

MEMORANDUM OF UNDERSTANDING BETWEEN  
THE GOVERNOR'S REPRESENTATIVE AND  
THE SECRETARY OF STATE OF VERMONT  
REGARDING ARCHIVAL STORAGE OF GUBERNATORIAL PAPERS  
OF RICHARD A. SNELLING

The purpose of this Memorandum of Understanding is to establish clear guidelines to govern public access to "the official correspondence of the Governor", upon the deposit of that correspondence into the custody of the Archives of the Office of the Secretary of State (hereafter "the State Archives").<sup>1</sup>

The basis for these guidelines is a commitment, shared by those acting for late Governor Richard A. Snelling and his cabinet, on the one hand, and Secretary of State James H. Douglas on the other, to openness and accessibility of state government, coupled with a recognition that certain gubernatorial documents are exempted from the Right to Know law under the constitutionally-based doctrine of executive privilege.

The guidelines strike a balance between the desire, on the one hand, to preserve a full and complete record of Governor Snelling's second administration (which commenced January 10, 1991) for the benefit of future historians and the public's right to know, and, on the other hand, to respect, at least to a

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<sup>1</sup> The only guidance provided by the Vermont statutes is that, upon retiring, the Governor is to deposit "the official correspondence of the Governor . . . with the Secretary of State," 3 V.S.A. §4(a), who, in turn, "shall . . . permit the public to inspect, examine and study the archives of his or her office: provided that any record placed in the keeping of the office under special terms or conditions of law restricting their use shall be made accessible only in accordance with those terms and conditions," 3 V.S.A. §117(a)(2).

limited extent, the confidentiality of gubernatorial documents deemed privileged under the Vermont Constitution and common law. Specifically, the guidelines affirm the public's right of access to all of the Governor's official correspondence, while at the same time setting the date for access to any executive privilege documents within the official correspondence to commence six years from January 10, 1993, the anticipated end of Governor Snelling's constitutional term.<sup>2</sup>

Guidelines to Govern Public Access  
to Governor Snellings's Official Correspondence

(January 10, 1991 - August 13, 1991)

I. Subject to the special terms and conditions of the restriction set forth in paragraph II, below, Governor Snelling's official correspondence in the possession of the State Archives shall be open to the public, in accordance with established policies and practices of the State Archives.

II. Any portions of Governor Snelling's official correspondence determined by Elizabeth McLain (Edwards), Governor Snelling's Chief of Staff, to be encompassed by executive privilege shall be open to the public, in accordance with the established policies and practices of the State Archives, commencing on January 11, 1999. Prior to that date, the following special terms and

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<sup>2</sup> The period of six years was chosen as a reasonable but brief period in comparison to the "executive privilege" closing periods used in other jurisdictions (e.g. up to twelve years federally, see the Presidential Records Act, 44 U.S.C.S. §2204(a); twenty years for the official papers of former Governor Thomas H. Kean of New Jersey (1982-1990), see Guidelines for Access to Governor Kean's Official Papers; and thirty years in Maryland, see Policy of the Hall of Records Commission regulating the Use of The Gubernatorial Files).

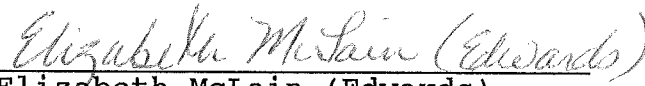
conditions of restriction shall apply:

A. Governor Snelling's executive privilege documents shall be housed and preserved in the State Archives in files that have been sealed and appropriately labelled and cross-referenced by the Governor's Office.

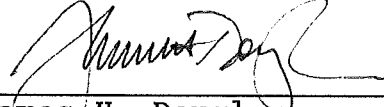
B. Governor Snelling's executive privilege documents in the possession of the State Archives shall be accessible only:

1. pursuant to a valid court order;
2. in accordance with written authorization from Elizabeth McLain (Edwards);
3. to the staff of the State Archives insofar as necessary to assure archival security; or
4. in the event that the document has been placed in the public domain.

Elizabeth McLain (Edwards), on behalf of late Governor Snelling, and James H. Douglas join in this Memorandum of Understanding for the purposes above stated.

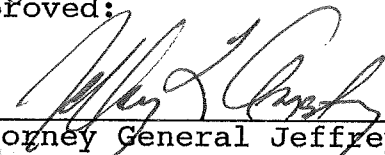
  
Elizabeth McLain (Edwards)

4-11-92  
Date

  
James H. Douglas

1/31/92  
Date

Approved:

  
Attorney General Jeffrey L. Amestoy

1/29/92  
Date

Wibs Edwards / Chief of Staff

FROM: Michael Gilhooly  
RE: Protocol for Governor's records  
DATE: September 10, 1991

INTRODUCTION

The following protocol will apply as members of the staff prepare Governor Snelling's papers and records for; 1.) Vermont State Archives, 2.) the Snelling family's personal archives, 3.) the University of Vermont.

Preparation of the Governor's material for historical and family purposes will be overseen by Chief of Staff Wibs Edwards, with legal advice from Josh Fitzhugh. Mike Gilhooly and Ed Von Turkovich will handle the actual consolidation of files and route them to the proper destination as described in this protocol. The above individuals shall be known as the Governor's Archive Committee.

The protocol will break down the removal of the Governor's records in the following categories:

1. Governor's papers exempt from public disclosure per Title 1, Section 317, VSA
2. Governor's records timelocked under executive privilege
3. Personal papers
4. Papers which are considered non-records, as explained in memo from the General Services Department (attached)
5. All other public papers

EXEMPT FROM PUBLIC RECORDS

Under VSA Title 1, Section 317, the following public records are exempt from disclosure.

1. Designated confidential by law
2. May be disclosed by certain individuals as designated by law
3. If disclosed would violate legal standards of ethics
4. If disclosed would cause the violation of a law
5. Dealing with detection and investigation of a crime
6. Tax returns or related documents
7. Related to personnel actions, i.e. hiring, promotion, disciplinary
8. Tests or other documents relating to examinations
9. Trade secrets
10. Lists of names, not otherwise made public, which if disclosed would violate rights to privacy
11. Student records at state funded institutions

12. Records concerning formulation of policy where disclosure is a clear invasion of privacy
13. Information on location of property for public agency purposes prior to public announcement
14. Records relevant to litigation
15. Negotiation of contracts
16. Voluntary information supplied to state prior to this public records law
17. Records of political subdivisions prior to determination of policy or before presentation of a budget
18. Internal affairs investigations by DPS

NOTE: These are the authors guidelines. Refer to statute for actual language.

EXECUTIVE PRIVILEGE TIMELOCK
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"Executive privilege" records will become public, but will be timelocked under a memorandum of understanding signed by the Governor's representative and the Vermont Secretary of State.

"Executive privilege has been defined by the Vermont Supreme Court in the case of Killington, Ltd. v. Lash (February 16, 1990) and common law precedents. Executive privilege may be invoked to preserve the confidentiality of documents reflecting advisory opinions, recommendations and deliberations between the Governor and his staff which make up the formulation of government decisions and policies.

Executive privilege documents include:

1. Weekly reports from Secretaries and Commissioners
2. Letters, memos, messages (inter and intra-agency), notes, etc. between the Governor and senior staff. (Secretaries, Commissioners, their deputies, executive staff advisors, policy analysts and other advisors working on matters pertaining to government decisions and policies)
3. Governor's private work schedules

NOTE: Documents in this category will be sealed and placed in custody of the Secretary of State for a period to be determined by negotiation between Governor's staff and the Secretary.

PERSONAL DOCUMENTS AND PAPERS
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Personal papers include:

- A. Campaign material, including; files, campaign memos, memos to file, contribution records (not public under law), notes, etc.

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- B. Personal correspondence between individuals considered to be friends of the Governor.
- C. All documents not considered by a reasonable person to be part of the official function of the Governor or the executive branch.

NOTE: Documents and letters in this category are the sole personal property of Barbara W. Snelling and shall be stored or disposed of as she sees fit.

NON-RECORDS
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Non-records are defined as material which do not fit within the definition of state records. They include, but are not limited to:

1. Extra copies of documents saved for convenience or reference
2. Copies of documents which originate from other agencies are maintained by other agencies
3. Requests for information after the information has been sent.

Records exempted under "Non-Records Material" guidelines are outlined in a memo from General Services Department Deputy Commissioner Paul Ohlson. (Memo attached)

Decisions on destruction of all those "Non-Records Material" documents are the responsibility of the Governor's Archives Committee, provided that the legal guidelines supplied by GSA Public Records Division are followed. Once the committee determines that a document fits the legal description of the guidelines, that document may be destroyed with no further action. (Source: John Yacavoni, Director of Public Records)

Governor's Office records which should go to the Public Records Division of GSA are:

1. Financial records
2. Expense accounts
3. Purchase order records

PUBLIC RECORDS FOR STATE ARCHIVES
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Simply put, all documents, papers and files which do not fit the above exemptions are considered public papers and will be placed in the custody of the Secretary of State for the state archives.

Also, all time locked papers will be sealed and placed in the custody of the Secretary of State.

All attorney client privileged papers will be placed under the custody of the Vermont Attorney General.

DOCUMENTS NEEDED FOR ORDERLY TRANSITION

Obviously, some documents, reports, letters and memos will be essential to the administration of Governor Dean. The original material will go to state archives, and copies should remain either in possession of the originating agency or the executive staff. Note: (All documents covered by executive privilege will be sealed and sent to the state archives.)

The documents should include but not be limited to:

1. Current projects
2. Active legislation
3. Budgets of Governor's Office and Policy Office
4. Active correspondence
5. Active Action Line documents
6. Active invitations for public appearances

Good judgement should be exercised by all Secretaries, Commissioners and staff members in easing the transition of government to Governor Dean.

Copies of documents need for transition should also be included in the appropriate category for historical disposition.

IMPLEMENTATION OF THIS PROTOCOL

This protocol will be implemented in the following fashion:

1. All files from executive office, policy office and action line will be reviewed and the committee will determine the proper disposition of the material based on Vermont law and this protocol.
2. All personal papers will be turned over to Barbara W. Snelling.
3. All Agency Secretaries will forward files which may be considered part of the Governor's Papers to the committee for disposition. Recommendations should be made regarding exemptions from public documents under Title 1 as earlier discussed or executive privilege.

The disposition of the Governor's papers will be as follows:

1. Public records state archives
2. Executive privilege records state archives (sealed/timelock)
3. Exempt under VSA Title 1 Public Records Div. GSA
4. Personal papers Barbara W. Snelling
5. Non-records destroyed by archive committee

**A186: RECORDS OF GOVERNOR RICHARD A. SNELLING  
1991  
13 cu. ft.**

**LIST OF SUBSERIES**

**SUBSERIES 1: ADMINISTRATIVE AND ADVISORY BOARDS  
1991  
.5 cu. ft.**

This subseries consist of boards and commissions attached to the governor's office. They are independent of any specific state agency. Their main function is to provide information and keep the governor abreast of various state policies and programs.

**SUBSERIES 2: ADMINISTRATION, AGENCY OF  
1991  
.5 cu. ft.**

This subseries is divided into six categories representing records from each department within the agency: Agency of Administration General File, Dept. of Buildings and General Services, Dept. of Finance and Management, Geographic Information Services, Dept. of Personnel and Dept. of Taxes. Each department's records are a small group of correspondence, much of which relates to balancing the budget, a key issue in Governor Snelling's administration.

**AGENCY OF ADMINISTRATION GENERAL FILE  
DEPARTMENT OF BUILDINGS AND GENERAL SERVICES  
DEPARTMENT OF FINANCE AND MANAGEMENT  
GEOGRAPHIC INFORMATION SERVICES (GIS)  
DEPARTMENT OF PERSONNEL  
DEPARTMENT OF TAXES**

**SUBSERIES 3: AGENCY OF DEVELOPMENT AND COMMUNITY AFFAIRS  
1991  
.5 cu. ft.**

The Agency of Development and Community Affairs' records revolve generally around the subjects of generating interest in development of state and local services that might encourage and enhance Vermont's industrial and economic development opportunities, adequate, affordable housing for low income Vermonters and the promotion of Vermont's tourism industry. The records are arranged separately by department.

**AGENCY OF DEVELOPMENT AND COMMUNITY AFFAIRS,  
GENERAL FILE  
DEPARTMENT OF ECONOMIC DEVELOPMENT**



**DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
VT INDUSTRIAL DEVELOPMENT AUTHORITY  
VT LIFE/VT TRAVEL DIVISION**

**SUBSERIES 4: AGENCY OF HUMAN SERVICES**

**1991**

**1 cu. ft.**

The bulk of this subseries focuses on reducing the agency's spending and reorganization. Con Hogan, Secretary of the Agency of Human Services and Governor Snelling worked to reverse Vermont's budget crisis and in coordinating and combining services of the agency while maintaining a high level service record. The Secretary's weekly reports to the governor provide insight into the reorganization efforts. The bulk of the records relate to the Department of Corrections regarding services provided to inmates, overcrowding, and policy. The escape of two inmates which subsequently resulted in the murder of a Townshend woman caused local uproar and was the main force behind revision of the escape policy.

**DEPARTMENT OF AGING AND DISABILITIES  
DEPARTMENT OF ALCOHOL AND DRUG ABUSE  
DEPARTMENT OF CORRECTIONS  
OFFICE OF ECONOMIC OPPORTUNITY  
DEPARTMENT OF HEALTH  
DEPARTMENT OF MENTAL HEALTH  
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES  
DEPARTMENT OF SOCIAL WELFARE**

**SUBSERIES 5: AGENCY OF NATURAL RESOURCES**

**1991**

**1 cu. ft.**

The bulk of this subseries consists of correspondence concerning various issues with which the agency was involved. Act 250 and the permitting process is one of the primary topics. The Environmental Board records include decisions and correspondence of the Board.

**ENVIRONMENTAL BOARD  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DEPARTMENT OF FISH AND WILDLIFE  
DEPARTMENT OF FORESTS, PARKS AND RECREATION  
WATER RESOURCES BOARD**

**SUBSERIES 6: AGENCY OF TRANSPORTATION**

**1991**

**1 folder**

As is evidenced throughout the Snelling records, the main point of this one-folder subseries is the budget and the efficient expenditure of public funds. Traffic safety and road maintenance are typical topics discussed here as well.

**SUBSERIES 7: DEPARTMENT OF AGRICULTURE**

**1991**

**2 folders**

Some topics of discussion in this subseries are dairy pricing, mosquito control, land use, the Northeast Interstate Dairy Compact, promotion of locally grown produce and food labeling. Weekly reports are scattered throughout.

**SUBSERIES 8: ATTORNEY GENERAL**

**1991**

**1 folder**

Most of this small subseries consists of correspondence originally addressed to the governor but forwarded on to the attorney general for response. A few items relate to the governor's authority in reducing the workforce.

**SUBSERIES 9: BANKING AND INSURANCE, DEPT OF**

**1991**

**3 folders**

Files include some weekly reports. The captive insurance industry is a major topic of discussion here. There are several complaints against banks and insurance companies alike.

**SUBSERIES 10: DEFENDER GENERAL**

**1991**

**1 folder**

Much of this very small subseries relates to budgeting and fiscal matters. A few items relate to the governor's request for the defender general's resignation and his refusal to provide it.

**SUBSERIES 11: DEPARTMENT OF EDUCATION**

**1991**

**.25 cu. ft.**

The Department of Education files touch on the various education issues under control of the state, primarily early education and state aid to education. There is also a good deal of educational resource material filed under subjects.

**SUBSERIES 12: EMERGENCY BOARD/EMERGENCY MANAGEMENT**

**1991**

**1 folder**

The bulk of the Emergency Board's records consist of agendas and minutes of meetings of the board. Additionally, there is information regarding the drought of 1991 and the state's response to it.

**SUBSERIES 13: DEPARTMENT OF EMPLOYMENT AND TRAINING**

**1991**

**2 folders**

This subseries concerns workmen's compensation, employment opportunities, job training, budget, policy, and unemployment. Weekly reports are included.

**SUBSERIES 14: EXECUTIVE DEPARTMENT**

**1991**

**2.5 cu. ft.**

Included in the Executive Department records is an enormous amount of internal memos and correspondence, generally relating to the budget, reorganization of state government and policy. Executive Orders and Proclamations are included as well as a folder of materials relating to the death of Governor Snelling which includes VHS tapes of his memorial ceremony. The records show the governor's attitude toward state spending.

**ATTORNEY FILES**

**BUDGET**

**CORRESPONDENCE/MEMOS**

**DEATH OF GOVERNOR SNELLING**

**EXECUTIVE ORDERS**

**INTEROFFICE MEMOS**

**OFFICE OF POLICY RESEARCH AND COORDINATION**

**PERSONNEL**

**PROCLAMATIONS**

**SCHEDULES**

**SECURITY**

**SUBSERIES 15: FEDERAL GOVERNMENT**

**1991**  
**.25 cu.ft.**

The Federal Government subseries consists of general correspondence to and from several federal agencies and Vermont's congressional delegation.

**SUBSERIES 16: GENERAL ASSEMBLY**

**1991**  
**1.75 cu. ft.**

The bulk of this subseries consists of proposed legislation and comments pertaining to it. The bill files are arranged by bill number while some legislation is arranged by agency.

**SUBSERIES 17: JUDICIAL BRANCH**

**1991**  
**1 folder**

Again, the budget is the primary concern in this single file of documents relating to the judiciary. There is discussion on a "Little Hoover Commission" for the courts.

**SUBSERIES 18: LABOR AND INDUSTRY, DEPT OF**

**1991**  
**2 folders**

Workman's compensation, fire prevention, the budget, plumber licensing, and VOSHA are subjects discussed in this subseries. The weekly reports are concise and informative.

**SUBSERIES 19: DEPARTMENT OF LIBRARIES**

**1991**  
**1 folder**

This small subseries includes materials regarding the naming of the Women's Veterans Memorial Highway, the 1990 census, the Vermont Automated Library System (VALS), and, of course, the budget. Additional records relating to the dedication of the Women Veterans Memorial Highway may be found in the Military Department's records.

**SUBSERIES 20: DEPARTMENT OF LIQUOR CONTROL**

**1991**  
**1 folder**

Much of this subseries relates to the budget and includes fiscal statistics. There is correspondence relating to liquor advertising, the liquor agency selection process and conversion of state-operated stores to private agencies.

**SUBSERIES 21: LOTTERY COMMISSION**

**1991**

**1 folder**

The bulk of this subseries includes monthly revenue estimates and statistics. Correspondence indicates Governor Snelling's dislike of the lottery.

**SUBSERIES 22: MILITARY DEPARTMENT**

**1991**

**1 folder**

Includes correspondence between the governor's office and the Adjutant General. Military leave policy, the closing of Plattsburg Air Force Base, Operation Desert Storm, promotion letters, armories, information on the dedication of the Women Veterans Memorial Highway are all topics of interest.

**SUBSERIES 23: DEPARTMENT OF PUBLIC SAFETY**

**1991**

**1 folder**

This subseries contains policy directives focused on reducing the state budget. The reduction of state police canine units and paperwork reduction are main points of interest, as well as highway safety, DWI enforcement, and communications.

**SUBSERIES 24: PUBLIC SERVICE BOARD/DEPARTMENT OF PUBLIC SERVICE**

**1991**

**1 cu. ft.**

The Public Services Board records consist of litigation and board decisions. The bulk of the board's records, however, consist of applications to fill the consumer member vacancy on the board. The Public Service Department records contain the most controversial records of the entire collection; half of the records relate to Hydro-Quebec and its effects on lower Canada's environment. Telephone rates, fuel prices, seasonal utility rates, fuel switching, low-level radioactive waste, Champlain Pipeline and VT Yankee are also topics of note.

**SUBSERIES 25: SECRETARY OF STATE**

**1991**

**1 folder**

Correspondence regarding the budget, the Vermont Statehood Bicentennial celebration and records management.

**SUBSERIES 26: STATE TREASURER**

**1991**

**1 folder**

Correspondence regarding state obligation bonds.

**SUBSERIES 27: STATE'S ATTORNEYS AND SHERIFFS**

**1991**

**1 folder**

Correspondence regarding the victim's assistance program and a DWI case that was subsequently dropped.

**SUBSERIES 28: SUBJECT FILES**

**1991**

**2.5 cu. ft.**

The Subject files are a diverse group of records created by the governor's office and unrelated to a specific agency. The economy, education, energy, the environment, health care and law enforcement are some of the general topics.

**SUBSERIES 29: UNIVERSITY OF VERMONT**

**1990-1991**

**1 folder**

Routine correspondence regarding financial matters and campus diversity. Also includes some news clippings.

**SUBSERIES 30: VT HISTORICAL SOCIETY**

**1991**

**1 folder**

Correspondence regarding use of the state seal and coat of arms and the moving of vital records to Middlesex.

**SUBSERIES 31: VT HOUSING FINANCE AGENCY**

**1990-1991**

**1 folder**

Correspondence relating to mortgage credit certificates and the 1990 Annual Report.

**SUBSERIES 32: VT LEAGUE OF CITIES AND TOWNS**

**1989-1991**

**1 folder**

Correspondence and newsletters relating to various municipal issues and funding.

**SUBSERIES 33: VT STUDENT ASSISTANCE CORPORATION**

**1991**

**1 folder**

Correspondence regarding policy changes to encourage more students to attend institutions of higher education in Vermont.