

Voice from the Vault

By Gregory Sanford, State Archivist

Was it just forty years ago? In the early 1960s a researcher seeking a certified copy of a public record would have to wait until a staff member typed a copy; proofed the copy against the original (often with another staff member); and then certified it as a true copy (minus any signatures).

Then in the mid-1960s the Secretary of State's Office acquired its first plain paper copier. Now staff could make multiple copies, including signatures, in a matter of minutes. More recently e-mail, word processing, scanning, databases, and web presentations again changed how copies of records can be provided, while blurring the lines between originals and copies.

These changes affect how all public offices, including municipal clerks, respond to public records requests. Enhanced efficiencies in providing access and copies, however, often raise new issues for old practices.

It is often the custodian of public records who must confront these issues. For example, how public should a public record be? The "public-ness" of a public record that must be re-typed and proofed in order to be provided is different than the "public-ness" of a web-presented database or the dump of electronic files to a CD that allows the data to be manipulated for multiple applications.

Too often we must address such complex issues against statutorily-set response times for public record requests. Statutes and case law provide some guidance on what is a public, or exempt, record, what we can charge for copies, and how we must respond to record requests. Vermont courts have repeatedly asserted that the right of access to public records should be liberally construed and that the motive of person requesting the record is irrelevant.

And yet as citizens anticipate more services, government collects more personal information to deliver those services. I hear from an increasing number of record keepers and citizens concerned about identity theft, privacy, and the expanding uses of public records in electronic form. Law and case law has not always kept apace of these new realities.

The Archives recently created an overview of public records and the right to know (<http://www.vermont-archives.org/records/right-to-know/overview.html>). Designed as an aid to record creators and custodians as well as citizens, we hope it can also begin a discussion about public records.

One of the interesting findings was the growing number of exemptions to access to public records. When the general public records act was created in 1976, 1 V.S.A. §317 included 16 exemptions; it now enumerates 33. A partial review of the statutes discovered another 124 exemptions outside of §317(c). Most of those additional exemptions relate to personal privacy, from the results of HIV tests to personal information collected as part of mandated agency activities.

Perhaps it is time for a more comprehensive review of the intent and requirements of our records laws. This dialogue should not involve record curators alone. Nor should such a dialogue exclusively focus on technologies. Some questions I would like to see discussed include:

- What information are we required to collect and maintain?
- What information are we gathering beyond those requirements, why?
- What do we use for personal identifiers in databases and do any of them create larger concerns (social security numbers or dates of birth, for example)?
- What information, particularly when available in electronic form, raise privacy and security issues?
- What records do we commonly make available on-line or electronically, why?
- Can we articulate what we mean by a "right to privacy" and what it should embrace?
- Should the use of certain public records be controlled, such as voter checklists, without making them exempt?
- Does the commercial use of some public records offer economic advantages to communities that off-set any general privacy concerns?
- Do our recordkeeping practices allow us to easily identify, and redact, exempt records embedded in public records? Are there legal grounds for such redactions?
- What contractual obligations should public entities require when using private vendors to create, store or manipulate public records?

We won't all agree on the possible answers, or even whether these are the right questions. It is, however, time to seek solutions.