



# New Hampshire Tax Collectors' Association



## Governmental Records & The Right-to-Know Law

NEW HAMPSHIRE MUNICIPAL ASSOCIATION

March 26, 2024

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[legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org)/[603.224.7447](tel:603.224.7447)/[www.nhmunicipal.org](http://www.nhmunicipal.org)

# NHMA's Legal Advisory Services



Open 8:30 a.m. – 4:30 p.m.

- Email: [legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org)
- Phone: 603-224-7447

Provide general legal advice

- Not comprehensive legal review of documents
- Not drafting individualized ordinances or charters
- Not reviewing specific applications before local boards
- Not settle intra-municipal disputes

Goal: Response w/in 48 hours

# The Right-to-Know Law

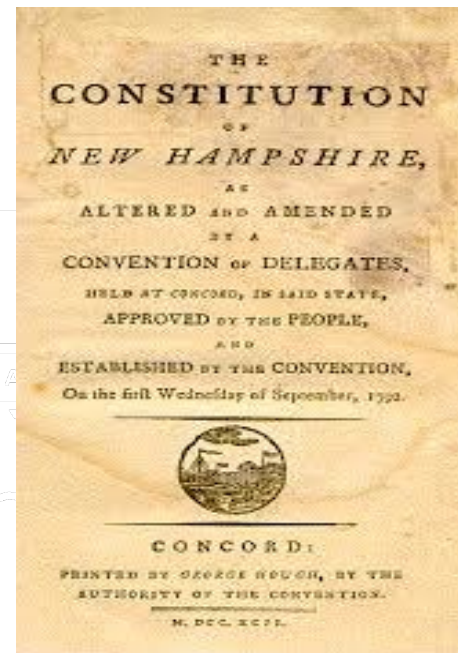
## RSA Chapter 91-A



PART I, ARTICLE 8 OF THE NH Constitution: Government ... should be open, ....

SECTION 1 OF RSA 91-A:

The purpose of this chapter is to ensure both the greatest possible public access to the **actions, discussions** and **records** of all public bodies, and their accountability to the people.



# RSA 91-A:4, I: Any Citizen Can Request Records

- ▶ No definition of “citizen” in statute or relevant case-law, but, presumably, at least a New Hampshire citizen.
- ▶ Best practice is anyone who shows up should be assumed to qualify as a “citizen” for the purposes of requesting records.
- ▶ This can make online requests tricky.

# What They're Requesting Must Be "Reasonably Described"



- ▶ Municipal employees must know what they are looking for in the voluminous materials kept by the municipality.
- ▶ Municipal employees do have an obligation to clarify with the citizen what the citizen is requesting. *Salcetti v. City of Keene*, No. 2019-0217 (June 3, 2020) (speaking in *dicta* about a “spirit of collaboration”).
- ▶ This may require a clarifying phone call.

# Search for Records Must Be Reasonable



- ▶ Whatever record is requested must also be met with a reasonably calculated search by the municipality to uncover the record. *ATV Watch v. N.H. Dep't of Transp.*, 161 N.H. 746 (2011).
- ▶ The crucial issue is not whether relevant documents might exist, but whether the agency's search was reasonably calculated to discover the requested documents.
- ▶ This can have major implications in electronic records searches.

# Three Key Steps



STEP 1: Is it a  
*Governmental Record?*

STEP 2: Is the record  
exempt from disclosure?

STEP 3: Make available  
non-exempt records.

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## Any information

- created
- accepted, or
- obtained

## By, or on behalf of,

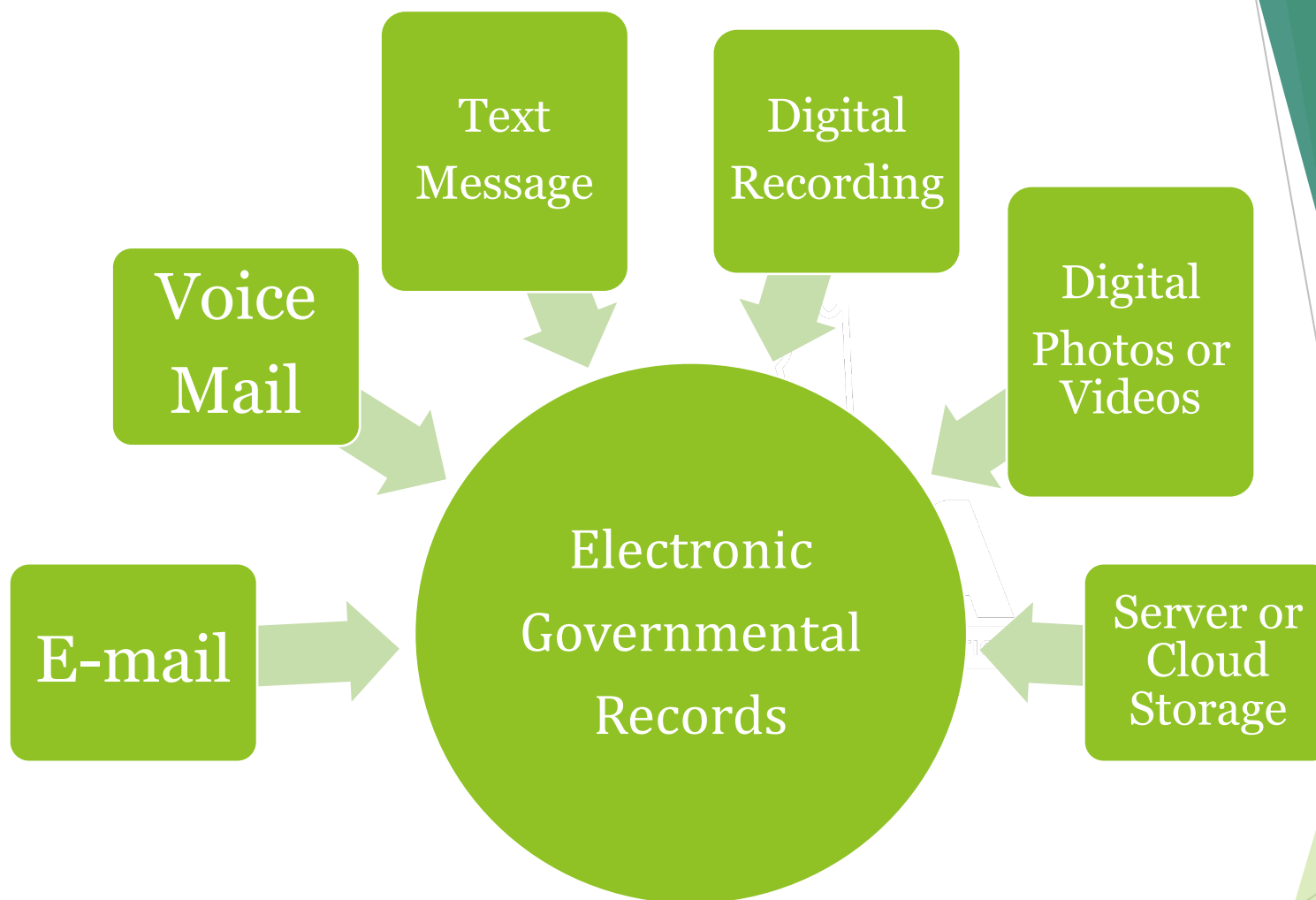
- any public body, or a quorum or majority thereof or
- any public agency

## in furtherance of its official function

Is it a  
governmental  
record?

RSA 91-A:1-a





# ACCESS TO GOVERNMENT AL RECORDS



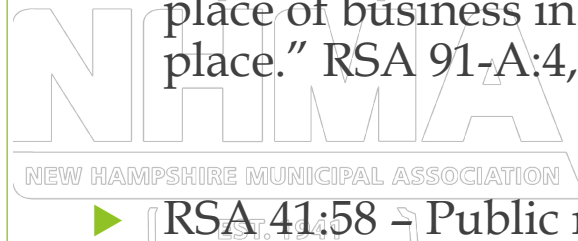
An individual's motives in seeking disclosure of public records are irrelevant to the question of access under the Right-to-Know Law.



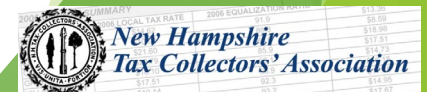
The provisions of RSA Chapter 91-A are construed in a manner favoring disclosure and interpreting the exemptions to disclosure restrictively.



- ▶ Governmental records must be available during the regular business hours of the public body or agency.
- ▶ “Each public body or agency shall keep and maintain all governmental records in its custody at its regular office or place of business in an accessible place.” RSA 91-A:4, III
- ▶ RSA 41:58 – Public records must be stored at office of the political subdivision.
- ▶ RSA 41:61 – Public records may not be loaned or removed except when discharging public duties.

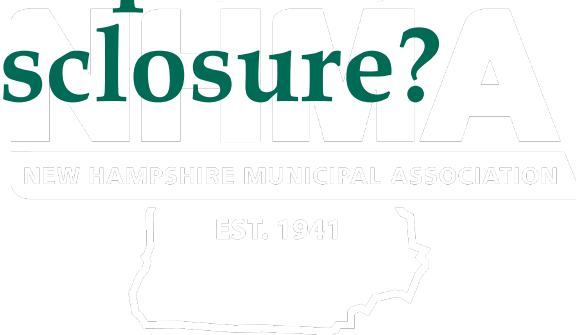


# Availability of Governmental Records





# Is the Record Exempt from Disclosure?



# Exemptions to Disclosure

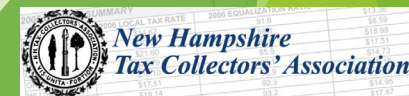
- ▶ **RSA 91-A:5** provides a list of records exemptions:
  - ▶ Some are categorical exemptions, such as the master jury list or teacher certification records.
  - ▶ Some require detailed analysis, such as “personnel records whose disclosure would constitute invasion of privacy.”
- ▶ **Other statutes and case law** also contain exemptions.
- ▶ The Right-to-Know Law’s purpose is to provide the utmost information to the public about what its government is up to.
- ▶ When a public body or agency seeks to avoid disclosure of material under the Right-to-Know Law, that entity bears a heavy burden.



# OTHER EXEMPTIONS TO DISCLOSURE

Governmental records are subject to disclosure “except as otherwise prohibited by statute or RSA 91-A:5.” RSA 91-A:4, I.

Scattered throughout the RSAs are other provisions that involve the disclose/non-disclosure of governmental records not directly addressed in 91-A.



# Tax Collecting - Specific Statutes

RSA 72:34, II – Tax exemptions with income or asset limitations, financial documents received under 72:33 or 72:38-a are exempt from disclosure

RSA 74:18, V - inventory of property transfers filed with the DRA and with the municipality are exempt from disclosure.

RSA 76:16, III (h) – SSN numbers or Taxpayer ID numbers supplied to municipality are exempt from disclosure.

# Drafts & Notes

## Preliminary Drafts – RSA 91-A:5, IX –

- “[N]ot in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body.”

## Personal Notes – RSA 91-A:5, VIII –

- “Any notes or other materials made for personal use that do not have an official purpose are exempt from disclosure.”



# Welford v. State Police



- ▶ While the previous cases involved privacy issues involving internal police practices, Welford addresses privacy issues involving private citizens.
- ▶ Persons have an obvious privacy interest in keeping secret the fact that they were subjects of a law enforcement investigation.
- ▶ The relevant public interest is not to find out what the individual himself was 'up to' but rather how the government carried out its statutory duties to investigate and prosecute criminal conduct.
- ▶ Where there is a privacy interest at stake, the requester must produce evidence that would warrant a belief by a reasonable person that alleged Government impropriety might have occurred. Or, at the very least, the requestor must articulate why the requested information serves a public purpose greater than simply exposing the police involvement of another individual.

# Invasion of Privacy

## RSA 91-A:5, IV

### Private

Evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. If no privacy interest is at stake, the Right-to-Know Law mandates disclosure.

### Public

Assess the public's interest in disclosure. Disclosure of the requested information should inform the public about the conduct and activities of their government.

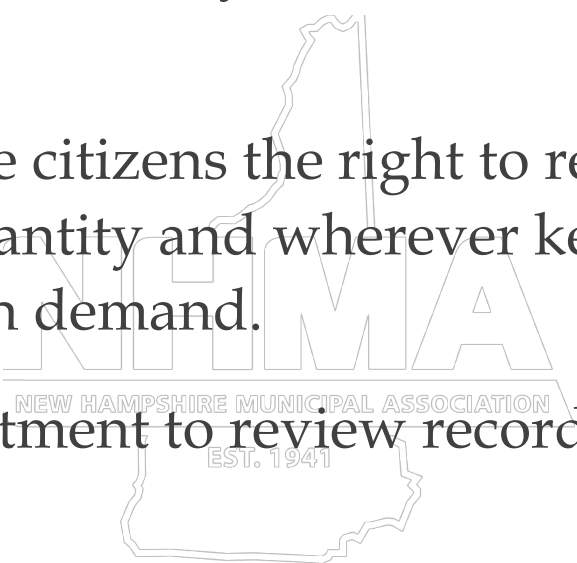
### Balance

Balance the public's interest in disclosure against the government's interest in nondisclosure and the individual's privacy interest in nondisclosure.

# Basics of Record Production



- ▶ Records must be provided immediately *only* when they are immediately available for release.
- ▶ RTK *does not* give citizens the right to review records in any quantity and wherever kept immediately upon demand.
- ▶ Requiring appointment to review records is permitted.
- ▶ RTK does not require document “compilation.”

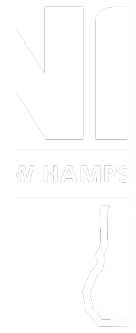


# It's a case-by-case analysis



- ▶ Does the document requested fall under a specific statute that has its own exemptions? Ex. RSA 73:34, II.
- ▶ Was the document discussed/produced for a non-public session? Ex. RSA 91-A:3, II (c)
- ▶ Would release of the information constitute an invasion of privacy? RSA 91-A:5, IV.
- ▶ Can private information be redacted to allow for production of the rest of the document?

# REDACT EXEMPT INFORMATION



Represented by council: [REDACTED]

Date of Interview: February 28, 2006

Following a series of discussions between counsel, [REDACTED] consented to a "free talk" interview to be conducted at the offices of the United States Attorney for the District of Arizona, in Phoenix, AZ. [REDACTED] was accompanied by counsel [REDACTED] throughout the interview. AUSA [REDACTED] and NPS Supervisory Special Agent [REDACTED] were present for the government.

As noted, it was previously agreed upon that this interview would take place under the provisions of a "free talk" agreement. A copy of that agreement is attached [See Attachment # 17].

[REDACTED] Finally, in 1981 or 1982 [REDACTED] was selected for the position of [REDACTED] at Hubbell Trading Post, in Ganado, AZ, working for Southwest Parks and Monuments Association, later known as Western National Parks Association. [REDACTED] estimated [REDACTED] salary at HTP as approximately \$12 per hour, for a forty-hour work week. [REDACTED] asked that [REDACTED] was routinely paid an additional monthly bonus check based upon the volume of sales realized at the trading post; typically around \$800 or \$900 per month. [REDACTED] stated that [REDACTED] usually cashed [REDACTED] paychecks and bonus checks at the Tye Dornio (NM) branch of the Bank of America.

[REDACTED] and [REDACTED] attorney were advised of the general suspicions and allegations that generated this investigation. Notably, this was the first formal notice that had been provided to [REDACTED] (or [REDACTED] attorney) concerning allegations of check forgery, as well



SUMMARY		2006 EQUALIZATION ROLLBACK	
MUNICIPAL TAX RATE	2006	2006	2006
	\$13.20	\$13.20	\$13.20
	\$16.90	\$16.90	\$16.90
	\$17.91	\$17.91	\$17.91
	\$19.21	\$19.21	\$19.21
	\$19.51	\$19.51	\$19.51
	\$19.14	\$19.14	\$19.14

# Production of Electronic Records

- ▶ *Green v. SAU #55*: If the records exist electronically, and the requester wants them electronically, and it is reasonably practical to do so, then they must be provided electronically.
- ▶ 91-A:4, IV: . . . . No fee shall be charged for the inspection or delivery, without copying, of governmental records, whether in paper, electronic, or other form.
- ▶ *Taylor v. SAU #55*: “there is no provision of RSA chapter 91-A that requires a governmental body to ‘deliver’ records to any location other than its regular place of business.”

# No Flat Fees!

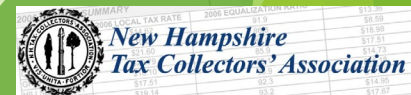


- ▶ ONLY Reasonable fees are allowed!
- ▶ RSA 91-A:4, IV
- ▶ FIFTY CENTS PER PAGE FOR FIRST 10 PAGES, AND THEN TEN CENTS PER PAGE DEEMED REASONABLE. *MARTIN V. ROCHESTER*, 173 NH 378 (2020)

We have



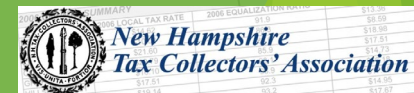
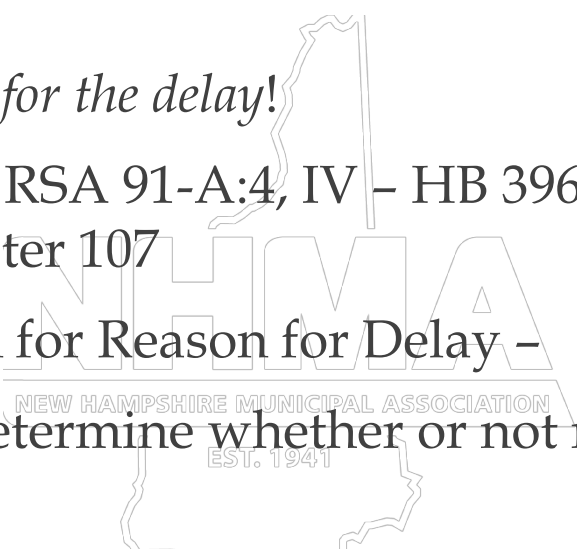
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# “Something” w/in 5 Days

- ▶ As of Jan. 1, 2020, municipalities must:
  - ▶ Provide a written statement of time necessary to determine whether request granted or denied;  
AND
  - ▶ *Provide a reason for the delay!*
  - ▶ Amendment to RSA 91-A:4, IV – HB 396 – 2019  
NH Laws Chapter 107
- ▶ NHMA Suggestion for Reason for Delay –
  - ▶ Need time to determine whether or not record exists;
  - ▶ Need time to determine whether it is disclosable;
  - ▶ If disclosable, need time to determine how much time it will take to make the requested records ready for review or copying



# Main Takeaways

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Every citizen can request records. \*

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The record request must be “reasonably described.” RSA 91-A:4, IV.

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Any search for records must be reasonably calculated to uncover relevant documents.

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There is no obligation to compile, cross reference or assemble records.

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Requiring a citizen make an appointment to review records is permitted.

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When denying access provide written reasons.

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Redact exempt information

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Reasonable fees allowed

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Is it really deleted? RSA 91-A:4, III-b

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# Recent Legal Inquiries



- ▶ **Question:** The local Rotary Club wants to send Christmas cards to each veteran in town and requests a list of those who receive veterans tax credits. Can the tax collector give out their names and addresses?
- ▶ **Answer:** The names and addresses of persons who qualify for and receive a veterans tax credit could be deemed personal and private information whose disclosure would be an unwarranted invasion of privacy as provided in RSA 91-A:5, IV.

# Recent Legal Inquiries



- ▶ **Question:** A citizen requested a copy of the PA-28, Inventory of Taxable property, so she could see the names listed under the census requirement listing those occupying the premises as of April 1, by name and age. Should the form be released?
- ▶ **Answer:** The information sought on PA-28 form would provide the name and age of all persons living at the subject property. Some of those people could be under the age of 18 or are old and infirm. Thus, the information has a heightened degree of privacy interests for the property owner who filled out the form. It would appear that the requesting party is not trying to investigate anything about the town's execution of the tax exemption or credit process, but rather only has a prurient interest in knowing who lives at the subject property. Reasonable to conclude that the privacy interest of the owner of the property and the occupants outweighs the public interest. Accordingly, the request for the PA-28 should be denied.

THANK  
YOU



## New Hampshire Tax Collectors' Association

2006 LOCAL TAX RATE	2006 EQUALIZATION RATE	
\$14.62	91.9	\$13.36
\$14.62	86.8	\$8.59
\$14.62	86.8	\$18.98
\$21.60	85.9	\$17.51
\$17.51	85.9	\$14.73
\$17.51	85.9	\$17.51
\$17.51	92.3	\$14.95
\$19.14	93.2	\$17.67



The New Hampshire Municipal Association is a nonprofit, non-partisan association working to strengthen New Hampshire cities and towns and their ability to serve the public as a member-funded, member-governed and member-driven association since 1941. We serve as a resource for information, education and legal services. NHMA is a strong, clear voice advocating for New Hampshire municipal interests.

EST. 1941

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