (10) business days from the date of receipt of the request.*
6. Depending on the content of the documents requested, it may be necessary to remove or redact exempt information from the requested documents. *The Records Officer will not send out, or provide for inspection, any document believed to require redaction or withholding until legal counsel approves the withholding or redaction.* Once the documents are collected and screened, the Records Officer will complete and either email or mail the appropriate response to the requestor, along with the documents and an invoice (if applicable). If there has been a determination that the record does not exist, the Records Officer must certify that the record does not exist. If any part of the request for records is denied, the response must identify the records withheld, the asserted statutory basis for the denial, a brief statement of the reasons and supporting facts for the denial, the name of the Records Officer as the person responsible for the denial of the request², and information on how the requestor may appeal to the head of the department. When the request is for inspection of documents, a response must be sent to schedule the inspection.
7. If the requestor appeals a denial, the head of the department must decide the appeal within five (5) business days after receipt of the appeal. If the head of the department upholds the denial of records, in whole or in part, the notification must include the asserted statutory basis for upholding the denial, a brief statement of the reasons and supporting facts upholding the denial, and the notification of the provisions for judicial review by the superior court of that determination, pursuant to 1 V.S.A. § 319.. If the head of the department reverses the denial, in whole or in part, the records pertaining to the reversal of the denial must promptly be made available to the requestor.

² AHS recognizes that the statute states that the statement shall “provide the names and titles or positions of each person responsible for the request”. 1 V.S.A. § 318(b)(2)(C). For reasons of clarity and to avoid conflicts upon appeal, the named person shall be the Records Officer.

PREPARING THE RESPONSE

A requesting party may ask for copies or to inspect documents.

1. GATHERING, REVIEWING, REDACTING

Throughout the public records request process, all staff must keep track of time spent responding to the request, because staff time spent, in excess of 30 minutes, associated with the copying or production of the request (including compiling, reviewing, and redacting records) may be charged to the requestor.

If a request will involve extensive staff time or copying, staff must contact the Records Officer with a rough estimate of how much time it would take to comply with the request as written. The Records Officer will provide the requestor with an estimate of the cost and ask whether the requestor wishes to continue with the request or narrow it. Once the requestor confirms the request – either the original request or a new, narrowed one, the production time frame (three or 10 days) begins anew.

2. INSPECTION

If inspection of documents is requested, the Records Officer should arrange a mutually convenient time during customary business hours for the inspection.

FEES AND INVOICES

Departments may charge for the cost of making copies and the costs associated with mailing or transmitting the record by electronic means.

Departments may also charge for the time it takes for staff to comply with a request under the following circumstances:

- the time involved exceeds 30 minutes, including time to retrieve, review, and redact the records and any other staff time expended responding to the request;
- the department agrees to create a public record [note: departments are under no obligation to create records]; or
- the department agrees to provide the record in a nonstandard format and the time involved exceeds 30 minutes.

Invoices will be provided to the requestor. Departments may require payment prior to providing the records. When payment is received the requestor will be provided with a receipt. Departments will charge requestors in accordance with the uniform fee schedule. See <https://www.sec.state.vt.us/archives-records/certifications-fees/uniform-fee-schedule.aspx>

Departments may ***not*** charge for the cost of retrieving, compiling, redacting, or other costs of providing public records for **inspection**, even when the requesting party brings technology that enables them to take photos or make a digital copy. If, however, the requesting party requests copies of documents, the Records Officer shall explain that the costs for the copies will be due, as well as the time it takes to make the copies – once staff time *exceeds* 30 minutes. If the requestor requests copies, the copies may be provided at that time or produced at a mutually agreed upon date.

RECORDING

All required information regarding public records requests must be logged in the Public Records Request System. Go to <http://foia.vermont.gov> to log this information. Both attorney and program staff time spent collecting, reviewing or responding to a public request should be included in this system.

This system requires that common department names be used. Entries must use the common departmental abbreviations listed below:

1. DAIL - Department of Disabilities, Aging and Independent Living
2. DOC - Department of Corrections
3. DCF/OCS - Department for Children and Families, Office of Child Support
4. DCF/FSD - Department for Children and Families, Family Services
5. DCF/ESD - Department for Children and Families, Economic Services
6. DCF/CDD - Department for Children and Families, Child Development Division
7. DMH - Department of Mental Health
8. VDH - Department of Health
9. VDH/CPH - Department of Health, Division of Community Public Health
10. VDH/ADAP - Department of Health, Division of Alcohol and Drug Programs
11. AHS - Secretary or Central Office
12. AHS/FS - AHS, Field Services Division
13. DVHA - Department of Vermont Health Access

AUTHORITIES:

1 V.S.A. Chapter 5, Subchapter 3: Access to Public Records, §§ 315-320