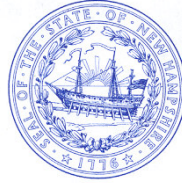


**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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ATTORNEY GENERAL



ORVILLE B. "BUD" FITCH II
DEPUTY ATTORNEY GENERAL

February 8, 2007

To the People of New Hampshire:

The public's right-to-know what their government is doing is a fundamental part of New Hampshire's democracy. For our government to remain of the people, by the people, and for the people, while protecting individuals' privacy, it is essential that the people have reasonable and open access to the information that will inform the people what their government is up to and how it is performing.

With the exception of the public business conducted at traditional annual town and school meetings, New Hampshire uses a representative form of democracy. The people's elected representatives set and carry out most public policy. New Hampshire's Constitution and the Right-to-Know Law ensure that the public has reasonable access to public meetings and public records that show what those elected representatives and the appointed public officials that carry out our laws are doing.

The people's right-to-know is embedded in our Constitution. When the current Constitution was adopted on June 2, 1784, the accountability to the people of the people's elected representatives and appointed public officials was established in Part 1, article 8, which read:

All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them.

In 1976, the people of New Hampshire amended Part 1, article 8 of our Constitution, reinforcing the existence of a right of access to public meetings and records, by adding the following two sentences:

Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted.

An integral part of the constitutional right-to-know is the protection of the freedom of speech and press guaranteed by Part 1, article 22 of the New Hampshire Constitution:

Free speech and liberty of the press are essential to the security of freedom in a state: They ought, therefore, to be inviolably preserved.

Our executive and judicial branch leaders have recognized that Part 1, articles 8 and 22 of our Constitution and Chapter 91-A of our Revised Statutes Annotated (“RSA”), the Right-to-Know Law, are intended to provide the utmost information to the people about what their government is up to. The New Hampshire Supreme Court has recognized that the Right-to-Know Law helps to carry out the Constitution’s requirement that access to governmental proceedings and records not be unreasonably restricted.

As New Hampshire’s Attorney General, I take an oath to uphold the Constitution and laws of our State. As part of my efforts to fulfill that duty I am proud to issue this updated Memorandum on New Hampshire's Right-to-Know Law, RSA Chapter 91-A. The purpose of this Memorandum is to provide a reference guide to the statute and to the judicial decisions that further define and explain the peoples’ right-to-know. This edition includes general principles concerning the law, statutory changes since the last edition, and up-to-date judicial interpretations of the statute.

I urge every citizen, every school child, and every student of government to study the Right-to-Know Law. Truly understanding our representative form of democracy requires a sound understanding of your right-to-know about the public actions of your elected and appointed representatives. It also requires an understanding of how the law balances that right-to-know with your right to keep certain aspects of your interactions with government and certain personal information the government maintains about you private. Finally every person interested in government should understand the ease with which they may go to the Superior Court to seek enforcement of their rights under the Right-to-Know Law. This guide and the copy of RSA Chapter 91-A provided in the Appendix offers a firm foundation of understanding for this fundamental aspect of New Hampshire’s democracy.

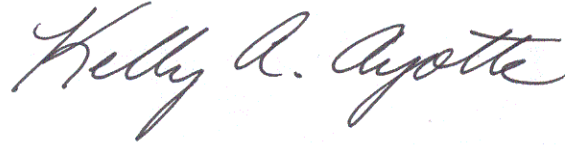
I strongly recommend that all public officials learn their responsibilities under the Right-to-Know Law. This guide should be kept easily accessible and referred to when you are faced with questions on the application of the law. When you are uncertain about the application of the law to a specific circumstance, State officials should consult my Office and municipal and county officials should consult with legal counsel.

I am making this Memorandum widely available to the public, the press, New Hampshire’s schools, and state and local officials. It will also be posted on my [Department's website](#).

As always, my Office stands ready to provide guidance in complying with RSA 91-A to state and local officials, the public and the media. While enforcement of the Right-to-Know Law

is assigned to the Superior Court, my Office will continue to promote the public's understanding of the Right-to-Know Law and compliance with the Right-to-Know Law by public officials.

Very truly yours,

A handwritten signature in black ink that reads "Kelly A. Ayotte". The signature is written in a cursive, flowing style.

Kelly A. Ayotte
Attorney General

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**ATTORNEY GENERAL'S MEMORANDUM ON NEW HAMPSHIRE'S
RIGHT-TO-KNOW LAW, RSA CHAPTER 91-A**

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RIGHT-TO-KNOW LAW MEMORANDUM

“Openness in the conduct of public business is essential to a democratic society. 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:1. The Supreme Court “resolve[s] questions regarding the [Right-to-Know] law with a view to providing the utmost information in order to best effectuate the statutory and constitutional objective of facilitating access to all public documents.” *WMUR v. N.H. Dept. of Fish and Game*, No. 2005-787, slip op. at 3 (N.H. August 3, 2006) (quoting *Goode v. N.H. Legislative Budget Assistant*, 148 N.H. 551, 553 (2002)).

I. WHICH GOVERNMENTAL BODIES ARE SUBJECT TO THE RIGHT-TO-KNOW LAW?

The Right-to-Know Law establishes certain procedures to be followed by governmental bodies and certain rights of access by members of the general public to the meetings and records of those bodies. In determining the applicable rights and procedures, the initial inquiry must be whether the governmental body involved is subject to the Right-to-Know Law.

A. IF THE GOVERNMENTAL BODY FALLS WITHIN ONE OF THE DESCRIPTIVE CATEGORIES SET FORTH BELOW, THE RIGHT-TO-KNOW LAW APPLIES:

1. STATE ENTITIES

Application: These government agencies are to maintain their public records in a way that makes them available to the public. *NHCLU v. City of Manchester*, 149 N.H. 437 (2003).

- a. The New Hampshire Senate and House of Representatives, including executive sessions of committees; and including nay advisory committee established by the Senate or House. RSA 91-A:1-a, I(a).
- b. The Executive Council and the Governor with the Executive Council, including any advisory committee established by the governor by executive order or by the executive council. RSA 91-A:1-a, I(b).
- c. The Board of Trustees of the University System of New Hampshire, including any advisory committee established by the Board of Trustees. RSA 91-A:1-a, I(c).

- d. All State executive branch agencies and departments including any board or commission of any state agency or authority, with the exception of certain records of the Department of Employment Security; and including any advisory committee established by any board or commission of any state agency or authority. *See Lodge v. Knowlton*, 118 N.H. 574 (1978); RSA 91-A:1-a, I(c); RSA 91-A:6; RSA 282-A:117-123.
- e. Several state statutes create bodies corporate and politic (entities that have a distinct legal existence separate from the state and are not a department of state government). *E.g.*, RSA 162-A:3 (Business Finance Authority); RSA 204-C (Housing Finance Authority);¹ RSA 35-A (Municipal Bond Bank); and RSA 12-G (Pease Development Authority). Some of the statutes creating these entities expressly state whether the Right-to-Know Law applies, but others are silent on this point. Absent express statutory language, applicability of the Right-to-Know Law will depend on the nature and extent of the governmental functions the entity performs. *See generally Northern New Hampshire Lumber Co. v. New Hampshire Water Resources Board*, 56 F. Supp. 177, 180 (D.N.H. 1944); *see also Professional Firefighters of N.H. v. Healthtrust, Inc.*, 151 N.H. 501, 505 (2004) (Court considered whether the entity was a public instrumentality, whether it used public funding, whether it performed public and essential governmental functions, enjoyed the tax-exempt status of a public entity or solely benefited governmental entities).

2. COUNTY AND MUNICIPAL ENTITIES

The Right-to-Know Law applies to all boards, commissions, agencies, or authorities, committees, subcommittees, subordinate bodies or advisory committees of all political subdivisions of the State, including, but not limited to counties, towns, municipal corporations, village districts, school districts, school administrative units, and charter schools. RSA 91-A:1-a, I(d); *see Selkove v. Bean*, 109 N.H. 247 (1968) (pertaining to meetings of the Keene Municipal Finance Committee).

II. MEETINGS

If the governmental body is one of those included above, the Right-to-Know Law imposes certain procedural requirements with respect to its meetings.

¹ The New Hampshire Housing Finance Authority is subject to the Right-to-Know Law. While the Authority is a body politic and corporate having a distinct legal existence separate from the State and not constituting a department of state government, and while in many of its day-to-day operations the Authority functions independently of the State, the Authority performs the essential government function of providing safe and affordable housing to the elderly and low income residents of the State. *Union Leader Corp. v. New Hampshire Hous. Fin. Auth.*, 142 N.H. 540 (1997).

A. WHEN DOES A PUBLIC BODY HOLD A MEETING?

1. A public body holds a meeting under the Right-to-Know Law when two criteria are met:
 - a. A quorum of the membership of the public body is convened; and
 - b. The purpose of the meeting is to discuss or act upon a matter or matters over which the public body has supervision, control, jurisdiction or advisory power. RSA 91-A:2. *See Herron v. Northwood*, 111 N.H. 324, 326-27, 282 (1971) (town budget committee's function of preparing and submitting a budget is subject to public Right-to-Know Law and must be held in a manner open to the public).

The attendance by a quorum of a municipal board of selectmen or planning board at public informational meetings of the Department of Transportation for the purpose of advising the Department concerning a highway project can constitute a "meeting" under RSA 91-A:2, I requiring appropriate notice. Attorney General's Opinion 93-01.

A majority of agency members constitutes a quorum absent some other controlling law. *See* RSA 21:15 (authorizing a majority of agency members to take agency action).

2. When less than a quorum convenes, there is no meeting within the meaning of the Right-to-Know Law unless the group is a committee of the larger body. In that case, the Right-to-Know Law applies if a quorum of the committee has convened. If members of the public body constituting less than a quorum are joined by an additional member, thereby creating a quorum, the Right-to-Know Law and its notice and procedural requirements then apply.
3. Chance or social meetings neither planned nor intended for the purpose of discussing matters relating to official business, and at which no decisions are made, are specifically exempt from the open meeting requirement. The Right-To-Know Law does not apply to isolated conversations among individual members outside of public meetings, unless the conversations were planned [or] intended for the purpose of discussing matters relating to official business and the public entity made decisions during the isolated conversation. *Webster v. Town of Candia*, 146 N.H. 430 (2001). Such meetings may not be used to circumvent the spirit of the Right-to-Know Law; therefore, if official deliberations occur or if a decision is made at such gatherings or if the gatherings occur on a regular basis, a court may determine that they constitute "meetings" under the Right-to-Know Law. RSA 91-A:2, I(a).

4. The definition of “meeting” covered by RSA 91-A excludes strategy or negotiations with respect to collective bargaining, a caucus elected on a partisan basis at a state or municipal general election and consultation with legal counsel. RSA 91-A:2, I(b-d). These statutory exclusions are consistent with the holdings of *Appeal of Town of Exeter*, 126 N.H. 685 (1985) (collective bargaining) and *Society for Protection of New Hampshire Forests v. WSPCC*, 115 N.H. 192 (1975) (consultation with legal counsel); *Talbot v. Concord Union School Dist.*, 114 N.H. 532, 535-36 (1974) (negotiations between school board and union committee not subject to public Right-to-Know statute although approved agreements were subject to the statute).
5. Consultation with legal counsel is not a “meeting” under RSA 91-A, nor does it fall within the “non-public” meeting provisions. If, however, a government body is meeting in public session and wants to consult with legal counsel, it should vote on the record to adjourn the meeting. If the government body intends to reconvene the public meeting, it should vote to temporarily adjourn the meeting for the purpose of consulting with legal counsel. Everyone except the members of the government body should be excluded from the meeting room during any consultation with legal counsel. Minutes are not required for consultation with legal counsel.

B. NOTICE - RSA 91-A:2

Assuming the governmental body is subject to the Right-to-Know Law and intends to convene a meeting within the meaning of the Right-to-Know Law, notice must be given as follows:

1. REGULAR NOTICE

- a. Either of the two following forms of notice is proper under the Right-to-Know Law:
 - (1) Notice of the time and place of any meeting (including non-public sessions) shall be posted in two appropriate places 24 hours prior to the meeting, excluding Sundays and legal holidays. RSA 91-A:2, II. Notices should be posted where people are likely to see them, such as on the government body’s website, the location where the checklist or town warrant is posted, or the agency’s office lobby or front door and the State House or Town Hall bulletin board; or
 - (2) Notice of the time and place of the meeting shall be printed in a newspaper of general circulation in the city or town at least 24 hours prior to the meeting, excluding Sundays and legal holidays.

- b. If the body decides to go into non-public session during an open meeting, the notice for the open meeting will suffice. If both public and non-public sessions are planned in advance, the notice should so state and generally identify the topics to be addressed in each session, including a brief outline of the agenda for each session.
- c. Individual notice may not be necessary where particular individuals are affected so long as notice is proper as described above. *See Brown v. Bedford School Bd.*, 122 N.H. 627, 631 (1982) (under the Right-to-Know Law probationary teachers not entitled to individual notice of public meeting at which teachers' terminations were on the agenda where notice was otherwise proper).
- d. Additional notice may not be necessary for continuation of public meetings. *See Town of Nottingham v. Harvey*, 120 N.H. 889, 894-95 (1980) (recess of a public zoning meeting until a later date without notice of the second date did not violate right-to-know statute).

2. EMERGENCY NOTICE PROCEDURE

- a. This method of notice may be utilized if the chairperson or presiding officer of the public body decides that an emergency exists and that immediate action is imperative.
- b. Notice shall be made by whatever means are available to inform the public about the meeting. For example, notice may be given over the radio, the body may post notice, and/or may notify by telephone persons known to be interested in the subject matter of the meeting. The nature of the emergency will dictate the type of notice which can be given. In any event, a diligent effort must be made to provide some sort of notice.
- c. In the event an emergency meeting is required in an adjudicative proceeding (*see* RSA 541-A:I, I), notice must be provided to all parties unless the body possesses authority to issue an *ex parte* order in the case at hand.
- d. The minutes of the meeting must clearly spell out the need for the emergency meeting.

3. NOTICE OF LEGISLATIVE MEETINGS

Notice of legislative committee meetings shall be made in accordance with the Rules of the House of Representatives and the Rules of the Senate, as appropriate. *See Hughes v. Speaker of the N.H. House of Representatives*, 152

N.H. 276, 278 (2005) (issue of whether Speaker of the House violated Right-to-Know Law by excluding representative from meetings of conferees was a nonjusticiable political question); *see also Baines v. NH Senate President*, 152 N.H. 124, 130 (2005) (authority to adopt procedural rules for passing legislation is demonstrably committed to the legislative branch by Part II, articles 22 and 37 of the NH Constitution.).

4. BROADER ACCESS

Any public body acting by its charter or by rules or guidelines may provide broader public access to meetings or records than the law requires. If such charter provisions, guidelines, or rules of order have been adopted, their provisions shall take precedence over the provisions of the Right-to-Know Law. RSA 91-A:2.

5. EFFECT OF FAILURE TO OBSERVE NOTICE REQUIREMENTS

Failure to properly notify the public subjects the agency to possible judicial sanctions, including an order declaring the meeting invalid, an order enjoining agency actions or practices, and an order assessing legal costs and fees. RSA 91-A:7 and 8; *see also* Section IV of this memorandum.

C. PROCEDURES AT MEETINGS

Meetings of bodies subject to the Right-to-Know Law are open to the public unless the body is authorized to hold a non-public session. RSA 91-A:2.

1. CHARACTERISTICS OF OPEN MEETINGS

- a. Any person may attend an open meeting.
- b. No vote in an open meeting may be taken by secret ballot except for:
 - (1) Town meetings and elections
 - (2) School district meetings and school district elections
 - (3) Village district meetings and elections
- c. Any person may record, film, or videotape an open meeting. *See WMUR v. N.H. Dept. of Fish and Game*, No 2005-787, slip. op. (N.H. August 3, 2006) (prohibiting television cameras at hearing on issuance of a hunting and fishing license because the presence of cameras would impair the applicants ability to present his case violated the Right-to-Know Law

where the applicant had not established that he had a due process right to a hearing without cameras present).²

- d. Minutes must be recorded and must include:
 - (1) The names of the members present
 - (2) The names of persons appearing before the body
 - (3) A brief description of each subject discussed
 - (4) A description of all final decisions made, including all decisions to meet in non-public session. “Final decisions” include actions on all motions made, even if the motion fails. A clear description of the motion, the person making the motion and the person seconding the motion should also be included

- e. Minutes are not required to include stenographic or verbatim transcripts. *DiPietro v. City of Nashua*, 109 N.H. 174 (1968). However, there may be other statutes which require a verbatim record for certain types of public proceedings. *E.g.*, adjudicative hearings conducted under RSA 541-A:31, VII.

- f. Minutes are a permanent part of the body’s records and must be recorded and open to public inspection within 144 hours (6 days) of the meeting.³ RSA 91-A:2, II. THERE ARE NO EXCEPTIONS TO THE MINUTE REQUIREMENTS FOR OPEN MEETINGS. Draft minutes can be used to satisfy this requirement until the final minutes are completed, but they must be clearly marked “Draft.”

² The Court did not reach the question of whether the right to due process, if it had been established, would outweigh the right to use television cameras at a public hearing. Television cameras should generally be allowed at public hearings.

³ RSA 641:7 reflects the importance of keeping minutes which accurately record the proceedings before the public body. This statute imposes a misdemeanor penalty upon persons who “tamper with public records or information.” A person is guilty of this crime if he or she:

- I. knowingly makes a false entry in or false alteration of any thing belonging to, received, or kept by the government for information or record, or required by law to be kept for information of the government; or
- II. presents or uses any thing knowing it to be false, and with a purpose that it be taken as a genuine part of information or records referred to in paragraph I; or
- III. purposely and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such thing. RSA 641:7.

- g. The right of the public to inspect public records including minutes of meetings specifically includes inspection and copying, after the completion of a meeting and during regular business hours, of all notes, materials, tapes or other sources used by an agency to compile the minutes of the meeting. RSA 91-A:4, II. An agency is not obligated to retain notes, tapes or other draft materials used to prepare minutes after final minutes have been approved, prepared and filed, *Brent v. Paquette*, 132 N.H. 415, 420 (1989); but if such draft materials are retained after the agency has approved final minutes, they will be subject to inspection. *See Orford Teachers Association v. Watson*, 121 N.H. 118 (1981).
- h. The public body should state during the public meeting what action it is taking when signing a check. The court may see the check signing process as a “*de facto* secret ballot” if the public is denied access to information about the checks being signed. *See generally Cioffi v. Sanbornton*, No. 2001-E-022, Belknap County Superior Court (2001).⁴

2. CHARACTERISTICS OF NON-PUBLIC SESSIONS⁵

- a. A body or agency may exclude the public only if a recorded roll call vote is taken on a motion to go into non-public session which states the statutory basis for the non-public session.

The allowable grounds for holding a non-public session are limited to the consideration of the following matters:

- (1) The dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him, unless the employee affected (1) has a right to a meeting pursuant to statute, rule or applicable law and (2) requests an open meeting in which case the request shall be granted. RSA 91-A:3, II(a)

Note: The “right to a meeting” provision was added by Laws of 1992, Chapter 34:1, and effectively replaces the holding in *Johnson v. Nash*, 135 N.H. 534 (1992), because any person with a right to a meeting would be entitled to personal notice of that meeting.

Nonetheless, if the body plans to hold a non-public

⁴ Superior Court orders cannot be cited as authority or precedent. The citations to Superior Court orders in this Memorandum are for information and guidance only.

⁵ Chapter 217, Laws of 1991, deleted the term “executive session” throughout RSA Ch. 91-A and replaced it with the term “non-public session.”

“hearing” on the discipline, compensation or promotion of a particular employee, it should state this intention in the notice sent to the parties and remind them of their right to request an open meeting.

- (2) The hiring of any person as a public employee
- (3) Matters which, if discussed in public, likely would affect adversely the reputation of any person, other than a member of the body or agency itself, unless such person requests an open meeting.⁶ This exception shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant
- (4) Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, likely would benefit a party or parties whose interests are adverse to those of the general community
- (5) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the body or agency or any subdivision thereof, or against any member thereof because of his membership in such body or agency, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any body, board or agency for the purposes of this subparagraph
- (6) Consideration of applications by the Adult Parole Board under RSA 651-A
- (7) Consideration of security-related issues bearing on the immediate safety of personnel or inmates at the county correctional facilities by facility superintendents or their designees

⁶ In *Appeal of Plantier*, 126 N.H. 500 (1985), the New Hampshire Supreme Court ruled that the New Hampshire Board of Registration in Medicine could not rely on this section to hold a closed disciplinary hearing to protect the reputation of a complaining witness where another, more specific, statute entitled the physician complained against to an open hearing if he requested one.

- (8) Consideration of applications by the Business Finance Authority under RSA 162-A:7-10 and 162-A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application
 - (9) Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life
- b. Unless a specific statute authorizes a body to deliberate in non-public session on a particular question, public bodies must deliberate in public.⁷
 - c. The reason for going into non-public sessions should be articulated with a specific reference to an appropriate section in RSA 91-A:3, II. If the body is relying on other law, a reference to that law should be included in the minutes. *See generally Cioffi v. Sanbornton*, No. 2001-E-022, Belknap County Superior Court (2001).
 - d. A public body may take final action in a non-public session on matters which may properly be considered in non-public sessions.
 - e. Minutes of non-public sessions:
 - (1) The decision to hold a non-public session must be included in the minutes of the open meeting
 - (2) Minutes of non-public sessions are required. These minutes (including any decisions reached by the body) must be disclosed within 72 hours unless two-thirds of the members present determine that divulgence of the information would:
 - (a) Likely affect adversely the reputation of any person other than a member of the body or agency itself.

⁷ The former law permitting non-public sessions for public bodies to deliberate for any purpose was repealed effective January 1, 1992. Public bodies may now meet in non-public session only for one of the specific purposes listed in RSA 91-A:3, II.

- (b) Render the proposed action ineffective.
 - (c) Pertain to terrorism.
- (3) The determination by two-thirds of the members present not to divulge the information is a “decision” which must be recorded together with the reasons for non-disclosure. The decision on the matter under consideration must be recorded in the minutes, although it need not be disclosed until a majority of the members determine that the circumstances set forth in (a), (b), or (c) above no longer apply

III. RECORDS

A. WHAT IS A PUBLIC RECORD?

Every citizen during the regular or business hours of all such bodies or agencies, and on the regular business premises of such bodies or agencies, has the right to inspect all public records, including minutes of meetings of the bodies or agencies, and to make memoranda, abstracts, and photographic or photostatic copies of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5. RSA 91-A:4, I.

Case law indicates that the term “public record” refers to specific pre-existing files, documents or data in an agency’s files, and not to information which might be gathered or compiled from numerous sources. *Brent v. Paquette*, 132 N.H. 415, 426 (1989). Documents or data which are covered by statutory or common law privileges or exclusions are excluded from the definition of “public records.” See RSA 91-A:4, I (referring to statutory exclusions). Some, but not all, of these privileged and excluded records are included among the exemptions specified in RSA 91-A:5, e.g., medical treatment records. If you question whether a document is a public record, you should consult your legal counsel.⁸

⁸ The interpretation of the Right-to-Know Law is decided ultimately by the New Hampshire Supreme Court, which resolves questions regarding the law with a view to providing the utmost information, in order to best effectuate the statutory and constitutional objectives of facilitating access to all public documents. Thus, while the statute does not provide for unrestricted access to public records, provisions favoring disclosure are broadly construed and exemptions are interpreted restrictively. *Union Leader Corp. v. New Hampshire Hous. Fin. Auth.*, 142 N.H. 540 (1997).

B. RECORDS REQUIRED TO BE DISCLOSED

1. Individual salaries and employment contracts of local school teachers. *Mans v. Lebanon School Board*, 112 N.H. 160 (1972).
2. Names and addresses of substitute teachers hired during a strike. *Timberlane Regional Education Assn. v. Crompton*, 114 N.H. 315 (1974).
3. Certain law enforcement investigative records. *Lodge v. Knowlton*, 118 N.H. 574 (1978). (This is discussed in more detail below.)
4. A computerized tape of field record cards concerning property tax information. *Menge v. City of Manchester*, 113 N.H. 533 (1973).
5. State agency budget requests and income estimates submitted pursuant to RSA 9:4, 5 to the Commissioner of Administrative Services. *Chambers v. Gregg*, 135 N.H. 478 (1992).
6. Records of any payment in addition to regular salary and accrued vacation, sick, and other leave, made to an employee of any public agency or body listed in RSA 91-A:1a, I-IV, or to an employee's agent or designee, upon the employee's resignation, discharge, or retirement. RSA 91-A:4, I-a.

C. ACCESS TO INFORMATION STORED IN COMPUTERS

Public documents stored in computers shall be available in the same manner as records stored in public files if access to such records would not reveal work papers,⁹ personnel data or other confidential information. RSA 91-A:4, V. The New Hampshire Supreme Court has held that a record does not lose its status as public because it is stored in a computer system. *Hawkins v. N.H. DHHS*, 147 N.H. 376 (2001). The Right-To-Know Law does not require an agency to compile data in the format requested by a member of the public or to create a new document. In dicta, the Court states that RSA 91-A does require that public records be maintained in a manner that makes them available to the public. *Hawkins*, 147 N.H. at 379.

D. SETTLEMENTS OF LAWSUITS

Every agreement to settle a lawsuit against a governmental unit, threatened lawsuit, or other claim entered into by any political subdivision or its insurer, shall

⁹ Work papers are not automatically exempt from disclosure. The Court is charged with balancing the competing interests between disclosure and nondisclosure. *Goode v. New Hampshire Office of the Legislative Budget Assistant*, 148 N.H. 551 (2002).

be kept on file at the municipal clerk's office and made available for public inspection for a period of no less than 10 years. RSA 91-A:4, VI.

E. EXEMPTIONS FROM DISCLOSURE

1. STATUTORY EXEMPTIONS - RSA 91-A:5

- a. Records of grand and petit juries.¹⁰
- b. Records of parole and pardon boards.
- c. Personal school records of pupils. *Brent v. Paquette*, 132 N.H. 415 (1989); *see also* 20 U.S.C. §1232(F), *et seq.*, known as the Buckley Amendment or the Family Educational Rights and Privacy Act ("FERPA").
- d. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examinations for employment or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental and other files whose disclosure would constitute an invasion of privacy.¹¹ *See Hounsell v. North Conway Water Precinct*, No 2005-505, slip op. (N.H. August 1, 2006); *see also Lamy v. NH Public Utilities Commission*, 152 N.H. 106 (2005).
- e. Teacher certification records, both hard copies and computer files, in the Department of Education; however, the department shall make teacher certification status available. RSA 91-A:5, V.

¹⁰ This extends to stenographic notes and transcripts of grand jury proceedings. *State v. Purrington*, 122 N.H. 458 (1982).

¹¹ A town officer may be dismissed from office if the confidentiality provided by RSA 91-A:3 or :5 is breached. RSA 42:1-a, II provides:

Without limiting other causes for such a dismissal, it shall be considered a violation of a town officer's oath for the officer to divulge to the public any information which that officer learned by virtue of his official position, or in the course of his official duties, if:

(a) A public body properly voted to withhold that information from the public by a vote of 2/3, as required by RSA 91-A:3, III, and if divulgence of such information would constitute an invasion of privacy, or would adversely affect the reputation of some person other than a member of the public body or agency, or would render proposed municipal action ineffective; or

(b) The officer knew or reasonably should have known that the information was exempt from disclosure pursuant to RSA 91-A:5, and that its divulgence would constitute an invasion of privacy, or would adversely affect the reputation of some person other than a member of the public body or agency, or would render proposed municipal action ineffective.

- f. Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.
- g. Certain information regarding the State's contracting process. Notwithstanding RSA 91-A:4, no information shall be available to the public concerning specific invitations to bid or other proposals for public bids, from the time the invitation or proposal is made public until the bid is actually awarded, in order to protect the integrity of the public bidding process. RSA 21-I:13-a, II; *see also Irwin Marine Inc. v. Blizzard Inc.*, 127 N.H. 271 (1985) (government contracting process must be fair; any procedure that places a bidder at a disadvantage violates the public interest and weakens public confidence in government). Information concerning specific invitations to bid or other proposals for public bid may be disclosed when the proposed contract and accompanying documents are placed on the public Governor and Executive Council agenda for approval or at the time when sealed competitive bids are opened before the public.
- h. The public body must have a basis for invoking the exemption and may not simply mark a document "confidential" in an attempt to circumvent disclosure. To best effectuate the purposes of the Right-to-Know Law, whether information is "confidential" must be determined objectively, and not based on the subjective expectations of the party generating it.

Except when the result is plainly established by the Right-to-Know Law itself, courts will apply a test which balances the benefits of public disclosure against the benefits of nondisclosure in construing the scope of RSA 91-A:4 and RSA 91-A:5. In *Union Leader Corp. v. Fenniman*, 136 N.H. 624 (1993), the court held that a balancing test would be inappropriate where the legislative history was clear that internal police investigatory files were "records pertaining to internal personnel practices." In *Goode v. Buckley*, 148 N.H. 551 (2002), the Court held that "while . . . 'work papers' is a category of confidential information under RSA 91-A:5, IV, there must be a balancing test applied to determine whether they are sufficiently confidential to justify nondisclosure."

In *Union Leader Corp. v. City of Nashua*, 141 N.H. 473 (1996), the court held that the motives of a particular party seeking disclosure are irrelevant when conducting the balancing test between the public's interest in disclosure and a private citizen's interests in privacy. There is a presumption in favor of disclosure and when no privacy interest is involved, disclosure is mandated. However, the general public must have a

legitimate interest in the information and disclosure must serve the purpose of informing the public about the activities of the government.

The New Hampshire Supreme Court adopted the United States Supreme Court's view that information about private citizens in government files that reveals nothing about an agency's conduct is not within the purpose of the Right-To-Know Law. *Lamy v. NH Public Utilities Commission*, 152 N.H. 106 (2005) (the names and addresses of PSNH's residential customers are private and disclosure does not inform the public about the conduct of the PUC; however, PSNH's business customers do not have a privacy interest and their names and addresses must be disclosed under the Right-To-Know Law); *see also, U.S. Dept. of Justice v. Reporters Committee*, 489 U.S. 749, 773 (1989). An *ex parte in camera* review of records whose release may cause an invasion of privacy is appropriate. *Union Leader Corp.*, 141 N.H. at 478.

- i. "Invasion of privacy" will not be so broadly construed as to defeat the purpose of the Right-to-Know Law. *Mans v. Lebanon School Board*, 112 N.H. 160 (1972). In *Brent v. Paquette*, 132 N.H. 415 (1989), the Court balanced the competing interests of society against those of school children and their parents and determined that disclosure of the names and addresses would be an invasion of privacy.
- j. Many agencies are subject to federal and state statutes and regulations establishing the confidentiality of certain types of information. Examples of state statutes include, but are not limited to:
 - (1) Certain records of the Department of Employment Security. RSA 282-A:118
 - (2) Public assistance records. RSA 167:30
 - (3) Physician-patient communications. RSA 329:26
 - (4) Certain records of the Insurance Department. RSA 400-A:25
 - (5) Certain consumer protection and antitrust records of the Office of Attorney General. RSA 356:10, V and RSA 358-A:8, VI
 - (6) Enhanced 911 System records. RSA 106-H:14
 - (7) Motor vehicle records. RSA 260:14, II(a). *See DeVere v. Attorney General*, 146 N.H. 762 (2001)

To determine which records of an agency or body are confidential, all applicable federal and state statutes and regulations must be analyzed.

- k. Records from non-public sessions under RSA 91-A:3, II(i) (emergency functions) or that are exempt under RSA 91-A:5, VI (emergency functions) may be released to local or state safety officials. Records released under this section shall be marked “limited purpose release” and shall not be disclosed by the recipient. RSA 91-A:5(a).
- l. If disclosure of a record is prohibited by statute, the Right-to-Know Law does not compel disclosure. RSA 91-A:4, I.

2. OTHER EXCEPTIONS TO DISCLOSURE

- a. Written legal advice from the agency’s or body’s counsel. *Society for the Protection of N.H. Forests v. Water Supply and Pollution Control Commission*, 115 N.H. 192 (1975).
- b. Documents or material which an agency would be permitted to receive in non-public session to the extent disclosure of such records would frustrate the purpose for the non-public session.¹²
- c. The Right-to-Know Law does not require the probing of the mental processes of governmental decision-makers. *See Merriam v. Salem*, 112 N.H. 267, 268 (1972). In other words, the Right-to-Know Law does not give the public the right to force a government decision maker to explain, beyond what has already been disclosed in a public document, why he or she made a particular decision.
- d. While many draft or advisory documents may be public records, the Right-to-Know Law does not require disclosure that would effectively prohibit the frank, open, and honest discussion that is so necessary to reasoned decision-making. *See Chambers v. Gregg*, 135 N.H. 478, 481 (1992) (“[I]t is arguable that the interaction between the Governor and department heads ... constitutes a deliberative process.”).
- e. Any notes or other materials made for personal use that do not have an official purpose, including notes and materials made prior to, during, or after a public proceeding. RSA 91-A:5, VII.

¹² The reasons behind both (a) and (b) are fairly obvious. If an agency can exclude the public from certain meetings and receive legal advice or information in such a closed session, the forced public disclosure of those documents would nullify the effect of holding a non-public session.

- f. Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of those entities defined in RSA 91-A:1-a.
- g. Bank examiners' reports. *Appeal of Portsmouth Trust Co.*, 120 N.H. 753 (1980).
- h. Real estate appraisal reports compiled by the Department of Transportation. *Perras v. Clements*, 127 N.H. 603 (1986).
- i. Quality assurance records maintained by ambulatory care clinics. *Disabilities Rights Center, Inc. v. Comm'r, N.H. Dept. of Corrections*, 146 N.H. 430 (1999).
- j. A public body may release information concerning health or safety to persons whose health or safety might be affected without compromising the confidentiality of the files. RSA 91-A:5, IV.

3. LAW ENFORCEMENT INVESTIGATIVE FILES

Relevant portions of the Federal Freedom of Information Act, 5 U.S.C. § 552(b)(7), have been adopted as the standard for the disclosure or non-disclosure of law enforcement investigative records. *Lodge v. Knowlton*, 118 N.H. 574 (1978).

If the records requested are (1) investigative records and (2) compiled for law enforcement purposes, they may be withheld if the law enforcement agency can prove that disclosure would either:

- a. Interfere with enforcement proceedings; or
- b. Deprive a person of a right to a fair trial or an impartial adjudication; or
- c. Constitute an unwarranted invasion of privacy¹³ (NOTE: The statutory exemption for invasion of privacy will be strictly construed. *Mans v. Lebanon School Board*, 112 N.H. 160 (1972)); or
- d. Reveal the identity of a confidential source, and in the case of a record compiled by a law enforcement authority in the course of a criminal

¹³ In *Union Leader Corp. v. City of Nashua*, No. 95-E-023 (1997), the Hillsborough County Superior Court held that police reports and a videotape of a defendant arrested for drunk driving but not prosecuted for that offense were not exempt from the Right-to-Know Law. The court reasoned that the information would shed light on the police department's activities and that the defendant's privacy interest was "weak" due to the fact that his arrest was widely reported in the press.

investigation or by any agency conducting a lawful national security investigation, confidential information furnished only by a confidential source; or

- e. Reveal investigative techniques and procedures; or
- f. Endanger the life or physical safety of law enforcement personnel.

The burden of proof is on the law enforcement agency to show that the record is exempt. It is not the responsibility of the person requesting the record to show that no exemption applies.¹⁴ If a law enforcement entity denies a request for investigative files, the response to the request should include an explanation of the basis for non-disclosure. In *Hopwood v. Pickett*, 145 N.H. 207 (2000), the court held that investigatory records may only be withheld if the State objects to their release.¹⁵

4. GUIDANCE IN PRODUCING LAW ENFORCEMENT INVESTIGATIVE RECORDS

Requests for the production of investigative records should be considered in light of all the relevant facts and circumstances. There is no test to apply in every instance to determine which documents may be withheld and which must be disclosed. However, in order to provide law enforcement with some assistance in resolving such requests, additional guidance follows:

a. Interference With Law Enforcement Proceedings

The proceedings do not have to be pending, but there should be a reasonable likelihood of adjudicatory proceedings at some point in the future. This would include an unresolved crime where some effort continues to be expended to solve it.

This exemption would not justify, for instance, withholding investigative records concerning an unquestioned suicide, although other exceptions might apply; for example, the report may include facts whose disclosure would constitute an invasion of privacy.

¹⁴ If none of the *Lodge* exemptions applies to a particular record, one of the statutory exemptions described in Section III, E of this memorandum may still apply.

¹⁵ The burden is on the state agency to object to a request to introduce investigatory records; otherwise the court may not rely on *Lodge* in refusing to admit them.

b. Accused's Right To Fair Trial

This exemption probably would apply in all pretrial situations. Information which might prejudice an accused's right to a fair trial includes records relating to the following:

- (1) The guilt or innocence of a defendant
- (2) The character or reputation of a suspect
- (3) Examinations or tests which the defendant may have taken or have refused to take
- (4) Gratuitous references to a defendant; for example, reference to the defendant as "a dope peddler"
- (5) The existence of a confession, admission or statement by an accused person, or the absence of such
- (6) The possibility of a plea of guilty to the offense charged or a lesser offense
- (7) The identity, credibility or testimony of prospective witnesses
- (8) Any information of a purely speculative nature
- (9) Any opinion as to the merits of the case or the evidence in the case

c. Unwarranted Invasion of Privacy

In determining whether disclosure of documents will constitute an unwarranted invasion of privacy, the court will balance the public and/or private interest in the information sought against the severity of the invasion of privacy. If the public body asserts this exemption in good faith, the individual requesting the information will have to provide a reason or need for the information, contrary to most Right-to-Know Law situations. Although the federal courts are in some disagreement, there is substantial authority to support the nondisclosure of the types of information listed below on the grounds that their disclosure constitutes an unwarranted invasion of privacy, which is another way of saying an invasion of privacy without justification or adequate reason. Remember that these are not blanket exceptions. The facts and circumstances of each situation must be carefully examined to determine whether the privacy exception will apply. Information regarding the following matters may be exempt under this section:

- (1) Marital status¹⁶
- (2) Legitimacy of children
- (3) Medical conditions
- (4) Welfare payments
- (5) Alcohol consumption
- (6) Family fights
- (7) Names of witnesses who cooperated by providing information to authorities and the information provided by them¹⁷
- (8) Names of subjects of investigation

d. Confidential Source

This relates to the informant situation and will probably cover express or implied assurances of confidentiality.

e. Investigative Techniques And Procedures

This exclusion should not be interpreted to include routine techniques and procedures already well known to the public, but should cover techniques and procedures not commonly known.

¹⁶ In *Petition of Keene Sentinel*, 136 N.H. 121, 128 (1992), the Supreme Court held that divorce records which were sealed in Superior Court could not remain sealed merely by asserting a general privacy interest. Right of access to these records must be weighed and balanced against privacy interests that are articulated with specificity; *see also Associated Press v. State*, 153 N.H. 120 (2005) (affirming that burden of justifying non-disclosure lies with the party seeking to prevent disclosure).

¹⁷ The reasoning behind this exclusion has been explained as follows:

Public policy requires that individuals may furnish investigative information to the government with complete candor and without the understandable tendency to hedge or withhold information out of fear that their names and the information they provide will later be open to the public. *Forrester v. U.S. Dept. of Labor*, 433 F. Supp. 987 (S.D.N.Y. 1977), *aff'd*, 591 F.2d 1330 (2d Cir. 1978).

Such disclosure might have a “chilling effect on sources.” *Id.*; *see also Tarnopol v. FBI*, 442 F. Supp. 5 (D.D.C. 1977); *Ferguson v. Kelly*, 448 F. Supp. 919 (N.D. Ill., 1977), reconsideration granted 455 F. Supp. 324 (N.D. Ill. 1978).

f. Endangering Life Or Physical Safety Of Law Enforcement Personnel

This exclusion has not been widely construed, but appears to be fairly straightforward.

Any investigative record, whether open, closed, active, or inactive may fall within the exemptions. For instance, the disclosure of an open or active file could interfere with enforcement proceedings in many ways: apprehending a suspect, disclosing trial strategy, etc. Disclosure of a closed file would not be likely to interfere with enforcement proceedings but might constitute an unwarranted invasion of privacy or make public the name of a confidential informant. If only a portion of the record is exempt, the remaining portion must be disclosed if it is reasonably segregable from the non-exempt portions.

Many of the exemptions for law enforcement investigative records have yet to be interpreted by the New Hampshire courts. The above guidance is based on federal case law, which a New Hampshire court may reject. Nevertheless, the needs, demands, and results of good law enforcement are complex and long lasting, and the federal case law will not be lightly disregarded. It is important, therefore, that these exemptions be applied thoughtfully and carefully. The mere assertion of an exclusion without adequate reason or justification will not be sufficient to sustain a law enforcement agency's denial of a request for information under the Right-to-Know Law.

In a 2006 decision, the Supreme Court clarified the law enforcement investigative records exception (A), interference with law enforcement proceedings. *Murray v. New Hampshire Division of State Police*, No 2006-113, Slip Op. (N.H. Dec. 20, 2006). To justify the withholding of records, an agency should categorize for the court the investigatory records and each category must be defined precisely. The description should not reveal the contents of withheld documents, but should provide enough information to allow a court to determine if the documents must be disclosed.

Affidavits, testimony, or other evidence should be provided to the court that explains how the disclosure of the information within the categories could interfere with any investigation or enforcement. The law enforcement agency may also be required to explain why there is no reasonably segregable portion of the withheld materials within the category that is suitable for release. *Murray v. New Hampshire Division of State Police*, No 2006-113, Slip Op. (N.H. Dec. 20, 2006).

F. BURDEN OF PROOF

In all cases, the public body bears the burden of proving that a record is not subject to public release.

In cases where disputed evidence cannot be reviewed effectively, a court may order that the party resisting disclosure prepare a detailed document index pursuant to *Vaughn v. Rosen*, 157 U.S. App. D.C. 340, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974), in order to determine whether the documents in question are exempt from the Right-to-Know Law. *Union Leader Corp. v. New Hampshire Hous. Fin. Auth.*, 142 N.H. 540 (1997). In cases of this type, the best practice is to prepare a document index such as described in *Vaughn*.

G. PUBLIC INSPECTIONS - RSA 91-A:4, IV

1. If no exemption applies, the record is subject to public inspection. Any citizen has the right to inspect all non-exempt public records during the regular business hours on the regular business premises of the public body.¹⁸
2. If the public body does not have a regular office or place of business, the public records shall be kept in an office of the political subdivision in which the body is located or, in the case of a state agency, in an office designated by the Secretary of State. RSA 91-A:4, III.
3. If the agency uses a photocopying machine or other device maintained for use by the agency, the agency may charge only the actual cost of providing the copy unless an applicable fee has been established by law. RSA 91-A:4, IV. If the agency maintains its records in a computer storage system, it may provide a print-out in lieu of the original documents, provided that the agency has the capacity to produce the information in a manner that does not reveal confidential information, and may charge a fee equal to the actual costs of preparing the print-out. The cost of converting a record into a format that may be made available to the public is not a factor in determining whether the information is a public record. *Hawkins v. NH Department of Health and Human Services*, 147 N.H. 376 (2001).
4. Although not specifically addressed in RSA 91-A, there may be certain records, files and documents that contain some information that must be disclosed and some information that is exempt from disclosure. Under these

¹⁸ RSA 91-A:4, I applies only to “citizens,” but the Right-to-Know Law does not define the term, and uses it nowhere else. Instead, the statute emphasizes accountability to “the people,” accessibility to the “public,” and the goals of a “democratic society.” An agency should not, therefore, require persons requesting access to public documents to demonstrate that they are citizens of either New Hampshire or the United States.

circumstances the governmental entity may have an obligation to produce the non-exempt portion of the requested record if the exempt portion can reasonably be redacted or separated from the requested record. If information is redacted, it must effectively block out the exempt portion of the record so that it is unreadable. The governmental entity should retain a copy of both the redacted and unredacted record. The governmental entity producing the record should also include an explanation of why certain information has been redacted or removed from the record. For example, if a record contains both public information and confidential medical information that has been redacted, the person requesting the record should be informed that the record has been redacted because it includes confidential medical information. The applicable section of the Right-To-Know Law indicating why the information is exempt from disclosure should be referenced. State officials should consult with the Attorney General's Office if they have questions regarding this process.

5. A citizen does not have to offer a reason or demonstrate a need to inspect the documents. If a record is public, it must be disclosed regardless of the motive for the request. The issue is always whether "the public should have the information" not whether the particular requesting party should have the information. *Mans v. Lebanon School Board*, 122 N.H. 160 (1972).
6. Whenever access to public records is requested, the agency must make a diligent effort to produce the record. An agency is not required to create a record where one does not exist. If public information is requested in a format that does not exist, the agency is not required to create that format. *Brent v. Paquette*, 132 N.H. 415 (1989).
7. If the requested records are not immediately available, the agency is required to, within five (5) business days, make the record available, deny the request in writing with reasons, or furnish a written acknowledgment of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied. RSA 91-A:4, IV. Arranging a mutually convenient time for the inspection of public documents is consistent with the purposes of the Right-to-Know Law. *Brent v. Paquette*, 132 N.H. 415 (1989).
8. If a public document is unavailable for a limited time because of its removal for use by a government official in discharging his official duties, this is not a violation of the requirement that public documents be available for inspection and copying. *Gallagher v. Town of Windham*, 121 N.H. 156 (1981). The *Gallagher* case also confirmed that, although all public documents must be available for inspection and copying, the public body is not absolutely mandated to provide copies at its labor and expense. Public officials have been cautioned, however, to assist citizens in obtaining copies whenever it is reasonable to do so. *Carbonneau v. Town of Rye*, 120 N.H. 96 (1980).

9. Municipal records shall be retained in the manner specifically set forth in RSA 33-A:3-a. Original town meeting and city council records shall be permanently preserved. RSA 33-A:6.

IV. REMEDIES

The importance of compliance with the Right-to-Know Law is demonstrated by the remedies available to persons aggrieved by a public body's noncompliance.

A. INJUNCTIVE RELIEF - RSA 91-A:7

1. A petition requesting an injunction against a public body may be filed with any Superior Court. Proceedings under this chapter shall be given priority on the court calendar.
2. The petition need only state facts constituting a violation of the Right-to-Know Law and need not adhere to all the formalities normally required of court pleadings. A petitioner may appear with or without legal counsel.
3. *Ex Parte* relief (a decision by the court after hearing only from the petitioner) may be granted when time is of the essence.
4. The court may issue an order enjoining the public body from violating the Right-to-Know Law with regard to future actions subject to its provisions. RSA 91-A:8.

B. ATTORNEY'S FEES AND COSTS - RSA 91-A:8

A body, agency or person violating the Right-to-Know Law will be required to pay for attorneys' fees and costs incurred in a lawsuit under RSA 91-A if the court finds (1) that the lawsuit was necessary in order to make the information available or the proceeding open and (2) that the body, agency or person knew or should have known that the conduct engaged in was a violation. *See Voebel v. Town of Bridgewater*, 140 N.H. 446 (1995) (award of attorney's fees held inappropriate because second factor was not present); *Chambers v. Gregg*, 135 N.H. 478 (1992) (declining to award fees where the second factor was not present); *Goode v. N.H. Office of the Legislative Budget Assistant*, 145 N.H. 451 (2000) (request for attorney's fees properly denied where the record, the trial court's findings, and the area of law revealed that the defendant neither knew nor should have known that its conduct violated the statute); and *New Hampshire Challenge Inc. v. Commissioner, NH Dept. of Education*, 142 N.H. 246 (1997) (holding that attorney's fees are mandated if necessary findings are made).

1. If an officer, employee or other official has acted in bad faith, the fees may be awarded personally against him or her.
2. No fees shall be awarded by the court if the parties have agreed that fees shall not be paid.

C. INVALIDATION OF AGENCY ACTION

A court may invalidate an action taken at a meeting held in violation of the Right-to-Know Law. RSA 91-A:8, II. *See also Stoneman v. Tamworth School District*, 114 N.H. 371 (1974) (imposing such a remedy based upon an agency's failure to provide proper public notice of a meeting before invalidation was expressly included in RSA 91-A:8).

D. SANCTIONS

A court may order summary disclosure when a public agency has improperly refused to disclose its records. Summary disclosure may also be appropriate when an agency refuses to provide a *Vaughn* index when ordered by the court to determine whether documents are exempt from the Right-to-Know Law. *Union Leader Corp. v. New Hampshire Hous. Fin. Auth.*, 142 N.H. 540 (1997) (*See III, E., supra*).

E. DESTRUCTION OF RECORDS

A person is guilty of a misdemeanor who knowingly destroys any information with the purpose to prevent such information from being inspected or disclosed in response to a request under this chapter. If a request for inspection is denied on the grounds that the information is exempt under this chapter, the requested material shall be preserved for 90 days or while any lawsuit pursuant to RSA 91-A:7-8 is pending. RSA 91-A:9.

V. COURT RECORDS

A. THE RIGHT-TO-KNOW LAW DOES NOT APPLY TO THE JUDICIAL BRANCH OF GOVERNMENT

Access to court records is governed by Part I, Article 8 of the New Hampshire Constitution (the public's right of access to governmental proceedings and records shall not be unreasonably restricted). The New Hampshire Supreme Court has specifically recognized that the New Hampshire Constitution creates a right of public access to court records. *Petition of the State of New Hampshire (Bowman Search Warrants)*, 146 N.H. 621 (2001). That right is not absolute and can be overcome when there is a sufficiently compelling interest supporting non-disclosure. The court system has established its own procedures for providing

public access to its records and proceedings. *See Associated Press v. State*, 153 N.H. 120 (2005); *see also Petition of Keene Sentinel*, 136 N.H. 121 (1992).

B. SEALED COURT RECORDS

The Supreme Court, first in *Petition of Keene Sentinel*, 136 N.H. 121 (1992) and more recently in *Associated Press v. State*, 153 N.H. 120 (2005), established the standards to be applied whenever a member of the public, including the press, seeks access to sealed court documents. The standards require that:

1. A party opposing disclosure of the sealed court document must demonstrate that there is a sufficiently compelling reason that would justify preventing public access to the document;
2. The court must determine that no reasonable alternative to non-disclosure exists; and
3. The court must use the least restrictive means available to accomplish the purposes sought to be achieved.

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as of November 27, 2006

TITLE VI
PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 91-A
ACCESS TO PUBLIC RECORDS AND MEETINGS

Section 91-A:1

91-A:1 Preamble. – Openness in the conduct of public business is essential to a democratic society. 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.

Source. 1967, 251:1. 1971, 327:1. 1977, 540:1, eff. Sept. 13, 1977.

Section 91-A:1-a

91-A:1-a Definition of Public Proceedings. –

I. The term "public proceedings" as used in this chapter means the transaction of any functions affecting any or all citizens of the state by any of the following:

(a) The general court including executive sessions of committees; and including any advisory committee established by the general court;

(b) The executive council and the governor with the executive council; including any advisory committee established by the governor by executive order or by the executive council;

(c) Any board or commission of any state agency or authority, including the board of trustees of the university system of New Hampshire and including any advisory committee established by such entities;

(d) Any board, commission, agency or authority, of any county, town, municipal corporation, school district, school administrative unit, charter school, or other political subdivision, or any committee, subcommittee or subordinate body thereof, or advisory committee thereto.

II. For the purposes of this section, "advisory committee" means any committee, council, commission, or other like body whose primary purpose is to consider an issue or issues designated by the appointing authority so as to provide such authority with advice or recommendations concerning the formulation of any public policy or legislation that may be promoted, modified, or opposed by such authority.

Source. 1977, 540:2. 1986, 83:2. 1989, 274:1. 1995, 260:4, eff. July 1, 1995. 2001, 223:1, eff. Jan. 1, 2002.

Section 91-A:2

91-A:2 Meetings Open to Public. –

I. For the purpose of this section, a ""meeting" shall mean the convening of a quorum of the membership of a public body, as provided in RSA 91-A:1-a, to discuss or act upon a matter or matters over which the public body has supervision, control, jurisdiction or advisory power. ""Meeting" shall not include:

(a) Any chance meeting or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business and at which no decisions are made; however, no such chance or social meeting shall be used to circumvent the spirit of this chapter;

(b) Strategy or negotiations with respect to collective bargaining;

(c) Consultation with legal counsel; or

(d) A caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 44:2.

II. All public proceedings shall be open to the public, and all persons shall be permitted to attend any meetings of those bodies or agencies. Except for town meetings, school district meetings and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras and videotape equipment, at such meetings. Minutes of all such meetings, including names of members, persons appearing before the bodies or agencies, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection within 144 hours of the public meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any body or agency, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the body or agency who shall employ whatever means are available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or guidelines or rules of order of any body or agency described in RSA 91-A:1-a require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter.

Source. 1967, 251:1. 1969, 482:1. 1971, 327:2. 1975, 383:1. 1977, 540:3. 1983, 279:1. 1986, 83:3. 1991, 217:2, eff. Jan. 1, 1992. 2003, 287:7, eff. July 18, 2003.

Section 91-A:3

91-A:3 Nonpublic Sessions. –

I. (a) Bodies or agencies shall not meet in nonpublic session, except for one of the purposes set out in paragraph II. No session at which evidence, information or testimony in any form is received shall be closed to the public, except as provided in paragraph II. No body or agency may enter nonpublic session, except pursuant to a motion properly made and seconded.

(b) Any motion to enter nonpublic session shall state on its face the specific exemption under paragraph II which is relied upon as foundation for the nonpublic session. The vote on any such motion shall be by roll call, and shall require the affirmative vote of the majority of members present.

(c) All discussions held and decisions made during nonpublic session shall be confined to the matters set out in the motion.

II. Only the following matters shall be considered or acted upon in nonpublic session:

(a) The dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted.

(b) The hiring of any person as a public employee.

(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the body or agency itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant.

(d) Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.

(e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the body or agency or any subdivision thereof, or against any member thereof because of his or her membership in such body or agency, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any body, board, or agency for the purposes of this subparagraph.

(f) Consideration of applications by the adult parole board under RSA 651-A.

(g) Consideration of security-related issues bearing on the immediate safety of security personnel or inmates at the county correctional facilities by county correctional superintendents or their designees.

(h) Consideration of applications by the business finance authority under RSA 162-A:7-10 and 162-A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application.

(i) Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

III. Minutes of proceedings in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of the body or agency itself, or render the proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying out of all emergency functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. This shall include training to carry out such functions. In the event of such circumstances, information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply.

Source. 1967, 251:1. 1969, 482:2. 1971, 327:3. 1977, 540:4. 1983, 184:1. 1986, 83:4. 1991, 217:3. 1992, 34:1, 2. 1993, 46:1, eff. June 7, 1993; 335:16, eff. June 29, 1993. 2002, 222:2, 3, eff. Jan. 1, 2003. 2004, 42:1, eff. Jan. 1, 2005.

Section 91-A:4

91-A:4 Minutes and Records Available for Public Inspection. –

I. Every citizen during the regular or business hours of all such bodies or agencies, and on the regular business premises of such bodies or agencies, has the right to inspect all public records, including minutes of meetings of the bodies or agencies, and to make memoranda, abstracts, and photographic or photostatic copies of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5.

I-a. Records of any payment made to an employee of any public body or agency listed in RSA 91-A:1-a, I(a)-(d), or to the employee's agent or designee, upon the resignation, discharge, or retirement of the employee, paid in addition to regular salary and accrued vacation, sick, or other leave, shall immediately be made available without alteration for public inspection. All records of payments shall be available for public inspection notwithstanding that the matter may have been considered or acted upon in nonpublic session pursuant to RSA 91-A:3.

II. After the completion of a meeting of such bodies or agencies, every citizen, during the regular or business hours of all such bodies or agencies, and on the regular business premises of such bodies or agencies, has the right to inspect all notes, materials, tapes or other sources used for compiling the minutes of such meetings, and to make memoranda, abstracts, photographic or photostatic copies, or tape record such notes, materials, tapes or sources inspected, except as otherwise prohibited by statute or RSA 91-A:5.

III. Each body or agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or

place of business, the public records pertaining to such body or agency shall be kept in an office of the political subdivision in which such body or agency is located or, in the case of a state agency, in an office designated by the secretary of state.

IV. Each public body or agency shall, upon request for any public record reasonably described, make available for inspection and copying any such public record within its files when such records are immediately available for such release. If a public body or agency is unable to make a public record available for immediate inspection and copying, it shall, within 5 business days of request, make such record available, deny the request in writing with reasons, or furnish written acknowledgment of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied. If a photocopying machine or other device maintained for use by a body or agency is used by the body or agency to copy the public record or document requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the body or agency. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

V. In the same manner as set forth in RSA 91-A:4, IV, any body or agency which maintains its records in a computer storage system may, in lieu of providing original documents, provide a printout of any record reasonably described and which the agency has the capacity to produce in a manner that does not reveal information which is confidential under this chapter or any other law. Access to work papers, personnel data and other confidential information under RSA 91-A:5, IV shall not be provided.

VI. Every agreement to settle a lawsuit against a governmental unit, threatened lawsuit, or other claim, entered into by any political subdivision or its insurer, shall be kept on file at the municipal clerk's office and made available for public inspection for a period of no less than 10 years from the date of settlement.

Source. 1967, 251:1. 1983, 279:2. 1986, 83:5. 1997, 90:2, eff. Aug. 2, 1997. 2001, 223:2, eff. Jan. 1, 2002. 2004, 246:2, eff. Aug. 14, 2004.

Section 91-A:5

91-A:5 Exemptions. – The following records are exempted from the provisions of this chapter:

- I. Records of grand and petit juries.
- II. Records of parole and pardon boards.
- III. Personal school records of pupils.

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a body or agency from releasing information relative to health or safety from investigative files on a limited basis to

persons whose health or safety may be affected.

V. Teacher certification records, both hard copies and computer files, in the department of education, provided that the department shall make available teacher certification status information.

VI. Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

VII. Unique pupil identification information collected in accordance with RSA 193-E:5.

VIII. Any notes or other materials made for personal use that do not have an official purpose, including notes and materials made prior to, during, or after a public proceeding.

IX. Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of those entities defined in RSA 91-A:1-a.

Source. 1967, 251:1. 1986, 83:6. 1989, 184:2. 1990, 134:1. 1993, 79:1, eff. June 22, 1993. 2002, 222:4, eff. Jan. 1, 2003. 2004, 147:5, eff. Aug. 1, 2004; 246:3, 4, eff. Aug. 14, 2004.

Section 91-A:5-a

91-A:5-a Limited Purpose Release. – Records from non-public sessions under RSA 91-A:3, II(i) or that are exempt under RSA 91-A:5, VI may be released to local or state safety officials. Records released under this section shall be marked ""limited purpose release" and shall not be redisclosed by the recipient.

Source. 2002, 222:5, eff. Jan. 1, 2003.

Section 91-A:6

91-A:6 Employment Security. – This chapter shall apply to RSA 282-A, relative to employment security; however, in addition to the exemptions under RSA 91-A:5, the provisions of RSA 282-A:117-123 shall also apply; this provision shall be administered and construed in the spirit of that section, and the exemptions from the provisions of this chapter shall include anything exempt from public inspection under RSA 282-A:117-123 together with all records and data developed from RSA 282-A:117-123.

Source. 1967, 251:1. 1981, 576:5, eff. July 1, 1981.

Section 91-A:7

91-A:7 Violation. – Any person aggrieved by a violation of this chapter may petition the superior court for injunctive relief. The courts shall give proceedings under this chapter priority on the court calendar. Such a petitioner may appear with or without counsel. The

petition shall be deemed sufficient if it states facts constituting a violation of this chapter, and may be filed by the petitioner or his counsel with the clerk of court or any justice thereof. Thereupon the clerk of court or any justice shall order service by copy of the petition on the person or persons charged. When any justice shall find that time probably is of the essence, he may order notice by any reasonable means, and he shall have authority to issue an order ex parte when he shall reasonably deem such an order necessary to insure compliance with the provisions of this chapter.

Source. 1967, 251:1. 1977, 540:5, eff. Sept. 13, 1977.

Section 91-A:8

91-A:8 Remedies. –

I. If any body or agency or employee or member thereof, in violation of the provisions of this chapter, refuses to provide a public record or refuses access to a public proceeding to a person who reasonably requests the same, such body, agency, or person shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter provided that the court finds that such lawsuit was necessary in order to make the information available or the proceeding open to the public. Fees shall not be awarded unless the court finds that the body, agency or person knew or should have known that the conduct engaged in was a violation of this chapter or where the parties, by agreement, provide that no such fees shall be paid. In any case where fees are awarded under this chapter, upon a finding that an officer, employee, or other official of a public body or agency has acted in bad faith in refusing to allow access to a public proceeding or to provide a public record, the court may award such fees personally against such officer, employee, or other official.

I-a. The court may award attorneys' fees to a board, agency or employee or member thereof, for having to defend against a person's lawsuit under the provisions of this chapter, when the court makes an affirmative finding that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive.

II. The court may invalidate an action of a public body or agency taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.

III. In addition to any other relief awarded pursuant to this chapter, the court may issue an order to enjoin future violations of this chapter.

Source. 1973, 113:1. 1977, 540:6. 1986, 83:7, eff. Jan. 1, 1987. 2001, 289:3, eff. July 17, 2001.

Section 91-A:9

91-A:9 Destruction of Certain Information Prohibited. – A person is guilty of a misdemeanor who knowingly destroys any information with the purpose to prevent such information from being inspected or disclosed in response to a request under this chapter. If a request for inspection is denied on the grounds that the information is exempt under this

chapter, the requested material shall be preserved for 90 days or while any lawsuit pursuant to RSA 91-A:7-8 is pending.

Source. 2002, 175:1, eff. Jan. 1, 2003.

Procedure for Release of Personal Information for Research Purposes

Section 91-A:10

91-A:10 Release of Statistical Tables and Limited Data Sets for Research. –

I. In this subdivision:

(a) "Agency" means each state board, commission, department, institution, officer or other state official or group.

(b) "Agency head" means the head of any governmental agency which is responsible for the collection and use of any data on persons or summary data.

(c) "Cell size" means the count of individuals that share a set of characteristics contained in a statistical table.

(d) "Data set" means a collection of personal information on one or more individuals, whether in electronic or manual files.

(e) "Direct identifiers" means:

(1) Names.

(2) Postal address information other than town or city, state, and zip code.

(3) Telephone and fax numbers.

(4) Electronic mail addresses.

(5) Social security numbers.

(6) Certificate and license numbers.

(7) Vehicle identifiers and serial numbers, including license plate numbers.

(8) Personal Internet IP addresses and URLs.

(9) Biometric identifiers, including finger and voice prints.

(10) Personal photographic images.

(f) "Individual" means a human being, alive or dead, who is the subject of personal information and includes the individual's legal or other authorized representative.

(g) "Limited data set" means a data set from which all direct identifiers have been removed or blanked.

(h) "Personal information" means information relating to an individual that is reported to the state or is derived from any interaction between the state and an individual and which:

(1) Contains direct identifiers.

(2) Is under the control of the state.

(i) "Provided by law" means use and disclosure as permitted or required by New Hampshire state law governing programs or activities undertaken by the state or its agencies, or required by federal law.

(j) "Public record" means records available to any person without restriction.

(k) "State" means the state of New Hampshire, its agencies or instrumentalities.

(l) "Statistical table" means single or multi-variate counts based on the personal information contained in a data set and which does not include any direct identifiers.

II. Except as otherwise provided by law, upon request an agency shall release limited data

sets and statistical tables with any cell size more than 0 and less than 5 contained in agency files to requestors for the purposes of research under the following conditions:

(a) The requestor submits a written application that contains:

(1) The following information about the principal investigator in charge of the research:

- (A) name, address, and phone number;
- (B) organizational affiliation;
- (C) professional qualification; and
- (D) name and phone number of principal investigator's contact person, if any.

(2) The names and qualifications of additional research staff, if any, who will have access to the data.

(3) A research protocol which shall contain:

- (A) a summary of background, purposes, and origin of the research;
- (B) a statement of the general problem or issue to be addressed by the research;
- (C) the research design and methodology including either the topics of exploratory research or the specific research hypotheses to be tested;
- (D) the procedures that will be followed to maintain the confidentiality of any data or copies of records provided to the investigator; and
- (E) the intended research completion date.

(4) The following information about the data or statistical tables being requested:

- (A) general types of information;
- (B) time period of the data or statistical tables;
- (C) specific data items or fields of information required, if applicable;
- (D) medium in which the data or statistical tables are to be supplied; and
- (E) any special format or layout of data requested by the principal investigator.

(b) The requestor signs a "Data Use Agreement" signed by the principal investigator that contains the following:

(1) Agreement not to use or further disclose the information to any person or organization other than as described in the application and as permitted by the Data Use Agreement without the written consent of the agency.

(2) Agreement not to use or further disclose the information as otherwise required by law.

(3) Agreement not to seek to ascertain the identity of individuals revealed in the limited data set and/or statistical tables.

(4) Agreement not to publish or make public the content of cells in statistical tables in which the cell size is more than 0 and less than 5 unless:

- (A) otherwise provided by law; or
- (B) the information is a public record.

(5) Agreement to report to the agency any use or disclosure of the information contrary to the agreement of which the principal investigator becomes aware.

(6) A date on which the data set and/or statistical tables will be returned to the agency and/or all copies in the possession of the requestor will be destroyed.

III. The agency head shall release limited data sets and statistical tables and sign the Data Use Agreement on behalf of the state when:

(a) The application submitted is complete.

- (b) Adequate measures to ensure the confidentiality of any person are documented.
- (c) The investigator and research staff are qualified as indicated by:
 - (1) Documentation of training and previous research, including prior publications; and
 - (2) Affiliation with a university, private research organization, medical center, state agency, or other institution which will provide sufficient research resources.
- (d) There is no other state law, federal law, or federal regulation prohibiting release of the requested information.

IV. Within 10 days of a receipt of written application, the agency head, or designee, shall respond to the request. Whenever the agency head denies release of requested information, the agency head shall send the requestor a letter identifying the specific criteria which are the basis of the denial. Should release be denied due to other law, the letter shall identify the specific state law, federal law, or federal regulation prohibiting the release. Otherwise the agency head shall provide the requested data or set a date on which the data shall be provided.

V. Any person violating any provision of a signed Data Use Agreement shall be guilty of a violation.

VI. Nothing in this section shall exempt any requestor from paying fees otherwise established by law for obtaining copies of limited data sets or statistical tables. Such fees shall be based on the cost of providing the copy in the format requested. The agency head shall provide the requestor with a written description of the basis for the fee.

Source. 2003, 292:2, eff. July 18, 2003.

Right-to-Know Oversight Commission

Section 91-A:11

[RSA 91-A:11 repealed by 2005, 3:2 effective Nov. 1, 2010.]

91-A:11 Oversight Commission Established. –

There is established an oversight commission to study and oversee the right-to-know law in light of the supreme court's decision in *Hawkins v. N.H. Department of Health and Human Services* and increasing use of electronic communications in the transaction of governmental business.

Source. 2005, 3:1, eff. May 3, 2005.

Section 91-A:12

[RSA 91-A:12 repealed by 2005, 3:2 effective Nov. 1, 2010.]

91-A:12 Membership and Compensation. –

I. The members of the oversight commission shall be as follows:

- (a) Four members of the house of representatives, one from the science, technology and energy committee, one from the municipal and county government committee, one from the judiciary committee, and one other member, appointed by the speaker of the house.

- (b) Three members of the senate, appointed by the president of the senate.
- (c) Three municipal officials, appointed by the New Hampshire Municipal Association.
- (d) One school board member, appointed by the New Hampshire School Boards

Association.

(e) One school administrator, appointed by the New Hampshire School Administrators Association.

(f) Two county officials, appointed by the New Hampshire Association of Counties.

(g) Four members of the public, one of whom shall be an attorney who has knowledge of and experience with the right-to-know law, one of whom shall be an information technology professional, and one of whom shall be a telecommunications professional, all appointed by the governor with the consent of the council.

(h) The attorney general, or designee.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

Source. 2005, 3:1, eff. May 3, 2005.

Section 91-A:13

[RSA 91-A:13 repealed by 2005, 3:2 effective Nov. 1, 2010.]

91-A:13 Duties. –

The commission shall study:

I. The need for disclosure requirements or guidelines for email and other electronic communication occurring between and among state, county, and local government appointed and elected officials and employees of governmental entities.

II. The need for disclosure requirements or guidelines for electronic communications with constituents of state, county, and local government appointed and elected officials and employees of governmental entities.

III. Archival requirements for electronic documents.

IV. The status of proprietary data within the definitions of the right-to-know law.

V. The ability to recover costs relative to the retrieval of electronic files and communications.

VI. Issues relative to public records posted to web sites of governmental entities.

VII. Whether a member of a body subject to the right-to-know law may participate in a meeting by teleconference or other electronic means.

VIII. The extent to which the public will be provided access to stored computer data under the right-to-know law.

IX. Any other matter deemed relevant by the commission.

Source. 2005, 3:1, eff. May 3, 2005.

Section 91-A:14

[RSA 91-A:14 repealed by 2005, 3:2 effective Nov. 1, 2010.]

91-A:14 Chairperson; Quorum. –

The members of the commission shall elect a chairperson from among the members. Nine members of the commission shall constitute a quorum.

Source. 2005, 3:1, eff. May 3, 2005.

Section 91-A:15

[RSA 91-A:15 repealed by 2005, 3:2 effective Nov. 1, 2010.]

91-A:15 Report. –

The commission shall make an annual report beginning on November 1, 2005, together with its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, and the governor.

Source. 2005, 3:1, eff. May 3, 2005.