



Vermont State Rifle and Pistol Association
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To: **Ken Gragg – Executive Director, Vermont Department of Military
All Personnel in Vermont Department of Military**

Date: **July 18, 2021**

RE: **Freedom of Information Request / Public Records Request
Setting of Fees for Use of Facilities at CEATS / EAFR by Non-Military Personnel**

Executive Director Gragg –

This is a request to inspect or copy public records pursuant to Vermont's Public Records Laws, Title 1 §315 through §320. As currently available information lists you as the Executive Director of the Vermont Military Department, we address this to you, however it applies Department-wide.

Under 1 V.S.A. § 317a, "A custodian of public records shall not destroy, give away, sell, discard, or damage any record or records in his or her charge, unless specifically authorized by law or under a record schedule approved by the state archivist pursuant to 3 V.S.A § 117(a)(5)."

"Records" mean "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. §317 applies without regard to the type of technology or forum or ownership of equipment on which any such information is created, received, sent, or maintained.

Violation of such laws is subject to penalties of up to \$1000 per violation under §320. The maker of this request specifically reserves the right to assert the position that each and any destruction of a record without authority represents a separate violation subject to separate penalty under §320.

This is also a NOTICE of PENDING OR THREATENED LITIGATION as to **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel**, as to which any such potential litigation the documents requested herein may be relevant. Penalties may be imposed by judicial officials for destruction of records after the receipt of this notice of potential or threatened litigation, and such penalties are separate from and can be in addition to penalties under the public records law.

The DUTY TO PRESERVE records that are or may be responsive to this request is distinct, different, and potentially broader than the obligation to produce records for inspection or copying. Under this request

to inspect or copy records and notice of pending / threatened litigation, you are hereby instructed to IMMEDIATELY CEASE any and all deliberate, routine, or inadvertent deletion or destruction of any form of written record or communication or transmittal of any record, in any form, of any of the subjects covered in this request. This includes suspending any routine or other over-writing or other deletion of backup tapes, or revisions of website content without preserving evidence of past and changing versions that may contain content covered by this request.

This is also a CONTINUING REQUEST for records including records created on or after the date that this request is received by the Vermont Military Department, and that come within the subject and scope of this request, which (future records) should not be destroyed without conferring and checking with the requester.

You are instructed to preserve and be prepared to provide examination or copying of all records responsive to this request in NATIVE FORMAT that preserves all relevant METADATA that may be contained in any digital form of any and all records responsive to this request, including dates, times, locations, all authors, all editors, track changes, additions, deletions, and other information regarding any and every creation or modification or transmittal of each record.

If there are materials that are responsive to this request, but that you believe or assert are privileged, confidential, or otherwise exempt from examination or copying YOU ARE NOT AUTHORIZED TO DESTROY THOSE MATERIALS but must preserve them pending full and final resolution of all issues presented by this public records request and also full and final resolution of any subsequent litigation that may arise regarding any eventual action taken by or against the Vermont Department of Military relating to the setting of fees for use of facilities at CEATS / EAFR by non-military personnel. See, e.g. Price v. Town of Fairlee, 2011 VT 48 ¶ 21 (“authority to destroy...must be stayed when a public-records request for the material is filed pursuant to 1 V.S.A § 318, and the stay must remain in effect until the request is resolved.”)

<http://info.libraries.vermont.gov/supct/current/op2010-125.html>

For any materials or portions of materials that are responsive to this request, but you believe are privileged, confidential, or otherwise exempt from examination or copying, you are to prepare an index, sometimes referred to as a “Vaughn Index” identifying the originator and recipient of the document, the substantive content of the document, and the basis and specific substantiating justification on which the content is allegedly confidential or exempt from examination or copying. See, e.g. Kade v. Smith 2006 VT 44, 180 Vt. 554 ¶¶ 3, 10.

<http://libraries.vermont.gov/sites/libraries/files/supct/180/eo2004-344.txt>

You are also instructed whenever possible to redact exempt portions of records while providing the remainder of the record: “[a] public agency shall not withhold any record in its entirety on the basis that it contains some exempt content if the record is otherwise subject to disclosure; instead, the public agency shall redact the information it considers to be exempt and produce the record accompanied by an explanation of the basis for denial of the redacted information.” 1 V.S.A. § 318(e).

I. **Requested Subject matter**

Anything relating to drafts, proposals, strategies, advantages, disadvantages, supporting documents, external input or guidance (for example Guard Bureau) or any other consideration for or against **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel** within the Vermont Department of Military.

Specifically, this request, inclusive of the **Scope of Documents and Media** outlined immediately below, is for any and all documents or responsive material that was produced or received by Vermont Military Department Personnel from **January 1, 2020** thru **June 1, 2021** which directly references or otherwise relates to **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel**.

II. **Scope of Documents and Media Requested (January 1 2020 thru June 1 2021)**

This request covers, but is not limited to:

- A. Any and all written correspondence or documents, transmitted or received in any form, whether paper or electronic, received or sent by any mode or technology, from or to any employee or elected or appointed official, or hired vendor (by way of example and not limitation: law firms, lobbyists, writers, consultants) of the Vermont Department of Military and relating to **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel**.
- B. Any agendas or minutes, from any past, present or future time relating to any form of **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel**.
- C. Drafts of potential structures for **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel**.
- D. Any articulation, of any form or nature, relating to **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel**.
- E. E-Mail correspondence of any Vermont Department of Military officer or employee using accounts provided by the public entity relating to **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel**.
- F. E-Mail correspondence using personal addresses, mailboxes, or accounts not provided by the public entity (including, by way of illustration and not limitation: Hotmail, Yahoo, Gmail, or any other webmail or “cloud mail” service, any personal account of any public officer or employee, or any unaffiliated business account of any public officer or employee) but that relates to any form of **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel** [pursuant to 1 V.S.A. § 317, public records include any content “produced or acquired” in the role or actions of a public agency or official, without regard to whether such activity took place on or using any specific system or technology].
- G. Social Media (including, by way of illustration and not limitation: Facebook, Myspace, Twitter, Yahoo group, Front Porch Forum, or government or personal web pages that provide for or allow interaction) relating to any form of **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel**.
- H. Text messages and instant messages relating to any form of **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel**.

- I. Any weblog(s) or “blog(s)” in which any officer or employee of the Vermont Department of Military is or has been the publisher of such blog or merely a contributor or commentator relating to any form of **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel.**
- J. Any website maintained by the Vermont Department of Military or its officers or employees, whether in their official or personal capacity, relating to any form of **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel.**
- K. Any audio recordings, regardless of format in which they have been recorded, copied, or preserved that relate to **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel.**
- L. This request specifically covers materials that originated from sources other than the public officials and public bodies and entities to whom this request is presented, but that (materials) were received from others, regardless of the place, mode, device, or technology by which such materials were received by a public official or body relating to **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel.**
- M. Any written or recorded information contained in any personal computer, cell phone, smart phone, tablet, or other device, regardless of ownership or location of such device relating to any effort to enact any form of **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel.**
- N. Any information shedding light on actual or anticipated financial expenditures, costs, or sources of funding associated with any effort to enact any form of **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel.**
- O. Names, and lists of names, of supporters or opponents of any subjects covered in this request, including both private citizens and public officials, whether inside of or beyond Vermont, for or against **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel.**
- P. Any correspondence relating to any form relating to **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel.**
- Q. Identify and name, individually and in detail, any and all Vermont Department of Military officers, employees, and outside vendors (by way of example and not limitation: Law firms, lobbyists, writers, consultants) that have spent time on, pro-bono or paid, for any efforts associated with **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel.**

III. **Past Deletions and Potential Violations of Public Records Law**

As noted above, under 1 V.S.A. § 317a, “A custodian of public records shall not destroy, give away, sell, discard, or damage any record or records in his or her charge, unless specifically authorized by law or under a record schedule approved by the state archivist pursuant to 3 V.S.A. § 317(a)(5).”

If you have previously destroyed or deleted any correspondence or proposals relating to this inquiry, then you are instructed to:

- A. Identify, to the honest and best of your ability:
 - i. Sender(s)
 - ii. Recipient(s)

- iii. Subject
- iv. Date; and

B. Provide the specific separate individual basis on which you had authority to destroy or delete each such item correspondence or written records or communications, on each occasion in which you destroyed or deleted such materials, without violating 1 V.S.A § 317a.

IV. **Costs and Consultation with Requestor**

Under 1 V.S.A. § 316 you have authority to charge actual cost for **production of copies**, and **for certain staff time involved in making copies**, but you are not authorized to charge for time or effort spent to identify, locate, or preserve responsive documents, or to make documents available for examination. See, e.g. Vermont State Employees Assn. v. Vermont Agency of Natural Resources, Dockets 517-7-10 Wncv and 518-7-10 Wncv, Washington Superior Court, Crawford, J., January 6, 2011.

By law, you should look to immediately commence identification and preservation of records covered by this request, and then continue such preservation until further written notice from the Requestor.

You are NOT to commence copying of records covered by this request until you have provided the Requester with descriptions of responsive records and the Requester has identified in writing what records the Requester wants copies of, and at what cost.

HOWEVER the DUTY TO PRESERVE records within the scope of this request continues unless and until the Requester has indicated that this request is closed and over.

To reiterate, this is also a CONTINUING request for records including records created on and after the date that this request is received by Vermont Department of Military or its officers or employees and outside vendors, and that come within the subject and scope of this request, which (future records) should not be destroyed without conferring and checking with the Requester.

As a final point, the list of people cc'ed below, along with their titles and e-mails, was taken from data obtained from http://www.mil.state.vt.us/content/employee_contact%20list.html. However: We do not believe that this list is correct or current, but this is what is publicly available. Due to this issue, we respectfully request that this notice be immediately forwarded to any and all Vermont Department of Military personnel who would have been or could have been involved with **the setting of fees for use of facilities at CEATS / EAFR by non-military personnel**, but who are not reflected on the below list.

Sincerely,



Chris Bradley, Secretary & Treasurer, Vermont State Rifle & Pistol Association

CC: COL Robert Gingras, Facilities Management Office
John Patry, Military Operations Manage
Wendall Nolan, Military Facilities Manager
Matthew Greaves, Plant Maintenance Supervisor B (EAFR)
Bonnie Pidgeon, Financial Administrator II
Betsy Flint, Administrative Assistant B
Suzette Bourdeau, Financial Administrator II
Mike Bleau, Facility Management Specialist
SGT John Medenwald, Contract Specialist
LTC Michael Papp, Facilities Project Manager
MAJ Jere Berger, Facilities Project Manager
CPT Austin Barber, Facilities Project Manager
Thomas Moore, BGS Electrician
Dale Magnant, Information Technology Specialist III
Keegan Woodward, Information Technology Analyst I
MAJ Jacob Roy, Environmental Protection Officer
Lee Ann Banks, Military Environmental Engineer
Michael O'Hara, Military Lands Administrator
Ryan Ochs, Military GIS Administrator
Kim Wittorff, Military Environmental Analyst II
Angela LeClair, Military Property Management Specialist II
Gary Gratton, Military Storekeeper
Kathy Furlani, Military Real Property