



1 of 13 DOCUMENTS

NEW HAMPSHIRE REVISED STATUTES ANNOTATED
Copyright 2009 by Matthew Bender & Company, Inc.,
a member of the LexisNexis Group.
All rights reserved.

*** STATUTES CURRENT THROUGH CHAPTER 2 OF THE 2009 SESSION ***
*** ANNOTATIONS CURRENT THROUGH CASES DECIDED FEBRUARY 20, 2009 ***

TITLE VI Public Officers And Employees
CHAPTER 91-A Access To Governmental Records and Meetings

Go to the New Hampshire Code Archive Directory

RSA Tit. VI, Ch. 91-A Note (2009)

Tit. VI, Ch. 91-A Note

NOTES:

Amendments

--2008.

The 2008 amendment by Chapter 303:2, effective July 1, 2008, substituted "Governmental" for "Public" in the chapter heading.

--1986.

1986, 83:1, eff. Jan. 1, 1987, added "and meetings" following "records" in the chapter heading.

Purpose.

2003, 287:1, eff. July 18, 2003, provided:

"The general court hereby establishes a commission to study clarifying the right-to-know law in light of the supreme court's December 31, 2001 decision in *Hawkins v. N.H. Department of Health and Human Services* and increasing use of electronic communication in the transaction of governmental business. The general court recognizes that guidance is needed for all government officials as well as for members of the public regarding what meetings and what documentation are considered subject to *RSA 91-A*, the right-to-know law."

Cross References.

Accountability of government officers; public's right to know, see New Hampshire Constitution, Part 1, Article 8.

NOTES TO DECISIONS

1. Purpose 2. Generally 3. Appointments 4. Unofficial tape recording 5. Tax Returns 6. Veterans' needs committee 7. Confidentiality of information 8. Burden of proof

1. Purpose

This chapter was intended to increase public access to governmental proceedings in order to augment popular control of government and encourage administrative agency responsibility. *Society for Protection of N.H. Forests v. Water Supply & Pollution Control Comm'n*, 115 N.H. 192, 337 A.2d 788, 1975 N.H. LEXIS 257 (1975).

Main purpose of this chapter is based upon theory that public knowledge of the considerations upon which governmental action is based and of the decisions taken is essential to the democratic process. *Carter v. Nashua*, 113 N.H. 407, 308 A.2d 847, 1973 N.H. LEXIS 285 (1973).

2. Generally

This chapter does not necessarily require the state to be placed at a disadvantage when bargaining with the private sector. *1987 Op. Att'y Gen. 122*.

3. Appointments

Trial court properly ruled that a government official does not necessarily violate this chapter whenever he or she requests a citizen to make an appointment before reviewing a public record. *Brent v. Paquette*, 132 N.H. 415, 567 A.2d 976, 1989 N.H. LEXIS 123 (1989).

4. Unofficial tape recording

Trial court properly found that tape recording made by school superintendent during a public meeting was not a public record subject to this chapter, where the tape was unofficial and made solely for the superintendent's personal use. *Brent v. Paquette*, 132 N.H. 415, 567 A.2d 976, 1989 N.H. LEXIS 123 (1989).

5. Tax Returns

Bank tax returns are not subject to public disclosure under this chapter. *1986 Op. Att'y Gen. 198*.

6. Veterans' needs committee

State veterans' needs committee is subject to this chapter. *1986 Op. Att'y Gen. 231*.

7. Confidentiality of information

The determination of whether information is confidential for purposes of Right-to-Know Law is assessed objectively, not based upon the subjective expectations of the party generating that information. *Goode v. N.H. Office of the Legislative Budget Assistant*, 148 N.H. 551, 813 A.2d 381, 2002 N.H. LEXIS 168 (2002).

8. Burden of proof

The burden of proving whether information is confidential rests with the party seeking non-disclosure. *Goode v. N.H. Office of the Legislative Budget Assistant*, 148 N.H. 551, 813 A.2d 381, 2002 N.H. LEXIS 168 (2002).

Cited

Cited in *State v. LaFrance*, 124 N.H. 171, 471 A.2d 340, 1983 N.H. LEXIS 377 (1983); *Gomez v. Nashua*, 126 F.R.D. 432, 1989 U.S. Dist. LEXIS 7406 (D.N.H. 1989); *Appeal of Salem Regional Medical Ctr.*, 134 N.H. 207, 590 A.2d 602, 1991 N.H. LEXIS 47 (1991); *Chambers v. Gregg*, 135 N.H. 478, 606 A.2d 811, 1992 N.H. LEXIS 62 (1992); *Appeal of Atlantic Connections*, 135 N.H. 510, 608 A.2d 861, 1992 N.H. LEXIS 69 (1992); *In re Keene Sentinel*, 136 N.H. 121, 612 A.2d 911, 1992 N.H. LEXIS 146 (1992); *Union Leader Corp. v. Fenniman*, 136 N.H. 624, 620 A.2d 1039, 1993 N.H. LEXIS 4 (1993).

RESEARCH REFERENCES

New Hampshire Practice

13 N.H.P. Local Government Law §§ 296, 514, 651, 653, 711.

New Hampshire Bar Journal

New Hampshire Right to Know Law, 20 N.H.B.J. 98 (March 1979).

The New Hampshire Right to Know Law--An analysis, 16 N.H.B.J. 227 (March 1975).

For article, "The Right to Know Your Privacy: An Analysis of *Petition of Keene Sentinel*," see 34 N.H.B.J. 5 (Sept. 1993).

New Hampshire Trial Bar News

For article, "How to Acquire Information Under the New Hampshire Right-to-Know Law," see 7 N.H. Trial Bar News 57, 57-61 (Winter 1987).

HIERARCHY NOTES:

Tit. VI Note



2 of 13 DOCUMENTS

NEW HAMPSHIRE REVISED STATUTES ANNOTATED

Copyright 2009 by Matthew Bender & Company, Inc.,

a member of the LexisNexis Group.

All rights reserved.

*** STATUTES CURRENT THROUGH CHAPTER 2 OF THE 2009 SESSION ***

*** ANNOTATIONS CURRENT THROUGH CASES DECIDED FEBRUARY 20, 2009 ***

TITLE VI Public Officers And Employees

CHAPTER 91-A Access To Governmental Records and Meetings

Go to the New Hampshire Code Archive Directory

RSA 91-A:1 (2009)

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.

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

NOTES:

Amendments

--1977.

Rewritten to the extent that a detailed comparison would be impracticable.

--1971.

Rewritten to the extent that a detailed comparison would be impracticable.

NOTES TO DECISIONS

1. Investigatory records 2. Photographs taken by police

1. Investigatory records

Law enforcement representatives did not meet their burden of justifying their withholding of requested documents that the father sought regarding the disappearance of the father's daughter following reports that the daughter had been involved in a traffic accident; since police investigative reports were not mentioned in the state law concerning the disclosure of government records, the state supreme court determined that the six-part test under the corresponding federal law applied and required the law enforcement representatives on remand of the case to the trial court to show how dis-

closure of the requested records could interfere with an ongoing investigation or law enforcement proceeding. *Murray v. N.H. Div. of State Police*, 154 N.H. 579, 913 A.2d 737, 2006 N.H. LEXIS 201 (2006).

2. Photographs taken by police

Photographs which police took with the consent of people who were stopped by police but not arrested were public records, and the trial court's judgment ordering the City of Manchester to provide a civil liberties union with access to consensual photographs which police officers took over a five-year period was upheld. *N.H. Civ. Liberties Union v. City of Manchester*, 149 N.H. 437, 821 A.2d 1014, 2003 N.H. LEXIS 61 (2003).

Cited

Cited in *Orford Teachers Ass'n v. Watson*, 121 N.H. 118, 427 A.2d 21, 1981 N.H. LEXIS 255 (1981); 1986 Op. Atty Gen. 220; 1986 Op. Atty Gen. 231; *Brent v. Paquette*, 132 N.H. 415, 567 A.2d 976, 1989 N.H. LEXIS 123 (1989); *Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 686 A.2d 310, 1996 N.H. LEXIS 127 (1996); *Lambert v. Belknap Cty. Convention*, 157 N.H. 375, 949 A.2d 709, 2008 N.H. LEXIS 75 (2008).

RESEARCH REFERENCES

New Hampshire Bar Journal

For annual survey article by Pierce law students, "Murray v. N.H. State Police: The Right to Access Police Investigatory Files," see 48 N.H.B.J. 34 (Summer 2007).

HIERARCHY NOTES:

Tit. VI Note

Tit. VI, Ch. 91-A Note



3 of 13 DOCUMENTS

NEW HAMPSHIRE REVISED STATUTES ANNOTATED

Copyright 2009 by Matthew Bender & Company, Inc.,

a member of the LexisNexis Group.

All rights reserved.

*** STATUTES CURRENT THROUGH CHAPTER 2 OF THE 2009 SESSION ***
 *** ANNOTATIONS CURRENT THROUGH CASES DECIDED FEBRUARY 20, 2009 ***

TITLE VI Public Officers And Employees
 CHAPTER 91-A Access To Governmental Records and Meetings

Go to the New Hampshire Code Archive Directory

RSA 91-A:1-a (2009)

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

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*.

HISTORY: 1977, 540:2. 1986, 83:2. 1989, 274:1. 1995, 260:4, eff. July 1, 1995. 2001, 223:1, eff. Jan. 1, 2002. 2008, 278:3, eff. at 12:01 a.m., July 1, 2008; 303:3, eff. July 1, 2008; 303:8, eff. at 12:01 a.m., September 5, 2008; 354:1, eff. September 5, 2008.

NOTES:

Amendments

--2008.

The 2008 amendment by Chapter 278:3, effective July 1, 2008 at 12:01 a.m., added VI(e).

The 2008 amendment by Chapter 303:3, effective July 1, 2008, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2008 amendment by Chapter 303:8, effective September 5, 2008 at 12:01 a.m., substituted "chartered public" for "charter" in V.

The 2008 amendment by Chapter 354:1, substituted "chartered public school" for "charter school" in I(d) (now VI(d) as amended by Chapter 303:3).

--2001.

Redesignated the former introductory paragraph as par. I, redesignated former pars. I through IV as pars. I(a) through I(d), and in par. I(a), inserted "and including any advisory committee established by the general court", in par. I(b), inserted "including any advisory committee established by the governor by executive order or by the governor's

council", and in par. I(c), inserted "and including any advisory committee established by such entities", and added new par. II.

--1995.

Paragraph IV: Inserted "school administrative unit, charter school" following "school district".

--1989.

Paragraph II: Added "and the governor with the governor's council" at the end of the paragraph.

--1986.

Paragraph III: Added "including the board of trustees of the university system of New Hampshire" following "authority".

Contingent 2008, ch. 278 amendment.

2008, 278:4, II, eff. August 26, 2008, provided in part: "If HB 1408-LOCAL [ch. 303] of the 2008 legislative session becomes law, section 3 of this act shall take effect July 1, 2008 at 12:01 a.m. and section 1 of this act shall not take effect." Pursuant to the terms of this provision par. II is set out above as amended by Ch. 278:3 eff July 1, 2008 at 12:01 a.m. and the amendment by Ch. 278:1 did not take effect.

Contingent 2008, ch. 303 amendment.

2008, 303:9, eff. July 1, 2008, provided in part: "If SB 418 [ch. 354] of the 2008 regular legislative session becomes law, section 8 of this act shall take effect at 12:01 a.m. on the day SB 418 takes effect." Pursuant to the terms of this provision par. V is set out above as amended by Ch. 303:8 eff September 5, 2008 at 12:01 a.m.

NOTES TO DECISIONS

1. Construction 2. Organizations 3. Special legislative session

1. Construction

Public informational meetings conducted by Department of Transportation were "public proceedings" for purposes of this chapter, and department was required to give notice to public and to keep brief minutes. Op. Atty. Gen. #0-93-1.

2. Organizations

The New Hampshire Housing Finance Authority is subject to the Right-to-Know Law as 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, 705 A.2d 725, 1997 N.H. LEXIS 132 (1997).

Not all organizations that work for or with the government are subject to the right-to-know law. *Bradbury v. Shaw*, 116 N.H. 388, 360 A.2d 123, 1976 N.H. LEXIS 361 (1976).

Where there was no statute or ordinance establishing mayor's industrial advisory committee consisting of prominent businessmen, newspapermen, and city council members, which met monthly on call of mayor and performed variety of functions including contacting concerns which might locate in city, gathering information which might be useful to potential concerns, discussing of sale of city-owned land to commercial developers and extension of city water and sewer lines and construction of new streets, advisory committee's involvement in governmental programs brought it within scope of right-to-know law. *Bradbury v. Shaw*, 116 N.H. 388, 360 A.2d 123, 1976 N.H. LEXIS 361 (1976).

Municipal finance committee was an agency of municipal corporation so that its meetings were included in the term "public proceedings" as defined by former RSA 91-A:1. *Selkove v. Bean*, 109 N.H. 247, 249 A.2d 35, 1968 N.H. LEXIS 171, 38 A.L.R.3d 1066 (1968).

3. Special legislative session

Assuming arguendo that the due process protections applied to the passage of legislation, an inmate's due process rights were not violated by the enactment of RSA 651:2, II-e, as the session during which this occurred was open to the

public, as required by *RSA 91-A:1-a*, I(a) and 91-A:2, II. *Starr v. Governor*, 154 N.H. 174, 910 A.2d 1247, 2006 N.H. LEXIS 140 (2006).

Cited

Cited in *Lodge v. Knowlton*, 118 N.H. 574, 391 A.2d 893, 1978 N.H. LEXIS 246 (1978); *Appeal of Plantier*, 126 N.H. 500, 494 A.2d 270, 1985 N.H. LEXIS 341 (1985); 1986 Op. Att'y Gen. 220; 1986 Op. Att'y Gen. 231; 1987 Op. Att'y Gen. 122.

HIERARCHY NOTES:

Tit. VI Note

Tit. VI, Ch. 91-A Note



4 of 13 DOCUMENTS

NEW HAMPSHIRE REVISED STATUTES ANNOTATED

Copyright 2009 by Matthew Bender & Company, Inc.,
a member of the LexisNexis Group.

All rights reserved.

*** STATUTES CURRENT THROUGH CHAPTER 2 OF THE 2009 SESSION ***

*** ANNOTATIONS CURRENT THROUGH CASES DECIDED FEBRUARY 20, 2009 ***

TITLE VI Public Officers And Employees
CHAPTER 91-A Access To Governmental Records and Meetings

Go to the New Hampshire Code Archive Directory

RSA 91-A:2 (2009)

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.

HISTORY: 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. 2007, 59:2, eff. July 31, 2007. 2008, 278:2, eff. at 12:01 a.m., July 1, 2008; 303:4, eff. July 1, 2008.

NOTES:

Amendments

--2008.

The 2008 amendment by Chapter 278, in I, added "subject to the provisions set forth in *RSA 91-A:2, III*" in the first sentence.

The 2008 amendment by Chapter 303, rewrote the section to the extent that a detailed comparison would be impracticable.

--2007.

Paragraph II: Substituted "not more than 5 business days after" for "within 144 hours of" preceding "the public meeting" in the fourth sentence and added the tenth sentence.

--2003.

Paragraph I: Made minor stylistic changes in subpars. (b) and (c) and added subpar. (d).

--1991.

Paragraph II: Substituted "a nonpublic" for "an executive" preceding "session" in the fifth sentence.

--1986.

Paragraph I: Added the second sentence.

Paragraph II: Inserted "or the senate, whichever rules are appropriate" following "house of representatives" in the eighth sentence and made other minor stylistic changes.

--1983.

Paragraph II: Substituted "144" for "72" following "inspection within" and deleted "of this chapter" following "91-A:6" in the fourth sentence.

--1977.

Deleted "the" preceding "public" in the section catchline, designated existing provisions of the section as par. II, added the second sentence of that paragraph, and added par. I.

--1975.

Added the second sentence.

--1971.

Inserted "or when there is a meeting of a legislative committee" following "emergency" and substituted "Sundays" for "Sunday" following "excluding" in the third sentence and added the fifth sentence.

--1969.

Rewritten to the extent that a detailed comparison would be impracticable.

Contingent 2008 amendment.

2008, 278:4, I, eff. August 26, 2008, provided in part: "If HB 1408-LOCAL [ch. 303] of the 2008 legislative session becomes law, section 2 of this act shall take effect July 1, 2008 at 12:01 a.m." Pursuant to the terms of this provision par. I is set out above as amended by Ch. 278:2 eff July 1, 2008 at 12:01 a.m.

Cross References.

Executive sessions, see *RSA 91-A:3*.

Minutes and records available for public inspection, see *RSA 91-A:4*.

NOTES TO DECISIONS

1. Construction 2. Availability of records 3. Public dissemination 4. Notice--Generally 5. --Personal notice 6. --Subsequent meetings 7. Collective bargaining 8. Public proceedings

1. Construction

Right-to-know law applies only to meetings of a quorum of members of a public body, not to conversations among individual members outside of such meetings. *Webster v. Town of Candia*, 146 N.H. 430, 778 A.2d 402, 2001 N.H. LEXIS 91 (2001), amended, 2001 N.H. LEXIS 154 (2001).

Public informational meetings conducted by Department of Transportation were "public proceedings" for purposes of this chapter, and department was required to give notice to public and to keep brief minutes. Op. Atty. Gen. #0-93-1.

2. Availability of records

Where newspaper sought to compel clerk of New Hampshire House of Representatives to turn over to it under Right-to-Know Law a certain tape recording of the proceedings of the house, for the purpose of duplicating and using it for a so-called voice stress analysis, case would not be viewed as a true Right-to-Know Law case because the legislative session in question was open to the public and press, an official journal was prepared of the proceedings, and written transcripts were available if the newspaper or anyone else wished to obtain them. *Union Leader Corp. v. Chandler*, 119 N.H. 442, 402 A.2d 914, 1979 N.H. LEXIS 336 (1979).

Where newspaper sought to compel clerk of New Hampshire House of Representatives to turn over to it under Right-to-Know Law a certain tape recording of the proceedings of the house, for the purpose of duplicating and using it for a so-called voice stress analysis, house could properly decide, consistent with the right of reasonable public access, that its official tape should not be duplicated or subjected to a voice stress analysis. *Union Leader Corp. v. Chandler*, 119 N.H. 442, 402 A.2d 914, 1979 N.H. LEXIS 336 (1979).

Verbatim stenographic records of testimony at zoning hearing are not required, nor are they commonly made, unless by the parties themselves. *Dipietro v. Nashua*, 109 N.H. 174, 246 A.2d 695, 1968 N.H. LEXIS 149 (1968).

3. Public dissemination

This chapter does not mandate that a negotiating party may not be restricted from issuing press releases regarding the status of closed public sector collective bargaining sessions. *Appeal of Exeter*, 126 N.H. 685, 495 A.2d 1288, 1985 N.H. LEXIS 352 (1985).

This section and RSA 365:8 empower the Public Utilities Commission to regulate all private recordings of its hearings and to deny a news media request to broadcast a recording. *1590 Broadcasting Corp. v. Public Utils. Comm'n*, 113 N.H. 258, 306 A.2d 49, 1973 N.H. LEXIS 248 (1973).

Radio broadcasting corporation had no unrestrained right to gather information through the taping of Public Utilities Commission public hearing on rate increase request, and public's right to be informed was satisfied where the commission, which validly denied radio broadcasting corporation's request that it be allowed to broadcast tapes the commission had allowed it to make for litigation purposes, allowed other reasonable methods of recording and reporting the hearing. *1590 Broadcasting Corp. v. Public Utils. Comm'n*, 113 N.H. 258, 306 A.2d 49, 1973 N.H. LEXIS 248 (1973).

4. Notice--Generally

Where principal's contract was improperly terminated because school board meeting was not preceded by proper notice, trial court would have power, if principal was interested in continuing his position, to order school board to hold a new and open meeting on the question whether the contract should be renewed. *Stoneman v. Tamworth Sch. Dist.*, 114 N.H. 371, 320 A.2d 657, 1974 N.H. LEXIS 281 (1974).

Fundamental purpose of requirements for notice and hearing is to advise all affected parties of their opportunity to be heard in public meeting and to be apprised of the relief sought. *Carter v. Nashua*, 113 N.H. 407, 308 A.2d 847, 1973 N.H. LEXIS 285 (1973).

Lack of compliance with requirements that hearings be upon notice and open to the public would deprive a zoning board of adjustment of jurisdiction to grant a variance. *Carter v. Nashua*, 113 N.H. 407, 308 A.2d 847, 1973 N.H. LEXIS 285 (1973).

Where counsel for applicant for zoning variance posted the notices required by this section, this ministerial act was properly permitted and complied with statutory requirements. *Carter v. Nashua*, 113 N.H. 407, 308 A.2d 847, 1973 N.H. LEXIS 285 (1973).

5. --Personal notice

Where two probationary teachers employed pursuant to individual written contracts were not offered contracts for the upcoming school year after a regularly scheduled school board meeting, the provisions of this section governing meetings open to the public did not require personal notice to be given for the teachers' nominations; the school board had not agreed to provide such personal notice pursuant to a collective bargaining agreement and the teachers' association was the exclusive representative of the two teachers. *Brown v. Bedford Sch. Bd.*, 122 N.H. 627, 448 A.2d 1375, 1982 N.H. LEXIS 414 (1982).

School board which decided not to renew principal's contract would not successfully meet fact it had not given posted or published notice of the meeting with fact principal received notice prior to the meeting. *Stoneman v. Tamworth Sch. Dist.*, 114 N.H. 371, 320 A.2d 657, 1974 N.H. LEXIS 281 (1974).

6. --Subsequent meetings

Where notice was published in a newspaper of general circulation that town planning board would consider adoption of subdivision regulations on January 5, and at such time only one-half of the proposed regulations were discussed and the hearing was recessed until January 12, recess of hearing without posting of additional notice was not violative of any of defendant's rights under this chapter or under RSA 36:23. *Nottingham v. Harvey*, 120 N.H. 889, 424 A.2d 1125, 1980 N.H. LEXIS 428 (1980).

Where notice of second meeting of zoning board of adjustment in the matter of a variance application was given 24 hours before the meeting instead of the 72-hour notice required by city ordinance, such failure was not sufficient to affect board's jurisdiction over the matter, which it acquired by its compliance with all notice requirements for the first meeting. *Carter v. Nashua*, 113 N.H. 407, 308 A.2d 847, 1973 N.H. LEXIS 285 (1973).

7. Collective bargaining

This chapter does not mandate that public sector collective bargaining sessions be open to the public when one of the negotiating parties insists upon such a format. *Appeal of Exeter*, 126 N.H. 685, 495 A.2d 1288, 1985 N.H. LEXIS 352 (1985).

Negotiation sessions between school board and teachers' representative were not within the ambit of this chapter, though any board approval of recommendations arrived at during the negotiations must be given at an open meeting in accordance with this chapter. *Talbot v. Concord Union Sch. Dist.*, 114 N.H. 532, 323 A.2d 912, 1974 N.H. LEXIS 318 (1974).

8. Public proceedings

Assuming arguendo that the due process protections applied to the passage of legislation, an inmate's due process rights were not violated by the enactment of RSA 651:2, II-e, as the session during which this occurred was open to the public, as required by RSA 91-A:1-a, I(a) and 91-A:2, II. *Starr v. Governor*, 154 N.H. 174, 910 A.2d 1247, 2006 N.H. LEXIS 140 (2006).

New Hampshire Department of Fish and Game violated RSA 91-A:2, II by excluding a television station's cameras from a hunting license hearing on grounds that the commotion they would cause would deprive the license applicant of his right to a fair hearing. The Department failed to identify what constitutional interest was at stake; a hunting license had never been found to be a constitutionally protected right. *WMUR Channel Nine v. N.H. Dep't of Fish & Game*, 154 N.H. 46, 908 A.2d 146, 2006 N.H. LEXIS 113 (2006).

Executive Director of the New Hampshire Department of Fish and Game violated RSA 91-A:2, II by excluding a television station's cameras from a hunting license hearing. Even if N.H. Code Admin. R. Ann. Fis. 203.01(b) could be read as authorizing the Director to take such action, a Department regulation could not override the clear directive of RSA 91-A:2, II. *WMUR Channel Nine v. N.H. Dep't of Fish & Game*, 154 N.H. 46, 908 A.2d 146, 2006 N.H. LEXIS 113 (2006).

Though the Executive Director of the New Hampshire Department of Fish and Game violated RSA 91-A:2, II by excluding a television station's cameras from a hunting license hearing on grounds that the commotion they would cause would deprive the license applicant of his right to a fair hearing, the station was properly denied attorney's fees under RSA 91-A:8. The trial court properly found, given the state of the case law, that the Director neither knew nor should have known that his conduct violated RSA 91-A:2, II. *WMUR Channel Nine v. N.H. Dep't of Fish & Game*, 154 N.H. 46, 908 A.2d 146, 2006 N.H. LEXIS 113 (2006).

Cited

Cited in *Stoneman v. Tamworth Sch. Dist.*, 114 N.H. 371, 320 A.2d 657, 1974 N.H. LEXIS 281 (1974); *Orford Teachers Ass'n v. Watson*, 121 N.H. 118, 427 A.2d 21, 1981 N.H. LEXIS 255 (1981); 1986 Op. Att'y Gen. 220; Op. Atty. Gen. 231; 1987 Op. Att'y Gen. 122; *Lambert v. Belknap Cty. Convention*, 157 N.H. 375, 949 A.2d 709, 2008 N.H. LEXIS 75 (2008).

RESEARCH REFERENCES**New Hampshire Bar Journal**

For article, "The New Practitioner's Guide to Representing Municipal Boards," see 48 *N.H.B.J.* 56 (Autumn 2007).

For article, "Electronic Records and Communications under New Hampshire's Right-to-Know Law," see 48 *N.H.B.J.* 38 (Autumn 2007).

For article, "Lex Loci: A Survey of New Hampshire Supreme Court Decisions," see 47 *N.H.B.J.* 78 (Autumn 2006).

HIERARCHY NOTES:

Tit. VI Note

Tit. VI, Ch. 91-A Note



5 of 13 DOCUMENTS

NEW HAMPSHIRE REVISED STATUTES ANNOTATED
Copyright 2009 by Matthew Bender & Company, Inc.,
a member of the LexisNexis Group.
All rights reserved.

*** STATUTES CURRENT THROUGH CHAPTER 2 OF THE 2009 SESSION ***
*** ANNOTATIONS CURRENT THROUGH CASES DECIDED FEBRUARY 20, 2009 ***

TITLE VI Public Officers And Employees
CHAPTER 91-A Access To Governmental Records and Meetings

Go to the New Hampshire Code Archive Directory

RSA 91-A:2-a (2009)

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*.

HISTORY: 2008, 303:4, eff. July 1, 2008.

HIERARCHY NOTES:

Tit. VI Note

Tit. VI, Ch. 91-A Note



6 of 13 DOCUMENTS

NEW HAMPSHIRE REVISED STATUTES ANNOTATED
 Copyright 2009 by Matthew Bender & Company, Inc.,
 a member of the LexisNexis Group.
 All rights reserved.

*** STATUTES CURRENT THROUGH CHAPTER 2 OF THE 2009 SESSION ***
 *** ANNOTATIONS CURRENT THROUGH CASES DECIDED FEBRUARY 20, 2009 ***

TITLE VI Public Officers And Employees
 CHAPTER 91-A Access To Governmental Records and Meetings

Go to the New Hampshire Code Archive Directory

RSA 91-A:3 (2009)

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*.

RSA 91-A:3

(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.

HISTORY: 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. 2008, 303:4, eff. July 1, 2008.

NOTES:**Amendments****--2008.**

The 2008 amendment in I(a), II(c), and II(e), substituted "public body" for "body or agency" or variants; in III, substituted "meetings" for "proceedings" and made a stylistic change.

--2004.

Paragraph II(c): Added the second sentence.

Paragraph II(d): Amended without change.

Paragraph II(e): Inserted "or her" following "of his" in the first sentence and added the second sentence.

--2002.

Paragraph II(i): Added.

Paragraph III: Inserted "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" following "ineffective" in the second sentence, and added the third sentence.

--1993.

Paragraph II(g): Added by ch. 46.

Paragraph II(h): Added by ch. 335.

--1992.

Paragraph II: Substituted "(1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted" for "requests an open meeting" at the end of subpar. (a) and inserted "real or personal" preceding "property" in subpar. (d).

--1991.

Rewritten to the extent that a detailed comparison would be impracticable.

--1986.

Paragraph II: Added the second sentence in the introductory paragraph and added subpars. (e) and (f).

--1983.

Paragraph II: Rewrote the introductory paragraph and deleted subpar. (e).

--1977.

Rewritten to the extent that a detailed comparison would be impracticable.

--1971.

Paragraph II(e): Added.

--1969.

Paragraph I: Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Dismissal of town officer for breach of confidentiality, see *RSA 42:1-a*.

NOTES TO DECISIONS

1. Construction 2. Construction with other laws 3. Finally approved 4. Employment contracts 5. Budget review 6. Legal advice 7. Minutes 8. Termination of employee 9. Appointment to fill vacant office

1. Construction

Statutory exemption from public access to executive sessions contained in this chapter, like all other exemptions, must be construed narrowly. *Orford Teachers Ass'n v. Watson*, 121 N.H. 118, 427 A.2d 21, 1981 N.H. LEXIS 255 (1981).

The 1969 and 1971 amendments to this section indicate a disposition to broaden its scope and application. *Herron v. Northwood*, 111 N.H. 324, 282 A.2d 661, 1971 N.H. LEXIS 191 (1971).

2. Construction with other laws

Board of Registration in Medicine erred in denying request of doctor for an open hearing, on a complaint filed against the doctor, on the basis of subparagraph II(c) of this section where *RSA 329:17, X*, relating to disciplinary action against doctors, specifically provided for an open hearing upon request of the doctor. *Appeal of Plantier*, 126 N.H. 500, 494 A.2d 270, 1985 N.H. LEXIS 341 (1985).

Notwithstanding this chapter, intervenors, as real party in interest, had available the use of traditional discovery techniques, subject to the exclusion of inquiry into the mental processes of the administrative decision-makers. *Society for Protection of N.H. Forests v. Water Supply & Pollution Control Comm'n*, 115 N.H. 192, 337 A.2d 788, 1975 N.H. LEXIS 257 (1975).

3. Finally approved

"Finally approved," as used in paragraph I, must be read to connote finality within the scope of the powers delegated to a given board, commission, agency or authority subject to the provisions of the statute. *Herron v. Northwood*, 111 N.H. 324, 282 A.2d 661, 1971 N.H. LEXIS 191 (1971).

"Finally approved," as used in this section, applied to Budget Committee's submission of budget it had prepared for school district and town expenditures, not to approval of budget by voters, as "finally approved" related to bodies' and agencies' final approval, so that fact final action on the budget was by the voters did not allow Budget Committee, following public hearing, to hold a closed, secret executive session for the purpose of giving its final approval to its recommendations for budget expenditures. *Herron v. Northwood*, 111 N.H. 324, 282 A.2d 661, 1971 N.H. LEXIS 191 (1971).

4. Employment contracts

School board meeting at which it was voted to terminate principal's contract was not an "executive session" or a meeting at which the "hiring" of the principal was considered, and notice of the meeting should have been given. *Stoneman v. Tamworth Sch. Dist.*, 114 N.H. 371, 320 A.2d 657, 1974 N.H. LEXIS 281 (1974).

5. Budget review

Under paragraph I of this section, municipal finance committee could properly meet in executive session to review the budget and receive information relating to it, so long as no final action was taken by the committee and no recommendation to the city council was formulated or agreed upon. *Selkove v. Bean*, 109 N.H. 247, 249 A.2d 35, 1968 N.H. LEXIS 171, 38 A.L.R.3d 1066 (1968).

6. Legal advice

Where Water Supply and Pollution Control Commission received legal advice regarding issue whether it should grant a permit to Public Service Company, which desired to build nuclear generating electrical units, its failure to pass contents of advice on to party opposing the permit was not a violation of this chapter. *Society for Protection of N.H. Forests v. Water Supply & Pollution Control Comm'n*, 115 N.H. 192, 337 A.2d 788, 1975 N.H. LEXIS 257 (1975).

7. Minutes

Construing the provisions of the right-to-know law for withholding minutes narrowly, supreme court concluded that there is no blanket exemption for minutes of executive sessions, and that they are public records covered by RSA 91-A:4. *Orford Teachers Ass'n v. Watson*, 121 N.H. 118, 427 A.2d 21, 1981 N.H. LEXIS 255 (1981).

When there is a question under the right-to-know law whether minutes are exempt from public access, trial judge should conduct an in camera review to determine whether portions of the minutes meet any of the other statutory exemptions. *Orford Teachers Ass'n v. Watson*, 121 N.H. 118, 427 A.2d 21, 1981 N.H. LEXIS 255 (1981).

8. Termination of employee

Governmental body may not move to go into executive session for the purpose of considering termination of a public employee unless it has previously put that employee on notice that such a motion would be made. *Johnson v. Nash*, 135 N.H. 534, 608 A.2d 200, 1992 N.H. LEXIS 73 (1992).

9. Appointment to fill vacant office

The "hiring of a public employee" under RSA 91-A:3, II(b) does not include the appointment of an interim sheriff. Accordingly, when a sheriff's office became vacant during the sheriff's term of office, a county convention was required to fill the vacancy in the office of the sheriff in public session. *Lambert v. Belknap Cty. Convention*, 157 N.H. 375, 949 A.2d 709, 2008 N.H. LEXIS 75 (2008).

Cited

Cited in *Appeal of Exeter*, 126 N.H. 685, 495 A.2d 1288, 1985 N.H. LEXIS 352 (1985); *Perras v. Clements*, 127 N.H. 603, 503 A.2d 843, 1986 N.H. LEXIS 208 (1986); 1986 Op. Att'y Gen. 220; 1986 Op. Att'y Gen. 231.

RESEARCH REFERENCES

New Hampshire Practice

13 N.H.P. Local Government Law §§ 675, 677, 677A, 725.

New Hampshire Bar Journal

For article, "The New Practitioner's Guide to Representing Municipal Boards," see 48 N.H.B.J. 56 (Autumn 2007).

HIERARCHY NOTES:

Tit. VI Note

Tit. VI, Ch. 91-A Note



7 of 13 DOCUMENTS

NEW HAMPSHIRE REVISED STATUTES ANNOTATED
Copyright 2009 by Matthew Bender & Company, Inc.,
a member of the LexisNexis Group.
All rights reserved.

*** STATUTES CURRENT THROUGH CHAPTER 2 OF THE 2009 SESSION ***
*** ANNOTATIONS CURRENT THROUGH CASES DECIDED FEBRUARY 20, 2009 ***

TITLE VI Public Officers And Employees
CHAPTER 91-A Access To Governmental Records and Meetings

Go to the New Hampshire Code Archive Directory

RSA 91-A:4 (2009)

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 remain accessible for the same retention or archival periods as their paper counterparts. Methods that may be used to accomplish this requirement 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 in-

RSA 91-A:4

spection 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.

HISTORY: 1967, 251:1. 1983, 279:2. 1986, 83:5, eff. Jan. 1, 1987. 1997, 90:2, eff. Aug. 2, 1997. 2001, 223:2, eff. Jan. 1, 2002. 2004, 246:2, eff. Aug. 14, 2004. 2008, 303:4, eff. July 1, 2008.

NOTES:**Amendments****--2008.**

The 2008 amendment rewrote the section to the extent that a detailed comparison would be impracticable.

--2004.

Paragraph VI: Added.

--2001.

Paragraph I-a: Substituted "I(a)-(d)" for "I-IV" in the first sentence.

--1997.

Paragraph I-a: Added.

--1986.

Paragraphs III-IV: Added.

--1983.

Designated the existing provisions of the section as par. I, made minor stylistic changes in that paragraph, and added par. II.

Cross References.

Access to analysis and compilations of data prepared by cancer registry, see *RSA 141-B:9*.

Disposition of municipal records, see *RSA 33-A*.

State records management and archives, see *RSA 5:25 et seq.*

NOTES TO DECISIONS

1. Right to inspect generally 2. Temporarily unavailable records 3. Furnishing of copies 4. Minutes of executive sessions 5. Employment records 6. Real estate records 7. Public utilities 8. Destruction of tapes and notes used to prepare minutes 9. Agency budget materials 10. Records not in final form 11. Work Papers 12. Mootness

1. Right to inspect generally

Trial court erred in considering whether the New Hampshire Department of Resources and Economic Development's (DRED's) conduct in withholding certain requested documents by an organization was reasonable or whether it committed a knowing violation when rejecting the organization's request for costs, which required the trial court's denial of costs to the organization to be vacated. Since the organization's request for costs remained viable only if DRED violated the Right-to-Know Law, the case was remanded to the trial court to consider costs and the lawfulness of the DRED's conduct in its delayed disclosure and retention of documents. *ATV Watch v. N.H. Dep't of Res. & Econ. Dev.*, 155 N.H. 434, 923 A.2d 1061, 2007 N.H. LEXIS 72 (2007).

Photographs which police took with the consent of people who were stopped by police but not arrested were public records, and the trial court's judgment ordering the City of Manchester to provide a civil liberties union with access to consensual photographs which police officers took over a five-year period was upheld. *N.H. Civ. Liberties Union v. City of Manchester*, 149 N.H. 437, 821 A.2d 1014, 2003 N.H. LEXIS 61 (2003).

Right to inspect does not depend upon a need, or demonstration of a need, for the information. *Mans v. Lebanon Sch. Bd.*, 112 N.H. 160, 290 A.2d 866, 1972 N.H. LEXIS 166 (1972).

2. Temporarily unavailable records

Trial court properly concluded that official did not violate this section by failing to provide requested documents immediately on the basis that the official was "too busy," where documents were sent to citizen two days later. *Brent v. Paquette*, 132 N.H. 415, 567 A.2d 976, 1989 N.H. LEXIS 123 (1989).

Where the only school official with the authority to respond to request for information was on vacation when the request was made, trial court properly concluded that computation of 5-day period within which official had to respond began on the day this official returned from vacation. *Brent v. Paquette*, 132 N.H. 415, 567 A.2d 976, 1989 N.H. LEXIS 123 (1989).

Where town resident asked town building inspector for plans for proposed industrial park, the latter said the chairman of the planning board had them out for the day on official business, and town otherwise at all times provided resident with access to the plans, town did not deny resident access to the plans in violation of this section. *Gallagher v. Windham*, 121 N.H. 156, 427 A.2d 37, 1981 N.H. LEXIS 271 (1981).

3. Furnishing of copies

This section does not contain language imposing an absolute duty on towns or agencies to provide copies of public records to citizens; it contemplates that the records be made available for inspection and reproduction. *Gallagher v. Windham*, 121 N.H. 156, 427 A.2d 37, 1981 N.H. LEXIS 271 (1981).

Where record did not demonstrate that plaintiff offered to pay town for copies of town records were they provided to her by photocopying them on town's photocopier, and the parties' briefs were silent on the issue, finding below that town did not violate this section when town did not provide copies of the record to plaintiff was amply supported by the evidence. *Gallagher v. Windham*, 121 N.H. 156, 427 A.2d 37, 1981 N.H. LEXIS 271 (1981).

4. Minutes of executive sessions

Construing the provisions of the right-to-know law for withholding minutes narrowly, supreme court concluded that there is no blanket exemption for minutes of executive sessions, and that they are public records covered by this section. *Orford Teachers Ass'n v. Watson*, 121 N.H. 118, 427 A.2d 21, 1981 N.H. LEXIS 255 (1981).

5. Employment records

Where public employee labor relations board's orders were within its jurisdiction and were supported by ample evidence in the record, superior court properly ordered enforcement of board's order that school board produce specific salary information for school year so that public employee labor relations board could determine which teachers were

entitled to back pay and amount owing to each one under master agreement, because this information was contained in records which any citizen had a right to examine. *Rochester Sch. Bd. v. Public Employee Labor Relations Bd.*, 119 N.H. 45, 398 A.2d 823, 1979 N.H. LEXIS 240 (1979).

Order that school district administrator supply educational association representing striking teacher with the names and addresses of substitute teachers hired during the strike was proper. *Timberlane Regional Educ. Ass'n v. Crompton*, 114 N.H. 315, 319 A.2d 632, 1974 N.H. LEXIS 267 (1974).

Teachers' contracts with school board were public records under this section. *Mans v. Lebanon Sch. Bd.*, 112 N.H. 160, 290 A.2d 866, 1972 N.H. LEXIS 166 (1972).

6. Real estate records

Computer tape containing information contained on approximately 35,000 field record cards made out when city had all its real estate revaluated, each card containing, inter alia, details of land, buildings, owners, use, topography, improvements, area trends, construction, value and a sketch of the property, was a public record under this section, and was not exempt from disclosure under RSA 91-A:5; and disclosure to the public would not constitute an unconstitutional invasion of privacy. *Menge v. Manchester*, 113 N.H. 533, 311 A.2d 116, 1973 N.H. LEXIS 311 (1973).

7. Public utilities

Intervenors opposing permit to company planning to build nuclear generating electrical units had right to examine all the evidence relied upon by the commission involved in making its final determination. *Society for Protection of N.H. Forests v. Water Supply & Pollution Control Comm'n*, 115 N.H. 192, 337 A.2d 788, 1975 N.H. LEXIS 257 (1975).

8. Destruction of tapes and notes used to prepare minutes

School official's practice of routinely destroying tapes and notes used to prepare minutes of public meetings did not violate this section, where the tapes and notes were destroyed only after the minutes of the meetings were approved. *Brent v. Paquette*, 132 N.H. 415, 567 A.2d 976, 1989 N.H. LEXIS 123 (1989).

9. Agency budget materials

State agency budget requests and income estimates are subject to public scrutiny on October 1, the statutory deadline for their submission to the commissioner of administrative services, unless they are exempt from the provisions of the Right-to-Know Law. *Chambers v. Gregg*, 135 N.H. 478, 606 A.2d 811, 1992 N.H. LEXIS 62 (1992).

10. Records not in final form

Trial court erred in failing to order disclosure of preliminary materials prepared for, but not expressly incorporated in, agency's final audit report, since Right-to-Know Law did not exempt public records from disclosure simply because they were not in their final form. *Goode v. New Hampshire Office of the Legislative Budget Assistant*, 145 N.H. 451, 767 A.2d 393, 2000 N.H. LEXIS 92 (2000).

11. Work Papers

Even if certain interview materials from an audit by the New Hampshire Legislative Budget Assistant constituted work papers within the meaning of this section, a balancing test for exemption from disclosure applied, just as with other confidential materials, and the materials were not exempt from disclosure under that test, as the government's interest in nondisclosure did not outweigh the public's interest in disclosure, especially where there was no evidence that requiring disclosure of such materials would have caused future auditors to be less honest or complete in recording information. *Goode v. N.H. Office of the Legislative Budget Assistant*, 148 N.H. 551, 813 A.2d 381, 2002 N.H. LEXIS 168 (2002).

Fact that records are "work papers" within the meaning of RSA 91-A:4, V does not render them categorically exempt from disclosure; rather, as with other asserted confidential information under RSA 91-A:5, IV, a court must balance the competing interests regarding disclosure and non-disclosure. *Goode v. N.H. Office of the Legislative Budget Assistant*, 148 N.H. 551, 813 A.2d 381, 2002 N.H. LEXIS 168 (2002).

12. Mootness

Trial court erred by dismissing, as moot, the remainder of an organization's Right-to-Know Law petition requesting all terrain vehicle trail documentation from the New Hampshire Department of Resources and Economic Development

as the trial court was required to determine if the state agency's conduct in withholding the documents was unlawful despite the ultimate release of the documents since the organization may have been entitled to a remedy despite the ultimate release of the documents. *ATV Watch v. N.H. Dep't of Res. & Econ. Dev.*, 155 N.H. 434, 923 A.2d 1061, 2007 N.H. LEXIS 72 (2007).

Cited

Cited in 1986 *Op. Att'y Gen.* 198; *New Hampshire Challenge v. Commissioner, New Hampshire Dept. of Educ.*, 142 N.H. 246, 698 A.2d 1252, 1997 N.H. LEXIS 85 (1997).

RESEARCH REFERENCES

New Hampshire Code of Administrative Rules

Rules of the Commission for Human Rights, Hum 103.02, New Hampshire Code of Administrative Rules Annotated.

New Hampshire Practice

13 N.H.P. Local Government Law §§ 653, 677A, 711.

New Hampshire Bar Journal

For article, "Electronic Records and Communications under New Hampshire's Right-to-Know Law," see 48 *N.H.B.J.* 38 (Autumn 2007).

For annual survey article by Pierce law students, "Murray v. N.H. State Police: The Right to Access Police Investigatory Files," see 48 *N.H.B.J.* 34 (Summer 2007).

For Article, "What Do You Have the Right to Know," see 43 *N.H.B.J.* 1 (March 2002).

HIERARCHY NOTES:

Tit. VI Note

Tit. VI, Ch. 91-A Note



8 of 13 DOCUMENTS

NEW HAMPSHIRE REVISED STATUTES ANNOTATED

Copyright 2009 by Matthew Bender & Company, Inc.,

a member of the LexisNexis Group.

All rights reserved.

*** STATUTES CURRENT THROUGH CHAPTER 2 OF THE 2009 SESSION ***
 *** ANNOTATIONS CURRENT THROUGH CASES DECIDED FEBRUARY 20, 2009 ***

TITLE VI Public Officers And Employees
 CHAPTER 91-A Access To Governmental Records and Meetings

Go to the New Hampshire Code Archive Directory

RSA 91-A:5 (2009)

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.

HISTORY: 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. 2008, 303:4, eff. July 1, 2008.

NOTES:

Amendments

--2008.

The 2008 amendment in the introductory language, added "governmental" preceding "records"; in IV, in the second sentence, added "public" preceding "body or agency"; in V, deleted "both hard copies and computer files" following "certification records"; in VIII, added "but not limited to" and substituted "governmental" for "public"; and in IX, substituted "the members of a public body" for "those entities defined in *RSA 91-A:1-a*".

--2004.

Chapter 147 added par. VII.

Chapter 246 inserted "following" preceding "records" and deleted "of the following bodies" thereafter in the introductory paragraph, added "records of" in pars. I and II, and added pars. VIII and IX.

--2002.

Paragraph VI: Added.

--1993.

Paragraph V: Added.

--1990.

Paragraph IV: Inserted "videotape sale or rental" following "library user" in the first sentence.

--1989.

Paragraph IV: Inserted "library user" following "welfare" in the first sentence.

--1986.

Paragraph IV: Rewritten to the extent that a detailed comparison would be impracticable.

Purpose of 1989 amendment.

1989, 184:1, eff. July 21, 1989, provided:

"The Access to Public Records and Meetings Law, RSA 91-A, or Right-to-Know Law, does not include a definition of what constitutes a public record. The New Hampshire supreme court has applied a balancing test to determine whether a record is public by weighing the benefits of disclosure to the public versus the benefits of nondisclosure. By weighing the benefits of allowing disclosure of library user records against the benefits of denial of disclosure, the general court has determined that the benefits of nondisclosure clearly prevail. This act, therefore, exempts library user records from RSA 91-A to ensure that the individual's right to privacy regarding the nature of the library materials used by the individual is not invaded. To protect the right to privacy of all New Hampshire citizens, both public and other than public library records are protected."

Cross References.

Access to information relating to location of archeological sites, see RSA 227-C:11.

Confidentiality of enhanced 911 system records, see RSA 106-H:14.

Confidentiality of information compiled for statewide 911 system, see RSA 106-H:14.

Confidentiality of videotape rental and sales records, see RSA 351-A:1.

Dismissal of town officer for breach of confidentiality, see RSA 42:1-a.

Confidentiality and disclosure of library user records, see RSA 201-D:11.

NOTES TO DECISIONS

1. Construction 2. Factors considered 3. Grand juries 4. Salaries 5. Real estate records 6. Names and addresses of pupils 7. Agency budget materials 8. Internal personnel practices 9. Market analysis 10. Audit interview materials 11. Police records 12. Mootness 13. Candidates for office

1. Construction

The statute requires an analysis of both whether the information sought is "confidential, commercial, or financial information," and whether disclosure would constitute an invasion of privacy. *Union Leader Corp. v. New Hampshire Hous. Fin. Auth.*, 142 N.H. 540, 705 A.2d 725, 1997 N.H. LEXIS 132 (1997).

In determining whether information is sufficiently "confidential" to justify nondisclosure, the emphasis should be placed on the potential harm that will result from disclosure, rather than simply promises of confidentiality, or whether the information has customarily been regarded as confidential. *Union Leader Corp. v. New Hampshire Hous. Fin. Auth.*, 142 N.H. 540, 705 A.2d 725, 1997 N.H. LEXIS 132 (1997).

When a public entity seeks to avoid disclosure of material under Right-to-Know Law, that entity bears a heavy burden to shift balance toward nondisclosure. *Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 686 A.2d 310, 1996 N.H. LEXIS 127 (1996).

2. Factors considered

When reviewing exemptions from Right-to-Know Law, court balances public interest in disclosure of requested information against government interest in nondisclosure, and in privacy exemption cases, the individual's privacy interest in nondisclosure. *Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 686 A.2d 310, 1996 N.H. LEXIS 127 (1996).

Although trial court's ex parte, in camera review of records whose release could cause invasion of privacy was plainly appropriate, court erred in considering plaintiff's motives in seeking disclosure of information. *Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 686 A.2d 310, 1996 N.H. LEXIS 127 (1996).

3. Grand juries

The legislature has protected the secrecy of grand jury proceedings by specifically exempting them from the purview of this otherwise expansive statute. *State v. Purrington*, 122 N.H. 458, 446 A.2d 451, 1982 N.H. LEXIS 377 (1982).

4. Salaries

In determining whether teachers' salaries are exempted from the provisions of this chapter as being financial or private information, the benefits of disclosure to the public are to be balanced against the benefits of non-disclosure to the school administration and teachers. *Mans v. Lebanon Sch. Bd.*, 112 N.H. 160, 290 A.2d 866, 1972 N.H. LEXIS 166 (1972).

Teachers' salaries are not exempt from inspection. *Mans v. Lebanon Sch. Bd.*, 112 N.H. 160, 290 A.2d 866, 1972 N.H. LEXIS 166 (1972).

5. Real estate records

A property owner was not entitled to copies of appraisal reports prepared in connection with condemnation proceedings under the provisions of this chapter since disclosure of information regarding the range of offers of compensation available to the state would put the property owner in an unfair bargaining position. *Perras v. Clements*, 127 N.H. 603, 503 A.2d 843, 1986 N.H. LEXIS 208 (1986).

Computer tape containing information contained on approximately 35,000 field record cards made out when city had all its real estate revaluated, each card containing, inter alia, details of land, buildings, owners, use, topography, improvements, area trends, construction, value and a sketch of the property, was a public record under RSA 91-A:4, and was not exempt from disclosure under this section; and disclosure to the public would not constitute an unconstitutional invasion of privacy. *Menge v. Manchester*, 113 N.H. 533, 311 A.2d 116, 1973 N.H. LEXIS 311 (1973).

6. Names and addresses of pupils

Names and addresses of children of a public school district are part of the personal school records of the pupils and therefore exempt from public inspection under paragraph III of this section. *Brent v. Paquette*, 132 N.H. 415, 567 A.2d 976, 1989 N.H. LEXIS 123 (1989).

Providing access to records pertaining to names and addresses of public school students would constitute an invasion of the students' and their parents' privacy under paragraph IV of this section. *Brent v. Paquette*, 132 N.H. 415, 567 A.2d 976, 1989 N.H. LEXIS 123 (1989).

7. Agency budget materials

State agency budget requests and income estimates are subject to public scrutiny on October 1, the statutory deadline for their submission to the commissioner of administrative services, unless they are exempt from the provisions of the Right-to-Know Law. *Chambers v. Gregg*, 135 N.H. 478, 606 A.2d 811, 1992 N.H. LEXIS 62 (1992).

To determine whether state agency budget requests and income estimates are exempt from the Right-to-Know Law as confidential, the benefits of disclosure to the public must be weighed against the benefits of nondisclosure to the government. *Chambers v. Gregg*, 135 N.H. 478, 606 A.2d 811, 1992 N.H. LEXIS 62 (1992).

8. Internal personnel practices

Trial court properly held that an investigatory report was exempt from disclosure under RSA 91-A:5, IV; the report, which resulted from allegations that one water precinct employee was harassing another, could have resulted in disciplinary action and was thus a record pertaining to internal personnel practices. Furthermore, there was no merit to petitioners' argument that the exemption applied only to internal police investigations, and the precinct's release of another report did not create an estoppel because that report related to precinct mismanagement, not internal personnel practices. *Hounsell v. N. Conway Water Precinct*, 154 N.H. 1, 903 A.2d 987, 2006 N.H. LEXIS 108 (2006).

Certain investigatory documents under the control of the defendants, a police department and the department's chief, were exempt from disclosure as records pertaining to internal personnel practices; the documents in question were compiled during an internal investigation of a department lieutenant accused of making harassing phone calls. *Union Leader Corp. v. Fenniman*, 136 N.H. 624, 620 A.2d 1039, 1993 N.H. LEXIS 4 (1993).

9. Market analysis

A market analysis of potential condominium sales at a certain location was not exempt as commercial information since the negative competitive impact of disclosing market information regarding potential condominium sales that was gathered in 1987 was blunted by time, and did not, on balance, outweigh the public interest in understanding the market conditions that gave rise to the housing finance authority's role in the project. *Union Leader Corp. v. New Hampshire Hous. Fin. Auth.*, 142 N.H. 540, 705 A.2d 725, 1997 N.H. LEXIS 132 (1997).

10. Audit interview materials

Even if certain interview materials from an audit by the New Hampshire Legislative Budget Assistant constituted confidential information under *RSA 91-A:5, IV*, the trial court erred in determining that the materials were exempt from disclosure, as the government's interest in nondisclosure did not outweigh the public's interest in disclosure, especially where there was no evidence that requiring disclosure of such materials would have caused future auditors to be less honest or complete in recording information. *Goode v. N.H. Office of the Legislative Budget Assistant*, 148 N.H. 551, 813 A.2d 381, 2002 N.H. LEXIS 168 (2002).

11. Police records

Law enforcement representatives did not meet their burden of justifying their withholding of requested documents that the father sought regarding the disappearance of the father's daughter following reports that the daughter had been involved in a traffic accident; since police investigative reports were not mentioned in the state law concerning the disclosure of government records, the state supreme court determined that the six-part test under the corresponding federal law applied and required the law enforcement representatives on remand of the case to the trial court to show how disclosure of the requested records could interfere with an ongoing investigation or law enforcement proceeding. *Murray v. N.H. Div. of State Police*, 154 N.H. 579, 913 A.2d 737, 2006 N.H. LEXIS 201 (2006).

Photographs which police took with the consent of people who were stopped by police but not arrested were public records, and the trial court's judgment ordering the City of Manchester to provide a civil liberties union with access to consensual photographs which police officers took over a five-year period was upheld. *N.H. Civ. Liberties Union v. City of Manchester*, 149 N.H. 437, 821 A.2d 1014, 2003 N.H. LEXIS 61 (2003).

12. Mootness

Trial court erred by dismissing, as moot, the remainder of an organization's Right-to-Know Law petition requesting all terrain vehicle trail documentation from the New Hampshire Department of Resources and Economic Development as the trial court was required to determine if the state agency's conduct in withholding the documents was unlawful despite the ultimate release of the documents since the organization may have been entitled to a remedy despite the ultimate release of the documents. *ATV Watch v. N.H. Dep't of Res. & Econ. Dev.*, 155 N.H. 434, 923 A.2d 1061, 2007 N.H. LEXIS 72 (2007).

13. Candidates for office

It was error to deny petitioners access to documents relating to the application of candidates for a vacant sheriff's office on the ground that disclosure would constitute invasion of privacy under *RSA 91-A:5, IV*. A candidate voluntarily seeking to fill an elected public office had a diminished privacy expectation in personal information relevant to that office, which was significantly outweighed by the public's interest in disclosure. *Lambert v. Belknap Cty. Convention*, 157 N.H. 375, 949 A.2d 709, 2008 N.H. LEXIS 75 (2008).

Cited

Cited in *Hampton Nat'l Bank v. State*, 114 N.H. 38, 314 A.2d 668, 1974 N.H. LEXIS 203 (1974); *Orford Teachers Ass'n v. Watson*, 121 N.H. 118, 427 A.2d 21, 1981 N.H. LEXIS 255 (1981); *Gallagher v. Windham*, 121 N.H. 156, 427 A.2d 37, 1981 N.H. LEXIS 271 (1981); *Hansen v. Lamontagne*, 808 F. Supp. 89, 1992 U.S. Dist. LEXIS 19301 (D.N.H. 1992); *Pivero v. Largy*, 143 N.H. 187, 722 A.2d 461, 1998 N.H. LEXIS 91 (1998); *Goode v. New Hampshire Office of the Legislative Budget Assistant*, 145 N.H. 451, 767 A.2d 393, 2000 N.H. LEXIS 92 (2000).

RESEARCH REFERENCES

New Hampshire Code of Administrative Rules

RSA 91-A:5

Rules of the Commission for Human Rights, Hum 102.01, 102.02 and 219.01, New Hampshire Code of Administrative Rules Annotated.

New Hampshire Practice

13 N.H.P. Local Government Law §§ 619, 653, 682, 711, 714, 717.

New Hampshire Bar Journal

For article, "Electronic Records and Communications under New Hampshire's Right-to-Know Law," see 48 *N.H.B.J.* 38 (Autumn 2007).

For annual survey article by Pierce law students, "Murray v. N.H. State Police: The Right to Access Police Investigatory Files," see 48 *N.H.B.J.* 34 (Summer 2007).

For Article, "What Do You Have the Right to Know," see 43 *N.H.B.J.* 1 (March 2002).

HIERARCHY NOTES:

Tit. VI Note

Tit. VI, Ch. 91-A Note



9 of 13 DOCUMENTS

NEW HAMPSHIRE REVISED STATUTES ANNOTATED

Copyright 2009 by Matthew Bender & Company, Inc.,

a member of the LexisNexis Group.

All rights reserved.

*** STATUTES CURRENT THROUGH CHAPTER 2 OF THE 2009 SESSION ***

*** ANNOTATIONS CURRENT THROUGH CASES DECIDED FEBRUARY 20, 2009 ***

TITLE VI Public Officers And Employees

CHAPTER 91-A Access To Governmental Records and Meetings

Go to the New Hampshire Code Archive Directory

RSA 91-A:5-a (2009)

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.

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

HIERARCHY NOTES:

Tit. VI Note

Tit. VI, Ch. 91-A Note



10 of 13 DOCUMENTS

NEW HAMPSHIRE REVISED STATUTES ANNOTATED
Copyright 2009 by Matthew Bender & Company, Inc.,
a member of the LexisNexis Group.
All rights reserved.

*** STATUTES CURRENT THROUGH CHAPTER 2 OF THE 2009 SESSION ***
*** ANNOTATIONS CURRENT THROUGH CASES DECIDED FEBRUARY 20, 2009 ***

TITLE VI Public Officers And Employees
CHAPTER 91-A Access To Governmental Records and Meetings

Go to the New Hampshire Code Archive Directory

RSA 91-A:6 (2009)

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*.

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

NOTES:

Revision note.

Pursuant to 1981, 408:9, substituted " *RSA 282-A*" for " *RSA 282*" and " *RSA 282-A:117-123*" for " *RSA 282:9(M)*".

Substituted a semicolon for a comma following "shall also apply" to correct a grammatical error.

Amendments

--1981.

Rewritten to the extent that a detailed comparison would be impracticable.

NOTES TO DECISIONS

Cited

Cited in *1986 Op. Att'y Gen. 220*.

HIERARCHY NOTES:

Tit. VI Note

Tit. VI, Ch. 91-A Note



NEW HAMPSHIRE REVISED STATUTES ANNOTATED
Copyright 2009 by Matthew Bender & Company, Inc.,
a member of the LexisNexis Group.
All rights reserved.

*** STATUTES CURRENT THROUGH CHAPTER 2 OF THE 2009 SESSION ***
*** ANNOTATIONS CURRENT THROUGH CASES DECIDED FEBRUARY 20, 2009 ***

TITLE VI Public Officers And Employees
CHAPTER 91-A Access To Governmental Records and Meetings

Go to the New Hampshire Code Archive Directory

RSA 91-A:7 (2009)

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.

HISTORY: 1967, 251:1. 1977, 540:5, eff. Sept. 13, 1977. 2008, 303:5, eff. July 1, 2008.

NOTES:

Amendments

--2008.

The 2008 amendment in the second sentence added "In order to satisfy the purposes of this chapter" and "high" and made stylistic changes throughout.

--1977.

Added the third through sixth sentences.

NOTES TO DECISIONS

Review

Review

In order to be heard in supreme court, issue of violation of this chapter must be promptly and properly raised below, especially where it does not appear that the alleged violation was obvious, intentional or prejudicial. *Hardiman v. Dover*, 111 N.H. 377, 284 A.2d 905, 1971 N.H. LEXIS 206 (1971).

Cited

Cited in *Perras v. Clements*, 127 N.H. 603, 503 A.2d 843, 1986 N.H. LEXIS 208 (1986).

RESEARCH REFERENCES

New Hampshire Bar Journal

For annual survey article by Pierce law students, "Murray v. N.H. State Police: The Right to Access Police Investigatory Files," see *48 N.H.B.J. 34 (Summer 2007)*.

HIERARCHY NOTES:

Tit. VI Note

Tit. VI, Ch. 91-A Note



12 of 13 DOCUMENTS

NEW HAMPSHIRE REVISED STATUTES ANNOTATED

Copyright 2009 by Matthew Bender & Company, Inc.,

a member of the LexisNexis Group.

All rights reserved.

*** STATUTES CURRENT THROUGH CHAPTER 2 OF THE 2009 SESSION ***

*** ANNOTATIONS CURRENT THROUGH CASES DECIDED FEBRUARY 20, 2009 ***

TITLE VI Public Officers And Employees

CHAPTER 91-A Access To Governmental Records and Meetings

Go to the New Hampshire Code Archive Directory

RSA 91-A:8 (2009)

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.

HISTORY: 1973, 113:1. 1977, 540:6. 1986, 83:7, eff. Jan. 1, 1987. 2001, 289:3, eff. July 17, 2001. 2008, 303:6, eff. July 1, 2008.

NOTES:

Amendments

--2008.

The 2008 amendment in I, added "public" in several places and substituted "governmental" for "public" throughout the paragraph; and in I-a, substituted "public body or public agency" for "board, agency" and made a stylistic change.

--2001.

Paragraph I-a: Added.

--1986.

Designated the existing provisions of the section as par. I, rewrote that paragraph, and added pars. II and III.

--1977.

Rewritten to the extent that a detailed comparison would be impracticable.

NOTES TO DECISIONS

1. Attorney's fees--Purpose 2. --Liability 3. --Review 4. Injunctive relief 5. Costs 6. Invalidation of action

1. Attorney's fees--Purpose

The word "shall" in the statute acts as a mandate if the necessary findings to support an award of attorney's fees are made. *New Hampshire Challenge v. Commissioner, New Hampshire Dept. of Educ.*, 142 N.H. 246, 698 A.2d 1252, 1997 N.H. LEXIS 85 (1997).

Provision for award of attorney's fees is critical to securing rights guaranteed by this section; attorney fee provision was enacted so that public's right-to-know law would not depend upon individual's ability to finance litigation. *Bradbury v. Shaw*, 116 N.H. 388, 360 A.2d 123, 1976 N.H. LEXIS 361 (1976).

2. --Liability

Though the Executive Director of the New Hampshire Department of Fish and Game violated *RSA 91-A:2, II* by excluding a television station's cameras from a hunting license hearing on grounds that the commotion they would cause would deprive the license applicant of his right to a fair hearing, the station was properly denied attorney's fees under *RSA 91-A:8*. The trial court properly found, given the state of the case law, that the Director neither knew nor should have known that his conduct violated *RSA 91-A:2, II*. *WMUR Channel Nine v. N.H. Dep't of Fish & Game*, 154 N.H. 46, 908 A.2d 146, 2006 N.H. LEXIS 113 (2006).

Where it was clear that a lawsuit by petitioner, the risk management administrator for the New Hampshire Property and Casualty Loss Program, was necessary to make the New Hampshire Legislative Budget Assistant (LBA) disclose certain materials related to an audit of the New Hampshire Property and Casualty Loss Program, the trial court erred in denying the administrator's request for attorney's fees under *RSA 91-A:8*, simply because the LBA voluntarily disclosed some of the materials after the supreme court found that the materials were not exempt from disclosure; instead, the trial court should have considered whether the LBA knew or should have known that its withholding of the information violated the Right-to-Know Law. *Goode v. N.H. Office of the Legislative Budget Assistant*, 148 N.H. 551, 813 A.2d 381, 2002 N.H. LEXIS 168 (2002).

The superior court utilized an incorrect legal standard in resolving the plaintiffs' request for attorney's fees when it denied such an award on the basis that the defendants' conduct was not a "knowing violation"; on remand, the court would be required to determine whether the defendants "should have known" that their conduct was improper. *New Hampshire Challenge v. Commissioner, New Hampshire Dept. of Educ.*, 142 N.H. 246, 698 A.2d 1252, 1997 N.H. LEXIS 85 (1997).

In a proceeding arising from the dismissal of the plaintiff police chief by a town, attorney's fees were improperly awarded against the town where (1) the town selectmen consulted with town counsel about what procedure should be followed before dismissing the plaintiff and followed that advice, (2) at the time of the plaintiff's dismissal, it was not generally understood among municipal law practitioners that advance notice was required to an employee that his or her dismissal would be considered in executive session, and (3) the town acted in good faith and the violation of the Right-To-Know Law was not obvious, deliberate, or willful. *Voelbel v. Town of Bridgewater*, 140 N.H. 446, 667 A.2d 1028, 1995 N.H. LEXIS 168 (1995).

Where defendants did not knowingly violate, or have reason to believe that their refusal to provide documents would violate, the Right-to-Know Law, plaintiff's request for attorney's fees was denied. *Chambers v. Gregg*, 135 N.H. 478, 606 A.2d 811, 1992 N.H. LEXIS 62 (1992).

Where mayor was sued in his official capacity, award of attorney's fees was properly chargeable to city. *Bradbury v. Shaw*, 116 N.H. 388, 360 A.2d 123, 1976 N.H. LEXIS 361 (1976).

Where plaintiff petitioned to secure access to records of mayor's industrial advisory committee under this section, and trial court ruled that committee was subject to right-to-know law although certain records of its meetings were exempt from disclosure, plaintiff was substantially successful and thus entitled to recover his counsel fees. *Bradbury v. Shaw*, 116 N.H. 388, 360 A.2d 123, 1976 N.H. LEXIS 361 (1976).

3. --Review

As the trial court properly denied petitioners' request for documents concerning internal personnel practices, there was no need for the appellate court to consider its denial of petitioners' request for attorney's fees. *Hounsell v. N. Conway Water Precinct*, 154 N.H. 1, 903 A.2d 987, 2006 N.H. LEXIS 108 (2006).

Because no abuse of discretion on the part of the trial court appeared on the record, its decision denying plaintiffs' petition for an award of attorney's fees under this section was affirmed. *Orford Teachers Ass'n v. Watson*, 122 N.H. 803, 451 A.2d 378, 1982 N.H. LEXIS 467 (1982).

Plaintiff's request for attorney's fees under Right-to-Know Law was properly denied, since agency neither knew nor should have known that its refusal to disclose materials was in violation of statute. *Goode v. New Hampshire Office of the Legislative Budget Assistant*, 145 N.H. 451, 767 A.2d 393, 2000 N.H. LEXIS 92 (2000).

4. Injunctive relief

Trial court did not err by denying injunctive relief to an organization requesting information relating to the New Hampshire Department of Resources and Economic Development's intended purchase of a large tract of land as well as its plan to develop all terrain vehicle and other trails once the land was purchased, because at the time of the organization's Right-to-Know petition, the State did not own the land at issue, the property was not state land and, thus, the provisions of RSA 215-A:41, II(f) did not apply. *ATV Watch v. N.H. Dep't of Res. & Econ. Dev.*, 155 N.H. 434, 923 A.2d 1061, 2007 N.H. LEXIS 72 (2007).

5. Costs

Trial court erred in considering whether the New Hampshire Department of Resources and Economic Development's (DRED's) conduct in withholding certain requested documents by an organization was reasonable or whether it committed a knowing violation when rejecting the organization's request for costs, which required the trial court's denial of costs to the organization to be vacated. Since the organization's request for costs remained viable only if DRED violated the Right-to-Know Law, the case was remanded to the trial court to consider costs and the lawfulness of the DRED's conduct in its delayed disclosure and retention of documents. *ATV Watch v. N.H. Dep't of Res. & Econ. Dev.*, 155 N.H. 434, 923 A.2d 1061, 2007 N.H. LEXIS 72 (2007).

6. Invalidation of action

Trial court erred in declining to invalidate a county convention's selection of a sheriff by secret ballot. The decision to fill a vacancy in the office by secret ballot contravened not only the explicit legislative mandate against such votes, but also the fundamental purpose of the Right-to-Know Law; furthermore, the public's need for scrutiny was critical since there was no other manner in which members of the public could determine how their representatives voted so that they could then hold the representatives accountable. *Lambert v. Belknap Cty. Convention*, 157 N.H. 375, 949 A.2d 709, 2008 N.H. LEXIS 75 (2008).

Cited

Cited in *Johnson v. Nash*, 135 N.H. 534, 608 A.2d 200, 1992 N.H. LEXIS 73 (1992); *Disabilities Rights Ctr., Inc. v. Commissioner, N.H. Dep't of Corrections*, 143 N.H. 674, 732 A.2d 1021, 1999 N.H. LEXIS 56 (1999).

RESEARCH REFERENCES

New Hampshire Practice

13 N.H.P. Local Government Law § 680.

New Hampshire Trial Bar News

For article, "Contingent Fees Attacked," see 16 Trial Bar News 52 (Summer 1994).

HIERARCHY NOTES:

Tit. VI Note

Tit. VI, Ch. 91-A Note



13 of 13 DOCUMENTS

NEW HAMPSHIRE REVISED STATUTES ANNOTATED

Copyright 2009 by Matthew Bender & Company, Inc.,

a member of the LexisNexis Group.

All rights reserved.

*** STATUTES CURRENT THROUGH CHAPTER 2 OF THE 2009 SESSION ***

*** ANNOTATIONS CURRENT THROUGH CASES DECIDED FEBRUARY 20, 2009 ***

TITLE VI Public Officers And Employees**CHAPTER 91-A Access To Governmental Records and Meetings****Go to the New Hampshire Code Archive Directory**

RSA 91-A:9 (2009)

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.

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

NOTES:**Cross References.**

Classification of crimes, see *RSA 625:9*

Sentences, see *RSA 651*.

HIERARCHY NOTES:

Tit. VI Note

Tit. VI, Ch. 91-A Note