

**Vermont Department of Banking, Insurance, Securities
and Health Care Administration**

April 11, 2005

**Health Care Administration Bulletin 117
and Insurance Division Bulletin 149**

CONFIDENTIALITY REQUESTS IN RATE AND FORM FILINGS

The purpose of this joint bulletin is to notify insurance companies how the Department handles confidentiality requests included with rate and form filings.

Generally, all rate and form filings are public records subject to public disclosure. Vermont law defines public records and public documents to include “all papers, documents, machine readable materials and any other written or recorded matters, regardless of their physical form or characteristics, that are produced or acquired in the course of agency business.” 1 V.S.A. § 317(b). Only records and documents fitting into the specific statutory exemptions of 1 V.S.A. § 317(c) are exempt from disclosure under Vermont law. Additionally, 8 V.S.A. §4688(e) (relating to property and casualty rate filings) specifically requires that all “rates, supplementary rate information and any supporting information for risks filed under [Chapter 128] shall, as soon as filed or after approval for those matters subject to pre-filing, be open to public inspection at any reasonable time.”

In connection with filings not subject to 8 V.S.A. § 4688(e), if a party contends that material submitted to the Department is proprietary or otherwise exempt from disclosure it must designate the specific section or document claimed as exempt. Broad claims of confidentiality and claims that are addressed to entire records or documents, such as data sets, are not likely to be sufficiently specific to support requests for exemption. Under no circumstances should an entire filing be marked as confidential.

Along with a clear designation of the specific material claimed to be exempt from disclosure, the party submitting the materials must provide a detailed explanation supporting its claim for exemption, including reference to the specific section(s) of 1 V.S.A. § 317(c) (or other law) claimed applicable. Conclusory descriptions that materials are “proprietary” or otherwise exempt under 1 V.S.A. § 317(c) are discouraged. For example, consistent with Vermont case law, materials claimed as exempt from disclosure under 1 V.S.A. § 317(c)(9) should be accompanied with a detailed explanation of the prospective harm to the competitive position of the party if the identified material were to be disclosed.

If a filing includes a confidentiality request that does not comply with the requirements of this bulletin, such filing will be disapproved. If a sufficiently detailed request for confidential treatment has been provided, the Commissioner will determine if such designated information meets the statutory requirements pertaining to materials exempted

from Vermont's public records law. Pending a determination by the Commissioner as to confidentiality, the records or documents identified by the party will be held out of the public file.

Questions relating to the Insurance Division filings should be directed to Phil Keller, Director of Insurance Rates and Forms. Questions relating to filings with the Health Care Administration should be directed to Bruce Spector, Legal Counsel.

Dated at Montpelier, Vermont this 11th day of April, 2005.

John P. Crowley, Commissioner