

## Voice from the Vault

By Gregory Sanford, State Archivist

### **The Right to Know and the Right to Privacy**

News coverage of the 2007-2008 legislative session has focused on the usual suspects: health care, energy, our aging transportation infrastructure, campaign finance, etc. A less noted, but nonetheless significant theme of the session is public records. A very cursory search of legislative bills turned up 20 bills relating to public records. Of these, eight address in whole or in part privacy issues and nine address access or disclosure.

This breakdown is an indicator of our ambivalence about records. On one hand we celebrate open records; on the other we worry about the disclosure of personal information within public records.

For example, H.452 (and S.76) proposes "to make available to the public the names of businesses, including dairy farms, registered with the agency of agriculture, food and markets." S.59 wants to expand the definition of public record to include audio and video tapes and DVDs. H.340 seeks to "permit, for any purpose, public access to criminal conviction records maintained by the Vermont criminal information center." S.236 would "clarify the manner in which electronically stored information is subject to court proceedings to discovery rules regarding the production of documents and tangible things."

On the other hand, H.35 seeks to exempt "information revealed by a participant in a counseling session conducted by a law enforcement agency or emergency services employee." H.335 seeks to "make confidential all reports, records, and other information obtained or produced by the victim's compensation program during the processing or investigation of a claim." H.459 would prevent telecommunication companies from selling "subscribers' personal information, or any other data pertaining to a subscriber, to a third party without the written authorization of the subscriber." S.246 would "prohibit the courts from allowing the general public to have unlimited electronic access to criminal and family court records." H.397 wishes to restrict "public access to information contained on a death certificate." S.220 would protect library patron records.



While many of these bills will not pass, the scope of the topics; their tensions between openness and privacy; and their ad hoc nature demonstrate why public agencies occasionally grapple with understanding access to records requirements. Which public records are open; which are exempt; and which are open but may contain exempt information?

A few bills attempt to step back and take a larger view of public records. H.826 proposes a study on "how the personal information of Vermonters is collected, how such information is used and shared with others, and if the personal privacy interests of Vermonters require additional protection." S.229 addresses access to records, including actual costs for copies; a public records act review committee to review exemptions to the public records act; and a public records advisory board to offer opinions when access to a public record has been denied.

S.351, a bill near and dear to my heart, takes a different tack by focusing on the effective management of public records. It proposes consolidating the state's record management program, currently in the Department of Buildings and General Services, under the State Archives within the Office of the Secretary of State. The goal is to create a single, authoritative voice for assisting agencies in the management of their records. Within that goal is the need to provide such assistance from the point of record creation instead of the current system when agencies often seek help in retroactively managing records that have become too voluminous to handle

effectively. In a digital world in particular it is impossible to retroactively apply management steps. The federal and the other state governments have recognized the need for consolidated records programs; Vermont is one of 13 states where archival and records management remains administratively fragmented.

I will address S.351, and what it means to you, in future columns. For now, I pose this question: can you articulate a balance between the desire for transparency and access to government information with concerns about personal privacy? I hasten to add that privacy concerns are not limited to public records as the business world constantly seeks to collect and mine data to track consumer trends, target potential customers, evaluate credit ratings, etc. It has often been remarked that a right to privacy is chimerical; there is so much data being collected and shared that privacy no longer exists.

A February 18th opinion piece in the *New York Times*, for example, noted how hard it is to delete voluntarily supplied personal information from Facebook, YouTube and other private sector services. It also noted the reaction to Facebook's Beacon system that notified users' friends—without the users' consent—about online purchases. The piece explained how hard "identity management" is in a networked world and how voluntarily supplied personal information can come back to haunt you.

In terms of public records the rub, as always, is in the details. If you are convicted of a criminal offense have you waived a portion of your right to privacy and your conviction records should be available online? Or does posting the records create a burden on re-integration into society? Would the details of an individual's death embarrass the family, or do you have a right to know any health issues in your neighborhood or state? Does putting your real property/grand list information online expose you to robbery or does it enhance your marketability of title by allowing potential buyers to know something about your property, town tax rates, etc? Should the library books you check out be protected information? What about the books your children check out; do they have an equal right to privacy or do you have parental rights that condition their right to privacy?

The balance is elusive. Legislative efforts to address openness and privacy can find themselves in conflict; more often than not they are addressed in an ad hoc manner that obscures potential conflicts or inconsistencies. Just as often the myriad bills that effect public records go unnoted by the public. So, I ask again: can you clearly define your right to know and your right to privacy?