NEW HAMPSHIRE'S RIGHT TO KNOW LAW

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RSA CHAPTER 91-A

Local Government Center

New Hampshire Municipal Association
Workers' Compensation Trust
Property-Liability Trust
HealthTrust

Legal Services and Government Affairs Department
May 2010
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The Right to Know Law
RSA 91-A

I. PURPOSE

Part I, Article 8 of the N.H. Constitution says:

> **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 time accountable to them. 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.**

Section 1 of RSA Chapter 91-A reflects this purpose when it states:

> **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.**

There may be times when this law seems inefficient, or even contrary to what is good for the community. But the legislature has decided that the benefits of open government outweigh these inconveniences.

CONSEQUENCES OF VIOLATING THE LAW

The superior court has the authority to invalidate action taken in a meeting held in violation of the Right to Know law. Also, if a citizen files a lawsuit to enforce the Right to Know law, the town or city or the official who has violated the law can become liable for that citizen's damages, attorney fees, and costs. RSA 91-A:8.

In *New Hampshire Challenge, Inc. v. Commissioner, New Hampshire Dept. of Educ.*, 142 N.H. 246 (1997), the N.H. Supreme Court said there were only two findings needed in order to grant a request for attorney fees when a citizen has prevailed in a lawsuit: (1) the lawsuit was necessary in order to obtain the information, and (2) the governmental body

knew or should have known that it was violating the law when it did not provide the information.
In addition, it is a misdemeanor for a person to knowingly destroy information with the purpose of preventing the information from being disclosed after a request has been made under the Right to Know law. See RSA 91-A:9.

II. PUBLIC MEETINGS

General Rule: A meeting of a public body must have proper notice and be open to the public.

WHAT IS A MEETING?

It is the convening of a quorum of a public body, "whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate contemporaneously," for the purpose of discussing or acting upon any public business. RSA 91A:2, I. This includes work sessions!

What is a *quorum*? A majority of any board or committee constitutes a quorum, unless an applicable law or rule states otherwise. *First Federal Savings & Loan v. State Board of Trust Co.*, 109 N.H. 467 (1969). A majority is all that is needed to take action — again, unless there is a law that says otherwise (*e.g.*, RSA 674:33, which requires the concurring vote of three members of a ZBA to take official action).

A provision added to the law in 2008 states that if the rules of the body define a quorum as more than a majority (for example, if a municipal charter defines a quorum of the town council as two-thirds of the members), then a meeting occurs when a majority is convened, even if that majority is less than a quorum. This was added in recognition of the fact that even if a simple majority does not constitute a quorum for the purpose of conducting business, that majority will be able to control any decisions when a quorum is actually convened.

What is *not* a meeting? The law makes it clear that certain gatherings of public officials are *not* meetings subject to the Right to Know law (see RSA 91-A:2, I). They include:

- Chance, social, or other encounters "not convened for the purpose of discussing or acting upon . . . matters [relating to official business] if no decisions are made regarding such matters"
- Strategy or negotiations relating to collective bargaining
- Consultation with legal counsel
- Legislative party caucuses

It is important to distinguish between non-meetings (which do not exist for purposes of the Right to Know Law) and nonpublic sessions, which are, in fact, meetings regulated by the Right to Know Law.

WHAT IS A PUBLIC BODY?

All "public bodies" are required to have open meetings under the law. Public bodies include all municipal legislative and governing bodies and any "board, commission, committee, agency, or authority" of any municipality. Expressly included are all subcommittees, subordinate bodies, or advisory committees of such bodies. RSA 91-A:1-a, VI. Thus, *any subcommittee of a municipal body (such as a two- or three-person subcommittee of a planning board) is a public body and must comply in all respects with the Right to Know Law.*

On the other hand, staff meetings, department meetings, and meetings among individual officials who are not an official board, committee, commission, etc., are not a meeting. For example, if the road agent, a planning board member and a selectman discuss something, that is not a "meeting" because that group of people has no authority to make any official decision on any matter. Similarly, if the library employees or the police department have a staff meeting, that is not a "meeting" for purposes of RSA 91-A because those groups of employees are not an official public body.

WHAT NOTICE IS REQUIRED?

All meetings must have at least 24-hour notice (not counting Sundays and holidays) prior to the meeting. Notice must be either published in a newspaper or posted in two public places. RSA 91-A:2, II. Local ordinances can be more strict about notice. If so, they must be complied with. If the municipality or the public body has an Internet website, it may (but is not required to) use the website as one of the two public places for posting notice.

This 24-hour notice is only a minimum under the Right-to-Know Law. Other statutes can require more notice. For example, planning board hearings require 10 days notice under RSA 676:4, I(d); zoning board of adjustment hearings require 5 days notice under RSA 676:7; and selectmen's hearings on highway petitions require 14 days notice under RSA 43:2 and RSA 43:3.

EXCEPTIONS TO NOTICE REQUIREMENTS

> **Emergencies.** If a public body has an urgent need for a meeting, leaving no time to give proper notice, the nature of the emergency must be stated in the minutes of the meeting. Notice must still be posted as soon as practicable, and any other means that are reasonably available must be employed to inform the public about the meeting. RSA 91-A:2, II.

Recessed (or continued) sessions. Recessed sessions do not require notice, if the date, time, and place of the session were announced at the previous, properly noticed, session of the same meeting.

OPEN TO THE PUBLIC

Anyone (not just local residents) must be permitted to attend any public meeting. They may take notes, tape record, take photos and videotape. However, "open to the public" does not mean that the Right to Know Law grants anyone the right to *speak* at the meeting. Nobody has a right to disrupt a meeting or to speak without being invited. RSA Chapter 91-A only assures a right to attend, not a right to participate. See *State v. Dominic*, 117 N.H. 573 (1977).

Clearly, public participation must be allowed at meetings which are public hearings. Note that there may be plenty of other reasons to allow public input at specifically designated portions of a meeting. For example, the constitutional due process right to be heard on regulations that may affect citizens' property rights — or even the political wisdom of being sure that voters' concerns are heard and addressed — is a strong reason to allow a "public comment" period.

MINUTES OF PUBLIC MEETINGS

Minutes must be kept of all public meetings, and must be available to the public within five business days after the close of the meeting. Minimum content of meeting minutes includes: (1) names of members present; (2) other people participating (it is not necessary to list everyone present, however); (3) a brief summary of subject matter discussed; and (4) any final decisions reached or action taken.

NONPUBLIC SESSIONS: EXCEPTIONS TO THE PUBLIC MEETING REQUIREMENT

Nonpublic sessions are meetings (or portions of meetings) that the public does *not* have the right to attend. Nonpublic sessions are allowed only for the reasons specified in RSA 91-A:3, II. A public body cannot meet in nonpublic session simply for the purpose of deliberation. All deliberations must be done in a public session unless one of the reasons for nonpublic sessions applies.

REASONS FOR NONPUBLIC SESSIONS

Apart from certain matters pertaining only to specific state or county bodies, a public body may hold a nonpublic session and may receive evidence and information, deliberate and decide in private only on 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 the employee, 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. RSA 91-A:3, II(a). *Notice that this section does not create a right to a meeting for an employee.* The right to a meeting must arise from some other source, such as a collective bargaining agreement, a personnel policy, or a state statute.

2. The hiring of a public employee. RSA 91-A:3, II(b).

3. Matters that, if discussed in public, would adversely affect the reputation of someone *other than a member of the public body*. However, if that person requests it, the meeting must be public. RSA 91-A:3, II(c). Such matters include any application for assistance or tax abatement, or waiver of fees or fines based on poverty or inability to pay.

4. Consideration of the acquisition, sale, or lease of property, where public discussion would give someone in the community an unfair advantage adverse to the general public. RSA 91-A:3, II(d). For example, it wouldn't be fair for a landowner to hear the selectmen or council say, "Let's offer $100,000, but we might go as high as $125,000."

5. Consideration of lawsuits threatened in writing or filed against the body or one of its members. RSA 91-A:3, II(e). An application for a tax abatement does not constitute threatened or filed litigation.

6. 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 (*i.e.*, terrorism). RSA 91-A:3, II(i). Note that other emergency management matters (flood, storm, health emergency) are not confidential under this section.

HOW TO ENTER NONPUBLIC SESSION

1. The body must first meet in a properly noticed public meeting.

2. A motion to go into a nonpublic session must be made and seconded, stating which specific reason listed in RSA 91-A:3, II is relied upon as justification for a nonpublic session.

3. A roll call vote must be taken, and requires the affirmative vote of the majority of members present. Only the matters specified in the motion can be discussed in the nonpublic session.

MINUTES OF NONPUBLIC SESSIONS

The statute requires that minutes be kept of the proceedings and actions of nonpublic sessions. These minutes must be released to the public within 72 hours (less than half the time frame for regular meetings), unless two-thirds of the members present, in a recorded vote, decide to seal the minutes because release of the minutes would adversely affect someone's reputation (other than a board member), or public release of the minutes public would render the action just taken ineffective (*e.g.*, the property offer example given above), or the information pertains to terrorism.

Caution: Unless you take the two-thirds vote not to release the minutes of a nonpublic session, those minutes are public records and must be released. *Orford Teachers Assn. v. Watson*, 121 N.H. 118 (1981). In other words, the fact that the session itself was nonpublic does not automatically make the minutes nonpublic.

REMOTE PARTICIPATION IN A PUBLIC MEETING

A public body *may*, but is *not required* to, allow one or more members to participate in a meeting by telephone or other electronic communication—but only if the member's attendance is "not reasonably practical." *See* RSA 91-A:2, III. The reason that in-person attendance is not reasonably practical must be stated in the minutes of the meeting. Although the law does not indicate what situations would qualify, some obvious examples include physical incapacity and out-of-state travel.

Except in an emergency, at least a quorum of the public body must be physically present at the location of the meeting. An "emergency" means that "immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action." The determination that an emergency exists is to be made by the chairman or presiding officer, and the facts upon which that determination is based must be included in the minutes.

Each part of a meeting that is required to be open to the public must be audible "or otherwise discernable" to the public at the physical location of the meeting. All members of the public body, including any participating from a remote location, must be able to hear and speak to each other simultaneously during the meeting, and must be audible or otherwise discernable to the public in attendance. **No meeting may be conducted by electronic mail** or "any other form of communication that does not permit the public to

hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice."

All votes taken during such a meeting must be by roll call vote.

COMMUNICATIONS OUTSIDE A MEETING

RSA 91-A:2-a, limits the use of communications outside a public meeting held in compliance with the law. The bottom line is that discussion and action on official matters should occur only in a properly held meeting.

1. *No deliberations outside a public meeting.* Public bodies may deliberate on matters of official business "only in meetings held pursuant to and in compliance with the provisions of RSA 91-A:2, II or III"—*i.e.*, only in properly noticed public meetings. This does not mean that any mention of a matter of official business outside a public meeting is illegal; however, it is illegal for the body to *deliberate* on such a matter outside a meeting—*i.e.*, to discuss the matter with a view toward making a decision. *This includes discussions by e-mail!* The intent of the law is that such matters should be deliberated in public.

   Note: There is an exception for those events that are exempted from the definition of a "meeting." These include (among others) consultations with legal counsel, strategy or negotiation sessions with respect to collective bargaining, and chance or social encounters not convened for the purpose of discussing or acting upon matters of official business.

2. *No circumvention of spirit or purpose of the law.* Communications outside a meeting, "including, but not limited to, sequential communications among members of a public body," shall not be used "to circumvent the spirit and purpose of this chapter." This is intended primarily to prevent public bodies from skirting the "meeting" definition by deliberating or deciding matters via a series of communications, none of which alone involves a quorum of the public body, but which in the aggregate include a quorum.

III. GOVERNMENTAL RECORDS

WHAT IS A GOVERNMENTAL RECORD?

The law defines a "governmental record" as

> any *information* created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body. The term "governmental records" shall also include the term "public records."

See RSA 91-A:1-a, III. The word "information," in turn, is defined as "knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic, or other physical form." *See* RSA 91-A:1-a, IV.

There are several important points here:

1. *Information in physical form.* "Information" may be "written, aural, visual, [or] electronic," but in any case must be in some *physical form*. Thus, for something to constitute a governmental record, there must be some physical manifestation of it: for example, a paper document, a computer file, a tape recording, a CD or DVD, or a videocassette. If it exists in one of those forms *or any other physical form*, it may be a "governmental record" (if the other elements of the definition are satisfied). This part of the Right to Know Law affects not *knowledge*, but *records*.

2. *Created, accepted, or obtained by a public <u>body</u>.* Information (such as a written communication) will constitute a governmental record when it is "created, accepted, or obtained by, or on behalf of, any public body, *or a quorum or majority thereof*, . . . in furtherance of its official function." More specifically, e-mail and other written communications constitute governmental records if they are "*received by a quorum or majority of a public body* in furtherance of its official function." Thus, a communication—electronic or otherwise—that is created, accepted, or obtained by *less than a quorum* of a public body is *not* a governmental record and is not subject to disclosure.

3. *Created, accepted, or obtained by a public <u>agency</u>.* Information constitutes a governmental record if it is "created, accepted, or obtained by, or on behalf of, . . . any public agency in furtherance of its official function." A public agency includes any agency, authority, department or office of a municipality. *See* RSA 91-A:1-a, V.

4. "In furtherance of its official function." A governmental record is one created, accepted, or obtained by a public body or a public agency *in furtherance of its official function*. Personal correspondence, for example, is not in furtherance of

the public body's or public agency's official function, and is not subject to disclosure. (However, if town employees are routinely using the town computers for inappropriate purposes, or for an inordinate amount of personal correspondence, that fact may be a matter of legitimate public concern.)

PUBLIC DISCLOSURE REQUIREMENT

RSA 91-A:4 governs the public disclosure and inspection of governmental records. The statute requires the following:

1. Records must be available for inspection and copying during the regular business hours of the public body or agency – unless a record is temporarily unavailable because it's actually being used. See *Gallagher v. Town of Windham,* 121 N.H. 156 (1981). The state Supreme Court has said that when the office receiving the request for a record is busy, officials may ask the citizen to make an appointment to review the records. RSA 91-A:4, IV says that when a public body or agency is not able to make a governmental record available for immediate inspection, it must do so within 5 business days, or deny the request with written reasons, or acknowledge the request with a statement of the time necessary to determine whether the request will be granted or denied. See also *Brent v. Paquette,* 132 N.H. 415 (1989)(the maximum time anyone can be required to wait is five days).

2. Any citizen may make notes, tapes, photos, or photocopies of a governmental record. The law does *not* provide a right to receive copies of records at the municipality's expense. See *Gallagher,* above. Government officials should not hand over the records for copying (see RSA 41:61, which prohibits the person with custody of the records from loaning them out, also RSA 91-A:4, III). The governmental agency or official is permitted by RSA 91-A:4, IV to make copies and charge the person requesting them the "actual cost" of copying. Several lower court cases have held that towns can include in the actual cost computation an amount for staff time needed to make the copies, as well as the actual mechanical costs of copying; however there is considerable disagreement among lawyers as to whether this is authorized under the law.

3. If the information requested exists in a more convenient form, then that must also be made available. For example, in *Menge v. City of Manchester,* 113 N.H. 533 (1973), the Court said the city had to make its computerized tax records available. Offering Menge only photocopies of the paper assessment cards did not satisfy the Right to Know law. Note, however, that the court in the *Menge* case was not confronted with the problem of copyrighted software. That issue has yet to be decided by the New Hampshire Supreme Court.

4. Under changes adopted in 2008, governmental records maintained in electronic form may be disclosed by copying them to an electronic medium; however, if that is not reasonably practical, or if the person making the request asks for the records in a different format, the public body or agency may provide a printout of the records "or may use any other means reasonably calculated to comply with the request." RSA 91-A:4, V.

5. The motives of the person requesting the information are not relevant, and should not even be asked about. *Union Leader Corp. v. City of Nashua,* 141 N.H. 473 (1996).

6. Materials (tapes, notes, etc.) used to compile official meeting minutes are governmental records, too. These materials may be destroyed after the official minutes are prepared, but they are subject to disclosure until destroyed. It is a good idea to adopt a formal policy stating how long drafts or original tapes are kept after transcription. It is also important that you designate who is taking the official minutes. Tapes or notes made by a board member for *personal* use are not subject to disclosure under the Right to Know law. *Brent v. Paquette,* 132 N.H. 415 (1989); RSA 91-A:5,VIII.

7. Preliminary documents and working papers that are not in their final form may or may not be subject to release under the Right to Know law. In *Goode v. N.H. Office of the Legislative Budget Asst.,* 145 N.H. 451 (2000), the Supreme Court reversed the trial court's decision that audit papers were not subject to disclosure to the public "because they were not in their final form." The Court reasoned that RSA 91-A:4, IV does not exempt records just because they are drafts and not yet completed.

   However, in 2004 the legislature added a new paragraph, RSA 91-A:5, IX, which exempts from disclosure "[p]reliminary 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 [a public body]." Thus, such materials are subject to disclosure only if they have been made available to a quorum or majority of the public body to which they relate. In addition, as the court in *Goode* noted, draft documents may still be exempt from disclosure if they qualify as confidential information under RSA 91-A:5, IV.

8. The government must maintain governmental records "in a manner that makes them available to the public." *Hawkins v. N.H. Department of Health and Human Services,* 147 N.H. 376 (2001). The Court said that information stored as data in a computer system was a public record under the Right to Know law. In response to the *Hawkins* decision, legislation enacted in 2008 states that records maintained in electronic form must remain accessible for the same periods as their paper

counterparts. RSA 91-A:4, III-a. Retention periods for all records are prescribed in a separate statute, RSA chapter 33-A.

A record in electronic form is no longer subject to disclosure once it has been "initially and legally deleted." RSA 91-A:4, III-b. A record cannot be "legally" deleted until the expiration of any statutory retention periods (generally governed by RSA chapter 33-A). An electronic record is deemed to have been "deleted" only if it is no longer readily accessible to the public body or agency itself. The mere transfer of an electronic record to a "deleted items" folder or similar location on a computer does not constitute deletion.

9. Under an amendment adopted in 2004, every agreement to settle a lawsuit or other claim against a municipality or other government entity must be kept on file at the municipal clerk's office and made available for inspection for at least 10 years from the date of settlement. RSA 91-A:4, VI.

EXEMPTIONS TO PUBLIC DISCLOSURE

RSA 91-A:5 exempts certain records from public disclosure. Among them are the records of grand and petit juries, parole and pardon boards, personal school records of students, and teacher certification records, and the following types of records that are particularly relevant to town and city governments:

1. Records pertaining to internal personnel files or practices, including police and other internal investigation documents of public employers. *See* RSA 91-A:5, IV; *see also Hounsell v. North Conway Water Precinct*, 154 N.H. 1 (2006); *Union Leader Corp. v. Fenniman*, 136 NH 624 (1993). However, salaries and lists of employees are not exempt from disclosure. *See Mans v. Lebanon School Board*, 112 NH 160 (1972).

2. Medical or welfare information, library user and videotape sale or rental records. *See* RSA 91-A:5, IV.

3. Confidential, commercial or financial information and other records whose disclosure would be an invasion of privacy. *See* RSA 91-A:5, IV.

4. Records pertaining to anti-terrorism measures. RSA 91-A:5, VI.

5. Notes or other materials made for personal use that do not have an official purpose. RSA 91-A:5, VIII.

6. 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 the public body to which they relate. RSA 91-A:5, IX.

WHAT DOES 'CONFIDENTIAL, COMMERCIAL OR FINANCIAL' MEAN?

Several Supreme Court decisions examine what confidential, commercial or financial information is and when it should and should not be disclosed to the public. The disclosure decision rests on a *balancing test* that weighs the public's interest in disclosure against the government's interest in non-disclosure. In *Union Leader v. N.H. Housing Finance Authority*, 142 N.H.540, 554 (1997), the Court said a two-step analysis must be made:

1. Is the requested document confidential, commercial or financial information?
2. Would its disclosure constitute and invasion of privacy?

The Court said an "expansive" definition of the terms "confidential, commercial or financial" could not be given because to do so would allow the exemption to swallow the rule, which would be inconsistent the purposes of the right to know law.

However, the Court said "commercial or financial" includes such information as business sales statistics, research data, technical designs, overhead and operating costs and information on financial condition. Such information is not automatically exempt from disclosure, but "is sufficiently private that it must be balanced against the public's interest in disclosure."

"Confidential" information, the Court said, is "determined objectively, and not based on the subjective expectations of the party generating it." In other words, just because a person stamps a document "confidential" doesn't mean it is exempt from disclosure to the public under the Right to Know law. Again, the benefits of disclosure of such information must be weighed against the benefits to the government of non-disclosure. The burden is on the party opposing disclosure to prove disclosure is likely to impair the government's ability to obtain such information in the future, or that disclosure would cause "substantial harm to the competitive position of the person from whom the information was obtained." However, the Court said that this is not the exclusive test for whether information is confidential.

To determine the second step of the analysis – would disclosure constitute an invasion of privacy – the Court said the nature of the document requested must be examined in relationship to the basic purpose of the Right to Know law. That purpose, the Court said, is "to increase the public's knowledge about how the [government] works."

The Court has suggested that information that would aid a person to understand some aspect of his/her government is the kind of information the public has a right to under the purposes of the Right to Know law. *Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 477 (1996).

Also note that when confronted with disputes over whether documents are open to public disclosure, the Court will resolve the question "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. … As a result, we broadly construe provisions favoring disclosure and interpret the exemptions restrictively." *Goode v. N.H. Office of Legislative Budget Assistant*, 145 N.H. 451 (2000) at 453.

Most recently, the Court has combined all of these concepts into a three-part test to determine whether disclosure would constitute an invasion of privacy: (1) Is there a privacy interest at stake that would be invaded by disclosure? (2) If so, what is the public's interest in disclosure? (3) Balance the public's interest in disclosure against the government's interest in nondisclosure and the individual privacy interest that would be invaded. See *Lamy v. New Hampshire Public Utilities Comm'n*, 152 N.H. 106 (2005).

OTHER EXEMPTIONS

Other records that are exempt from public disclosure, as determined by case law, include:

1. Written legal advice. *Society for Protection of N.H. Forests v. Water Supply and Pollution Control Comm.*, 115 N.H. 192 (1975).

2. Some, not all, law enforcement files. Routine dispatch logs, names and addresses of persons arrested, and charges actually filed, are public records. Open investigative files, case records that may still be used at trial, etc., should not be released. Closed investigation files should be released unless the release would invade someone's privacy, disclose confidential sources of information, or threaten the safety of police. See *Lodge v. Knowlton*, 118 N.H. 574 (1978); *Union Leader Corp. v. City of Nashua*, 141 N.H. 473 (1996).

There are other privacy statutes that make certain information confidential. Some examples include: RSA 106-H:14, regarding the enhanced 911 system; RSA 165:2-c, concerning local welfare recipients; and RSA 159:6-a, regarding pistol permits. See also, for example, RSA 151-D:2 (quality assurance program records of ambulatory care clinics), discussed in the context of a Right to Know law petition in *Disabilities Rights Center, Inc. v. Commissioner, N.H. Dept. of Corrections*, 143 N.H. 674 (1999).

PARTIAL RELEASE

If only part of a governmental record is subject to an exemption, the part that is not protected should be released. If a case goes to court, the burden of proof will be on the town or city to prove that the material is subject to an exemption. Further, if the information requested is not compiled in convenient form, officials have no duty to compile it, but must allow the citizen to do so if he or she wants to. *Brent v. Paquette,* 132 N.H. 415, 426 (1989).

REMOVAL FOR VIOLATION OF CONFIDENTIALITY

Until 1994, there was no statutory penalty for a public official who improperly released confidential information. However, RSA 42:1-a now makes it a breach of a municipal official's oath of office to divulge to the public any information learned by virtue of his or her official position if either:

1. The public body has voted to withhold that information from the public by a vote of two-thirds under the Right to Know Law; or

2. The official knew or reasonably should have known that the information was exempt from disclosure under the Right to Know law, *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 would render proposed municipal action ineffective.

The method of removing an official for violation of this statute is by petition to the superior court; removal is not automatic.

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RSA CHAPTER 91-A
ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

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.

91-A:1-a Definitions. – In this chapter:

I. "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.

II. "Governmental proceedings" means the transaction of any functions affecting any or all citizens of the state by a public body.

III. "Governmental records" means any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body. The term "governmental records" shall also include the term "public records."

IV. "Information" means knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic, or other physical form.

V. "Public agency" means any agency, authority, department, or office of the state or of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision.

VI. "Public body" means 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 any committee, advisory or otherwise, established by such entities.

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

(e) Any corporation that has as its sole member the state of New Hampshire, any county, town, municipal corporation, school district, school administrative unit, village district, or other political subdivision, and that is determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code.

91-A:2 Meetings Open to Public. –

I. For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. "Meeting" shall also not include:

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

(b) Consultation with legal counsel;

(c) 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; or

(d) Circulation of draft documents which, when finalized, are intended only to formalize decisions previously made in a meeting; provided, that nothing in this subparagraph shall be construed to alter or affect the application of any other section of RSA 91-A to such documents or related communications.

II. Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. 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 public bodies, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, 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 one of which may be the public body's Internet website, if such exists, 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 public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably 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 town or guidelines or rules of order of any public body 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. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.

(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.

(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

(d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

(e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.

91-A:2-a Communications Outside Meetings. –

I. Unless exempted from the definition of "meeting" under RSA 91-A:2, I, public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with the provisions of RSA 91-A:2, II or III.

II. Communications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

91-A:3 Nonpublic Sessions. –

I. (a) Public bodies 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 public body 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 or her, 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 public body 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 public body or any subdivision thereof, or against any member thereof because of his or her membership in such public body, 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 public body 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 meetings 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 public body 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.

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

I. Every citizen during the regular or business hours of all public bodies or agencies, and on the regular business premises of such public bodies or agencies, has the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies, including minutes of meetings of the public bodies, and to copy and make memoranda or abstracts of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5. In this section, "to copy" means the reproduction of original records by whatever method, including but not limited to photography, photostatic copy, printing, or electronic or tape recording.

I-a. Records of any payment made to an employee of any public body or agency listed in RSA 91-A:1-a, VI(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 a public body, every citizen, during the regular or business hours of such public body, and on the regular business premises of such public body, has the right to inspect all notes, materials, tapes, or other sources used for compiling the minutes of such meetings, and to make memoranda or abstracts or to copy such notes, materials, tapes, or sources inspected, except as otherwise prohibited by

statute or RSA 91-A:5.

III. Each public body or agency shall keep and maintain all governmental records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the governmental records pertaining to such public body or agency shall be kept in an office of the political subdivision in which such public body or agency is located or, in the case of a state agency, in an office designated by the secretary of state.

III-a. Governmental records created or maintained in electronic form shall be kept and maintained for the same retention or archival periods as their paper counterparts. Governmental records in electronic form kept and maintained beyond the applicable retention or archival period shall remain accessible and available in accordance with RSA 91-A:4, III. Methods that may be used to keep and maintain governmental records in electronic form may include, but are not limited to, copying to microfilm or paper or to durable electronic media using standard or common file formats.

III-b. A governmental record in electronic form shall no longer be subject to disclosure pursuant to this section after it has been initially and legally deleted. For purposes of this paragraph, a record in electronic form shall be considered to have been deleted only if it is no longer readily accessible to the public body or agency itself. The mere transfer of an electronic record to a readily accessible "deleted items" folder or similar location on a computer shall not constitute deletion of the record.

IV. Each public body or agency shall, upon request for any governmental record reasonably described, make available for inspection and copying any such governmental record within its files when such records are immediately available for such release. If a public body or agency is unable to make a governmental 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 computer, photocopying machine, or other device maintained for use by a public body or agency is used by the public body or agency to copy the governmental record requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public body or agency. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of governmental 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 public body or agency which maintains governmental records in electronic format may, in lieu of providing original records, copy governmental records requested to electronic media using standard or common file formats in a manner that does not reveal information which is confidential under this chapter or any other law. If copying to electronic media is not reasonably practicable, or if the person or entity requesting access requests a different method, the public body or agency may provide a printout of governmental records requested, or may use any other means reasonably calculated to comply with the request in light of the purpose of this chapter as expressed in RSA 91-A:1. 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.

VII. Nothing in this chapter shall be construed to require a public body or agency to compile, cross-reference, or assemble information into a form in which it is not already kept or reported by that body or agency.

91-A:5 Exemptions. – The following governmental 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 public 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 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 but not limited to, notes and materials made prior to, during, or after a governmental 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 the members of a public body.

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.

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.

91-A:7 Violation. – Any person aggrieved by a violation of this chapter may petition the superior court for injunctive relief. In order to satisfy the purposes of this chapter, the courts shall give proceedings under this chapter high 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 or her 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 or she may order notice by any reasonable means, and he or she shall have authority to issue an order ex parte when he or she shall reasonably deem such an order necessary to insure compliance with the provisions of this chapter.

91-A:8 Remedies. –

I. If any public body or agency or employee or member thereof, in violation of the provisions of this chapter, refuses to provide a governmental record or refuses access to a governmental proceeding to a person who reasonably requests the same, such public body, public 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 public body, public 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 governmental proceeding or to provide a governmental record, the court may award such fees personally against such officer, employee, or other official.

I-a. The court may award attorney's fees to a public body or public 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.

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.

PROCEDURE FOR RELEASE OF PERSONAL INFORMATION FOR RESEARCH PURPOSES

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.

RIGHT-TO-KNOW OVERSIGHT COMMISSION

[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.

[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.

[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.

[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.

[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.