



New Hampshire Tax Collectors' Association



Governmental Records & The Right-to-Know Law

NEW HAMPSHIRE MUNICIPAL ASSOCIATION

EST. 1941

March 24, 2026

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NHMA's Legal Advisory Services



Open 8:30 a.m. – 4:30 p.m.

- Email: 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

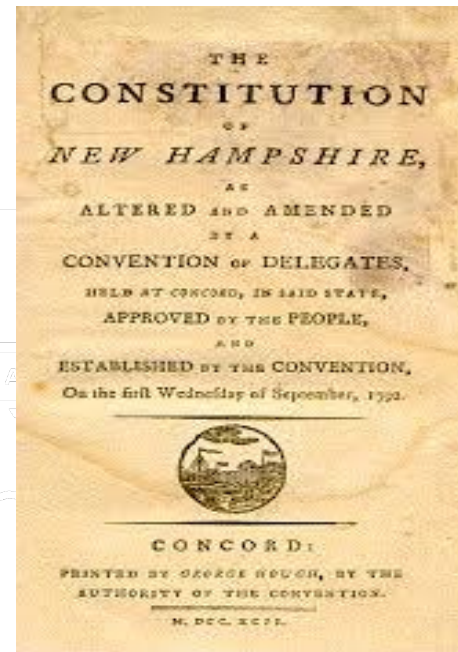
RSA Chapter 91-A



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.

Is it a governmental record?

RSA 91-A:1-a

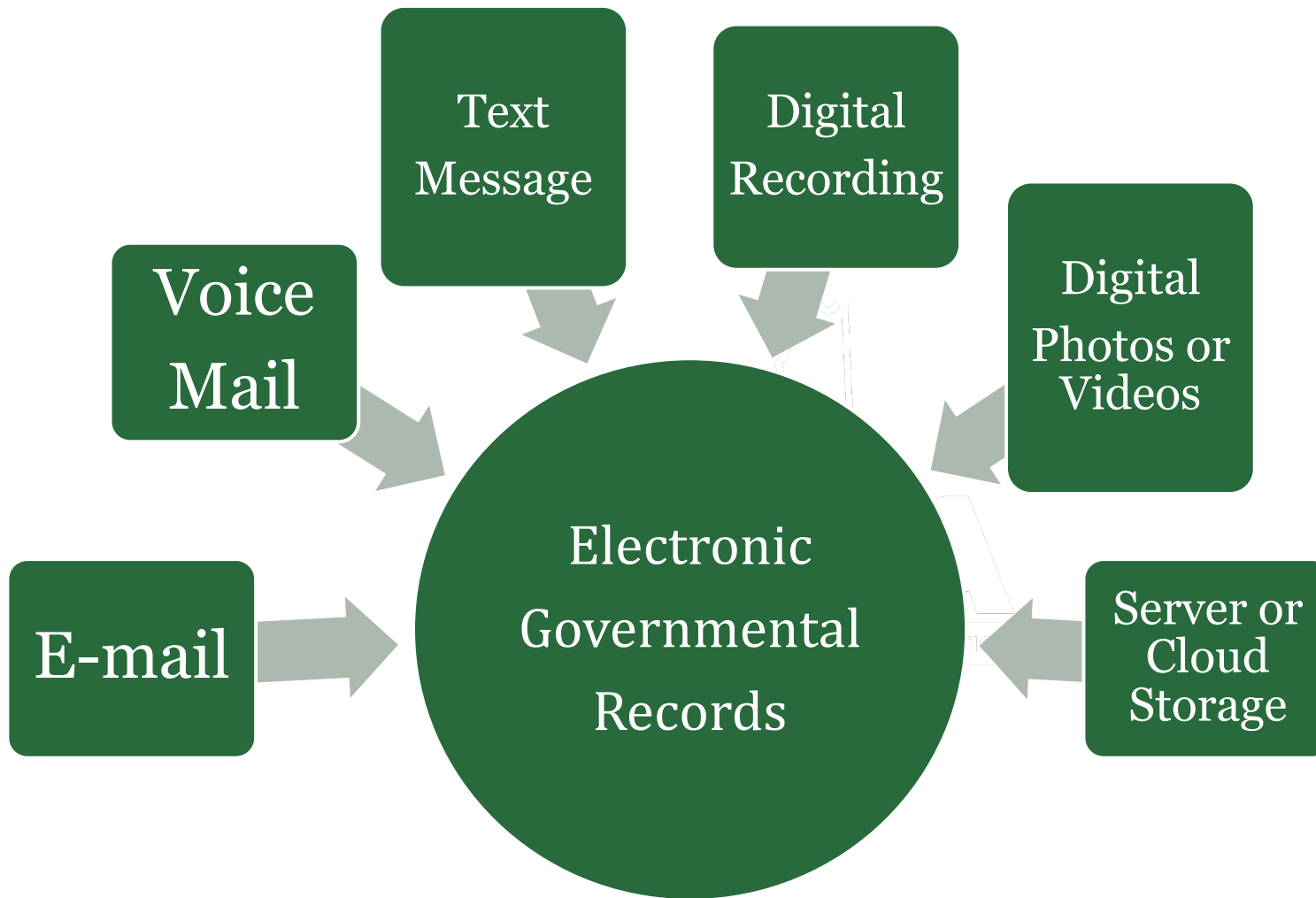
Any information

- 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



ACCESS TO GOVERNMENTAL 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.

Availability of Governmental Records

- 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.



IS THE RECORD EXEMPT FROM DISCLOSURE?

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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 request 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] added 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 Tse Boniso (NM) branch of the Bank of America.

[REDACTED]

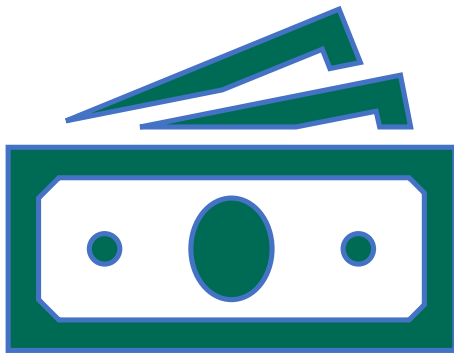
[REDACTED] and [REDACTED] attorney were advised of the general suspicions and allegations that generated this investigation. Notably, this was the first formal notice that had been provided to [REDACTED] (or [REDACTED] attorney) concerning allegations of check forgery, as well



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



...right?

“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

Every citizen can request records. *

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

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

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

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

When denying access provide written reasons.

Redact exempt information

Reasonable fees allowed

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



Recent Legal Inquiries

Question: A realtor/developer contacted the town looking for a list of Tax Liened properties. We have concerns that this information should not be given out because its personal credit information.

Answer: The town tax collector is already required to record a Report of Tax Lien with the registry of deeds identifying each parcel liened, along with the name of the current owner, a description of the property and the amount of the tax lien. RSA 80:64. The NH Supreme Court has stated by reference to a federal court decision that a local government agency is not required to collect and produce information that has already been made available to the public. Furthermore, the town could take the position that the property taxpayer has a right of practical obscurity, such that even though the tax lien information is readily available at the registry of deeds the taxpayer retains some interest in the dissemination of the same lien information by the town. Direct the realtor/developer to the book and page for the recorded Report of Tax Lien.

Recent Legal Inquiries

- *Question:* Does the public have a right to the names and addresses of people getting a veteran's exemption?
- *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 for a particular 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



2006 LOCAL TAX RATE	2006 EQUALIZATION RATE	
\$14.62	91.9	\$13.36
\$15.79	86.3	\$8.59
\$21.60	85.9	\$18.98
\$16.10	85.9	\$17.51
\$17.51	92.3	\$14.73
\$19.14	93.2	\$14.95
		\$17.67

New Hampshire Tax Collectors' Association



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.

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