State of Vermont
Office of the Secretary of State
128 State Street
Montpelier, VT 05633-1101

[phone] 802-828-2363
[fax] 802-828-2496
www.sec.state.vt.us

James C. Condos, Secretary of State
Christopher D. Winters, Deputy Secretary

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It's Sunshine Week and the Public has a Right to Know!

By Vermont Secretary of State Jim Condos

Sunshine Week, celebrated nationwide this week, is about opening the blinds and letting the sun shine in on government.

My long understanding about Open Government's importance began while growing up in VT and is based on 18 years on the South Burlington City Council, 6 years on the VT League of Cities and Towns Board, 8 years in the VT Senate, and 5+ years as VT's Secretary of State.

VT's history has several examples of Vermonters who support Open Government – including former state legislator Matthew Lyon - jailed in 1798 for his beliefs; U.S. Sen. Patrick J. Leahy (D-Vt.) - strong advocacy of Federal Freedom of Information; and my work with current Democratic Governor Peter Shumlin, to strengthen VT public records laws.

Who can argue against open and transparent government?

It means different things to different people. Arguments can be clouded with misinterpretations of the law, personal interests, and other factors. It also is easier to make decisions when nobody is watching.

The vast majority of our elected state/local officials are trustworthy, dedicated and passionate individuals who want to do the right thing. However, corruption can exist. In small doses corruption can be just as corrosive to our democracy as any prominent scandal, undermining the public's trust.

There are many cases in the news where public and elected officials have clashed on their interpretation of laws covering public meetings and/or public records. Sometimes one side is clearly right – the other side is clearly wrong. Sometimes there is grey area in the law that is open for interpretation.

However, even with these grey areas, Vermont's Constitution and state statutes have always been clear in their fundamental intent: **VT's public officials ARE accountable to the people.**

From the Vermont Constitution, Chapter 1, Article 6:
"That all power being originally inherent in and consequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them."

This is the very basis of public office – elected officials represent the people and are accountable to the people.

And just in case there was any confusion over the intent of Article 6, the VT statutes for Open Meeting Laws (***1 V.S.A. § 311(a))*** says:
"…the legislature finds and declares that public commissions, boards and councils and other public agencies in this state exist to aid in the conduct of the people's business and are accountable to them pursuant to Chapter I, Article VI of the Vermont constitution."

Sunshine Week should be every week, and every day!

VT's open meeting law recognizes that the media and the public are one and the same; AND they are entitled to: properly warned public meetings; posting of meeting agendas; an opportunity to express one's opinion on matters considered by the public body during the meeting; knowing why a public body is going into Executive Session; and, the posting/availability of minutes 5 days after the meeting – even if in draft form.

Let's continue this journey, that all public bodies conduct the business of the people and are, thus, accountable to the people.

Again, from the VT statutes (***1 V.S.A. § 315),*** Access to Public Records:
"…to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment."

These excerpts support a mandate on government (state and local) transparency so the people of VT know what is happening in their government. The only time the people lose their "right to know" is when greater harm to an individual or the state could come from releasing certain information. However, in these very rare cases, the burden of proof for withholding information is on the state and the exemption must be laid out in statute.

Public records are defined as: ***"…any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business."*** 1 V.S.A. § 317(b)

The courts have upheld the notion that the public's access to records *"shall be liberally construed to implement this policy, and the burden of proof shall be on the public agency to sustain its action."*

This means if that which is being disputed falls in a gray area – the courts will likely fall on the side of disclosure.

Simply, illegal meetings and improperly withheld public records offend our notions of openness, accountability, and the core of our democracy.

Open Government just makes good sense for officials and the people they serve.

So, to any public officials reading this – please think twice about what you "text," "tweet" or

"email" a fellow board member or constituent. Those messages can all constitute government work and be classified public records.

And to the public, in Vermont, you do have a right to know!

Let the sun shine in and on government – let's restore our faith in government.

Jim Condos, Vermont's 38th Secretary of State, has served since January 2011.