

Opinions

Office of the Vermont Secretary of State



Vol. 5, # 10

October 2003



A Message from the Secretary

This past month we unveiled two new web tools to help government officials meet their obligations to make the records of government accessible to the public; one covering the laws that govern access to public records and the other a site devoted to the management of electronic records.

At the Secretary of State's Office we regularly field questions from citizens, members of the press and government officials about what information created by state or local government must be made available for public inspection. Because of the complexity of the laws and uncertainty about the effect of new technology on these obligations, and because of the importance of open government to a free society, we decided to create web tools to help people navigate the requirements of Vermont's public record law.

The "Access to Public Records" web publication is intended to help government managers and the public understand the statutory mandates governing access to records. The publication is laid out as a series of questions government managers should ask when developing a record keeping system. It answers such questions as what is a public record and what are the basic rights to access. It lists the various exemptions to disclosure and describes the procedures government employees must follow when responding to a public records request. The publication also addresses the more complex issues of the requirements to create and manage public records.

The Electronic Record website is intended to be a resource to people who are looking at the record issues related to e- government. E-government refers to the use of information and communications technologies to improve the efficiency, effectiveness, transparency and accountability of government. Technology, however, is only a tool and without adequate planning the promised benefits of e-government cannot be realized.

The Electronic Records website includes a publication "[Limiting Liability in the Digital Age: Electronic Records Guidelines for Business and Government.](#)" This publication is designed to help government managers and policymakers understand the mandates and practices they should consider in implementing information technology systems that conform to Vermont law and to sound record keeping practices.

see Secretary, page 3...

In This Issue...

Thoughts from the Archivist.....	pg. 2
Opinions of Opinions.....	pg. 4
Tip of the Month.....	pg. 8
New Electronic Records Website.....	pg. 8
Town Meeting Curriculum.....	pg. 10
Month's Calendar.....	pg. 11

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.



We would like to extend a big thank you to Dencie Mitchell for all of her hard work and service as VMCTA's past president! We wish her all the best.

We would also like to welcome VMCTA's new president Sandy Harris, Vernon Town Clerk. Congratulations!

Secretary, continued from front cover...

A second publication, “The Vermont Trustworthy Information Handbook” is designed for systems administrators and records managers and includes user-friendly checklists to ensure that your information systems create reliable and authentic records.

The 2003 legislative session featured a number of lively debates over access to public records, sparked by conflicting concerns of government accountability, security, and the right to personal privacy. The move toward e-government, which allows for greater sharing of information across agencies and with broader public, only heightens these concerns. Technology itself will not make government more accountable or effective. We need to have a better understanding of the special requirements public entities have in promoting accessibility and protecting privacy. By compiling and publishing our various record requirements I hope to encourage an informed public dialogue that is essential to the development of our democratic government.

You can find these new web publications at www.sec.state.vt.us.

Deborah L. Markowitz, Secretary of State



Opinions of *Opinions*

1. **Overseas voters vote in town where last resided.** Registered voters in Vermont do not lose residence for voting purposes solely by living outside of the United States. Until the voter returns to live in the United States, the voter can remain on the checklist and vote by absentee ballot in the town in which the voter last resided. This rule applies regardless of his or her reason for living outside of the United States, and regardless of how long the person lives abroad.
2. **However, once a person moves back to the United States, the person must register to vote in the jurisdiction of his or her current residence.** For example, if a member of the armed forces that has been in Germany for 20 years retires and moves back to the United States, that person must register to vote in the place in which he or she now resides. If you send a letter as part of your purging process and the person returns your form giving another town or state as his or her residence, you can remove that person from your checklist.
3. **A citizen who wishes to be added to the checklist cannot refuse to take the voter's oath.** Vermont's constitution is clear that every citizen must take the voter's oath once before being added to the checklist for the first time in Vermont. (If you move to another town in Vermont, you do not need to take the oath again.). A notary public, member of the board of civil authority, or other person authorized to administer oaths must complete and sign the form stating that the new voter has sworn or affirmed the oath and the form must be received by your Town Clerk before the new voter can receive an absentee ballot or vote in person for the first time in Vermont.
4. **Felons Vote in Vermont.** Vermont law does not take away the right to vote from felons unless the crime involved voter fraud or "offenses against the purity of elections." 17 V.S.A ch. 35. This means that individuals who are in jail can continue to vote where they resided prior to incarceration, and that they do not need any special permission to register to vote when they are released from prison and move to a new location. Vermont law differs from most other states that limit the right of felons to vote so there is often unnecessary confusion about what Vermont requires.



5. BCA Should Have Political Balance. Upon request of an underrepresented major party, the selectboard can appoint additional members to the board of civil authority to bring the major party membership up to three. 17 V.S.A. §2143. The member(s) appointed by the Selectboard are NOT Justices of the Peace, they are members of the board of civil authority for election related duties only. **The additional members appointed by the Selectboard have no authority to act with respect to**

functions of the board of civil authority that are not related to elections. The members appointed by the Selectboard cannot participate in property tax appeal hearings, abatement hearings, etc.

6. Towns Should Have Policy For Use of Public Buildings. It is best practice for each legislative body, selectboard, school board, or other public body that owns buildings to adopt a policy outlining its requirements for use of town or school property by other groups. It is constitutionally permissible for a board to prohibit any and all use by outside groups. However, it is not good policy, and may cause discrimination claims, to allow use of the buildings by certain categories or types of groups and not other groups, unless there is a real difference in the type of use being requested. For example, it is reasonable and acceptable to limit use of certain rooms or spaces to groups of less than 30, or to meetings ending not later than 9 p.m. However, it may be discriminatory to allow the boy scouts to meet in a room, but to turn down a political caucus or a religious organization.

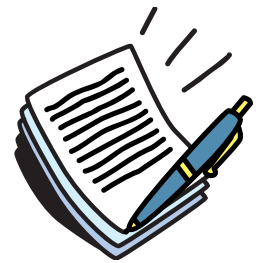


7. Taxpayer who refuses access to property will lose appeal. An inspection committee will generally inspect the entire property (rather than just the portions mentioned in the appeal) in order to report back to the full board of civil authority on property tax appeals. If the taxpayer refuses access to the property, his or her appeal is deemed withdrawn. 17 V.S.A. §4404.

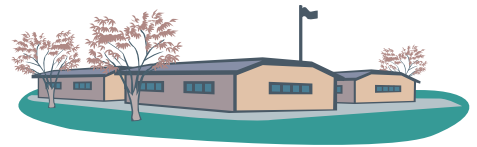
8. Members of inspection committee can view property separately. The law requires three members of the BCA to inspect property as part of a tax appeal within thirty days of the tax appeal. 32 V.S.A. § 4404. However, it is not mandatory that all three members inspect the property at the same time. Whenever possible the three members should inspect together as a convenience to the landowner. Note also that if the inspection committee fails to view part of the property that the appellant wanted the committee to see, the BCA members can return to the property a second time within the 30 days period required by law.

9. Organizers of large events need permit from the Public Safety. The organizers of a commercial public event or gathering expecting 2,000 or more attendees must apply for a permit from the Department of Public Safety at least 30 days before the event is held. 20 V.S.A. § 4501. The Department of Public Safety may grant the permit, deny the permit, or grant the permit with conditions, such as providing a bond or other financial security. If a town wants to regulate smaller assemblies, the town must enact a local ordinance to do so. 24 V.S.A. § 2291(11).

10. Voters Cannot Petition To Enact Ordinance. With the exception of ordinances governing conflict of interest in a town, Vermont law does not permit a municipal ordinance to be adopted or established by vote of the electorate. Only the Selectboard has the authority to adopt an ordinance. Once an ordinance has been adopted, legal voters of the town can bring a petition signed by 5% of the voters within 44 days of the adoption of the ordinance to require the selectboard to warn a meeting to allow voters to vote to disapprove an ordinance. However, a petition can not be used to force a town to vote to adopt an ordinance. 24 V.S.A. §1972 and 1973.



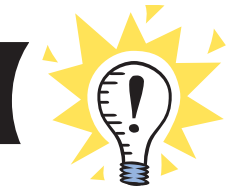
- 11. Selectboard cannot prevent petitions that bundle financial requests from service agencies.** Vermont law permits social service agencies to join together in circulating a petition signed by 5% of the legal voters to ask to have an article or several articles placed on the warning for town meeting. However, if using a joint petition, we strongly suggest that each agency present its request as a separate article so that the votes for each agency's appropriation will be considered separately.
- 12. BCA may increase, decrease or sustain the appraisal on appeal.** Once the taxpayer raises the issue of the property's valuation, the BCA must make findings to support what the BCA believes to be the correct valuation of the property, even if that amount is higher than the lister's assessment. 32 V.S.A. §4409. The same is true for further appeals to the State Board of Appraisers or the Superior Court.
- 13. No Bidding Required for Town Projects.** Vermont law does not require the selectboard to go through a public bidding process when they are making contracts or purchases for the town. However, the board has a fiduciary obligation to the people of the town that requires them to use the public's resources wisely.
- 14. School districts must bid contracts over \$10,000.** Law requires public advertisement of all contracts over \$10,000 or an invitation to bid to three or more vendors or suppliers. 16 V.S.A. § 559. (If the board receives fewer than 3 bids the Commissioner of Education can grant an exception to this rule.) For school construction contracts of over \$500,000, the board must follow rules established by the State Board of Education, and receive suggestions and recommendations on bidders from the State Department of Buildings and General Services. 16 V.S.A. § 559.
- 15. Towns can borrow for five years or less without bond.** Towns can choose to finance improvements or assets by borrowing for five years or less without a bond. To do so the voters must approve the proposed loan at an annual or special meeting of the town. 24 V.S.A. § 1786a.
- 16. When necessary the selectboard may borrow for highway purposes without vote.** The selectboard may borrow from the municipal equipment loan fund to purchase tools, equipment and materials necessary for the construction, maintenance or repair of highways and bridges without a prior vote. 24 V.S.A. § 1786a (b).
- 17. Listers must keep minutes of their meetings.** Like all municipal boards, the listers meetings are subject to the requirements of the open meeting law. Amongst its other requirements, the open meeting law requires that minutes be taken at all meetings of public bodies. At a minimum, the minutes must include the following information: All members of the public body present; All other active participants in the meeting; All motions, proposals and resolutions made, offered and considered, and what disposition is made of same; and The results of any votes, with a record of the individual vote of each member if a roll call is taken. 1 V.S.A. § 312(b)(1).



- 18. Administrative work does not require public meeting.** The requirements of the open meeting law do not apply to site inspections for the purpose of making tax assessments or abatements, clerical work, or work assignments of staff or other personnel. In addition, the law permits routine day-to-day administrative matters that do not require action by the public body, to be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered. 1 V.S.A. § 312(g).
- 19. Subcommittees must follow the open meeting law.** All public bodies must follow the requirements of the open meeting law. 1 V.S.A. § 312. A “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. . . .” 1 V.S.A. § 310(3).
- 20. Selectboard may reduce the size of the planning commission / zoning board/ DRB by resolution.** The law does not explicitly address the issue of reducing the size of the planning commission, DRB or zoning board. However, the right to alter the size of these boards is implicit in the right of the selectboard to create them and set their sizes. 24 V.S.A. § 4321, 4322, 4461. We strongly recommend boards reduce the size of their boards when they find that positions on the boards are hard to keep filled with active members. The smaller commission will help ensure the necessary quorum at meetings.
- 21. Most planning commissioners serve at the will of the selectboard.** With the exception of elected planning commissioners, the selectboard can appoint and remove planning commissioners at will. Any member may be removed at any time by unanimous vote of the legislative body. 24 V.S.A. § 4323(a).
- 22. Town will be liable for sexual harassment by board member.** The selectboard cannot take a hands-off approach to allegations that a zoning board member or member of the public is making sexually explicit or harassing comments to a town employee. There is an affirmative obligation of the town to protect its employees from sexual harassment. Failure to take reasonable steps to prevent further incidents of harassment, once notified of the problem, can lead to liability for the town. 25 V.S.A. § 495h.
- 23. Towns must adopt a sexual harassment policy.** Vermont law requires that all employers adopt a policy against sexual harassment which must include a statement that sexual harassment in the workplace is unlawful, and that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or cooperating with an investigation. The policy must include a description and examples of sexual harassment and must state the range of consequences for employees who commit sexual harassment. In addition, if a town has more than five employees the policy must include a complaint process. This policy must be given to each employee as well as posted in the town. You can obtain a model policy and poster from the Department of Labor and Industry. 25 V.S.A. § 495h.

In our monthly Opinions we provide what we believe the law requires based upon our legal judgment, years of observing Vermont’s local government practices, and Vermont Court decisions. This information is intended as a reference guide only and should not replace the advice of legal counsel.

Tip of the Month from the VMCTA



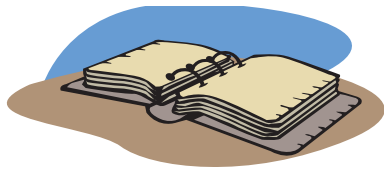
**This month's tips are from VMCTA's new president:
Sandy Harris, Vernon Town Clerk**

Septic Permits

With the exception of zoning we have all our septic permits filed by parcel id number rather than by name. This makes it easier for folks doing searches as they simply obtain the parcel id number from the Grand List and pull the file. It usually takes less than a minute and we don't have to keep updating the files due to name changes.



Property Transfer Returns



Thanks to a tip from Barbara Oles in Guilford, we copy the property transfer return (with the social security numbers covered up) onto archival paper and put them in a Property Transfer Book (like the land records book). This enables us to keep them in order and preserve them at the same time.

We also put the Grand List on archival paper in a binder with the current and past year's pages encased in mylar pockets to protect them from the oils on people's hands.

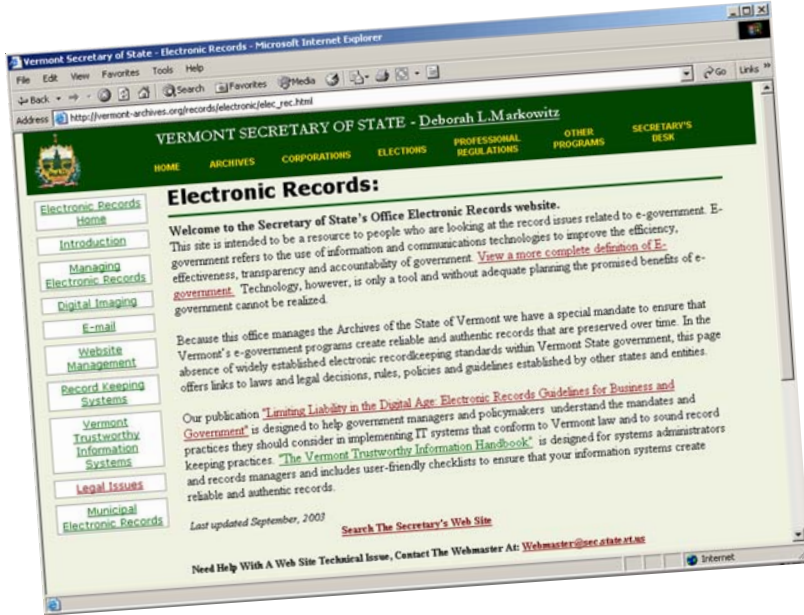


If you have a good tip that you would like to share with our readers please email it to Sandy Harris at vernontc@sover.net or mail them to:

Sandy Harris- VMCTA President
Town of Vernon
567 Governor Hunt Rd
Vernon, VT 05354

Electronic Records Website Redesigned!

This redesigned site is a resource for people who are looking at the record issues related to e-government. E-government refers to the use of information and communications technologies to improve the efficiency, effectiveness, transparency and accountability of government.



The following topics are covered on the website:

- Managing Electronic Records
- Digital Imaging E-mail
- Website Management
- Record Keeping Systems
- Vermont Trustworthy Information Systems
- Legal Issues
- Municipal Electronic Records

Visit our homepage at
<http://www.sec.state.vt.us/> and click on
Electronic Records

Volunteers Wanted!

We are planning for the 2004 Vermont Public Service Awards and we need your help!

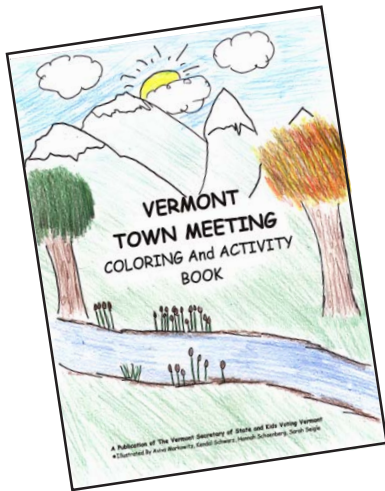


The Secretary of State's Office will be honoring long serving appointed and elected local officials of all fourteen counties for the 2004 Vermont Public Service Awards (VPSA). The purpose of the VPSA program is twofold -it gives our dedicated local officials the recognition they deserve - and, by highlighting the vital role our public servants play in our towns, it will hopefully encourage others to serve.

If you are interested in volunteering please email Sarah Alberghini at salberghini@sec.state.vt.us or call 802-828-2148 to get involved!

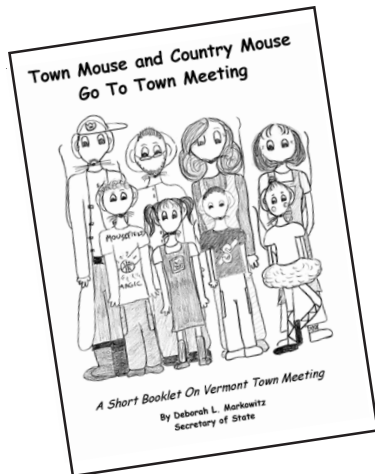
Free Town Meeting Curriculum Available Online:

<http://www.sec.state.vt.us/kids/votevt/ntmeeting.htm>



Vermont Town Meeting Coloring and Activity Book Grades preK-2

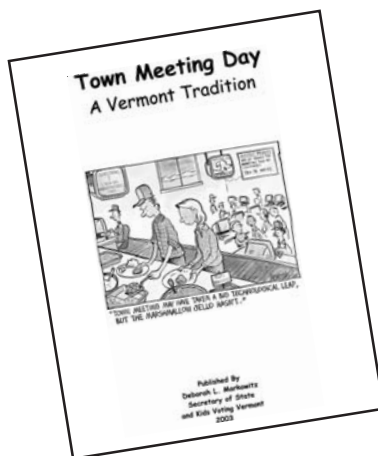
The “Vermont Town Meeting Coloring and Activity Book” was designed to provide our younger students with some basic information about Vermont’s tradition of town meeting. The booklet also includes suggestions for classroom activities to help students experience the concepts addressed in the Coloring Book.



Town Mouse and Country Mouse Go To Town Meeting Grades 3-5

“Town Mouse and Country Mouse Go To Town Meeting” is a 25 page booklet designed to teach students about Vermont’s Town Meeting Day, its history and how it works today. In addition to the text we have included some fun puzzles to help teachers assess student learning.

The teacher’s guide includes sample discussion questions/answers and classroom activities to supplement the reading materials and help children experience the concepts addressed in the Booklet.



Town Meeting Day A Vermont Tradition Grades 6-8

“Town Meeting Day – A Vermont Tradition” is a 40 page booklet (16 Pages of text plus teachers guide and supplemental articles) designed to help students learn about Vermont’s Town Meeting Day, its history and how it works today. Student questions and suggested classroom activities are designed to stimulate discussion and critical thinking about whether town meeting can continue to be an important part of Vermont’s community experience.

All materials may be downloaded and copied for your students. Call 802-828-2148 to request a hard copy.

October 2003



October 1-2: VLCT Annual Meeting and Town Fair, Barre, Vermont

October 13: Columbus Day. 1:371

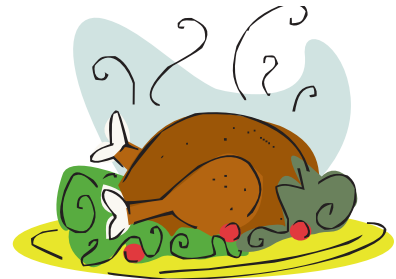
October 25: State Withholding Tax Return is due (actual date by which return must be postmarked is shown on printed form) if reporting less than \$2,500 per quarter. More than \$2,500 requires monthly report; more than \$9,000 requires semiweekly report. 32:5842

October 31: Last day to file Form 941 (Quarterly Withholding Return) with the IRS.

November 2003

November 11: Veterans Day. 1:371

November 27: Thanksgiving Day. 1:371



December 2003

December 1: Last day to pay property taxes in towns that voted to collect interest on overdue taxes. 32:5136(a)

December 14: Last day for Listers to add omitted inventory to tax roles. 32:4086

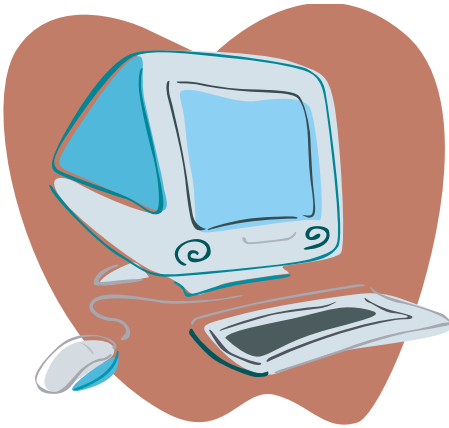
December 23: (70 days before Town Meeting) First day to warn the first public hearing if a charter adoption, amendment or repeal is to be voted on at Town Meeting. 17:2641(a), 2645(a)

December 25: Christmas Day. 1:371

December 30: Last day for Listers to correct real or personal estate omission or obvious error in grand list, with approval of Selectboard. 32:4261

December 31: Town fiscal year ends, unless voted otherwise. 24:1683(c)

New Web Publication on the Vermont Public Records Law



The Secretary of State's Office announces a new web publication on the Vermont public records law. The web publication is intended to help government managers and the public understand the statutory mandates governing access to records.

Visit us online to view this new document at:

<http://vermont-archives.org/records/access/pubrec.html>

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Office of the Vermont Secretary of State
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