

Title: Public Record Requests

Issuance Date: November 27, 2023

(Must be reviewed annually)

Applicable Regulations, Guidelines, and AHS Policy:

Vermont statute or rule:

- 1 V.S.A. §§ 315 et. seq.; Uniform Schedule of Public Records Charges for State Agencies (CVR 04-000-002).

Purpose:

A “public records request” is a request to inspect or receive a copy of a department record or records. A record is, essentially, any document (recording, computer file, etc.) that is received or created in the course of Department business. State law requires that most DVHA records be made available to the public without delay.

Procedure:

All duties assigned to the Public Records Officer (PRO) may be performed by a designee.

1. Receiving Requests

1.1. Requests received by Staff – General Staff

Requests may be received verbally or in written or electronic form. Staff should notify the public records officer immediately upon receipt of a public records request. Written requests should be forwarded to the Public Records email inbox.

Simple or routine requests for documents or information do not need to be treated as public records requests. Examples of DVHA records which may be provided without the involvement of the public records officer are forms that are intended to be produced upon request (e.g., benefit applications, blank authorizations for release of information), and information that is readily available (e.g., a published or legislative report, information about program requirements, minutes of public meetings).

1.2. Processing and Docketing Requests – PRO and Legal Admin

Requests and associated records are kept in the Public Record Requests folder on the DVHA Shared Drive.

- DVHA assigns a docket number to each request consisting of the year the sequential number of the request, "2018-01".
- A file folder is created on the shared drive named with the PRR docket number. A scanned copy of the request or the email or the Outlook email file containing the request is placed in the folder.

1.3. Communicate Request to Responsible Units – PRO

The Public Records Officer will forward the request to the DVHA staff or managers of DVHA units whose records have been requested.

1.4. Preliminary Unit Response – DVHA Staff

DVHA Staff and/or Managers should respond as soon as possible to the Records Officer to report:

- Whether the staff member or unit has responsive records.
- If further clarification is needed to narrow the search or identify the records requested,
- If requested records may contain confidential, exempt, or sensitive material.
- If the requested records include emails of former staff or poorly indexed files on the shared drive.
- If the requested records may exist in other units or outside the department.
- If the time involved in gathering the requested records will exceed 30 minutes.

After providing this response, Staff should await further direction from the Records Officer before gathering the records.

To prevent unnecessary duplication of effort, DVHA staff should notify the Public Records Officer before forwarding a public records request to other staff.

2. Screening for issues and preliminary notification

2.1. Screening for Potential Issues - Public Records Officer and other DVHA Staff

The Public Records Officer and DVHA staff will identify if any of the following circumstances exist:

- The request was received verbally, but the request will be subject to staff time or other charges and requires the submission of a written request.

Standard Operating Procedure

- The request must be clarified because the request is unclear or seeks a voluminous amount of material.
- The requestor seeks records which are kept, in whole or in part, by another department or agency, and must be referred to that department or agency.
- The requestor seeks records which do not exist, or would have to be created, and DVHA determines that the request should be denied.
- The request merits an extension of the statutory deadline.
- To agree on search terms if digital search is required.

If any of these circumstances exist, the Public Records Officer will contact the requestor immediately to resolve them.

2.2. Unusual Circumstances - PRO

Under what is referred to as “unusual circumstances,” the Public Records Act allows an additional seven business days (for a total of ten business days) for DVHA to respond to a request. These circumstances exist for requests for records that are kept in a geographically separate facility, for large requests, or for requests that require consultation with legal or other parts of the State. If such a circumstance is identified, the Public Records Officer will notify the requestor in writing within three business days of the date of request.

2.3. Creating Records – PRO, Data Team, DVHA Legal

DVHA will deny record requests that would require the creation of new documents. The exception to this will be some requests for Medicaid data. DVHA’s legal department can help the Public Records Officer determine if a request is too complex or burdensome to justify the creation of a record.

2.4. Notification of Fees - PRO

The PRO will notify the requestor if it appears that fees will be charged for the cost of production of records.

3. Gathering Records

3.1. Unit staff responsibilities – DVHA Staff

While the Public Records Officer facilitates the production of records, unit staff are ultimately responsible for identifying, gathering, and reviewing.

3.2. Records of Current Staff – DVHA Staff

DVHA Staff will produce records in their unit’s shared drive, their email, and their personal electronic and physical files.

When producing email messages, please include the messages as attachments rather than forwarding them to the Public Records Officer. When providing records to the Public Records Officer, DVHA staff should report the time spent gathering the records.

3.3. Medicaid Data – PRO and Data Team

The public records officer should work with the DVHA data team to respond to simple requests for Medicaid data, even if it requires the creation of a new report.

3.4. Searching for Electronic Files/Emails

3.4.1. Availability of former employee emails.

Email messages of employees who left DVHA prior to September 1, 2011 are no longer available, unless the Department manually saved them.

3.4.2. Searching for Electronic Files – Unit Staff and PRO

The Public Records Officer will need to search for emails using the process described below. Files on the shared drive will also need to be located through a search, which may be performed by unit staff or the Public Records Officer.

Before performing a search for former employee emails or files, the Public Records Officer should contact the requestor to agree on terms for the search, such as key words, date ranges, and file type.

3.4.3. Accessing emails of current and/or former employees - PRO

Current employees can search their email using Microsoft Outlook, or the Public Records Officer can gather emails of current and former employees using the eDiscovery tool.

- DVHA Staff will identify any former employees whose emails are included in the request.
- After docketing the request, the Public Records Officer will enter a Landesk ticket including the DII-generated record request number and the names of the employees whose emails have been requested.
- ADS will provide the officer with access to the eDiscovery tool found at protection.office.com.
- The PRO will use this tool's export feature to generate a .pst file containing the emails responsive to the query as well as a file called "Export Summary mm.dd.yyyy-hhmmTT.csv".
- The PRO should preserve the results of this query as follows: 1) Record the query that was used to generate the exported file by opening the Export Summary file and add the text of the query to the bottom of the

spreadsheet. 2) Before opening it in Outlook, create a copy of the .pst file and add "Preservation Copy" to the file name.

4. Preparing records for production – Public Records Officer

4.1. Formatting records

The Public Records Officer will scan paper documents and convert electronic files to the preferred format. Adobe Acrobat (.pdf) is the format most often used and is required for documents that will be redacted before production. Unless a specific, nonstandard format is requested, DVHA will not include the time involved in converting files when calculating the cost of production. DVHA uses the Sperry software add-in for Outlook to batch convert emails and their attachments to .pdf. Attempting to save converted emails to network locations will cause this add-in to crash. Converted emails should be saved to a folder on the computer desktop and then immediately moved to the public records folder on the shared drive.

4.2. Identifying Exempt Records – PRO, Unit staff and DVHA Legal

Unit staff are primarily responsible for identifying sensitive records as they are gathered. The Public Records Officer should also review documents provided for exempt material, especially for potential PHI or PII of individuals served by AHS. Documents or, more often, portions of documents are exempt from disclosure under the Public Records Act. The most common exemptions for DVHA are:

- Records which are confidential under the law, such as HIPAA PHI, pharmaceutical rebate information, social security numbers, or tax returns.
- Personal information of individuals or corporations (including bank account numbers).
- Confidential business information and trade secrets (most often applied to bids received in response to Requests for Proposal (RFPs)).
- Records relating to contract negotiations (applies to all documents related to a contract, including RFP bids, until the contract has been executed).

If materials are identified as sensitive or confidential, the Public Records Officer will notify DVHA Legal to ensure that exempt materials are accurately and narrowly identified before redaction.

Unit staff will coordinate with PRO and DVHA Legal whenever materials are identified as confidential business information or trade secrets of contractors or other third parties. Unit staff must coordinate with contractors to ensure that DVHA Legal is promptly provided with satisfactory documentation

showing a factual basis as to why the identified materials are exempt from production. If DVHA Legal determines that such an exemption is not available, unit staff, the PRO, and DVHA Legal will coordinate to inform the third party and the AGO of this decision and to inform the third party that they may seek an injunction in the Washington Unit of the Vermont Superior Court to attempt to prevent the disclosure by DVHA of the materials.

4.3. Redacting exempt records - PRO and DVHA Legal

Public Records Officer will redact any material identified as exempt from disclosure using Adobe Acrobat Pro. The Public Records Officer will save a copy of the record before applying redactions to the documents and provide them to DVHA Legal for review. The Public Records Officer must identify the exemptions that served as the basis for the Officer's redactions. If more than one exemption applies to the records requested, the Records Officer must provide enough detail for the requestor to identify which exemption applies to each individual redaction.

5. Inspection or Copying

A requestor may request to inspect records or to be provided with copies of records. If inspection of documents is requested, the Records Officer should arrange a mutually convenient time during customary business hours for the inspection. If copies of records are requested, the Public Records Officer will provide those records in DVHA's preferred format, or such format as is specified by the requestor.

6. Fees

DVHA will charge a fee for the costs associated with requests for copies of records. DVHA follows the Secretary of State's fee schedule when calculating the costs associated with complying with requests for copies of records. DVHA will not charge fees for requests costing less than \$50.

The PRO will check with staff at the accounts payable and accounts receivable (AP/AR) unit and any other applicable sources to determine whether the requestor is known to present a risk of nonpayment. If so, or if the cost of the request is more than \$150, DVHA will deliver records only after receiving payment for the request.

In all other cases, DVHA will provide the records requested and a cover letter stating the cost of the request and requiring payment within 30 days.

The PRO will provide a copy of all correspondence with requestors in which a fee is requested to AP/AR,

7. Accounts receivable – PRO and AP/AR Staff

AP/AR Staff will receive a copy of all communications from the PRO in which fees are requested. If fees are required before records are produced, AP/AR Staff will document such fee requests and notify PRO and the DVHA Legal Admin when any such payment is received.

If fees are charged after the production of records, AP/AR Staff will enter pending items into VISION and track payment.

Revision History:

Date	Summary of Revisions
10/4/18	Final draft, area director approval
11/13/18	Accepted by OMU
1/22/20	Revision - new template
11/13/2023	Revision. Struck language about posting public records request to website.
11/27/2023	OMU review, updated to ADA template.

Table 1 Revision History