ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOSEPH A. FOSTER
ATTORNEY GENERAL

ANN M. RICE
DEPUTY ATTORNEY GENERAL

March 20, 2015

To the People of New Hampshire:

I am proud to issue this updated Memorandum on New Hampshire's Right-to-Know law, RSA Chapter 91-A. This Memorandum describes the statute and the judicial decisions that further define and explain the peoples' right to know.

The public's right to know what its government is doing is a fundamental part of New Hampshire's democracy. New Hampshire's Constitution and the Right-to-Know law ensure that the public has reasonable access to meetings of public bodies and to governmental records. When New Hampshire's Constitution was adopted on June 2, 1784, accountability of public servants to the people was established in Part 1, article 8, which reads:

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

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

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

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

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

These provisions of our Constitution and RSA Chapter 91-A are intended to provide the utmost information to the people about what their government is doing, while preserving individuals' rights to privacy. The New Hampshire Supreme Court has recognized that the Right-to-Know law helps to carry out the Constitution's requirement that access to governmental proceedings and records not be unreasonably restricted.

Since the Department last issued its Memorandum, the New Hampshire Legislature has amended the Right-to-Know law in several ways. The law now allows consideration of confidential, commercial, or financial information in nonpublic session. The master jury list is now exempt from the Right-to-Know law. Officers, employees and other officials of a public body or public agency are now subject to a civil penalty of not less than $250 and not more than $2,000 if they are found to have violated the Right-to-Know law in bad faith. Such individuals may now also be required to undergo remedial training at their own expense. This Memorandum has been updated to reflect these amendments to the law and recent court decisions.

In an effort to enhance the usefulness of this Memorandum, the appendix includes sample motions for use by public bodies when the members want to go into non-public session, seal non-public minutes, or adjourn to consult with legal counsel. It also includes a sample index for use when a person has requested documents that are exempt from disclosure or contain confidential information. The index can be used to inform the requester of which documents have been withheld and the reason for their non-disclosure. For those interested in municipal government records, the statute that establishes the retention period for municipal records is provided. Finally, the appendix includes a list of statutes, rules, and court cases the designate certain information as confidential or privileged.

I strongly recommend that all public officials learn their responsibilities under the Right-to-Know law. It is important for those public officials who use e-mail or who maintain government records in electronic form to carefully study the 2008 and 2009 changes to the law relating to electronic records. This Memorandum should be kept easily accessible and be referred to when you are faced with questions on the application of the law. When you are uncertain about the application of the law to a specific circumstance, state officials should consult with my Office, county officials should consult with their County Attorney, and municipal and schools officials should consult with their legal counsel.

I am making this Memorandum widely available to the public, the press, New Hampshire's schools, and State and local officials. It will also be posted on the Department's website.

Sincerely,

Joseph A. Foster
Attorney General

#1061112

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOSEPH A. FOSTER
ATTORNEY GENERAL

ANN M. RICE
DEPUTY ATTORNEY GENERAL

March 20, 2015

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

TABLE OF CONTENTS

This Memorandum cites to both New Hampshire Supreme Court opinions and Superior Court orders. Unlike New Hampshire Supreme Court opinions, Superior Court orders and decisions are not binding precedent. Instead, such decisions and orders may be persuasive authority for courts when analyzing RSA 91-A issues. At the least, these cases provide guidance to state and municipal agencies, public bodies and employees.

RIGHT-TO-KNOW LAW MEMORANDUM

"Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people." RSA 91-A:1.

The Supreme Court "resolve[s] questions regarding the [Right-to-Know] law with a view to providing the utmost information in order to best effectuate the statutory and constitutional objective of facilitating access to all public documents." *WMUR v. N.H. Dept. of Fish and Game*, 154 N.H. 46 (2006) (*quoting Goode v. N.H. Legislative Budget Assistant*, 148 N.H. 551, 553 (2002)).

"The public's right of access to governmental proceedings . . . is not absolute. . . . It must yield to reasonable restrictions." *Hughes v. Speaker of the New Hampshire House of Representatives*, 152 N.H. 276, 290 (2005) (*citing Petition of Union Leader*, 147 N.H. 603, 604-05 (2002); N.H. Const. Pt. I, art. 8).

I. DEFINITIONS

The following definitions apply to the Right-to-Know law:

"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. RSA 91-A:1-a (I).

"Governmental proceedings" means the transaction of any functions affecting any or all citizens of the state by a public body. RSA 91-A:1-a (II).

"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." RSA 91-A:1-a (III).

"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. RSA 91-A:1-a (IV).

"Public agency" means any agency, authority, department, or office of the state or of any county, town, municipal corporation, school district, school administrative unit, charter school, or other political subdivision. RSA 91-A:1-a (V). Other political subdivisions include entities like village districts and water precincts, which are public agencies under the Right-to-Know law.

"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, charter 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.

RSA 91-A:1-a (VI).

II. BODIES AND AGENCIES SUBJECT TO THE RIGHT-TO-KNOW LAW

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

In determining what access is available, the initial inquiry must be whether the body or agency involved is subject to the Right-to-Know law. The Right-to-Know law applies to the following public bodies:

A. State Entities – Public Bodies

1. The New Hampshire Senate and House of Representatives, including executive sessions of committees. (*Note*: In *Hughes v. Speaker of the House*, 152 N.H. 276 (2005), the Supreme Court held that a question of whether the Legislature complied with the Right-to-Know law during the legislative process was a political question not subject to the Court's review).

2. Any advisory committee established by the General Court, the Senate or the House. RSA 91-A:l-a, VI(a).

3. The Executive Council and the Governor with the Executive Council, including any advisory committee established by the Governor by executive order[1] or by the Executive Council. RSA 91-A:l-a, VI(b).

4. The Board of Trustees of the University System of New Hampshire, including any advisory committee established by the Board of Trustees. RSA 91-A:l-a, VI(c).

5. Any board or commission of any state agency or authority, including any advisory committee established by any board or commission of any state agency or authority. RSA 91-A:l-a, VI(c).

[1] RSA 21-G:11 establishes the procedure a Commissioner should follow in establishing an advisory committee, which requires approval of the Governor and filing with the Secretary of State. Approval by the Governor, unless provided by formal executive order, would not make an advisory committee a public body under this provision. Generally, advisory committees created by public agency officials are not public bodies and are not themselves subject to the Right-to-Know law meeting requirements. However, any information an advisory committee provides to the agency will be subject to the governmental records requirements. In contrast, *see* RSA 91-A:l-a, VI(c) and 5 above, advisory committees established by a board or commission of a state agency or authority are public bodies subject to the Right-to-Know law meeting and record requirements.

6. Certain bodies corporate and politic created by statute that have a distinct legal existence and are not a department of the executive branch of state government. *E.g.*, RSA 162-A:3 (Business Finance Authority); RSA chapter 204-C (Housing Finance Authority);[2] RSA chapter 35-A (Municipal Bond Bank); and RSA chapter 12-G (Pease Development Authority). Some of the statutes creating these entities expressly state whether the Right-to–Know law applies, but others are silent on this point. Without express statutory language, applicability of the Right-to-Know law will depend on the nature and extent of the governmental functions the entity performs. *See generally Professional Firefighters of N.H. v. Healthtrust, Inc.*, 151 N.H. 501 (2004); *Northern New Hampshire Lumber Co. v. New Hampshire Water Resources Board*, 56 F. Supp. 177, 180 (D.N.H. 1944).

B. State Entities – Public Agencies

1. All State executive branch departments and agencies. RSA 91-A:6; *Lodge v. Knowlton*, 118 N.H. 574 (1978).

2. Several of the bodies corporate and politic created by statute operate through executive directors and bureaucratic structures, which for Right-to-Know law purposes should be treated as a public agency. Consider the example of the Pease Development Authority. While the Board of Directors of the Pease Development Authority is a public body, the Authority itself is a public agency. Likewise, the Division of Ports and Harbors operated by the Pease Development Authority is a public agency.

C. County And Municipal[3] Governments – Public Bodies

1. The county delegation, the county commissioners, and any committee, subcommittee, or subordinate body or any advisory committee thereto.

2. The board of selectmen, city council, school board, commissioners of a village district, the planning board, conservation commission, zoning board of adjustment, police commission, fire commission, board of fire engineers, budget committee, and any other board, commission, committee or authority including subcommittees, advisory committees, or other subordinate body.

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

[3] In this Memorandum, the term "municipal" is used in its broadest sense and, except where otherwise indicated, is meant to include towns, cities, school districts, village districts, water and fire precincts, and any other unit of government established pursuant to state law.

3. Regional planning commissions, joint governing boards or commissions established through intermunicipal agreements, and other similar bodies established pursuant to statute from two or more municipalities.

D. County And Municipal Government – Public Agencies

1. The county department of corrections, office of the sheriff, county home, human services department and any other agency, authority, department, or office of the county.

2. The police, fire, highway, welfare, water, sewer, recreation, zoning enforcement, and planning departments, the office of the town clerk, tax collector, treasurer, and town/city manager of a town, city, or village district and any other agency, authority, department or office of a town, city, or village district. [4]

[4] Members of the former Right-to-Know Commission have publicly commented that the inclusion of "agency" in the definition of a municipal public body was unintended. The Right-to-Know law otherwise distinguishes a public agency from a public body. Generally, public bodies are subject to the open meeting requirements and public agencies are not. Such municipal agencies and authorities are subject to the governmental records requirements of the Right-to-Know law because they fall within the definition of a public agency. The courts have not yet had occasion to interpret whether the existing paragraph imposes public meeting requirements on a municipal agency. Applying public meeting requirements to an agency would be impractical and it is expected a court would find application of the public meeting requirement on a municipal public agency an absurd construction of the statute. Legislation introduced in 2009, House Bill 53, would have removed the words "agency" and "authority" from the definition of a municipal public body. House Bill 53 was retained in the House Judiciary Committee and vetoed after passage in the 2010 legislative session.

III. ENTITIES NOT SUBJECT TO THE RIGHT-TO-KNOW LAW

The Right-to-Know law does not apply to the Courts or the judicial branch of government. The Courts are subject to a constitutional requirement of openness that is similar to, but not identical to the Right-to-Know law. Court rules and Supreme Court decisions define the public's constitutional right of access to most court hearings and to certain information held by the courts. *See* section VII, (Court Records), in this Memorandum.

The Right-to-Know law does not apply to most charitable non-profit corporations. However, most charitable organizations are required to file certain information with the State. These filings are public and can be accessed through the Charitable Trusts Unit of the Attorney General's Office. http://doj.nh.gov/charitable/index.html

Charitable non-profit corporations that have a government entity as their sole member or non-profit corporations that are composed of units of government and carry out the work of government with public funds are subject to the Right-to-Know law. RSA 91-A:1-a, VI (e); *see also Professional Firefighters of N.H. v. Healthtrust, Inc.*, 151 N.H. 501, 505 (2004) (Court, in determining that the Healthtrust was subject to the Right-to-Know law, considered whether the entity was a public instrumentality, whether it used public funding, whether it performed public and essential governmental functions, enjoyed the tax-exempt status of a public entity or solely benefited governmental entities).

IV. MEETINGS

Public bodies subject to the Right-to-Know law are required to follow certain procedures with respect to the notice and conduct of meetings. RSA 91-A:2; RSA 91-A:3. In most cases, meeting provisions under the Right-to-Know law do not apply to public agencies. Although the meeting provisions do not apply to most of the work an agency does, there may be occasions when an agency is required by statute, rule, ordinance or charter provision to hold a hearing, which may be subject to public notice and meeting requirements.

A. What Constitutes a Meeting of a Public Body?

1. A public body holds a meeting when:

   a. A quorum of the membership of the public body[5] is convened in person so that all members may communicate contemporaneously; and

   b. The purpose of convening a quorum or a majority of the membership is to discuss or act upon a matter or matters over which the public body has supervision, control, jurisdiction or advisory power. RSA 91-A:2; s*ee also Herron v. Northwood*, 111 N.H. 324, 326-27 (1971) (town budget committee's function of preparing and submitting a budget is subject to the Right-to-Know law and meetings must be held in a manner open to the public).

      The attendance by a quorum of a municipal board of selectmen or planning board at public informational meetings of the Department of Transportation for the purpose of advising the Department concerning a highway project can constitute a "meeting" under RSA 91-A:2, I, requiring appropriate notice. Attorney General's Opinion 93-01. Generally, attendance by a quorum of a public body at a meeting being held by a different public body to discuss or act upon a matter within the first body's jurisdiction should be treated as a meeting for Right-to-Know law purposes by both public bodies. Both bodies should provide notice of the meeting and both bodies should keep minutes, which may be the same document, separately adopted as minutes by both.

2. When members of a public body constituting a quorum find themselves together either coincidently or when gathering for a purpose other than discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction or advisory power, communications between the members shall not be used to circumvent the spirit and purpose of the Right-to-Know law. RSA 91-A:2-a, II. The convening of a quorum of a public body that does not have a purpose to discuss or act on business, could easily constitute a meeting.

[5] In the absence of specific language to the contrary, a quorum is defined as a majority of the membership of the public body. *See* RSA 21:15. Some statutes specifically define a quorum, in which case the specific statutory quorum requirement will control.

Therefore, it is very important to limit any conversation or other communication about the business of the public body. It is explicitly improper to deliberate or act on any business of the public body. RSA 91-A:2-a, II.

3. E-mail use should be carefully limited to avoid an inadvertent meeting, albeit one where there is a failure to have a physical quorum at a noticed meeting place. Simultaneous e-mails sent to a quorum of a public body by a member discussing, proposing action on, or announcing how one will vote on a matter within the jurisdiction of the body would constitute an improper meeting. Sequential e-mail communications among members of a public body similarly should not be used to circumvent the public meeting requirement. For example, e-mail among a quorum of members of a public body in a manner that does not constitute contemporaneous discussion or deliberation and does not involve matters over which the body has supervision, control, jurisdiction, or advisory power does not technically constitute a meeting under the Right-to-Know law. E-mail discussions of a quorum concerning matters over which the public body has supervision, control, jurisdiction, or advisory power would run counter to its spirit and purpose.

4. Unless exempted from the definition of "meeting" under RSA 91-A:2, I, or by another statute, 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-a, I. *See e.g.*, RSA 363:17-c (making Public Utility Commission deliberations exempt from the Right-to-Know law).

B. Not a Meeting

1. Chance or social meetings, neither planned nor intended for the purpose of discussing matters relating to official business, and at which no deliberations are conducted and no decisions are made, are specifically exempt from the open meeting requirement. The Right-to-Know law does not apply to isolated conversations among less than a quorum of individual members outside of public meetings, unless the conversations were planned or intended for the purpose of discussing matters relating to official business and the public entity made decisions during the isolated conversation. *Webster v. Town of Candia*, 146 N.H. 430 (2001). Such meetings may not be used to circumvent the spirit of the Right-to-Know law. Therefore, if official deliberations occur or if decisions are made at such gatherings or if the gatherings occur on a regular basis, a court may determine that they constitute improper ''meetings'' under the Right-to-Know law. RSA 91-A:2, I(a).

2. Strategy or negotiations with respect to collective bargaining, a caucus of officeholders elected on a partisan basis at a state or municipal general election, and consultation with legal counsel are not meetings. RSA 91-A:2, I(b-d). These statutory exclusions are reinforced by the holdings of *Appeal of Town of Exeter*,

126 N.H. 685 (1985) (collective bargaining), *Society for Protection of New Hampshire Forests v. WSPCC*, 115 N.H. 192 (1975) (consultation with legal counsel) and *Talbot v. Concord Union School Dist.*, 114 N.H. 532, 535-36 (1974) (negotiations between school board and union committee not subject to public Right-to-Know statute although approved agreements are subject to the statute).

3. Consultation with legal counsel is neither a "meeting" under RSA chapter 91-A, nor does it fall within the "non-public" meeting provisions.[6] If a public body is meeting in public session and wants to consult with legal counsel, it should vote on the record to adjourn the meeting. *See* Appendix B for a model motion to adjourn for the purpose of consulting with legal counsel. Please note, however, if members of the public are not present during an open, public meeting, the public body does not need to move into non-meeting with counsel to preserve the privilege. *See Prof. Fire Fighters of N.H. v. N.H. Local Gov't Ctr.*, 163 N.H. 613, 615 (2012) (holding meeting minutes containing attorney-client privileged communication may be redacted as "[t]he fact that the meeting occurs in a public place does not destroy the privilege, if no one hears the conversation."). If the public body intends to reconvene the public meeting, it should vote to temporarily adjourn the meeting for the purpose of consulting with legal counsel, giving notice to those present that the meeting will be reconvening. Everyone except the members of the public body should be excluded from the room when any consultation with legal counsel occurs. Minutes are not required or appropriate for consultation with legal counsel. Consultation with legal counsel should be limited to discussion of legal issues. Deliberation about the matter on which advice is sought may not occur during consultation with legal counsel. The public body must reconvene and, unless a statutory exemption allowing deliberation in non-public session exists, conduct deliberation in public session.

   To constitute consultation with counsel, there must be a contemporaneous exchange of words and ideas between the public body and its attorney (e.g., physically present, telephonically, video-conference, etc.). A public body may not (a) move into non-meeting merely to discuss the contents of legal documents or advice previously provided by counsel or (b) close a meeting whenever its discussion turns to advice received from its attorney. *Ettinger v. Town of Madison Planning Bd.*, 162 N.H. 785, 789–92 (2011). However, discussion of legal advice in public session may constitute an inadvertent waiver of the attorney-client privilege if members of the public are present during the discussion. Public bodies are encouraged to consult with legal counsel prior to making a decision regarding waiver of the privilege.

[6] Note however that RSA 91-A:3,II(e) allows consideration or negotiation of pending claims or litigation in certain circumstances.

C. Notice – RSA 91-A:2[7]

When a public body intends to convene a meeting, notice must be given as follows:

1. Regular Notice

a. Either of the two following forms of notice is proper under the Right-to-Know law:

(1) Notice of the time and place of any meeting (including non-public sessions) shall be posted in two appropriate places 24 hours prior to the meeting, excluding Sundays and legal holidays. RSA 91-A:2, Notices should be posted where people are likely to see them, such as on the public body's website[8], the location where the checklist or town warrant is posted, the agency's office lobby or front door, and the State House or Town Hall bulletin board; or

(2) Notice of the time and place of the meeting shall be printed in a newspaper of general circulation in the city or town at least 24 hours prior to the meeting, excluding Sundays and legal holidays.

b. If the body decides to go into non-public session during an open meeting, the notice for the open meeting will suffice. If both public and non-public sessions are planned in advance, the notice should so state.

c. The Right-to-Know law explicitly requires that a notice of the meeting of a public body include the time and place of the meeting. While not required under the Right-to-Know law, it is generally appropriate that the notice include or be accompanied with a brief list of the planned agenda items and a general notice that other matters within the public body's jurisdiction may be considered. Other law may impose requirements that notices of certain hearings and meetings where particular actions may be taken include specific additional information. Members of a public body should maintain familiarity with these additional notice requirements and consult with legal counsel as to the proper form of a meeting notice when uncertainty exists.

d. Individual notice may not be necessary where particular individuals are affected so long as notice is proper as described above. *See Brown v. Bedford School Bd.*, 122 N.H. 627, 631 (1982) (under the Right-to-Know law probationary teachers not entitled to individual notice of public meeting at which teachers' terminations were on the agenda where public notice was otherwise proper).

[7] Effective December 1, 2012, the General Court repealed RSA 91-A:2-b "Meetings of the Economic Strategic Commission to Study the Relationship Between New Hampshire Businesses and State Government by Open Blogging Permit."

[8] Note that only one of the two required postings can be on the internet.

e. Additional notice may not be necessary for continuation of public meetings. *See Town of Nottingham v. Harvey*, 120 N.H. 889, 894–95 (1980) (recess of a public zoning meeting until a later date without notice of the second date did not violate Right-to-Know law). When practical, posting notice of meetings that are to be reconvened supports the spirit and objectives of the Right-to-Know law.

2. Emergency Meeting Notice Procedure

a. This method of notice may be utilized if the chairperson or presiding officer of the public body decides that an emergency exists and that immediate action is imperative. RSA 91-A:2, II. *See* Section D, 3 below.

b. Notice shall be made by whatever means are available to inform the public about the meeting. RSA 91-A:2, II. For example, notice may be given over the radio, the body may post notice, and/or may notify by telephone people known to be interested in the subject matter of the meeting. The nature of the emergency will dictate the type of notice which can be given. In any event, a diligent effort must be made to provide some sort of notice and those efforts should be documented.

c. In the event an emergency meeting is required in an adjudicative proceeding (*see* RSA 541-A:I, I), notice must be provided to all parties unless the body possesses authority to issue an *ex parte*[9] order in the case at hand.

d. The minutes of the meeting must clearly spell out the need for the emergency meeting. RSA 91-A:2, II.

3. Notice of Legislative Meetings

Notice of legislative committee meetings shall be made in accordance with the Rules of the House of Representatives and the Rules of the Senate, as appropriate. *See Hughes v. Speaker of the N.H. House of Representatives*, 152 N.H. 276, 278 (2005) (issue of whether Speaker of the House violated Right-to-Know law by excluding a Representative from meetings of conferees was a nonjusticiable (not appropriate or proper for judicial consideration or resolution) political question); *see also Baines v. NH Senate President*, 152 N.H. 124, 130 (2005) (authority to adopt procedural rules for passing legislation is demonstrably committed to the legislative branch by Part II, articles 22 and 37 of the New Hampshire Constitution).

4. Broader Access

[9] An order issued on behalf of one party without hearing from other parties.

A municipal charter, ordinance, or rule or guideline adopted by a public body may require broader public access to meetings than what the Right-to-Know law requires. If such charter provisions, guidelines, or rules of order have been adopted and they are more broad (strict), their provisions shall take precedence over the provisions of the Right-to-Know law. RSA 91-A:2. The Right-to-Know law establishes minimum requirements; public bodies must comply with more stringent requirements established by other law.

5. Effect of Failure to Observe Notice Requirements

Failure to give proper public notice subjects the public body to possible judicial sanctions, including an order declaring the meeting invalid, an order enjoining the public body's actions or practices, and/or an order assessing legal costs and fees. RSA 91-A:7 and 8; *see also* Section V (Remedies) of this Memorandum.

D. Meeting Procedures

Meetings of public bodies subject to the Right-to-Know law are open to the public unless the body is authorized to hold a non-public session. RSA 91-A:2. Any person may attend an open meeting. The public's right to attend a meeting established by the Right-to-Know law does not convey a right to speak or participate. Other laws may require that the public be afforded some opportunity to speak at public hearings or certain other meetings of public bodies. Many public bodies voluntarily establish appropriate regulated public comment periods at some meetings; however, this is not required by the Right-to-Know law.

1. Member Participation and Attendance at Meetings

a. Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice. RSA 91-A:2, III(b).

b. A member of the public body may participate in a meeting other than by attending in person at the location of the meeting only when attending in person is not reasonably practical. RSA 91-A:3(a). The reason for participation from some place other than the location of the meeting shall be stated in the minutes of the meeting. RSA 91-A:2, III(a).

c. Each member participating remotely, whether by phone, electronically, or otherwise, must be able to simultaneously hear each other member and speak to each other member during the meeting. The member participating remotely must also be audible or otherwise discernible to the public in attendance at the meeting's location. RSA 91-A:2, III(c). One practical solution is participating by telephone, provided there is a speaker phone used in the meeting room that can be heard by the public.

d. Any member participating remotely must identify all other persons present at the place from which the member is participating. RSA 91-A:2, III(c).

e. A member participating in a meeting remotely is deemed to be present at the meeting for purposes of voting.

f. All votes taken during a meeting in which any member participates remotely shall be by roll call vote. RSA 91-A:2, III(e). The Right-to-Know law does not explicitly require that every roll call vote be recorded member by member in the minutes. However, compliance with the roll call requirement should be documented.

2. Basic Meeting Requirements

a. 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 the meeting discussion contemporaneously at the meeting location specified in the meeting notice. RSA 91-A:2, III(c).

b. RSA 91-A:2, III(c) explicitly requires that when a member is participating remotely each part of a meeting required to be open to the public shall be as audible or otherwise discernible to the public as it would be if all members were participating in person.

Generally, a public body should plan to hold meetings in a space that is accessible to persons with disabilities and that will accommodate any reasonably anticipated public attendance. If necessary, the body should make provisions for amplifying the discussions between members and parties presenting to the public body. While outside the scope of this Memorandum, public bodies should consult with legal counsel to ensure the body is prepared to meet the requirements of the Americans with Disabilities Act should any person require accommodation.

If extraordinary unanticipated public attendance results in some members of the public being effectively denied the opportunity to attend the public meeting, it may be necessary to reconvene the meeting in a more suitable space. For example, if a crowd in excess of the fire code limit for the meeting room shows up and others wishing to attend are limited to hallways or other rooms where they can neither hear nor see, the right of public access is put in question. If practical, move the meeting to a sufficiently large nearby space. Ensure those arriving at the location shown on the meeting notice are informed of the new meeting location. If moving is impractical, consult with legal counsel before proceeding with a meeting where members of the public are present who are being denied the opportunity to attend due to space limitations.

c. Any person shall be permitted to use recording devices including, but not limited to, tape recorders, cameras, and videotape equipment at public meetings. RSA 91-A:2, II; s*ee WMUR v. N.H. Dept. of Fish and Game*, 154 N.H. 46 (2006) (prohibiting television cameras at a hearing on issuance of a hunting and fishing license because the presence of cameras would impair the applicant's ability to present his case violated the Right-to-Know law where the applicant had not established that he had a due process right to a hearing without cameras present).[10] It is recommended that public bodies whose public meetings are regularly recorded by members of the public establish uniform procedures that allow for a reasonable opportunity to record while not interfering with or disrupting the conduct of the meeting.

d. No vote in a public meeting may be taken by secret ballot except for:

(1) Town meetings and elections;
(2) School district meetings and school district elections; or
(3) Village district meetings and elections.

e. Meeting minutes must be kept and must include:

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

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

g. Minutes are a permanent part of the body's records and must be written and open to public inspection not more than five business days after the meeting.[11] RSA 91-A:2, II. There are no exceptions to this requirement for

[10] The Court did not reach the question of whether the right to due process, if it had been established by the person seeking a license, would outweigh the right to use television cameras at a public hearing. Television cameras should generally be allowed at public meetings and hearings.

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

the minutes of open meetings. Draft minutes can be used to satisfy this requirement, until the final minutes are completed and accepted, but they must be clearly marked "Draft."

h. Each public body should adopt a uniform character for its minutes and decide, outside the context of any controversial issue, how detailed its minutes will be. Many public bodies choose to keep minutes that go beyond the requirements of the Right-to-Know law and include a summary of discussion or comments on most agenda items. While this practice is generally appropriate, the additional information voluntarily included in minutes is subject to the same disclosure requirements as the information required by the Right-to-Know law. *Orford Teachers Ass'n v. Watson*, 121 N.H. 118, 121 (1981) (Court rejected the contention that "public records" are only those records required to be kept by law) (citing *Menge v. Manchester*, 113 N.H. 533, 536-37 (1973)).

3. Emergency Meetings

a. "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. RSA 91-A:2, II.

b. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body. The facts upon which that determination is based shall be included in the minutes of the meeting. RSA 91-A:2, III(b).

c. In an emergency there still must be a location specified in the notice which is available for public attendance. Therefore, as a practical matter, most emergency meetings will involve at least one member present at the public location. Other members may attend electronically, provided the requirements described herein are met.

4. Characteristics of Non-Public Sessions[12]

a. A body may exclude the public from a meeting only if the body votes, by roll call vote, to adopt a motion for a non-public session. The motion should state the statutory basis for the non-public session and must be approved by the

---

I. Knowingly makes a false entry in or false alteration of anything belonging to, received, or kept by the government for information or record, or required by law to be kept for information of the government; or

II. Presents or uses anything knowing it to be false, and with a purpose that it be taken as a genuine part of information or records referred to in paragraph I; or

III. Purposely and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such thing. RSA 641:7.

[12] Chapter 217, Laws of 1991, deleted the term "executive session" throughout RSA chapter 91-A and replaced it with the term "non-public session."

majority of the members present. The vote to go into non-public session is taken at the public meeting and recorded in the minutes of the public meeting that will be available to the public. The minutes should explicitly identify each voting member and how he or she voted on the motion to enter non-public session.

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

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

Note: The "right to a meeting" provision was added by Laws of 1992, Chapter 34:1, and effectively replaces the holding in *Johnson v. Nash*, 135 N.H. 534 (1992). Any person with a right under some other law to a public hearing or meeting would be entitled to personal notice of that meeting according to the law or contract that grants the right. Where a right to a public hearing and notice exists, generally that right attaches when the public body is considering imposing discipline or discharging the employee. It would generally not apply to non-public sessions held to discuss a complaint when initially received or to decide whether to direct that a complaint be investigated by the appropriate authority.

Public bodies that are hiring authorities with disciplinary and discharge authority that also provide open public comment periods at meetings should consult with legal counsel and establish a procedure to follow when a member of the public makes a complaint about a specific employee.

Nonetheless, if the body plans to hold a non-public "hearing" on the discipline, compensation or promotion of a particular employee, it should state this intention in the notice sent to the parties, and if a right to have that meeting held in public is granted by some legal authority (law, ordinance, contract), include in the notice a statement of the employee's right to an open meeting.

(2) The hiring of any person as a public employee. RSA 91-A:3, II(b). Note: Filling a vacancy of an elected or appointed public office is an "appointment" and is not the "hiring" of a public employee. Interviews and deliberation on filling a vacancy in an elected office therefore must occur in public session. *Lambert v. Belknap County Convention*, 157 N.H. 375 (2007).

(3) Matters which, if discussed in public, likely would adversely affect the reputation of any person, other than a member of the body or agency itself, unless such person requests an open meeting.[13] This exception shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant. RSA 91-A:3, II(c).

(4) Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, likely would benefit a party or parties whose interests are adverse to those of the general community. RSA 91-A:3, II(d).

(5) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the body or agency or any subdivision thereof, or against any member thereof because of his or her membership in such body or agency, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any body, board or agency for the purposes of this subparagraph. RSA 91-A:3, II(e). However, note that RSA 91-A:3, II(c) makes a non-public session proper if the tax abatement is sought based on inability to pay or poverty.

(6) Consideration of applications by the Adult Parole Board under RSA chapter 651-A. RSA 91-A:3, II(f).

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

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

designees. RSA 91-A:3, II(g). A county correctional superintendent acting in his or her executive capacity is not a public body subject to the public meeting requirements of the Right-to-Know law. This provision applies to meetings of the superintendent with the County Commissioners or any other public body for the purposes stated.

(8) Consideration of applications by the Business Finance Authority under RSA 162-A:7-10 and RSA 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. RSA 91-A:3, II(h).

(9) Consideration of matters relating to the preparation for and carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials for the purpose of thwarting a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. RSA 91-A:3, II(i).

(10) Consideration of confidential, commercial, or financial information that is exempt from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or RSA 541-A.

b. Unless a specific statute authorizes a body to deliberate in non-public session on a particular question, public bodies must deliberate in public. RSA 91-A:3, I(a).

c. Any motion to go into non-public session must include a specific reference to an appropriate section in RSA 91-A:3, II, as listed above. If the body is relying on other law, a reference to that law should be included in the motion and minutes. *See, e.g.*, RSA 21-G:31, V.

d. A public body may take final action in a non-public session on matters which may properly be considered in non-public sessions.

e. Minutes of non-public sessions:

(1) The roll call vote to adopt a motion to go into non-public session, and the statutory basis for doing so, must be recorded in the minutes of the public meeting.

(2) Minutes of non-public sessions are required. These minutes (including any decisions reached by the body) must be disclosed within 72 hours unless two-thirds of the members present determine that divulgence of the information would:

(i) Likely adversely affect the reputation of any person other than a member of the body or agency itself;

(ii) Render the proposed action ineffective; or

(iii) Pertain to terrorism.

(3) A vote by two-thirds of the members present not to divulge the information is a "decision" that must be recorded in the minutes, together with the reasons for non-disclosure. Any decision on the matter under consideration must be recorded in the minutes, although it need not be disclosed until a majority of the members determine that the circumstances set forth in (i), (ii), or (iii) above no longer apply.

See Appendix B, Model Nonpublic Session Procedures/Motions.

V. GOVERNMENTAL RECORDS

During the regular or business hours of all public bodies and public agencies, the public has a right to inspect and copy all non-exempt governmental records in the possession, custody, or control of the body or agency. RSA 91-A:4, I. Public bodies and public agencies must maintain their public records in a way that makes them available to the public. *NHCLU v. City of Manchester*, 149 N.H. 437 (2003).

A. What is a Governmental Record?

"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" also shall include the term "public records." RSA 91-A:1-a, III.

"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. RSA 91-A:1-a, IV.

The term "public record" refers to specific pre-existing files, documents or data in an agency's files, and not to information which might be gathered or compiled from numerous sources. *Brent v. Paquette*, 132 N.H. 415, 426 (1989). Documents or data which are covered by statutory or common-law privileges or exclusions are excluded from the definition of "public records." *See* RSA 91-A:4, I (referring to statutory exclusions). Some, but not all, of these privileged and excluded records are included among the exemptions specified in RSA 91-A:5, *e.g.*, medical treatment records. If you question whether a document is a public record, you should consult your legal counsel.[14]

The NH Supreme Court has not had occasion to address the requirement that to be a governmental record, information must be created, accepted or obtained by a public body or public agency "*in furtherance of its official function.*" However, both the Superior Court and an Attorney General's Opinion have addressed the issue of when an individual member of a public body is acting on behalf of that body in furtherance of its official function. *See KingCast.net et al. v. Martha Mcleod et al.*, Grafton County Superior Ct., No. 08-E-192 (Dec. 23, 2008) (Order, Vaughan, J.) (finding under the circumstances of this case individual legislators' emails were not "'governmental records' because they

[14] The New Hampshire Supreme Court is the ultimate decision maker regarding interpretations of the Right-to-Know Law. The Court has interpreted he law with a view toward providing the utmost information, in order to effectuate the statutory and constitutional objectives of facilitating access to all public documents. Thus, while the statute does not provide for unrestricted access to public records, provisions favoring disclosure are broadly construed and exemptions are interpreted restrictively. *Union Leader Corp. v. New Hampshire Hous. Fin. Auth*., 142 N.H. 540 (1997).

were not '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.'"); *see also Joseph Kelly Levasseur v. City of Manchester, et al.*, Hillsborough County Superior Ct. Northern District, No. 216-2014-CV-0125 (Mar. 31, 2014) (Order, Nicolosi, J.) (finding individual Alderman's email "does not, on its own, constitute a record created, accepted or obtained by, or on behalf, of a public body."); *see also* Attorney General's Opinion 11-01 ("[I]n determining whether a particular email constitutes a governmental record, a determination should be made as to the capacity and authority under which the individual legislator is acting in creating or receiving the email" because "if an individual member is imbued with authority to act on behalf of a public body,… the individual member could presumably create or obtain governmental records.").

Spam or junk e-mail received and incidental personal messages sent or received via e-mail, such as chat, instant messages or other forms of electronic communication, are unlikely to be deemed governmental records, as they are not received in furtherance of an official function. However, if the e-mails are analyzed for evidence of abuse of the governmental e-mail system, particularly if they end up being used as evidence in a personnel action, they likely would then be considered a governmental record.

Governmental records that are provided electronically may contain metadata that could be accessible to the requesting party. Metadata is data imbedded in electronic documents and can include information such as your organization and/or computer name, comments, template information, hidden text or cells, the name of the network server or hard disk where the document is saved, and the names of previous document authors. New Hampshire Courts have not ruled on whether such information is subject to disclosure under RSA 91-A. At least one Federal District Court has determined that, with respect to the Freedom of Information Act, certain metadata is an intrinsic part of an electronic record and that "metadata *maintained* by the agency *as part of an electronic record* is *presumptively* producible under FOIA, unless the agency demonstrates that such metadata is not 'readily producible.'" *National Day Laborer Organizing Network, et al., Plaintiffs, v. United States Immigration and Customs Enforcement Agency, et al., Defendants*, No. 10 Civ. 3488 (SAS). Questions about metadata should be reviewed with legal counsel.

Given the proliferation of electronic records, public bodies and public agencies should review the following with legal counsel: their computer, e-mail, instant message, phone and other system use; the sections of their employee handbooks covering e-mail, instant message, phone and web usage, including but not limited to social media usage such as Twitter, YouTube, Facebook; and record retention policies and practices.

B. Examples of Governmental Records Required to be Disclosed

1. Individual salaries and employment contracts of local school teachers. *Mans v. Lebanon School Board*, 112 N.H. 160 (1972).

2. Names and addresses of substitute teachers hired during a strike. *Timberlane Regional Education Assn. v. Crompton*, 114 N.H. 315 (1974).

3. Certain law enforcement investigative records. *Lodge v. Knowlton*, 118 N.H. 574 (1978). (Discussed in more detail below).

4. A computerized tape of field record cards concerning property tax information. *Menge v. City of Manchester*, 113 N.H. 533 (1973).

5. State agency budget requests and income estimates submitted pursuant to RSA 9:4 and 5 to the Commissioner of Administrative Services. *Chambers v. Gregg*, 135 N.H. 478 (1992).

6. Records of any payment in addition to regular salary and accrued vacation, sick, and other leave, made to an employee of any public agency or body listed in RSA 91-A:1-a, I-IV, or to an employee's agent or designee, upon the employee's resignation, discharge, or retirement. RSA 91-A:4, I-a.[15] *See Union Leader Corp. v. New Hampshire Retirement System*, 162 N.H. 673 (2010) (requiring disclosure of names of retired public employees who received payments from public employee retirement plan and amounts of those payments).

C. Examples of Electronic Governmental Records Required to be Disclosed

1. Electronic records are defined in RSA 5:29, VI as "information that is created or retained in a digital format. Electronic governmental records shall be available in the same manner as records stored in public files if access to such records would not reveal work papers,[16] personnel data or other confidential information. RSA 91-A:4, V. The New Hampshire Supreme Court has held that a record does not lose its status as public because it is stored in a computer system. *Hawkins v. N.H. DHHS*, 147 N.H. 376 (2001).

2. Electronic Government Records may include, but are not limited to:

   a. Documents stored in a computer or any other storage medium such as CD, DVD, the cloud, or thumb drive;
   b. E-mail;
   c. Voice mail;
   d. PDF documents;
   e. Instant messages;
   f. Text messages; and

[15] Public bodies or public agencies should be careful not to make public any health information protected under HIPAA or other health information privacy laws.

[16] While courts have not yet addressed the issue, it is our view that the RSA 91-A:4 exemption, while referencing only public bodies, is properly applied to the governmental records of a public agency because the Court has found it is merely an emphasis on the exemption in RSA 91-A:5, which applies to government records held by a public agency.

g. Electronic photos (digital).

D. A Public Body's Duty to Maintain Electronic Records

1. Governmental records created or maintained in electronic form shall be kept and maintained for the same retention or archival periods as their paper counterparts. Governmental records in electronic form kept and maintained beyond the applicable retention or archival period shall remain accessible and available in accordance with RSA 91-A:4, III. RSA 91-A:4, III-a. You do not need to keep a particular record in both paper and electronic form.

2. Retention schedules for public bodies are set forth within the following statutes:

   a. Counties, cities and towns, RSA 33-A:3-a;
   b. School Districts and School Boards; RSA 189:29-a; RSA 189:27-a, b;
   c. State Entities, RSA 5:40 (The Director of the Division of Archives, under the supervision of the Secretary of State, shall establish a manual of uniform procedures necessary and proper to effectuate the purpose of this subdivision. A link to the Archives Procedure Manual, which sets forth the retention schedules for state government records, can be found at http://sos.nh.gov/Arch_Rec_Mgmt.aspx.)

3. There is no requirement to keep or maintain electronic records which have no paper counterpart. RSA 91-A:4, III-a. If an electronic record would fulfill a pending Right-to-Know request it may not be destroyed, even if exempt from disclosure. *See* RSA 91-A:9, addressed further below.

4. Methods that may be used to keep electronic records accessible include, but are not limited to:

   a. Copying to microfilm or paper. RSA 91-A:4, III-a.
   b. Transferring to durable electronic media using standard or common file formats. RSA 91-A:4, III-a.

5. Deletion of an electronic record.

   a. 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. RSA 91-A:4, III-a.
   b. 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. RSA 91-A:4, III-a.

   While the New Hampshire Supreme Court has not yet addressed the issue, it is our view that electronic records that have been legally deleted and are available only on system back-up storage media are properly treated as no longer subject to disclosure

under RSA 91-A:4 III-b. To access a record that exists only on back-up media typically requires either replicating the system hardware or taking the system in use off-line to restore the backup. RSA 91-A:4, III-a has the effect of making restoration from back-up unnecessary in the ordinary course of responding to Right-to-Know requests.[17]

Restoring from backup, however, might be legally necessary if an electronic record was not retained as required by law, that is, if it was illegally deleted. The expense of restoring records from backups is another reason why public bodies and public agencies should review their electronic record retention and purging policies and practices.

E. Settlements of Lawsuits by Municipalities

Every agreement to settle a lawsuit, threatened lawsuit, or other claim against a public body, public agency, or its members 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. RSA 91-A:4, VI.

F. Exemptions From Disclosure

Statutory Exemptions - RSA 91-A:5. The following government records are exempt from disclosure. *Also see* Appendix F, a listing of most statutes that exempt specific government records from disclosure.

1. Records of grand and petit juries.[18]

2. Records of parole and pardon boards.

3. Personal school records of pupils. *Brent v. Paquette*, 132 N.H. 415 (1989); *see also* 20 U.S.C. §1232(F), *et seq.*, known as the Buckley Amendment or the Family Educational Rights and Privacy Act ("FERPA") and 20 U.S.C. 1092(f), *et seq.*, known as the Clery Act, requiring postsecondary educational institutions to disclose campus security policy and crime statistics.

4. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examinations for employment or academic examinations; and personnel, medical, welfare, library user, videotape

[17] *See Paul Twomey v. N.H. Department of Justice*, Docket No. 10-CV-503 (2010) (finding that where the purpose of back-up tapes is to restore agency services and not to maintain governmental records, and where the back-up tapes only contain a snapshot of what is on a computer at a particular time, "the back-up tapes themselves cannot be considered governmental records within the meaning of RSA 91-A:1-a because they do not contain 'information'.").

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

sale or rental and other files whose disclosure would constitute an invasion of privacy.[19] *See Hounsell v. North Conway Water Precinct*, 154 N.H. 1 (2006) (investigative report prepared for the Water Precinct concerning claimed employee misconduct that could have lead to disciplinary action was a record pertaining to internal personnel practices and thus exempt from disclosure); *Lamy v. NH Public Utilities Commission*, 152 N.H. 106 (2005) (upholding non-disclosure of names and addresses of residential customers of utility company); *Montenegro v. City of Dover*, 162 N.H. 641 (2011) (job titles of any persons who had monitored city's law enforcement surveillance equipment were not internal personnel practice).

5. Teacher certification records, held by the Department of Education. However, the Department shall make teacher certification status available. RSA 91-A:5, V.

6. 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.

7. Certain information regarding the State's procurement and contracting process. Notwithstanding RSA 91-A:4, no information shall be available to the public concerning bids or proposals, from the time the invitation is made public until the contract is actually awarded in order to protect the integrity of the public bidding process. RSA 21-I:13-a, II; *see also Irwin Marine Inc. v. Blizzard Inc*., 127 N.H. 271 (1985) (government contracting process must be fair; any procedure that places a bidder at a disadvantage violates the public interest and weakens public confidence in government).

---

[19] A municipal officer may be dismissed from office for breaching the confidentiality provided by RSA 91-A:3 or :5. RSA 42:1-a, II provides:

> Without limiting other causes for such a dismissal, it shall be considered a violation of a town officer's oath for the officer to divulge to the public any information which that officer learned by virtue of his official position, or in the course of his official duties, if:
>
> (a) A public body properly voted to withhold that information from the public by a vote of 2/3, as required by RSA 91-A:3, III, and if divulgence of such information would constitute an invasion of privacy, or would adversely affect the reputation of some person other than a member of the public body or agency, or would render proposed municipal action ineffective; or
>
> (b) The officer knew or reasonably should have known that the information was exempt from disclosure pursuant to RSA 91-A:5, and that its divulgence would constitute an invasion of privacy, or would adversely affect the reputation of some person other than a member of the public body or agency, or would render proposed municipal action ineffective.

When a proposed contract is submitted to the Governor and Council (G&C) for approval, only the contract and its exhibits and attachments are placed on the public agenda. Other documents related to a contract, such as bids or proposals, internal emails, memoranda, notes, should not be submitted and are not subject to disclosure at that point. RSA 21–I:13-a, II. Once the contract is "actually awarded" by G&C, all relevant documents, including the internal emails, memoranda, notes and the like will be subject to RSA 91-A disclosure.[20] If the G&C do not actually award the contract or the contract is withdrawn from consideration, the provisions of RSA 21-I:13, II would continue to apply until either a new invitation to bid or RFP is issued, in which case the RSA 21–I:13-a, II provision would again apply, or the original public offering is abandoned by the agency.

Further, RSA 9-F:1 requires that State contracts entered into as a result of requests for proposals ("RFP") be posted online. It is advisable to include language in the RFP informing potential vendors that any resulting contract will be posted online(*see* sample RFP public disclosure language in Appendix E).

RSA 9-F:1 does not require posting of information exempt from public disclosure under RSA 91-A or other law. For example, contracts may contain confidential, commercial, or financial information exempt from disclosure under RSA 91-A:5, IV.[21] Therefore, pursuant to the requirements of RSA 9-F:1 and RSA 91-A:5, state agencies are responsible for ensuring that information exempt under RSA 91-A, and other laws, is redacted prior to the proposed contract being posted online.

8. Confidential Information. The public body must have a basis for invoking the exemption and may not simply mark a document "confidential" in an attempt to circumvent disclosure. In determining whether a governmental record must be disclosed, "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." *Goode v. LBA*, 148 N.H. 551, 554-55 (2002).[22] To best effectuate the purposes of the Right-to-Know law, whether information is "confidential" must be determined objectively, and

[20] To the extent that a contract is not subject to approval by the G&C, the contract is "actually awarded" following DOJ approval for form, substance and execution.

[21] The New Hampshire Supreme Court has not had occasion to rule on how trade secrets are addressed under RSA 91-A. The Merrimack Superior Court in *Caremark PCS Health, LLC v. NH Department of Administrative Services*, 217-2011-CV-00475 (2014), held that disclosure of trade secrets is prohibited under New Hampshire's Uniform Trade Secrets Act and, as such, trade secrets are exempt from disclosure under RSA 91-A:4, I as records "otherwise prohibited by statute." This decision is on appeal.

[22] In business dealings where a unit of government will come into possession of information belonging to the contracting party and that party believes it should be treated as confidential and exempt from the disclosure under the Right-to-Know law, it is appropriate for government to promise in contract documents only to give notice to the other party and to afford that party a set period of time in which to seek a court order prohibiting disclosure in the event a Right-to-Know request is received, which the public body or public agency believes requires disclosure of the information. It is helpful when the contracting document cites the legal authority for the information being confidential or otherwise non-public.

not based on the subjective expectations of the party generating it. *See Professional Firefighters of N.H. v. Local Gov't Ctr., Inc.*, 159 N.H. 699, 709 (2010) (while employees of public body may not have expected their salary information to be made public, that does not make the information confidential under the Right-to-Know law)..

Except when the result is plainly established by the Right-to-Know law itself, courts analyzing whether a "confidential" government record should be disclosed will apply a test which balances the benefits of public disclosure against the benefits of non-disclosure in construing the scope of RSA 91-A:4 and RSA 91-A:5.

In *Union Leader Corp. v. Fenniman*, 136 N.H. 624 (1993), the Court held that a balancing test would be inappropriate where the legislative history was clear that internal police investigatory files were "records pertaining to internal personnel practices, which are categorically exempt from disclosure."

In *Goode v. LBA*, 148 N.H. 551 (2002), the Court held that "while . . . 'work papers' is a category of confidential information under RSA 91-A:5, IV, there must be a balancing test applied to determine whether they are sufficiently confidential to justify non-disclosure."

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

The New Hampshire Supreme Court adopted the United States Supreme Court's view that disclosure of information about private citizens in government files that reveals nothing about an agency's conduct is not within the purpose of the Right-to-Know law. *Lamy v. NH Public Utilities Commission*, 152 N.H. 106 (2005) (the names and addresses of PSNH's residential customers are private and disclosure does not inform the public about the conduct of the PUC. However, PSNH's business customers do not have a privacy interest and their names and addresses must be disclosed under the Right-to-Know law.); *Professional Firefighters of N.H. v. Local Gov't Ctr., Inc.*, 159 N.H. 699, 709–10 (2010) (employers' names and salary information provides insight into the operations of the entity and must be disclosed); *see also U.S. Dept. of Justice v. Reporters Committee*, 489 U.S. 749, 773 (1989). When release of records may cause an invasion of privacy, an *ex parte in-camera* review of the records by a court is appropriate. *Union Leader Corp.*, 141 N.H. at 478.

9. "Invasion of privacy" will not be so broadly construed as to defeat the purpose of the Right-to-Know law. *Mans v. Lebanon School Board*, 112 N.H. 160 (1972). In *Brent v. Paquette*, 132 N.H. 415 (1989), the Court balanced the competing interests of society against those of school children and their parents and determined that disclosure of the names and addresses would be an invasion of privacy.

   A three-step analysis should be used to evaluate whether disclosure of governmental records constitutes an invasion of privacy:

   i. Is there a privacy interest at stake that would be invaded by the disclosure?
   ii. Would disclosure inform the public about the conduct and activities of its government?
   iii. Balance the public interest in disclosure against the government's interest in non-disclosure and the individual's privacy interest in non-disclosure.

   Lambert v. Belknap County Convention, 157 N.H. 375, 382-3 (2008); *Lamy v. New Hampshire PUC*, 152 N.H. 106, 109 (2005); *NHCLU v. Manchester*, 149 N.H. 437, 440 (2003); *Union Leader Corp. v. City of Nashua*, 141 N.H. 473 (1996).

10. Many State agencies are subject to federal and state statutes and regulations establishing the confidentiality of certain types of information. Examples of state statutes include, but are not limited to:

    (a) Certain records of the Department of Employment Security. RSA 282-A:118.

    (b) Public assistance records. RSA 167:30.

    (c) Physician/patient communications. RSA 329:26.

    (d) Certain records of the Insurance Department. RSA 400-A:25.

    (e) Certain consumer protection and antitrust records of the Office of Attorney General. RSA 356:10, V and RSA 358-A:8, VI.

    (f) Enhanced 911 System records. RSA 106-H:14.

    (g) Motor vehicle records. RSA 260:14, II(a); s*ee DeVere v. Attorney General*, 146 N.H. 762 (2001).

11. To determine which records of an agency or body are confidential, all applicable federal and state statutes and regulations must be analyzed. Governmental records which are made privileged by statute, court rule, or common law, are appropriately treated as exempt from disclosure under the Right-to-Know law *See* Addendum E for a list of most state statutes and court rules that make specific information confidential or exempt from disclosure under the Right-to-Know law.

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

13. If disclosure of a record is prohibited by statute, the Right-to-Know law does not compel disclosure. RSA 91-A:4, I.

G. Other Exceptions to Disclosure

1. Written legal advice from the agency or body's counsel. *Society for the Protection of N.H. Forests v. Water Supply and Pollution Control Commission*, 115 N.H. 192 (1975). *See Hampton Police Ass'n Inc. v. Town of* Hampton, 162 N.H. 7 (2011) ("attorney-client privilege may apply to information in a billing record that reveals the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law"); *Professional Fire Fighters of New Hampshire v. New Hampshire Local Government Center*, 163 N.H. 613 (2012) (Communications protected under the attorney-client privilege fall within the exemption in the Right-to-Know law for confidential information).

2. Documents or information which an agency properly receives in non-public session if disclosure of such records would frustrate the purpose for the non-public session.[23]

3. The Right-to-Know law does not require the probing of the mental processes of governmental decision-makers. *See Merriam v. Salem*, 112 N.H. 267, 268 (1972). In other words, the Right-to-Know law does not give the public the right to force a government decision-maker to explain, beyond what has already been disclosed in a public document, why he or she made a particular decision.

4. While advisory documents may be public records, the Right-to-Know law does not require disclosure that would effectively prohibit the frank, open, and honest

[23] If an agency can exclude the public from certain meetings and receive information in such a closed session or receive legal advice in a non-meeting, the forced public disclosure of those government records would nullify the effect of holding a non-public session or non-meeting to consult with legal counsel.

discussion that is so necessary to reasoned decision-making. *See Chambers v. Gregg*, 135 N.H. 478, 481 (1992) ("[I]t is arguable that the interaction between the Governor and department heads ... constitutes a deliberative process.").

5. Any notes or other materials made for personal use that do not have an official purpose, including notes and materials made prior to, during, or after a public proceeding. RSA 91-A:5, VII. *See ATV Watch v. N.H. Dept. of Transportation*, 161 N.H. 746, 761 (2011) (rejecting argument that all notes and materials that bear on an agency's business must be disclosed; "official purpose" is narrower than "bearing on the agency's business").

6. Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of those entities defined in RSA 91-A:1-a. *See ATV Watch v. N.H. Dept. of Transportation*, 161 N.H. 746, 758 (2011) (exemption meant to protect "pre-decisional, deliberative communications that are part of an agency's decision-making process [and] the distinction between preliminary and final documents does not consist of the extent to which the person or persons from whom they originate expect to alter them."; also rejecting argument that disclosure to another agency invalidates the exemption).

7. Bank examiners' reports. *Appeal of Portsmouth Trust Co*., 120 N.H. 753 (1980).

8. Real estate appraisal reports compiled by the Department of Transportation. *Perras v. Clements*, 127 N.H. 603 (1986).

9. Quality assurance records maintained by ambulatory care clinics. *Disabilities Rights Center, Inc. v. Comm'r, N.H. Dept. of Corrections*, 146 N.H. 430 (1999).

10. A public body may release information concerning health or safety to people whose health or safety might be affected without compromising the confidentiality of the files. RSA 91-A:5, IV.

H. Law Enforcement Records or Information[24]

1. Relevant portions of the Federal Freedom of Information Act, 5 U.S.C. §552(b)(7), have been adopted as the standard for the disclosure or non-disclosure of law enforcement records. *Lodge v. Knowlton*, 118 N.H. 574 (1978); *Murray v. State Police*, 154 N.H. 579, 582 (2006); *38 Endicott St. N., LLC v. State Fire Marshal*, 163 N.H. 656 (2012).

2. If the records requested are compiled for law enforcement purposes, they may be withheld if the agency[25] can prove that disclosure would either:

[24] The New Hampshire Supreme Court has explicitly held that the exemption extends beyond "investigatory" documents to records "compiled for law enforcement purposes." *Montenegro v. City of Dover*, 162 N.H. 641, 646 (2011).

a. Interfere with enforcement proceedings;

b. Deprive a person of a right to a fair trial or an impartial adjudication;

c. Constitute an unwarranted invasion of privacy.[26] (The statutory exemption for invasion of privacy will be strictly construed. *Mans v. Lebanon School Board*, 112 N.H. 160 (1972));

d. Reveal the identity of a confidential source, and in the case of a record compiled by a law enforcement authority in the course of a criminal investigation or by any agency conducting a lawful national security investigation, confidential information furnished only by a confidential source;

e. Reveal investigative techniques and procedures; or

f. Endanger the life or physical safety of any person.

3. The burden of proof is on the agency to show that the record is exempt.[27] It is not the responsibility of the person requesting the record to show that no exemption applies.[28] If an agency denies a request for law enforcement records, it should include in its response to the requester an explanation of the basis for non-disclosure. In *Hopwood v. Pickett*, 145 N.H. 207 (2000), the Court held that the probate court erred in relying on the *Lodge* factors to deny a litigant's request to have an law enforcement record introduced into evidence as a sealed exhibit, where the investigating agency did not object. [29]

I. Guidance In Producing Law Enforcement Records

---

[25] "The exemption does not apply exclusively to law enforcement officers or agencies, but rather applies to all records and information compiled, by any type of agency, for law enforcement purposes." *38 Endicott St. N., LLC*, 163 N.H. at 661–62 (finding Fire Marshal's Office is not primarily a law enforcement agency but instead, a "mixed-function agency"). "When the agency claiming the exemption constitutes a 'mixed-function agency,' it may meet its burden by showing that the pertinent records were compiled pursuant to the agency's law enforcement functions, as opposed to administrative functions." *Id*. at 665.

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

[27] The standard for determining whether the agency met its burden depends on whether the agency is primarily a law enforcement agency, a mixed-function agency, or something else. *See 38 Endicott St. N. LLC v. State Fire Marshal*, 163 N.H. 656, 662–63 (2012).

[28] If none of the *Lodge* exemptions apply to a particular record, one of the statutory exemptions described in Section III, E of this Memorandum may still apply.

[29] The burden is on the State agency to object to a request to introduce investigatory records; otherwise, the court may not rely on *Lodge* in refusing to admit them.

Requests for the production of investigative records should be considered in light of all the relevant facts and circumstances. There is no bright-line test to apply in every instance to determine which documents may be withheld and which must be disclosed. However, the following should be considered:

1. Interference with Law Enforcement Proceedings

   Documents compiled for law enforcement purposes are exempt from production if such production would reasonably be expected to interfere with law enforcement proceedings.

   The proceedings must either be pending or "reasonably anticipated." *Murray v. State Police*, 154 N.H. 579, 582 (2006). The Court construes this to include unresolved crimes where some regular effort continues to be expended to solve it. *Id.* at 583. The exemption for interference with enforcement proceedings "requires proof of only 'a reasonable chance that an enforcement proceeding will occur.'" *Murray v. State Police*, (*Murray II*), No. 2007-0459, at 1 (Supreme Court Order, April 16, 2008) (rejecting claim that proof of 'a high likelihood that an individual would be prosecuted' was required).

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

   This exemption "does not require that the agency explain when, where, or by whom charges might arise." *38 Endicott St. N., LLC*, 163 N.H. at 666. Instead, the agency, at the least, must "fairly describe the content of the material withheld and adequately [state the] grounds for nondisclosure, and [explain why] those grounds are reasonable and consistent with the applicable law." *Id. at 667* (*citing Barney v. I.R.S.*, 618 F.2d 1268, 1274 (8th Cir. 1980) (quotation omitted)).[30]

2. Accused's Right to a Fair Trial

   This exemption will apply to some extent in all pretrial situations. Right-to-Know requests received during the pendency of a criminal prosecution should be reviewed with the case prosecutor before a substantive response is made. Information which might prejudice an accused's right to a fair trial includes, but is not limited to, records relating to the following:

   a. The guilt or innocence of a defendant;

[30] The *38 Endicott St. N., LLC* Court further found where an agency has "sustained its burden of proof by affidavit or testimony" demonstrating likely interference, through "generic determinations" for each category of documents, the "trial court need not undertake an *in camera* inspection or order a *Vaughn* index." 163 N.H. 656, 668 (2012).

b. The character or reputation of a suspect;

c. Examinations or tests which the defendant may have taken or have refused to take;

d. Gratuitous references to a defendant; for example, a reference to the defendant as "a dope peddler;"

e. The existence of a confession, admission or statement by an accused person, or the absence of such;

f. The possibility of a plea of guilty to the offense charged or a lesser offense;

g. The identity, credibility or testimony of prospective witnesses;

h. Any information of a purely speculative nature; and

i. Any opinion as to the merits of the case or the evidence in the case.

3. Unwarranted Invasion of Privacy

In determining whether disclosure of documents will constitute an unwarranted invasion of privacy, the court will balance the public and/or private interest in the information sought against the severity of the invasion of privacy.

A three-step analysis should be undertaken when considering whether disclosure of public records constitutes an invasion of privacy under RSA 91-A:5, IV. First, evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. Whether information is exempt from disclosure because it is private is judged by an objective standard and not a party's subjective expectations. If no privacy interest is at stake, the Right-to-Know law mandates disclosure.

Second, assess the public's interest in disclosure. Disclosure of the requested information should inform the public about the conduct and activities of their government. If disclosing the information does not serve this purpose, disclosure will not be warranted even though the public may nonetheless prefer, albeit for other reasons, that the information be released.

Finally, balance the public interest in disclosure against the government's interest in non-disclosure and the individual's privacy interest in non-disclosure. The motives of the person making the request are irrelevant to this analysis. "Information that is subject to disclosure under the Right-to-Know law belongs to citizens to do with as they choose. As a general rule, if the information is subject to disclosure, it belongs to

all." *Lambert v. Belknap County Convention*, 157 N.H. 375, 382–83 (2008) (*citing and quoting Lamy*, 152 N.H. at 109.)

Examples of information that may implicate a privacy interest:

a. Marital status;[31]

b. Legitimacy of children;

c. Sexual orientation

d. Medical or mental health conditions;

e. Welfare recipient;

f. Consumption of alcohol or a controlled substance;

g. Domestic disturbances and disputes;

h. Names of witnesses who cooperated by providing information to authorities and the information provided by them;[32]

i. Names of subjects of investigation; and

j. Names of children.

4. Confidential Source

Information may be withheld if disclosure "could reasonably be expected to disclose the identity of a confidential source, . . .in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by any agency conducting a lawful national security

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

[32] The reasoning behind this exclusion has been explained as follows:

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

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

intelligence investigation, confidential information furnished by a confidential source; or . . ." *Murray v. State Police*, 154 N.H. 579, 582 (2006).

5. Investigative Techniques and Procedures

   Information may be withheld if disclosure "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." *Murray v. State Police*, 154 N.H. 579, 582 (2006). This exclusion should not be interpreted to include routine techniques and procedures already well known to the public. It does, however, protect from disclosure "detailed law enforcement surveillance procedures," such as locations of surveillance equipment, recording capabilities for each piece of equipment, the specific time periods each piece of equipment is expected to be operational, and the retention time for any recordings. *Montenegro v. City of Dover*, 162 N.H. 641, 649 (2012). "This information is of such substantive detail that it could reasonably be expected to risk circumvention of the law by providing those who wish to engage in criminal activity with the ability to adjust their behaviors in an effort to avoid detection." *Id*.

6. Endangering Life or Physical Safety of Any Person

   Information may be withheld if disclosure "could reasonably be expected to endanger the life or physical safety of any individual." *Murray v. State Police*, 154 N.H. 579, 582 (2006).

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

Many of the exemptions for law enforcement records or information have received limited interpretation by the New Hampshire courts. The above guidance is based, in part,on federal case law, which the New Hampshire Supreme Court has cited to favorably. The needs, demands, and results of good law enforcement are complex and long lasting, and the federal case law will not be lightly disregarded. It is important, however, that these exemptions be applied thoughtfully and carefully. The mere assertion of an exclusion without adequate reason or justification will not be sufficient to sustain an agency's denial of a request for law enforcement information under the Right-to-Know law.

In a 2006 decision, the Supreme Court clarified the process for asserting the law enforcement records exception for interference with law enforcement proceedings. *Murray v. New Hampshire Division of State Police,* 154 N.H. 579 (2006). To justify the withholding of records, an agency should provide the court a categorization of the records, with each category defined precisely. The description should not reveal the contents of withheld documents, but should provide enough information to allow a court to determine if the documents must be disclosed. The Court, in *Murray,* offered examples of the types of categories that might satisfy that reguirement:

1. Details regarding initial allegations giving rise to the investigation;
2. Interviews with witnesses and subjects;
3. Investigative reports furnished to prosecutors;
4. Communications with prosecutors;
5. Investigation progress reports;
6. Prosecutor's opinions – Prosecution Memoranda.

Murray, 154 N.H. at 584. The Court noted that, in limited circumstances where the naming of a category would in itself release information that would interfere with an investigation, a "miscellaneous" category may be justifiable. Broad terms for categories such as photographs, correspondence, or maps and diagrams are insufficient. *Id.*.

Affidavits, testimony, or other evidence that explains how the disclosure of the information within the categories could interfere with any investigation or enforcement should be provided to the court. The law enforcement agency may also be required to explain why there is no portion of the withheld materials that can be reasonably segregated within a particular category that is suitable for release. *Murray v. New Hampshire Division of State Police,* 154 N.H. 579 (2006).

J. Burden of Proof for Not Disclosing a Governmental Record

In all cases, the public body bears the burden of proving that a record is not subject to public release. An agency must meet a minimum threshold to justify non-disclosure. It "is not required, however, to justify its refusal on a document-by-document basis. When generic determinations are used, the withholding should be justified category-of-document by category-of-document not file-by-file." *Murray v. State Police,* 154 N.H. 579, 583 (2006).

However, in cases where disputed records cannot be reviewed effectively, such as in case involving a large number of documents, a court may order that the party resisting disclosure prepare a detailed document index pursuant to *Vaughn v. Rosen*, 157 U.S. App. D.C. 340, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974), to assist the court in determining whether the documents in question are exempt from the Right-to-Know law. *Union Leader Corp. v. New Hampshire Hous. Fin. Auth*., 142 N.H. 540 (1997). Such an index will include a general description of each document withheld and the justification for its nondisclosure. *See* Appendix C, for a sample of a *Vaughn* Index

K. Public Inspection of Governmental Records – RSA 91-A:4, IV

Every citizen during has the right to inspect all non-exempt governmental records, including meeting minutes , during the regular or business hours of a public body or public agency, at the regular business premises of that body or agency. Citizens have the right to make memoranda, abstracts, and photographic or photostatic copies of the records or minutes, except as otherwise prohibited by statute or RSA 91-A:5. RSA 91-A:4, I.

The Right-to-Know law does not require the requesting party to identify himself or herself and imposes no restrictions on the use of information once it is disclosed. *Associated Press v. N.H.*, 153 N.H. 120 (2005). It is permissible to ask the person making a Right-to-Know request to put the request in writing. However, if he or she declines, the individual receiving the request should create a written record for the public body or public agency's files. The written record should include the date of the request and a description of the specific governmental records being requested. Governmental records that are immediately available must be provided for inspection. When this occurs, the written record should also document what governmental records were provided for inspection and/or which were copied.

1. If records are immediately physically available, the public body or public agency should:

    a. Ask the person requesting access to wait while the records are made available;
    b. If production is appropriate, make the records available for inspection and/or copying;
    c. Provide only a copy for inspection or closely monitor the person's handling of the original documents;
    d. If production is not appropriate, explain why;
    e. If the documents are copied or reproduced using the public body or public agency's equipment is used, the person requesting the documents may be charged for copying or reproduction costs.

RSA 91-A:4(I), RSA 91-A:4(IV), RSA 126-A:5(X). *See ATV Watch v. N.H. Dept. of Transportation*, 161 N.H. 746, 757-758 (2011) (finding that petitioner's inadequately supported statement that documents were 'probably immediately available' was not sufficient to prove a violation of the Right-to-Know law).

2. Timing is important! If the records are not immediately available the body or agency has at most five business days to provide an initial response to the request. Often records will not be available immediately because:

    a. The documents are in use;
    b. They must be reviewed or redacted;

c. They are archived in another location;
d. They are not readily identifiable;
e. A search for the documents must be conducted; or
f. Legal advice must be obtained.

Within five business days, the public agency or body must either deny the request in writing, with reasons, or notify the requester, in writing, if or when the records, subject to RSA 91-A and other applicable statutes, will be available. If the public official is not sure whether or what responsive documents exist, then the requester must be told when the search, retrieval and review process is expected to be completed. RSA 91-A:4(IV).

The NH Supreme Court in *ATV Watch v. DRED*, 155 N.H. 434 (2007) made clear that it is essential that:

a. If government records are immediately available, disclosure must be immediate;
b. If government records can be produced within five days, they must be produced within five days; and
c. Otherwise it is critical that the requesting party be provided with a written response explaining when the determination will be made as to what, if anything, will be disclosed.

Id. at 440-41. *ATV Watch* did not address how much time can be taken to produce a response . The statute refers to the "time reasonably necessary to determine whether the request shall be granted or denied." That is the only guidance available as to how much of a public body's or agency's resources must be diverted from regular work to complete the retrieval, review, redaction process, which is necessary to determine what can be produced.

3. The following generally applies to all governmental records:

a. The public's right to inspect governmental records, including meeting minutes, specifically includes a right to inspect and copy all notes, materials, tapes or other sources used by an agency to compile the minutes of a meeting, after the completion of a meeting and during the entity's regular business hours. RSA 91-A:4, II.

b. An agency is not obligated to retain notes, tapes or other draft materials used to prepare minutes after final minutes have been approved, prepared and filed. *Brent v. Paquette*, 132 N.H. 415, 420 (1989). If drafts, notes, and memoranda and other documents not in their final form are disclosed, circulated, or made available to a quorum or a majority of the members of a public body and retained after the public body or agency has approved final minutes, they will be subject to inspection. *See Orford Teachers Association v. Watson*, 121 N.H. 118 (1981); RSA 91-A:5, IX. Drafts, notes, memoranda

and other documents not in their final form which are not disclosed, circulated, or made available to a quorum or a majority of the members of a public body are exempt from disclosure. RSA 91-A:5, IX. The courts have not yet addressed whether audio or video recordings made by the individual responsible for drafting minutes solely as an aid to creation of the minutes constitute governmental records that must be retained as long as its paper counterpart. Public bodies using tape or video recordings solely to aid in the creation of minutes should consult with legal counsel regarding when, if ever, the recordings can properly be destroyed. Generally minutes and paper verbatim transcripts used for minutes must be preserved permanently.

c. If no exemption applies, a governmental record is subject to public inspection. Any citizen has the right to inspect all non-exempt governmental records during the entity's regular business hours on the regular business premises of the public body or public agency.[33]

d. Arranging a mutually convenient time for the inspection of public documents is consistent with the purposes of the Right-to-Know law. *Brent v. Paquette*, 132 N.H. 415 (1989). Reasonableness is the only guide for resolving conflict between a request to immediately access governmental records, when doing so would significantly disrupt the public body's or agency's business or its legal obligations to fulfill other duties.

e. If a public document is unavailable for a limited time because of its removal for use by a government official in discharging his official duties, this is not a violation of the requirement that public documents be available for inspection and copying. *Gallagher v. Town of Windham*, 121 N.H. 156 (1981). The *Gallagher* case also confirmed that, although all governmental records must be available for inspection and copying, the public body is not absolutely mandated to provide copies at its own labor and expense. Public officials have been cautioned, however, to assist citizens in obtaining copies whenever it is reasonable to do so. *Carbonneau v. Town of Rye*, 120 N.H. 96 (1980).

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

g. The Right-to-Know law does not require an agency to compile data in the format requested by a member of the public or to create a new document. RSA 91-A:4, VII. The NH Supreme Court has suggested that RSA 91-A does require that public records be maintained in a manner that makes them available to the public. *Hawkins*, 147 N.H. at 379.

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

h. If the public body or public agency does not have a regular office or place of business, the public records must be kept in an office of the political subdivision in which the body is located or, in the case of a state agency, in an office designated by the Secretary of State. RSA 91-A:4, III. A public agency includes any office of a county, town, municipal corporation, school district, school administrative unit, charter school, or other political subdivision. Historically, in many small towns and village districts, the district clerk, tax collector, or treasurer would keep the office records in his or her home. This is not permissible under the Right-to-Know Law unless the official maintains a "regular office or place of business" at that residence.

i. If the public body or public agency uses a photocopy machine or other device to make copies of records for the requester, and the device is maintained by the agency/body, the agency may charge the actual cost of providing a copy, unless an applicable fee has been established by law. RSA 91-A:4, IV.

j. When providing Statistical Tables and Limited Data Sets for Research, the requestor can be required to pay fees established by law for obtaining copies of limited data sets or statistical tables. Such fees shall be based on the cost of providing the copy in the format requested. The agency head shall provide the requestor with a written description of the basis for the fee. RSA 91-A:10, VI.

k. Any public body or agency that maintains governmental records in electronic format may, in lieu of providing original records, copy the requested records to electronic media using standard or common file formats, in a manner that does not reveal information which is confidential under the Right-to-Know law or any other law. RSA 91-A:4, V.

l. If copying to electronic media is not reasonably practicable, or if requester asks for the records in a different format, the public body or agency may provide a printout of the requested records, 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. RSA 91-A:4, V.

m. The cost of converting a record into a format that can be made available to the public is not a factor in determining whether the information is a public record. *Hawkins v. NH Department of Health and Human Services*, 147 N.H. 376 (2001).

n. Although redaction of non-public information is not specifically addressed in RSA chapter 91-A, it is not uncommon for a governmental record to contain some information that must be disclosed and some information that is exempt

from disclosure and which the public body or public agency has a duty not to disclose. Under these circumstances, the governmental entity may have an obligation to produce the non-exempt portion of the requested record if the exempt portion can reasonably be redacted or separated from the requested record.

o. Redaction must effectively block out the exempt portion of the record so that it is unreadable:

i. The governmental entity should retain a copy of both the redacted and un-redacted record. The governmental entity producing the record should also include an explanation of why certain information has been redacted or removed from the record. For example, if a record contains both public information and confidential medical information that has been redacted, the person requesting the record should be informed that the record has been redacted to prevent disclosure of confidential medical information. It is helpful to cite the applicable section of the Right-to-Know law or the other legal authority which exempts the information from disclosure. The person seeking the governmental record can then easily independently assess the appropriateness of the redaction. State officials should consult with the Attorney General's Office if they have questions regarding this process.

ii. Redaction may be accomplished manually by copying the document and then covering the sections to be redacted on the copy with ink, for example using a black marker. Alternatively, a piece of white redaction tape can be used to cover the sections of the copy to be redacted. The redacted copy is then copied, with the person making the request receiving that second generation copy. If ink is used, it is important to check the second generation copy to ensure the redaction effectively blocks the non-public information. The quality of some copiers makes it necessary to use very heavy application of ink, redaction tape, or to make a third generation copy.

iii. Software programs, such as Adobe Acrobat version 8 or higher, provide an electronic redaction capability. The manufacturer claims that once the electronic redaction is applied, it is not possible to electronically recreate the information that has been redacted.

iv. When a public body or public agency is preparing a copy of documents for disclosure, it is good practice to Bates Stamp or page number all of the documents disclosed. This creates a record

of how many pages were disclosed. This is particularly helpful when the disclosure involves many different original documents that were previously numbered or records from different sources. The Bates Stamped number or page numbering should be done on a corner of the document in a manner that does not cover or alter the information on the document. Software programs, such as Adobe Acrobat version 8 or higher, will electronically Bates Stamp each page of a document. Documents and records from various paper sources can be scanned and combined with electronic documents to create a single electronic document for Bates Stamping, redaction, and then electronic disclosure. If the person making the request prefers, the final product can also be printed and provided on paper. The "see through" problem with ink redaction does not occur with printed documents that have been electronically redacted.

v. Redaction must be based on an analysis of the specific governmental record. Statutes, court rules, and case law make some types of information non-public, privileged, or confidential. These types of information should always be redacted. People have a legally recognized, but limited, privacy interest in other information, such as home addresses. *Lamy*, 152 N.H. 106 (2005). For such information, analysis must establish that the public interest in disclosure does not outweigh the privacy interest of the individual.

vi. Analysis of what information should be redacted from a governmental record before disclosure should include consideration of the risk of identity theft. There is no requirement that a person seeking records pursuant to the Right-to-Know law identify himself or herself. Once information or records have been disclosed, there is no legal bar to them being published on the Internet. This type of publicly available information has been recognized as a source of identity theft.[34] Public bodies and public agencies should redact information which would facilitate identity theft.

vii. Always redact the following private information from governmental records subject to disclosure (this is not an exhaustive list):

- Date of birth (generally acceptable to list age)

[34] Saunders, Kurt M. and Zucker, Bruce, "Counteracting Identity Fraud in the Information Age: The Identity Theft and Assumption Deterrence Act," Cornell Journal of Law and Public Policy, Vol. 8, p. 661, 1999. Available at SSRN: http://ssrn.com/abstract=870791, last viewed 01-18- 2009. This journal article is cited as an example of redaction for the purposes of preventing identity theft with a meta-analysis of the then existing academic literature and evidence from the experience of law enforcement.

- Place of birth (town/city/state)
- Social Security number
- NH driver's license/driver ID number
- Grand Jury records
- Juvenile records
- Attorney work product (prosecution memoranda, memoranda of law not filed with a court)
- Medical records/information on medical condition
- Psychiatric records/information
- Educational records
- Names of juvenile witness/suspect named in a crime investigation report
- Criminal records obtained from the Central Repository
- Personnel records

ix. Generally redact or analyze the privacy interests of the following data (this is not an exhaustive list):

- Home address
- Home telephone number
- Personal cell phone number
- Other unlisted telephone numbers
- E-911 Records

p. A citizen does not have to offer a reason or demonstrate a need to inspect a governmental record. If a record is public, it must be disclosed regardless of the motive for the request. The issue is always whether "the public should have the information" not whether the particular requesting party should have the information. *Mans v. Lebanon School Board*, 122 N.H. 160 (1972).

q. Whenever access to public records is requested, the agency must make a diligent effort to produce the record. An agency is not required to create a record where one does not exist. If public information is requested in a format that does not exist, the agency is not required to create a document in that format. *Brent v. Paquette*, 132 N.H. 415 (1989); *Hawkins*, 147 N.H. at 379.

L. Other Considerations of Public Inspection of Governmental Records

The Right-to-Know law does not require a public body or a public agency to create governmental records to answer a question. Nor does the Right-to-Know law prevent a public body or public agency from answering the public's questions in written form. The decision whether questions posed in the context of a Right-to-Know request should be answered, when it would be necessary to create a new governmental record to do so, is a policy choice for the public body or public agency. The Right-to-Know law does not provide guidance on how to determine when creating an answer is consistent with or supports the purpose or mission of the entity. However, once created, the written answer becomes a governmental record, which typically will be subject to

disclosure. To the extent that new document is created to provide an answer to a question posed for which there were no previously existing governmental records that provided the answer, it is helpful to inform the party making the request that the Right-to-Know law does not create a right to have all questions answered, that the answer is provided as a public service. This notice should help mitigate the misperception by some that the Right-to-Know law entitles them to receive answers to any question they wish to pose to a public body, agency, or official.

Public bodies and public agencies are created to serve the public. While specific statutory duties to inform the public vary, most public entities are generally expected to keep the public informed regarding how the body or agency's duties are being carried out. At the same time, most are expected to use the public's resources efficiently to carry out the public entity's duties and not to divert unreasonable quantities of public resources to satisfy the interests of a single person that are not common to others served by the entity.

When analyzing the adequacy of a public body's or agency's search for documents conducted in response to a Right-to-Know request, the New Hampshire Supreme Court looks to the FOIA and other jurisdictions for guidance. *See ATV Watch v. N.H. Dept. of Transportation*, 161 N.H. 746, 753 (2011). The Court employs a "standard of reasonableness" in which "[t]he crucial issue is not whether relevant documents might exist, but whether the agency's search was reasonably calculated to discover the requested documents." *Id*. (quoting *Church of Scientology Intern. v. United States Dept. of Justice*, 30 F.3d 224, 230 (1st Cir. 1994)). The Court in *ATV Watch v. N.H. Dept. of Transportation*, 161 N.H. 746 (2011), found that the Department of Transportation's search was reasonable because evidence on record indicated the search was not unreasonably limited. *Id*. At 755-56 (finding petitioners have the burden to offer "sufficient evidence to raise substantial doubt concerning the adequacy of [the agency's] search").

Right-to-Know requests and response letters themselves are governmental records subject to the Right-to-Know law. While it will be appropriate to redact the same information that would be redacted from any other governmental record, the public's Right-to-Know extends to the right to know what Right-to-Know requests its government is responding to. To the extent that a public body or public agency creates records summarizing the cost of responding to a Right-to-Know request, that document also is subject to disclosure upon request.

M. FOIA – THE FEDERAL FREEDOM OF INFORMATION ACT

The federal Freedom of Information Act ("FOIA"), is similar to, but not identical to, the Right-to-Know law. FOIA applies to federal government departments and agencies. FOIA does not apply to the State of New Hampshire or its political subdivisions. The Right-to-Know law does not apply to the federal government or its departments.

State and municipal officials are encouraged to treat a request for governmental records citing only "FOIA" or the "sunshine" law as a Right-to-Know request. While a request under FOIA does not technically trigger the obligations imposed by the Right-to-Know law, "FOIA" and "sunshine law" are terms from federal law and the laws of other states[35] which are considered generic terms for the Right-to-Know law in New Hampshire. The Right-to-Know response should

[35] *E.g.* see Florida Constitution, Article I, Section 24; Fla. Statutes 286.*011 et. seq*. and 119.01 *et. seq*.

inform the requesting party that the response is made under the Right-to-Know law because FOIA does not apply to the state, county, or municipal public body or public agency.

VI. REMEDIES

The remedies available to people aggrieved by a public body's noncompliance demonstrate the importance of compliance with the Right-to-Know law.

A. Injunctive Relief – RSA 91-A:7

1. A petition requesting an injunction against a public body may be filed with any Superior Court. Proceedings under this chapter shall be given high priority on the court calendar.

2. The petition need only state facts constituting a violation of the Right-to-Know law and need not adhere to all the formalities normally required of court pleadings. A petitioner may appear with or without legal counsel.

3. *Ex parte* relief (a decision by the court after hearing only from the petitioner) may be granted when time is "probably of the essence" and the proceeding is "necessary to ensure compliance."

4. The court may issue an injunction ordering the public body not to violate the Right-to-Know law in the future. RSA 91-A:8, III. It may also require any officer, employee, or other official of a public body or public agency in violation of RSA chapter 91-A to undergo appropriate remedial training at such person(s) expense. *Id*.

B. Attorney's Fees and Costs – RSA 91-A:8

If a public body, public agency or officer, employee or other official thereof violates the Right-to-Know law, such public body or public agency will be required to pay for attorney's fees and costs incurred in a lawsuit under RSA chapter 91-A if the court finds that:

(1) the lawsuit was necessary in order to make the information available or the proceeding open to the public; or the lawsuit was necessary to address a purposeful violation of this chapter; and
(2) the public body, public agency or person knew or should have known that the conduct engaged in was a violation.

Proof required for fees is different than the proof required for costs. "Establishing that the agency 'knew or should have known' that its refusal constituted a Right-to-Know violation is required for an award of legal fees, but not for costs." *ATV Watch v. N.H. Dept. of Resources and Economic Dev.*, 155 N.H. 434, 449 (2007) (remanding case to require court to determine lawfulness of defendant's conduct in delayed disclosure and retention of documents). The test for awarding the reasonable costs of a lawsuit is whether the lawsuit was necessary in order to make information available that is subject to disclosure under the Right-to-Know law. *Id. See also; WMUR Channel Nine v. N.H.*

Dept. of Fish & Game, 154 N.H. 46 (2006) (no attorneys' fees awarded where the public agency did not know the conduct was a violation due to state of case law); *Goode v. N.H. Office of the Legislative Budget Assistant*, 145 N.H. 451 (2000) (request for attorney's fees properly denied where the record, the trial court's findings, and the area of law revealed that the defendant neither knew nor should have known that its conduct violated the statute); *New Hampshire Challenge Inc. v. Commissioner, N.H. Dept. of Education*, 142 N.H. 246 (1997) (holding that attorney's fees are mandated if necessary findings are made); *Voelbel v. Town of Bridgewater*, 140 N.H. 446 (1995) (award of attorney's fees held inappropriate because second factor was not present); *Johnson v. Nash*, 135 N.H. 534 (1992) (award of attorneys' fees upheld where selectmen failed to provide proper notice of meeting); and *Chambers v. Gregg*, 135 N.H. 478 (1992) (declining to award fees where the second factor was not present).

If an officer, employee or other official has acted in bad faith, the fees may be awarded personally against him or her. RSA 91-A:8, I.

No fees shall be awarded by the court if the parties have agreed that fees shall not be paid.

The court may award attorney's fees to a public body or public agency or other defendant in a Right-to-Know court action if the court finds the person bringing the claim did so in bad faith, the claim was frivolous, unjust, vexatious, wanton, or oppressive.

C. Invalidation of Agency Action

A court may invalidate an action taken at a meeting held in violation of the Right-to-Know law if the circumstances justify such invalidation. RSA 91-A:8, III. *See also Stoneman v. Tamworth School District*, 114 N.H. 371 (1974) (imposing such a remedy based upon an body's failure to provide proper public notice of a meeting before invalidation was expressly included in RSA 91-A:8); *Johnson v. Nash*, 135 N.H. 534 (1992) (reinstating police officer because selectmen failed to notify officer that they would be making motion to go into non-public session for purpose of considering termination); *Hull v. Grafton County*, 160 N.H. 818,823 (2010) (noting that the superior court has discretion in whether to invalidate action of the public body under RSA 91-A:8, II).

D. Sanctions

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

The Right-to-Know law was amended, effective January 1, 2013, to include a provision authorizing a court to impose a civil penalty of not less than $250 and not more than $2,000 against an officer, employee or other official if the court finds that the individual has violated any provision of the Right-to-Know law in bad faith. Such person or persons may also be required to reimburse the public body or public agency for any attorney's fees or costs paid as a result of defending a Right-to-Know lawsuit. *See* RSA 91-A:8, IV.

E. Destruction of Records

A person is guilty of a misdemeanor who knowingly destroys any information with the purpose to prevent such information from being inspected or disclosed in response to a request under the Right-to-Know law.[36] If a request for inspection is denied on the grounds that the information is exempt under the Right-to-Know law, the requested material shall be preserved for 90 days or while any lawsuit pursuant to RSA 91-A:7 and RSA 91-A:8 is pending. RSA 91-A:9.

The general statute of limitations for a misdemeanor is one year. RSA 625:8, I (c). However, the statute of limitations for any offense based upon misconduct in office by a public servant extends to any time when the defendant is in public office or within two years thereafter. RSA 625:8, III (b).

[36] In a 2001Rockingham County Superior Court case (*James M. Knight v. School Administrative Unit #16, et al.*, Docket No. 00-E-307 (2001)), the Court found that respondents intentionally deleted the requested files and misled the Court into believing that the files still existed at the time of trial. The Court made a judicial finding that information in the deleted files was "unfavorable and embarrassing" to the respondents, and found them in contempt of Court. Respondents were required to pay petitioner's costs and attorney's fees and to bear the costs of production of the remaining records. In 2002, RSA 91-A was amended to include subsection 9, making it a misdemeanor to knowingly destroy records that are responsive to a Right-to-Know request.

VII. COURT RECORDS

A. The Right-To-Know Law Does Not Apply to Court Records

Access to court records is governed by Part I, article 8 of the New Hampshire Constitution (the public's right of access to governmental proceedings and records shall not be unreasonably restricted). The New Hampshire Supreme Court has specifically recognized that the New Hampshire Constitution creates a right of public access to court records. *Petition of the State of New Hampshire (Bowman Search Warrants)*, 146 N.H. 621 (2001). That right is not absolute and can be overcome when there is a sufficiently compelling interest supporting non-disclosure. The court system has established its own procedures for providing public access to its records and proceedings. *See Associated Press v. State*, 153 N.H. 120 (2005); *see also Petition of Keene Sentinel*, 136 N.H. 121 (1992).

B. Sealed Court Records

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

1. A party opposing disclosure of the sealed court document must demonstrate that there is a sufficiently compelling reason that would justify preventing public access to the document;

2. The court must determine that no reasonable alternative to non-disclosure exists; and

3. The court must use the least restrictive means available to accomplish the purposes sought to be achieved.

381077.doc

INDEX

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

APPENDIX A – RSA Chapter 91-A

TITLE VI
PUBLIC OFFICERS AND EMPLOYEES
CHAPTER 91-A
ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

91-A:1 Preamble. – Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.

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

91-A:1-a Definitions. – In this chapter:
I. "Advisory committee" means any committee, council, commission, or other like body whose primary purpose is to consider an issue or issues designated by the appointing authority so as to provide such authority with advice or recommendations concerning the formulation of any public policy or legislation that may be promoted, modified, or opposed by such authority.
II. "Governmental proceedings" means the transaction of any functions affecting any or all citizens of the state by a public body.
III. "Governmental records" means any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body. The term "governmental records" shall also include the term "public records."
IV. "Information" means knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic, or other physical form.
V. "Public agency" means any agency, authority, department, or office of the state or of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision.
VI. "Public body" means any of the following:
(a) The general court including executive sessions of committees; and including any advisory committee established by the general court.
(b) The executive council and the governor with the executive council; including any advisory committee established by the governor by executive order or by the executive council.
(c) Any board or commission of any state agency or authority, including the board of trustees of the university system of New Hampshire and any committee, advisory or otherwise, established by such entities.
(d) Any legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto.
(e) Any corporation that has as its sole member the state of New Hampshire, any county, town,

municipal corporation, school district, school administrative unit, village district, or other political subdivision, and that is determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code.

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

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.

Source. 1967, 251:1. 1969, 482:1. 1971, 327:2. 1975, 383:1. 1977, 540:3. 1983, 279:1. 1986, 83:3. 1991, 217:2. 2003, 287:7. 2007, 59:2. 2008, 278:2, eff. July 1, 2008 at 12:01 a.m.; 303:4, eff. July 1, 2008.

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.

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

91-A:2-b Meetings of the Economic Strategic Commission to Study the Relationship Between New Hampshire Businesses and State Government by Open Blogging Permitted. – [Repealed 2012, 232:14, eff. Dec. 1, 2012.]

91-A:3 Nonpublic Sessions. –
I. (a) Public bodies shall not meet in nonpublic session, except for one of the purposes set out in paragraph II. No session at which evidence, information, or testimony in any form is received shall be closed to the public, except as provided in paragraph II. No public body may enter nonpublic session, except pursuant to a motion properly made and seconded.
(b) Any motion to enter nonpublic session shall state on its face the specific exemption under paragraph II which is relied upon as foundation for the nonpublic session. The vote on any such motion shall be by roll call, and shall require the affirmative vote of the majority of members present.
(c) All discussions held and decisions made during nonpublic session shall be confined to the matters set out in the motion.
II. Only the following matters shall be considered or acted upon in nonpublic session:
(a) The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted.
(b) The hiring of any person as a public employee.
(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant.
(d) Consideration of the acquisition, sale, or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.
(e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the public body or any subdivision thereof, or against any member thereof because of his or her membership in such public body, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any public body for the purposes of this subparagraph.
(f) Consideration of applications by the adult parole board under RSA 651-A.
(g) Consideration of security-related issues bearing on the immediate safety of security personnel or inmates at the county correctional facilities by county correctional superintendents or their designees.
(h) Consideration of applications by the business finance authority under RSA 162-A:7-10 and 162-A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application.
(i) Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials

that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.
(j) Consideration of confidential, commercial, or financial information that is exempt from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or RSA 541-A.
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.

Source. 1967, 251:1. 1969, 482:2. 1971, 327:3. 1977, 540:4. 1983, 184:1. 1986, 83:4. 1991, 217:3. 1992, 34:1, 2. 1993, 46:1; 335:16. 2002, 222:2, 3. 2004, 42:1. 2008, 303:4. 2010, 206:1, eff. June 22, 2010.

91-A:4 Minutes and Records Available for Public Inspection. –
I. Every citizen during the regular or business hours of all public bodies or agencies, and on the regular business premises of such public bodies or agencies, has the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies, including minutes of meetings of the public bodies, and to copy and make memoranda or abstracts of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5. In this section, "to copy" means the reproduction of original records by whatever method, including but not limited to photography, photostatic copy, printing, or electronic or tape recording.
I-a. Records of any payment made to an employee of any public body or agency listed in RSA 91-A:1-a, VI(a)-(d), or to the employee's agent or designee, upon the resignation, discharge, or retirement of the employee, paid in addition to regular salary and accrued vacation, sick, or other leave, shall immediately be made available without alteration for public inspection. All records of payments shall be available for public inspection notwithstanding that the matter may have been considered or acted upon in nonpublic session pursuant to RSA 91-A:3.
II. After the completion of a meeting of a public body, every citizen, during the regular or business hours of such public body, and on the regular business premises of such public body, has the right to inspect all notes, materials, tapes, or other sources used for compiling the minutes of such meetings, and to make memoranda or abstracts or to copy such notes, materials, tapes, or sources inspected, except as otherwise prohibited by statute or RSA 91-A:5.
III. Each public body or agency shall keep and maintain all governmental records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the governmental records pertaining to such public body or agency shall be kept in an office of the political subdivision in which such public body or agency is located or, in the case of a state agency, in an office designated by the secretary of state.

III-a. Governmental records created or maintained in electronic form shall be kept and maintained for the same retention or archival periods as their paper counterparts. Governmental records in electronic form kept and maintained beyond the applicable retention or archival period shall remain accessible and available in accordance with RSA 91-A:4, III. Methods that may be used to keep and maintain governmental records in electronic form may include, but are not limited to, copying to microfilm or paper or to durable electronic media using standard or common file formats.
III-b. A governmental record in electronic form shall no longer be subject to disclosure pursuant to this section after it has been initially and legally deleted. For purposes of this paragraph, a record in electronic form shall be considered to have been deleted only if it is no longer readily accessible to the public body or agency itself. The mere transfer of an electronic record to a readily accessible "deleted items" folder or similar location on a computer shall not constitute deletion of the record.
IV. Each public body or agency shall, upon request for any governmental record reasonably described, make available for inspection and copying any such governmental record within its files when such records are immediately available for such release. If a public body or agency is unable to make a governmental record available for immediate inspection and copying, it shall, within 5 business days of request, make such record available, deny the request in writing with reasons, or furnish written acknowledgment of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied. If a computer, photocopying machine, or other device maintained for use by a public body or agency is used by the public body or agency to copy the governmental record requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public body or agency. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of governmental records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.
V. In the same manner as set forth in RSA 91-A:4, IV, any public body or agency which maintains governmental records in electronic format may, in lieu of providing original records, copy governmental records requested to electronic media using standard or common file formats in a manner that does not reveal information which is confidential under this chapter or any other law. If copying to electronic media is not reasonably practicable, or if the person or entity requesting access requests a different method, the public body or agency may provide a printout of governmental records requested, or may use any other means reasonably calculated to comply with the request in light of the purpose of this chapter as expressed in RSA 91-A:1. Access to work papers, personnel data, and other confidential information under RSA 91-A:5, IV shall not be provided.
VI. Every agreement to settle a lawsuit against a governmental unit, threatened lawsuit, or other claim, entered into by any political subdivision or its insurer, shall be kept on file at the municipal clerk's office and made available for public inspection for a period of no less than 10 years from the date of settlement.
VII. Nothing in this chapter shall be construed to require a public body or agency to compile, cross-reference, or assemble information into a form in which it is not already kept or reported by that body or agency.

Source. 1967, 251:1. 1983, 279:2. 1986, 83:5. 1997, 90:2. 2001, 223:2. 2004, 246:2. 2008, 303:4. 2009, 299:1, eff. Sept. 29, 2009.

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

I. Records of grand and petit juries.
I-a. The master jury list as defined in RSA 500-A:1, IV.
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.

Source. 1967, 251:1. 1986, 83:6. 1989, 184:2. 1990, 134:1. 1993, 79:1. 2002, 222:4. 2004, 147:5; 246:3, 4. 2008, 303:4, eff. July 1, 2008. 2013, 261:9, eff. July 1, 2013.

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

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

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

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

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.

Source. 1967, 251:1. 1977, 540:5. 2008, 303:5, eff. July 1, 2008.

91-A:8 Remedies. –
I. If any public body or public agency or officer, employee, or other official thereof, violates any provisions of this chapter, such public body or public agency 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 enforce compliance with the provisions of this chapter or to address a purposeful violation of this chapter. 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 in violation of this chapter or if the parties, by agreement, provide that no such fees shall be paid.
II. 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 lawsuit under the provisions of this chapter, when the court finds that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive.
III. The court may invalidate an action of a public body or public agency taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.
IV. If the court finds that an officer, employee, or other official of a public body or public agency has violated any provision of this chapter in bad faith, the court shall impose against such person a civil penalty of not less than $250 and not more than $2,000. Upon such finding, such person or persons may also be required to reimburse the public body or public agency for any attorney's fees or costs it paid pursuant to paragraph I. If the person is an officer, employee, or official of the state or of an agency or body of the state, the penalty shall be deposited in the general fund. If the person is an officer, employee, or official of a political subdivision of the state or of an agency or body of a political subdivision of the state, the penalty shall be payable to the political subdivision.
V. The court may also enjoin future violations of this chapter, and may require any officer, employee, or other official of a public body or public agency found to have violated the provisions of this chapter to undergo appropriate remedial training, at such person or person's expense.

Source. 1973, 113:1. 1977, 540:6. 1986, 83:7. 2001, 289:3. 2008, 303:6. 2012, 206:1, eff. Jan. 1, 2013.

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

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

Procedure for Release of Personal Information for Research Purposes

91-A:10 Release of Statistical Tables and Limited Data Sets for Research. –
I. In this subdivision:
(a) "Agency" means each state board, commission, department, institution, officer or other state official or group.
(b) "Agency head" means the head of any governmental agency which is responsible for the collection and use of any data on persons or summary data.
(c) "Cell size" means the count of individuals that share a set of characteristics contained in a statistical table.
(d) "Data set" means a collection of personal information on one or more individuals, whether in electronic or manual files.
(e) "Direct identifiers" means:
(1) Names.
(2) Postal address information other than town or city, state, and zip code.
(3) Telephone and fax numbers.
(4) Electronic mail addresses.
(5) Social security numbers.
(6) Certificate and license numbers.
(7) Vehicle identifiers and serial numbers, including license plate numbers.
(8) Personal Internet IP addresses and URLs.
(9) Biometric identifiers, including finger and voice prints.
(10) Personal photographic images.
(f) "Individual" means a human being, alive or dead, who is the subject of personal information and includes the individual's legal or other authorized representative.
(g) "Limited data set" means a data set from which all direct identifiers have been removed or blanked.
(h) "Personal information" means information relating to an individual that is reported to the state or is derived from any interaction between the state and an individual and which:
(1) Contains direct identifiers.
(2) Is under the control of the state.
(i) "Provided by law" means use and disclosure as permitted or required by New Hampshire state law governing programs or activities undertaken by the state or its agencies, or required by federal law.
(j) "Public record" means records available to any person without restriction.
(k) "State" means the state of New Hampshire, its agencies or instrumentalities.
(l) "Statistical table" means single or multi-variate counts based on the personal information contained in a data set and which does not include any direct identifiers.
II. Except as otherwise provided by law, upon request an agency shall release limited data sets and statistical tables with any cell size more than 0 and less than 5 contained in agency files to requestors for the purposes of research under the following conditions:
(a) The requestor submits a written application that contains:
(1) The following information about the principal investigator in charge of the research:
(A) name, address, and phone number;
(B) organizational affiliation;

(C) professional qualification; and
(D) name and phone number of principal investigator's contact person, if any.
(2) The names and qualifications of additional research staff, if any, who will have access to the data.
(3) A research protocol which shall contain:
(A) a summary of background, purposes, and origin of the research;
(B) a statement of the general problem or issue to be addressed by the research;
(C) the research design and methodology including either the topics of exploratory research or the specific research hypotheses to be tested;
(D) the procedures that will be followed to maintain the confidentiality of any data or copies of records provided to the investigator; and
(E) the intended research completion date.
(4) The following information about the data or statistical tables being requested:
(A) general types of information;
(B) time period of the data or statistical tables;
(C) specific data items or fields of information required, if applicable;
(D) medium in which the data or statistical tables are to be supplied; and
(E) any special format or layout of data requested by the principal investigator.
(b) The requestor signs a "Data Use Agreement" signed by the principal investigator that contains the following:
(1) Agreement not to use or further disclose the information to any person or organization other than as described in the application and as permitted by the Data Use Agreement without the written consent of the agency.
(2) Agreement not to use or further disclose the information as otherwise required by law.
(3) Agreement not to seek to ascertain the identity of individuals revealed in the limited data set and/or statistical tables.
(4) Agreement not to publish or make public the content of cells in statistical tables in which the cell size is more than 0 and less than 5 unless:
(A) otherwise provided by law; or
(B) the information is a public record.
(5) Agreement to report to the agency any use or disclosure of the information contrary to the agreement of which the principal investigator becomes aware.
(6) A date on which the data set and/or statistical tables will be returned to the agency and/or all copies in the possession of the requestor will be destroyed.
III. The agency head shall release limited data sets and statistical tables and sign the Data Use Agreement on behalf of the state when:
(a) The application submitted is complete.
(b) Adequate measures to ensure the confidentiality of any person are documented.
(c) The investigator and research staff are qualified as indicated by:
(1) Documentation of training and previous research, including prior publications; and
(2) Affiliation with a university, private research organization, medical center, state agency, or other institution which will provide sufficient research resources.
(d) There is no other state law, federal law, or federal regulation prohibiting release of the requested information.
IV. Within 10 days of a receipt of written application, the agency head, or designee, shall respond to the request. Whenever the agency head denies release of requested information, the agency head

shall send the requestor a letter identifying the specific criteria which are the basis of the denial. Should release be denied due to other law, the letter shall identify the specific state law, federal law, or federal regulation prohibiting the release. Otherwise the agency head shall provide the requested data or set a date on which the data shall be provided.
V. Any person violating any provision of a signed Data Use Agreement shall be guilty of a violation.
VI. Nothing in this section shall exempt any requestor from paying fees otherwise established by law for obtaining copies of limited data sets or statistical tables. Such fees shall be based on the cost of providing the copy in the format requested. The agency head shall provide the requestor with a written description of the basis for the fee.

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

Right-to-Know Oversight Commission

91-A:11 to 91-A:15 Repealed. – [Repealed 2005, 3:2, eff. Nov. 1, 2010.]

APPENDIX B - Model Non-Public Session/Legal Consultation Procedures/Motions

A public body is generally required to meet in public and to provide notice of the time and location of its meetings. Under one or more of the circumstances enumerated in RSA 91-A:3 or another statutory provision which requires that a public body meet in non-public session, the members of a public body may vote by roll call vote to enter into a non-public session.

The public is properly excluded from a non-public session.

Minutes must be taken regarding the matters addressed in non-public session, including documenting any action taken. The minutes of non-public sessions are public documents unless the public body determines by a recorded vote of the body that the minutes are properly made non-public, often called "sealed." Sealed minutes must be unsealed and made public as soon as the circumstances justifying sealing no longer apply.

The following model motions are offered as examples of motions that comply with this law. This list is not exhaustive. Alternative wording for motions may also satisfy the law. Public bodies with concerns regarding their non-public meeting procedures should consult with their legal counsel.

In the course of a properly noticed and conducted public meeting a member of a public body seeking to have the body enter a non-public session should make a motion, such as follows:

Example (three member public body):

Member 1: "Mr. Chairman, I move to enter into non-public session for the purposes of discussing a personnel matter pursuant to RSA 91-A:3, II (a)."

Chairman: "Is there a second?"

Secretary: "I second the motion."

Chairman: "This requires a roll call vote. The secretary will call the roll."

The secretary should then state each present member's name out loud. The member should then state his or her vote out loud. Alternatively, the each member can state his or her vote out loud, typically going in order around the table. While the Right-to-Know law does not require a recorded roll call vote, the most effective way to document proper compliance with this requirement is to have the minutes reflect how each member voted.

Secretary: "Member 1"

Member 1: "Yes"

Secretary: "Mr. Chairman"

Chairman: "The Chair votes yes."

Secretary: "The secretary votes yes." (Assumes a member of the body serves as the secretary, a support staff member present taking minutes would not vote.)

Chairman: "A majority of the board having voted yes we will now go into non-public session."

"Everyone present from the public is required to leave the room. Those interested in attending the public session following this non-public session should wait in the hallway, we will open the door when we come out of non-public session."

Necessary support staff to the public body and other necessary parties to the matter to be discussed may participate in the non-public session.

If a tape or video recording is made of the meeting either as a permanent record of the meeting or as an aid to creation of the minutes, a good practice is to use a different tape for each non-public session.

The body would then conduct its non-public session.

At the end of the non-public session a motion is required to end the non-public session. If the public body is to make the minutes of the session non-public, there must be a motion to seal the minutes. The Right-to-Know law does not specify whether this motion and vote must occur in the non-public session or after the public body returns to the public session. When the motion to seal the minutes may prompt discussion which if conducted in public would disclose information that the non-public session was held to protect, the vote should be in non-public session. The Right-to-Know law does not require that motion explicitly state the basis in law for sealing the minutes, however, doing so in the non-public minutes will create a record should the decision later be challenged.

Member 1: "Mr. Chairman, I move to seal the minutes because divulgence of the information in the minutes would likely adversely affect the reputation of the employee and citizens discussed."

Secretary: "I second the motion."

Chairman: "A motion has been made and seconded to seal the minutes, all in favor say 'yes.'"

Member 1, Secretary, and Chairman: "Yes."

Chairman: "All three members of the board having voted yes, the motion caries by more than 2/3rds of the members present and the minutes of this non-public session are sealed.[37]"

Member 1: "I move to come out of non-public session.[38]"

Secretary: "I second the motion."

Chair: "All those in favor say "yes."

Member 1, Secretary: "Yes."

Chairman: It is a vote in favor and I so declare, we will now return to public session.

If a tape recording is being made, the Clerk/Secretary should remove the non-public session tape and replace the public session tape in the recorder. If the minutes were sealed, the tape should be marked accordingly.

The Chairman should then arrange for the hallway door to be opened and the members of the public waiting to be invited to return to the room.

Chairman: "We are now back in public session. We voted during the non-public session to seal the minutes of that session. We will now move on to the next item of business."

Alternative grounds for the motion to enter non-public session:

Member 1: "Mr. Chairman, I move to enter into non-public session for the purposes of discussing the hiring of a public employee pursuant to RSA 91-A:3, II (b)."

Member 1: "Mr. Chairman, I move to enter into non-public session for the purposes of discussing a matter which, if discussed in public, would likely affect adversely the reputation of a person who is not a member of this body pursuant to RSA 91-A:3, II (c)."

Member 1: "Mr. Chairman, I move to enter into non-public session for the purposes of discussing a request for assistance based on poverty pursuant to RSA 91-A:3, II (c)."

---

[37] RSA 91-A:3, III provides in pertinent part "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," the body votes to seal the minutes. The law does not require a "recorded roll call vote." Therefore, while a role call vote satisfies the law, it is sufficient if the minutes reflect the count of members voting for and against or a statement by the chair that the vote to seal was carried by a vote of 2/3rds or more of the members present. In determining supermajority votes while the general rule is that only "yes" and "no" votes are counted, this statute requires a vote "of the members present," therefore the 2/3rds majority requirement is satisfied only if 2/3 of the members present, including those abstaining, vote in favor of sealing the minutes.

[38] While RSA 91-A:3, requires a roll call vote to enter non-public session, the vote to leave non-public session can be conducted without a roll call.

Member 1: "Mr. Chairman, I move to enter into non-public session for the purposes of discussing a tax abatement which is sought on the grounds of inability to pay pursuant to RSA 91-A:3, II (c)."

Member 1: "Mr. Chairman, I move to enter into non-public session for the purposes of discussing a request for a waiver of a beach permit fee based on the poverty of the applicant pursuant to RSA 91-A:3, II (c)."

Member 1: "Mr. Chairman, I move to enter into non-public session for the purposes of discussing the acquisition, sale, or lease of land pursuant to RSA 91-A:3, II (d)."

Member 1: "Mr. Chairman, I move to enter into non-public session for the purposes of discussing a law suit against the town pursuant to RSA 91-A:3, II (e)."

Member 1: "Mr. Chairman, I move to enter into non-public session for the purposes of discussing security at the county department of corrections pursuant to RSA 91-A:3, II (g)."

Member 1: "Mr. Chairman, I move to enter into non-public session for the purposes of discussing plans for emergency responses to an incident at the high school when there is a threat of widespread injury or loss of life pursuant to RSA 91-A:3, II (i)."

Alternative Chairman's statements - minutes not sealed.

RSA 91-A:3 III, requires that "Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting . . ." This neither requires nor prohibits immediate disclosure of the decisions made.

Chairman: "We are now back in public session. The minutes of the non-public session, which document the actions we took, will be available from the Administrative Assistant within 72 hours. You may pick them up here at this office anytime after 3 PM on Wednesday." (Assumes 3 PM on Wednesday is within 72 hours of the announcement).

Alternative:

Chairman: "We are now back in public session. We voted to accept a negotiated settlement of the law suit by the Smiths about the property line between their property and the transfer station. We will pay them $10,000 to settle this matter. The agreement allows us to keep the recycling shed where it is currently situated."

Consultation with Legal Counsel

Consultation with legal counsel is exempted by the Right-to-Know law from the definition of a meeting. RSA 91-A:2, I(b). Therefore, a meeting to consult with legal counsel is, in the eyes of the Right-to-Know law, not a meeting. Often public bodies will consult with

legal counsel at the same time and place where they hold regularly scheduled public meetings. It is also common during the course of a public meeting to need to consult with legal counsel.[39]

Consulting with legal counsel before a public meeting is called to order or after it has been finally adjourned requires no special action. Preserving the attorney client privilege, the right to keep everything discussed with legal counsel non-public, requires limiting who is present during the consultation. It may be helpful to inform the public at the public meeting of the consultation occurring, to establish that no improper meeting or non-public session occurred.

Consulting with legal counsel during the course of a meeting is best accomplished by temporarily adjourning the meeting. This gives proper notice to anyone attending the public meeting that they are not entitled to be present during the consultation. It also makes clear in the minutes that activity occurred that is properly not included in the minutes.

In the course of a properly noticed and conducted public meeting a member of a public body seeking to have the body adjourn the meeting for the purpose of consulting with legal counsel should make a motion, such as follows:

Example (three member public body):

Member 1: "Mr. Chairman I move that we temporarily adjourn this meeting for the purpose of consulting with legal counsel."

Chair: Is there a second?

Member 2: "Mr. Chairman, I second the motion."

Chair: "All in favor say: 'Aye.'"

Members: All vote "Aye."

Chair: "The motion passes. We will now adjourn this public meeting for the purpose of consulting with legal counsel. The public must leave the meeting room and the door will be closed. We expect this to take about 15 minutes and we plan to reconvene the public meeting as soon as we are done consulting with our attorney.329123.doc

[39] Please note, as indicated above, a public body may not move into non-meeting merely to discuss the contents of legal documents or advice previously provided by counsel without contemporaneously communicating with legal counsel. *See Ettinger v. Town of Madison Planning Bd.*, 162 N.H. 785, 789–90 (2011) (finding "consultation" with counsel justifying non-meeting requires the ability to have a contemporaneous exchange of words and ideas between the public body and its attorney). Additionally, public bodies may not "close a meeting whenever its discussion turns to advice received from its attorney who is neither physically present nor present telephonically and therefore unable to participate in the discussion. *Id*. at 791–92.

APPENDIX C - Right-to-Know Request Index of Fully Redacted Pages

Bate Stamp Page Number(s)	Category of document / Reason Fully Redacted	Statute/Case Law/Administrative Rule/Court Order *

* Legal authority establishing the documents cited are non-public/not properly disclosed in response to a Right-to-Know request. The State reserves the right to assert additional legal authority for withholding this information should non-disclosure be challenged.

SAMPLE
Right-to-Know Request
Index of Fully Redacted Pages -

Bate Stamp Page Number(s)	Category of document / Reason Fully Redacted	Statute/Case Law/Administrative Rule/Court Order *
RTK 000120	Juvenile Matter Record	RSA 169-B:35-38; RSA 91-A:5, IV
RTK 000473 to 000476	E-911 Records	106-H:14
RTK000511 to 000521	Juvenile Matter Record (Sealed by Court)	RSA 169-B:35-38; RSA 91-A:5, IV
RTK000713 to 000716	Medical Record	RSA 91-A:5, IV
RTK000806 to 000807	Juvenile Petitions	RSA 169-B:35-38; RSA 91-A:5, IV
RTK000808 to 000809	Petition for Certification	RSA 169-B:35-38; RSA 91-A:5, IV
RTK000822 to 000826	Motion to Preserve Evidence – Juvenile Matter	RSA 169-B:35-38; RSA 91-A:5, IV
RTK001037 (partial)	Reference to sealed information	Court Order sealing personnel information
RTK001050 to 001059	Motion for Discovery	Sealed by Court Order
RTK001118 (partial)	Notes	RSA 91-A:5, VIII
RTK001161 to 001172	Medical Record – John Doe	RSA 91-A:5, IV
RTK001347 to 001350	Notes – Confidential Attorney Work Product	RSA 91-A:5, VIII and IV
RTK001444 to 001446	Drafts of communications between counsel, notes, confidential attorney work product	RSA 91-A:5, IV and VIII, and IX.
RTK001560 to 001561	Department of Safety Personnel Memo, supervisor to subordinate, and subordinate to supervisor response	RSA 91-A:5, IV; Administrative Rules Chapter Per 1500 Personnel Records.
RTK001584	Letter from AG to defense counsel disclosing personnel file information regarding state witness.	RSA 91-A:5, IV and Court Order dated 2/17/97 see RTK001528; Administrative Rules Chapter Per 1500 Personnel Records
RTK002221 to 002222	Disciplinary Complaint, Personnel file	RSA 91-A:5, IV, *Housell v. North Conway Water Precinct*, 154 N.H. 1 (2006); *Union Leader Corp. v. Fenniman*, 136 N.H. 624 (1993); Administrative Rules Chapter Per 1500 Personnel Records.

RTK002259 to 002279	Internal Memorandum between subject employee and supervisors and between supervisors and leadership re disciplinary complaints, including copies of related investigation reports. Internal investigation/ personnel file documents.	RSA 91-A:5, IV, *Housell v. North Conway Water Precinct*, 154 N.H. 1 (2006); *Union Leader Corp. v. Fenniman*, 136 N.H. 624 (1993); Administrative Rules Chapter Per 1500 Personnel Records.
RTK002679	State employee inked fingerprint card, personnel file	RSA 91-A:5, IV, VIII, and IX; Administrative Rules Chapter Per 1500 Personnel Records
RTK002680	State employee birth certificate, personnel file	RSA 91-A:5, IV, VIII, and IX; Administrative Rules Chapter Per 1500 Personnel Records
RTK002681 to 002703	State employee employment background investigation report, personnel file	RSA 91-A:5, IV, VIII, and IX; Administrative Rules Chapter Per 1500 Personnel Records
RTK004559 to 004570	Internal personnel practice, Rules and regulations, technical training and firearms tactics – disclosure would increase criminal's ability to circumvent law enforcement	RSA 91-A:5, IV; *Lodge v. Knowlton*, 118 N.H. 544 (1978); FOIA and FOIA caselaw
RTK005526	Handwritten notes for personal use, attorney work product privileged, confidential	RSA 91-A:5, IV, VIII, IX
RTK005579 to 005588	Internal personnel practice, Rules and regulations, technical training and firearms tactics – disclosure would increase criminal's ability to circumvent law enforcement	RSA 91-A:5, IV; *Lodge v. Knowlton*, 118 N.H. 544 (1978); FOIA and FOIA caselaw
RTK005897 to 005898	Juvenile Record/Educational Record	RSA 169-B:35-38; RSA 91-A:5, IV, RSA 91-A:5, III

Legal authority establishing the documents cited are non-public/not properly disclosed in response to a Right-to-Know request. The State reserves the right to assert additional legal authority for withholding this information should non-disclosure be challenged.

APPENDIX D - RSA Chapter 33-A Disposition Of Municipal Records

CHAPTER 33-A
DISPOSITION OF MUNICIPAL RECORDS

33-A:1 Definition of Terms. – In this chapter:

I. "Board" means the municipal records board.

II. "Municipal" refers to a city or town, county or precinct.

III. "Municipal officers" means:

(a) In the case of a town, the board of selectmen.

(b) In the case of a city which has adopted the council manager plan under RSA 49-A, the city manager.

(c) In the case of any other city, the mayor.

(d) In the case of a county, the county commissioners.

(e) In the case of a precinct, the precinct commissioners.

IV. "Municipal records" means all municipal records, reports, minutes, tax records, ledgers, journals, checks, bills, receipts, warrants, payrolls, deeds and any other written or computerized material that may be designated by the board.

V. "Active" means until termination or expiration of obligations or services, cessation of need for further attention, and completion or release of any pending legal processes.

Source. 1967, 105:1. 1977, 358:1, eff. July 1, 1977. 2005, 187:1, eff. Aug. 29, 2005.

33-A:2 Authority Granted. – [Repealed 1977, 358:7, I, eff. July 1, 1977.]

33-A:3 Municipal Committees. – The municipal officers or their designee together with the clerk, treasurer, an assessor, and tax collector of each city or town shall constitute a committee to govern the disposition of municipal records pursuant to this chapter. Unless otherwise provided by a municipal ordinance, the committee shall designate the office responsible for the retention of each type of record created for the municipality.

Source. 1967, 105:1. 1977, 358:2, eff. July 1, 1977. 2005, 187:2, eff. Aug. 29, 2005. 2006, 119:1, eff. May 12, 2006.

33-A:3-a Disposition and Retention Schedule. – The municipal records identified below shall be retained, at a minimum, as follows:

I. Abatements: 5 years.

II. Accounts receivable: until audited plus one year.

III. Aerial photographs: permanently.

IV. Airport inspections-annual: 3 years.

V. Airport inspections-daily, including fuel storage and vehicles: 6 months.

VI. Annual audit report: 10 years.

VII. Annual reports, town warrants, meeting and deliberative session minutes in towns that have adopted official ballot voting: permanently.

VIII. Archives: permanently.

IX. Articles of agreement or incorporation: permanently.

X. Bank deposit slips and statements: 6 years.

XI. Blueprints-architectural: life of building.

XII. Bonds and continuation certificates: expiration of bond plus 2 years.

XIII. Budget committee-drafts: until superseded.

XIV. Budgets: permanently.

XV. Building permits-applications and approvals: permanently.

XVI. Building permits-lapsed: permanently.

XVII. Building permits-withdrawn, or denied: one year.

XVIII. Capital projects and fixed assets that require accountability after completion: life of project or purchase.

XIX. Cash receipt and disbursement book: 6 years after last entry, or until audited.

XX. Checks: 6 years.

XXI. Code enforcement specifications: permanently.

XXII. Complaint log: expiration of appeal period.

XXIII. Contracts-completed awards, including request for purchase, bids, and awards: life of project or purchase.

XXIV. Contracts-unsuccessful bids: completion of project plus one year.

XXV. Correspondence by and to municipality-administrative records: minimum of one year.

XXVI. Correspondence by and to municipality-policy and program records: follow retention requirement for the record to which it refers.

XXVII. Correspondence by and to municipality-transitory: retain as needed for reference.

XXVIII. Current use applications and maps: until removed from current use plus 3 years.

XXIX. Current use release: permanently.

XXX. Deed grantee/grantor listing from registry, or copies of deeds: discard after being updated and replaced with a new document.

XXXI. Deferred compensation plans: 7 years.

XXXII. Underground facility damage prevention forms: 4 years.

XXXIII. Dredge and fill permits: 4 years.

XXXIV. Driveway permits and plans: permanently.

XXXV. Easements awarded to municipality: permanently.

XXXVI. Elections-federal elections: ballots and absentee ballot applications, affidavit envelopes, and lists: by the town clerk until the contest is settled and all appeals have expired or at least 22 months after the election, whichever is longer.

XXXVII. Elections-not federal: ballots and absentee ballot applications, affidavit envelopes, and lists: by the town clerk until the contest is settled and all appeals have expired or at least 60 days after the election, whichever is longer.

XXXVIII. Elections-challenge affidavits by the town clerk:

(a) Federal elections: until the contest is settled and all appeals have expired or 22 months after the election, whichever is longer.

(b) Non-federal elections: until the contest is settled and all appeals have expired or 60 days after the election, whichever is longer.

XXXIX. Elections-ward maps: until revised plus 1 year.

XL. Emergency medical services run reports: 10 years.

XLI. Equipment maintenance: life of equipment.

XLII. Excavation tax warrant and book or list: permanently.

XLIII. Federal form 1099s and W-2s: 7 years.

XLIV. Federal form 941: 7 years.
XLV. Federal form W-1: 4 years.
XLVI. Fire calls/incident reports: 10 years.
XLVII. Grants, supporting documentation: follow grantor's requirements.
XLVIII. Grievances: expiration of appeal period.
XLIX. Health-complaints: expiration of appeal period.
L. Health-inspections: 3 years.
LI. Health-service agreements with state agencies: term plus 7 years.
LII. Health and human services case records including welfare applications: active plus 7 years.
LIII. Inspections-bridges and dams: permanently.
LIV. Insurance policies: permanently.
LV. Intent to cut trees or bushes: 3 years.
LVI. Intergovernmental agreements: end of agreement plus 3 years.
LVII. Investigations-fire: permanently.
LVIII. Invoice, assessors: permanently.
LIX. Invoices and bills: until audited plus one year.
LX. Job applications-successful: retirement or termination plus 50 years.
LXI. Job applications-unsuccessful: current year plus 3 years.
LXII. Labor-public employees labor relations board actions and decisions: permanently.
LXIII. Labor union negotiations: permanently or until contract is replaced with a new contract.
LXIV. Ledger and journal entry records: until audited plus one year.
LXV. Legal actions against the municipality: permanently.
LXVI. Library:
(a) Registration cards: current year plus one year.
(b) User records: not retained; confidential pursuant to RSA 201-D:11.
LXVII. Licenses-all other except dog, marriage, health, and vital records: duration plus 1 year.
LXVIII. Licenses-dog: current year plus one year.
LXIX. Licenses-dog, rabies certificates: disposal once recorded.
LXX. Licenses-health: current year plus 6 years.
LXXI. Liens-federal liens upon personal property, other than IRS liens: permanently.
LXXII. Liens-hospital liens: 6 years.
LXXIII. Liens-IRS liens: one year after discharge.
LXXIV. Liens-tax liens, state liens for support of children: until court order is lifted plus one year.
LXXV. Liens-tax liens, state meals and rooms tax: until release plus one year.
LXXVI. Liens-tax sale and record of lien: permanently.
LXXVII. Liens-tax sales/liens redeemed report: permanently.
LXXVIII. Liens-Uniform Commercial Code leases: lease term plus 4 years; purge all July 1, 2007.
LXXIX. Liens-Uniform Commercial Code security agreements: 6 years; purge all July 1, 2007.
LXXX. Meeting minutes, tape recordings: keep until written record is approved at meeting. As soon as minutes are approved, either reuse the tape or dispose of the tape.
LXXXI. Minutes of boards and committees: permanently.
LXXXII. Minutes of town meeting/council: permanently.
LXXXIII. Minutes, selectmen's: permanently.
LXXXIV. Motor vehicle-application for title: until audited plus one year.

LXXXV. Motor vehicle-titles and voided titles: sent to state division of motor vehicles.

LXXXVI. Motor vehicle permits-void and unused: until audited plus one year.

LXXXVII. Motor vehicle permits and registrations-used: current year plus 3 years.

LXXXVIII. Municipal agent daily log: until audited plus one year.

LXXXIX. Notes, bonds, and municipal bond coupons-cancelled: until paid and audited plus one year.

XC. Notes, bonds, and municipal bond coupon register: permanently.

XCI. Oaths of office: term of office plus 3 years.

XCII. Ordinances: permanently.

XCIII. Payrolls: until audited plus one year.

XCIV. Perambulations of town lines-copy kept by town and copy sent to secretary of state: permanently.

XCV. Permits or licenses, pole: permanently.

XCVI. Personnel files: retirement or termination plus 50 years.

XCVII. Police, accident files-fatalities: 10 years.

XCVIII. Police, accident files-hit and run: statute of limitations plus 5 years.

XCIX. Police, accident files-injury: 6 years.

C. Police, accident files-involving arrests: 6 years.

CI. Police, accident files-involving municipality: 6 years.

CII. Police, accident files-property damage: 6 years.

CIII. Police, arrest reports: permanently.

CIV. Police, calls for service/general service reports: 5 years.

CV. Police, criminal-closed cases: statute of limitations plus 5 years.

CVI. Police, criminal-open cases: statute of limitations plus 5 years.

CVII. Police, motor vehicle violation paperwork: 3 years.

CVIII. Police, non-criminal-internal affairs investigations: as required by attorney general and union contract and town personnel rules.

CIX. Police, non-criminal-all other files: closure plus 3 years.

CX. Police, pistol permit applications: expiration of permit plus one year.

CXI. Property inventory: 5 years.

CXII. Property record card: current and last prior reassessing cycle.

CXIII. Property record map, assessors: until superceded.

CXIV. Property tax exemption applications: transfer of property plus one year.

CXV. Records management forms for transfer of records to storage: permanently.

CXVI. Road and bridge construction and reconstruction, including highway complaint slips: 6 years.

CXVII. Road layouts and discontinuances: permanently.

CXVIII. Scenic roads: permanently.

CXIX. School records: retained as provided under RSA 189:29-a.

CXX. Septic plan approvals and plans: until replaced or removed.

CXXI. Sewer system filtration study: permanently.

CXXII. Sign inventory: 7 years.

CXXIII. Site plan review: life of improvement plus 3 years.

CXXIV. Site plan review-lapsed: until notified that planning board action and appeal time has expired plus one year.

CXXV. Site plan review-withdrawn or not approved: appeal period plus one year.

CXXVI. Special assessment (betterment of property): 20 years.

CXXVII. Street acceptances: permanently.

CXXVIII. Street signs, street lights and traffic lights-maintenance records: 10 years.

CXXIX. Subdivision applications-lapsed: until notified that planning board action and appeal period has expired plus one year.

CXXX. Subdivision applications-successful and final plan: permanently.

CXXXI. Subdivision applications-withdrawn, or not approved: expiration of appeal period plus one year.

CXXXII. Subdivision applications-working drafts prior to approval: expiration of appeal period.

CXXXIII. Summary inventory of valuation of property: one year.

CXXXIV. Tax maps: permanently.

CXXXV. Tax receipts paid, including taxes on land use change, property, resident, sewer, special assessment, and yield tax on timber: 6 years.

CXXXVI. Tax-deeded property file (including registered or certified receipts for notifying owners and mortgagees of intent to deed property): permanently.

CXXXVII. Time cards: 4 years.

CXXXVIII. Trust fund minutes, quarterly reports, and bank statements: permanently.

CXXXIX. Vehicle maintenance records: life of vehicle plus 2 years.

CXL. Voter checklist-marked copy kept by town pursuant to RSA 659:102: 7 years.

CXLI. Voter registration:

(a) Forms, including absentee voter registration forms: until voter is removed from checklist plus 7 years.

(b) Same day, returned to undeclared status, form and report from statewide centralized voter registration database: 7 years.

(c)(1) Party change form: until voter is removed from checklist plus 7 years.

(2) List of undeclared voters from the statewide centralized voter registration database: 7 years.

(d) Forms, rejected, including absentee voter registration forms, and denial notifications: 7 years.

(e) Qualified voter affidavit: until voter is removed from checklist plus 7 years.

(f) Domicile affidavit: until voter is removed from checklist plus 7 years.

(g) Overseas absentee registration affidavit: until voter is removed from checklist plus 7 years.

(h) Absentee ballot voter application form in the federal post card application format, for voters not previously on the checklist: until voter is removed from checklist plus 7 years.

(i) Absentee ballot affidavit envelope for federal post card applicants not previously on the checklist: until voter is removed from checklist plus 7 years.

(j) Notice of removal, 30-day notice: until voter is removed from checklist plus 7 years.

(k) Report of death: until voter is removed from checklist plus 7 years.

(l) Report of transfer: until voter is removed from checklist plus 7 years.

(m) Undeliverable mail or change of address notice from the United States Postal Service: until voter is removed from checklist plus 7 years.

CXLII. Vouchers and treasurers receipts: until audited plus one year.

CXLIII. Warrants-land use change, and book or list: permanently.

CXLIV. Warrants-property tax, and lists: permanently.

CXLV. Warrants-resident tax, and book or list: permanently.

CXLVI. Warrants-town meeting: permanently.

CXLVII. Warrants-treasurer: until audited plus one year.
CXLVIII. Warrants-utility and betterment tax: permanently.
CXLIX. Warrants-yield tax, and book or list: permanently.
CL. Welfare department vouchers: 4 years.
CLI. Work program files: current year plus 6 years.
CLII. Writs: expiration of appeal period plus one year.
CLIII. Zoning board of adjustment applications, decisions, and permits-unsuccessful: expiration of appeal period.
CLIV. Intent to excavate: completion of reclamation plus 3 years.
CLV. Election return forms, all elections: permanently.

[Paragraph CLVI effective September 1, 2015.]

CLVI. Affidavits of religious exemption: until voter is removed from checklist plus 7 years.

Source. 2005, 187:3, eff. Aug. 29, 2005. 2006, 119:2-5, eff. May 12, 2006. 2010, 172:1-3, eff. Aug. 16, 2010; 191:1, eff. Aug. 20, 2010. 2012, 113:1, eff. May 31, 2012; 284:13, eff. Sept. 1, 2015.

33-A:4 Disposition Schedule. – [Repealed 1977, 358:7, II, eff. July 1, 1977.]

33-A:4-a Municipal Records Board. –
I. There is hereby established a municipal records board consisting of the following persons or their designees:
(a) The director of the division of archives and records management.
(b) The director of the New Hampshire Historical Society.
(c) The state librarian.
(d) The presidents of the New Hampshire Tax Collectors' Association, the New Hampshire City and Town Clerks' Association and the Association of New Hampshire Assessors.
(e) The registrar of vital records.
(f) The secretary of state.
(g) A municipal treasurer or finance director appointed by the president of the New Hampshire Municipal Association for a 3-year term.
(h) A professional historian appointed by the governor and council for a 3-year term.
(i) A representative of the Association of New Hampshire Historical Societies appointed by its president for a 3-year term.
(j) A representative of the department of revenue administration.
(k) The state records manager.
II. The board shall elect its own chairman and vice-chairman. The board shall meet at the call of the chairman, but not less than once every 2 calendar years. Five members of the board shall constitute a quorum for all purposes. Board members shall serve without compensation. Administrative services for the board shall be provided by the director of the division of archives and records management who shall serve as secretary of the board.

Source. 1977, 358:3. 1985, 102:1. 1991, 197:1, eff. July 27, 1991. 2003, 97:4, eff. Aug. 5, 2003; 319:56, eff. July 1, 2003.

33-A:4-b Powers and Duties of Board. – The board shall advise the secretary of state on standards and procedures for the effective and efficient management of municipal records. Such standards and procedures shall govern the retention, preservation and disposition of municipal records. The board shall oversee the local government records management improvement program as provided in RSA 5:47-5:51.

Source. 1977, 358:3, eff. July 1, 1977. 2002, 145:3, eff. July 12, 2002. 2005, 187:4, eff. Aug. 29, 2005.

33-A:5 Microfilming. – If municipal records are disposed of by microfilming, 2 films shall be produced. One film shall be retained by the municipality in a fireproof container and properly labeled. One shall be transferred to a suitable location for permanent storage.

Source. 1967, 105:1. 1977, 358:4, eff. July 1, 1977.

33-A:5-a Electronic Records. – Electronic records as defined in RSA 5:29, VI and designated on the disposition schedule under RSA 33-A:3-a to be retained for more than 10 years shall be transferred to paper, microfilm, or both. Electronic records designated on the disposition schedule to be retained for less than 10 years may be retained solely electronically if so approved by the record committee of the municipality responsible for the records. The municipality is responsible for assuring the accessibility of the records for the mandated period.

Source. 2005, 187:5, eff. Aug. 29, 2005. 2006, 275:6, eff. June 15, 2006.

33-A:6 Exception. – Notwithstanding any other provision hereof, original town meeting and city council records shall not be disposed of but shall be permanently preserved. Such records prior to 1900 need not be microfilmed unless legible.

Source. 1967, 105:1, eff. July 10, 1967.

Appendix E – Model State RFP Public Disclosure Language

PUBLIC DISCLOSURE

A. Introduction

The State of New Hampshire has made it a priority through the Right-to-Know law (RSA 91-A), the TransparentNH initiative, and other statutes and practices to ensure that government activity is open and transparent. In general, these requirements allow for public review, disclosure and posting of government and public records. As such, the State is obligated to make public the information submitted in response to this RFP, any resulting contract, and information provided during the contractual relationship. The Right-to-Know law obligates the State to conduct an independent analysis of the confidentiality of the information submitted, regardless of whether it is marked confidential.

In addition, the Governor and Council (G&C) contract approval process more specifically requires that pricing be made public and that any contract reaching the G&C agenda for approval be posted online.

B. Disclosure of Information Submitted in Response to RFP

Information submitted in response to this request for proposal (RFP) is subject to public disclosure under the Right-to-Know law after a contract is actually awarded by G&C. Notwithstanding the Right-to-Know law, no information concerning the contracting process, including, but not limited to, information related to proposals, communications between the parties or contract negotiations, shall be available until a contract is actually awarded by G&C.

Confidential, commercial or financial information may be exempt from public disclosure under RSA 91-A:5, IV. If you believe any information submitted in response to this request for proposal should be kept confidential, you must specifically identify that information where it appears in your submission in a manner that draws attention to the designation. You must also provide a letter to the person listed as the point of contact for this RFP, identifying the specific page number and section of the information you consider to be confidential, commercial or financial and providing your rationale for each designation. Marking or designating an entire proposal, attachment or section as confidential shall neither be accepted nor honored by the State.

In most cases, pricing and other information that relates to your contractual obligations in your proposal or any subsequently awarded contract shall be subject to public disclosure regardless of whether it is marked as confidential.

Notwithstanding a bidder's designations, the State is obligated under the Right-to-Know law to conduct an independent analysis of the confidentiality of the information submitted in a proposal. If a request is made to the State by any person or entity to view or receive copies of any portion of your proposal, the State shall first assess what information it is obligated to release. It will then notify you that a request has been made, indicate what, if any, information the State has assessed is confidential and will not be released, and specify the planned release date of the remaining portions

of the proposal. To halt the release of information by the State, a bidder must obtain and provide to the State, prior to the date specified in the notice, a court order valid and enforceable in the State of New Hampshire, at its sole expense, enjoining the release of the requested information.

By submitting a proposal, you acknowledge and agree that:

- The State may disclose any and all portions of the proposal or related materials which are not marked as confidential and/or which have not been specifically explained in the letter to the person identified as the point of contact for this RFP;
- The State is not obligated to comply with your designations regarding confidentiality and must conduct an independent analysis to assess the confidentiality of the information submitted in your proposal; and
- The State may, unless otherwise prohibited by court order, release the information on the date specified in the notice described above without any liability to you.

C. Electronic Posting of Resulting Contract

RSA 91-A obligates disclosure of contracts resulting from responses to RFPs. As such, the Secretary of State provides to the public any document submitted to G&C for approval, and posts those documents, including the contract, on its website. Further, RSA 9-F:1 requires that contracts stemming from RFPs be posted online. By submitting a proposal, you acknowledge and agree that, in accordance with the above mentioned statutes and policies, (and regardless of whether any specific request is made to view any document relating to this RFP), any contract resulting from this RFP will be posted online and may appear without any redaction whatsoever.

APPENDIX F
New Hampshire Statutes, Court Decisions, and Court Rules Making Information Confidential or Non-public

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
6:10-a Checks to be Void under Title I, The State and Its Government	The state treasurer is authorized and directed to cancel of record, and refuse to honor, all state checks, except those drawn on special funds created under RSA 282-A, which have not been presented for payment within one year from the date of issue. The records of all checks outstanding, as maintained by the state treasurer during the period prior to cancellations, shall be exempt from the provisions of RSA 91-A.		State checks
7:41 Findings and Purpose.	Address confidentiality Program for Victims of Domestic Violence, Stalking, or Sexual Assault		
7:47 Disclosure of Records Prohibited; Exceptions.	The attorney general shall not make any records in a program participant's file available for inspection or copying, other than the address designated by the attorney general, except under the following circumstances: I. If requested by a law enforcement agency, to the law enforcement agency; II. If directed by a court order, to a person identified in the order; III. If certification has been cancelled; or IV. To verify the participation of a specific program participant, in which case the attorney general may only confirm participation in the program.		Inspection
9:4 - Requests for Appropriations and Statement of Objectives and 9:5-Estimates of Income	Under Statute Annotations: 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. 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 (1992)	Budget; income estimates
RSA 14:31-a - Audit	II. The detailed reports of every audit conducted pursuant to this section	Goode v. LBA,	LBA, Legislative

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F
New Hampshire Statutes, Court Decisions, and Court Rules Making Information Confidential or Non-public

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
work papers and notes.	shall become a public record upon approval by the fiscal committee. Audit work papers and notes are not public records. However, those materials necessary to support the compilations in the final audit report may be made available by majority vote of the fiscal committee after a public hearing showing proper cause. For the purposes of this section, work papers shall include, but are not limited to, all preliminary drafts and notes used in preparing the audit report.	148 N.H. 551, (2002)	Audit, Work Papers, notes
RSA 21-G:31	Executive Branch Ethics Committee Complaints, until closed or hearing is held.		
21-M:8-c Victim of Alleged Sexual Offense.	The bill for the medical examination of a sexual assault victim shall not be sent or given to the victim or the family of the victim. The privacy of the victim shall be maintained to the extent possible during third party billings. Billing forms shall be subject to the same principles of confidentiality applicable to any other medical record under RSA 151:13. Where such forms are released for statistical or accounting services, all personal identifying information shall be deleted from the forms prior to release.		Sexual assault, medical examination
21-M:8-k Rights of Crime Victims.	(m) The right of confidentiality of the victim's address, place of employment, and other personal information.		Confidential
21-M:9 Consumer Protection and Antitrust Bureau.	III. The bureau may disclose to the public the number and type of complaints or inquiries filed by consumers against a particular person, as defined by RSA 358-A:1, I; provided, however, that no such disclosure shall abridge the confidentiality of consumer complaints or inquiries.		Consumer complaint, confidentiality
21-I:43 II (r)	II. The director of personnel shall adopt rules, pursuant to RSA 541-A, which shall apply to employees in the classified service of the state, relative to… (r) Availability of division records for public inspection, including identification of those records or portions of records for which exemption under RSA 91-A:5 is claimed.		

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F
New Hampshire Statutes, Court Decisions, and Court Rules Making Information Confidential or Non-public

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
21-I:52-a - Employee Assistance Program; Confidential Communications.	The confidential relations and confidential communications between an employee of the state of New Hampshire and a representative or representatives of an employee assistance program shall be placed on the same basis as those provided by law between attorney and client. Except as otherwise provided by law, no representative of an employee assistance program shall be required to disclose either the nature of the program's relationship with the state employee or any privileged and confidential communications, either oral or written, made between the state employee and the representative or representatives of the program in the context of that relationship.		Employee assistance program
21-M:16, IV Incapacitated Adult Fatality Review Committee Established.	Records of the committee, including testimony by persons participating in or appearing before the committee and deliberations by committee members relating to the review of any death, shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena, or admission into evidence in any judicial or administrative proceeding.	*Capitol One Auto Fin., Inc. v. Clougherty*, Merrimack Co., No. 2010-CV-708 (May 31, 2012) (*McNamara*, J.)	Records, confidential, privilege,
21-J:14, I Confidentiality of Department Records for the Department of Revenue	Notwithstanding any other provision of law, and except as otherwise provided in this chapter, the records and files of the department are confidential and privileged. Neither the department, nor any employee of the department, nor any other person charged with the custody of such records or files, nor any vendor or any of its employees to whom such information becomes available in the performance of any contractual services for the department shall disclose any information obtained from the department's records, files, or returns or from any examination, investigation or hearing, nor may any such employee or person be required to produce any such information for the inspection of any person or for use in any action or		Department of Revenue

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	proceeding except as hereinafter provided.		
72:34,II Investigation of Application and Decision by Town Officials.	II. For those exemptions having income or asset limitations, the assessing officials may request true copies of any documents as needed to verify eligibility. Unless otherwise provided for by law, all documents submitted with an application or as requested, as provided for in paragraphs I and II, and any copies shall be considered confidential, handled so as to protect the privacy of the individual, and not used for any purpose other than the specific statutory purposes for which the information was originally obtained. All documents and copies of such documents submitted by the applicant shall be returned to the applicant after a decision is made on the application.		Confidential
76:16,III (h) By Selectmen or Assessors	Municipalities shall treat the social security or federal tax identification information as confidential and exempt from a public information request under RSA 91-A		Abatement
77-B:26 Commuter's Income Tax - Confidentiality of Department of Revenue Administration Records.	Notwithstanding any other provision of law and except as hereinafter provided, the records and files of the department of revenue administration respecting the administration of this chapter are confidential and privileged		Confidential, privilege, Deptartment of Revenue
82-A:16-a Confidentiality of Records -from 82-A Communications Services Tax	Information disclosed shall not be further disclosed to persons other than officers or employees of the bureau of emergency communications, division of emergency services, communications, and management, of the department of safety.		Confidential

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F
New Hampshire Statutes, Court Decisions, and Court Rules Making Information Confidential or Non-public

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
84-A:10 & 84-C:10 Confidentiality of Records under Title V: Taxation *****	Notwithstanding the provisions of RSA 21-J:14, the commissioner shall not be prohibited from providing tax information to the commissioner of health and human services with respect to the tax imposed by this chapter, provided that the commissioner of health and human services and his agents and employees shall be subject to the provisions of RSA 21-J:14 with respect to any tax information provided by the commissioner.		
91-A:5,I Grand and Petit Jury Records		*State v. Purrington*, 122 N.H. 458 (1982)	
91-A:5,II Parole and Pardon Board Records			
91-A:3 ,III Sealed Minutes	Sealed if there is a recorded vote of 2/3 members present at non-public meeting to seal the minutes.		
91-A:5, III Personal School Records of Pupils			
91-A:5, IV	Records pertaining to test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations		
91-A:5, IV Records pertaining to confidential, commercial, or financial information			
91-A:5, IV Records pertaining to	"A report generated in the course of an investigation of alleged employee misconduct is a record pertaining to "internal personal practices" and thus is	*Hounsell v. North Conway Water*	Internal personal practices

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
personnel, medical, welfare, library user, videotape sale or rental and other files whose disclosure would constitute invasion of privacy.	exempt from disclosure."	*Precinct*, 154 N.H. 1, 4 (2006)	
91-A:5, V Teacher Certification Records	Teacher certification records, both hard copies and computer files, in the department of education, provided that the department shall make available teacher certification status information.		
91-A:5, VI	Records pertaining to matters related to the preparation for and carrying out emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thrawt a deliberate act that is intended to result in widespread of severe damage to property or widespread injury or loss of life		
91-A:5, VII	Unique pupil identification information collected in accordance with RSA 193-E:5		
91-A:5, IX	Preliminary drafts, notes and memoranda, as well as other documents "not in their final form and not disclosed, circulated, or available to a quorum or a majority" of the public.	*ATV Watch v. N.H. Dep't of Trans.*, 161 N.H. 746 (2011)	
98-E:3 Confidential Records under Title VI. Public Officers	Nothing in this chapter shall suspend or affect any law relating to confidential and privileged records or communications. For the purposes of this chapter, confidential records and communications shall include		Communication, Records, Confidential,

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
and Employees	communication or records relating to investigations for law enforcement purposes and collective bargaining proceedings.		
105:13-b, II Confidentiality of Personnel Files under Title VII. Sheriffs, Constables, and Police Officers	No personnel file on a police officer who is serving as a witness or prosecutor in a criminal case shall be opened for the purposes of that criminal case, unless the sitting judge makes a specific ruling that probable cause exists to believe that the file contains evidence relevant to that criminal case	*State v. Puzzanghera*, 140 N.H. 105 (1995); *State v. Gaffney*, 147 N.H. 550 (2002); *In re State (Theodosopolous)*, 153 N.H. 318 (2006).	Personnel Files, Confidential
106-B:14 The State Police under Title VII. Sheriffs, Constables, and Police Officers	With the approval of the commissioner of safety, the director shall adopt rules under RSA 541-A as may be necessary to secure records and other information relative to persons who have been convicted of a felony, misdemeanor or violation within the state, or who are known to be habitual criminals, or who have been placed under arrest in criminal proceedings. The term "violation"; as used in this section shall apply only to violations committed under title LXII. Notwithstanding RSA 91-A, such records and information, including but not limited to dissemination logs, shall not be open to the inspection of any person except those who may be authorized to inspect the same by the director, as follows:		
106-F:6 Application for License; Confidential under Title VII. Sheriffs, Constables, and Police Officers	All information provided by an applicant for a license under this chapter, other than the application date and the business address of the applicant, shall be kept confidential, unless such information is requested by a law enforcement agent engaged in the performance of his authorized duties		License, confidential

APPENDIX F
New Hampshire Statutes, Court Decisions, and Court Rules Making Information Confidential or Non-public

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
106-H:12 Confidentiality – Enhanced 911 systems	Automatic number identification and automatic location identification information consisting of the address and telephone numbers of telephone subscribers whose listings are not published in directories or listed in directory assistance offices is confidential		Emergency, Confidential
106-K:6 Confidentiality – Enhanced 911 systems	All data stored in J-One shall be confidential and shall be exempt from disclosure under RSA 91-A; provided, however, that nothing in this chapter shall affect the continued application of RSA 91-A to such information, to the extent that it is collected and maintained separately by a member agency		Emergency, Confidential
126-J:4 Technical Assistance under Title X Public Health	The department of health and human services, department of education, and the insurance department shall provide to the council available data, consistent with confidentiality requirements, relevant to the needs of this population.		Department of Health and Human Services; Data, Confidential
126:24-d Disclosure of Information From Vital Records.	All protected health information possessed by the department shall be considered confidential, except that the commissioner shall be authorized to provide vital record information to institutions and individuals both within and outside of the department who demonstrate a need for such information for the purpose of conducting health-related research.		Research, Health, Confidential
126-A:4,III, IV – b – Dept. of Health and Human Services	(III)The records of the ombudsman's office shall be confidential and shall not be disclosed without the consent of the client or employee on whose behalf the complaint is made, except as may be necessary to assist the service provider or the employee's supervisor to resolve the complaint, or as required by law. (IV-b) Records of the department's quality assurance program including records of interviews, internal reviews or investigations, reports, statements, minutes, and other documentation except for individual client medical records, shall be confidential and privileged and shall be protected from direct or indirect discovery, subpoena, or admission into evidence in any		Confidential, privilege, complaint

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	judicial or administrative proceeding, except as provided in subparagraphs IV (c) and (d).		
126-H:8 Healthy Kids Corporation - Confidentiality	Notwithstanding any provision of law to the contrary, the corporation shall have access to the medical records of a child upon receipt of permission from a parent or guardian of the child. Such medical records may be maintained by state and local agencies. Any confidential information obtained by the corporation pursuant to this section shall remain confidential and shall not be subject to RSA 91-A.		Medical Records, Confidential
135-C:19-a,II and IIINH Mental Health Services System - Disclosure of Certain Information	Information disclosed pursuant to this paragraph shall remain confidential and shall not be subject to discovery, subpoena, or admission into evidence in any judicial or administrative proceeding. Any person who willfully re-discloses confidential information provided to a committee designated by the governor to review child fatalities shall be guilty of a violation.		Confidential, Mental Health, Records
135-C:63-a, II NH Mental Health Services System Proceedings of Quality Assurance Program; Confidentiality.	Records of a community mental health program's quality assurance program, including those of its functional components and committees as defined by the organization's quality assurance plans, organized to evaluate matters relating to the care and treatment of patients and to improve the quality of care provided and testimony by members on the board of directors of the community mental health program, medical and clinical staff, employees, or other committee attendees relating to activities of the quality assurance program shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena, or admission into evidence in any judicial or administrative proceeding.		Records, Mental Health
135-C:66 Access of Records under Title X: Public Health	Notwithstanding any other provisions of law, records regarding children placed at Philbrook center pursuant to RSA 169-B, 169-C, or 169-D shall be exchanged between employees of the department to facilitate coordinated care for those children and their families. The confidentiality of such		Philbrook; Records, Confidential

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	information shall be maintained according to applicable law.		
135-E:3,VIInvoluntary Civil Commitment of Sexually Violent Predators - Notice to County Attorney or Attorney General; Multidisciplinary Teams Established.	VI. Records, reports, and proceedings of the multidisciplinary team shall be confidential and shall be exempt from the provisions of RSA 91-A, except as provided in RSA 135-E:15		Records, Reports
135-E:15, I Involuntary Civil Commitment of Sexually Violent Predators - Release of Records.	In order to protect the public, relevant information and records that are otherwise confidential or privileged shall be released to the agency with jurisdiction, to a multidisciplinary team, or to the county attorney or attorney general for the purpose of meeting the notice requirements of this chapter and determining whether a person is or continues to be a sexually violent predator. A person, agency, or entity receiving information under this section which is confidential shall maintain the confidentiality of that information. Such information does not lose its confidential status due to its release under this section.		Sexually Violent, Confidential
137-J:9 Confidentiality and Access to Protected Health Information.	I. Health care providers, residential care providers, and persons acting for such providers or under their control, shall be authorized to; (a) Communicate to an agent any medical information about the principal, if the principal lacks the capacity to make health care decisions, necessary for the purpose of assisting the agent in making health care decisions on the principal's behalf. (b) Provide copies of the principal's advance directives as necessary to		Health Care

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	facilitate treatment of the principal. II. Subject to any limitations set forth in the advance directive by the principal, an agent whose authority is in effect shall be authorized, for the purpose of making health care decisions, to: (a) Request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including, but not limited to, medical and hospital records. (b) Execute any releases or other documents which may be required in order to obtain such medical information. (c) Consent to the disclosure of such medical information.		
137-K:7 Brain and Spinal Cord Injuries - Disclosure; Confidentiality.	A report provided to the brain and spinal cord injury registry disclosing the identity of an individual, who was reported as having a brain and spinal cord injury, shall only be released to persons demonstrating a need which is essential to health-related research, except that the release shall be conditioned upon the individual granting authority to release the information and personal identities remaining confidential.		Health, research, confidential
141-B:9 Chronic Disease Prevention, Assessment and Control - Disclosure; Confidentiality.	A report provided to the cancer registry disclosing the identity of an individual, who was reported as having a cancer, shall only be released to persons demonstrating a need which is essential to health-related research, except that the release shall be conditioned upon the personal identities remaining confidential.		Report, Health, Research, Confidential
146-C:5, IV Records Required; Inspections under Title X Public Health	Information obtained by the department under this chapter which, in the judgment of the federal Environmental Protection Agency or the department, constitutes a trade secret shall not be disclosed to the public without notice to the owner of the trade secret and an opportunity for hearing. The		Trade, Confidential

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	department may provide information relating to trade secrets to the Environmental Protection Agency, provided that the Environmental Protection Agency guarantees the same degree of confidentiality as does the department.		
141-C:10, I Communicable Diseases - Disclosure; Confidentiality.	Any release of information under this section without the informed, written consent of the individual shall be conditioned upon the protected health information remaining confidential.		Health, Confidential
141-F:8, I, II Human Immunodeficiency Virus Education, Prevention, and Control - Confidentiality; Release of Information.	All records and any other information pertaining to a person's testing for the human immunodeficiency virus shall be maintained by the department, health care provider, health or social service agency, organization, business, school, or any other entity, public or private, as confidential and protected from inadvertent or unwarranted intrusion. Such information obtained by subpoena or any other method of discovery shall not be released or made public outside of the proceedings.		Confidential, Health, HIV
147-C:4 Duties of the Committee under Title X: Public Health	The committee shall: (b) Have access to all information given to and comments made to the department, except that information relative to a facility application obtained by the department which, in the judgment of the federal Environmental Protection Agency or the department, constitutes a trade secret shall not be disclosed to the committee without notice to the owner of the trade secret and an opportunity for hearing. The department may provide information relating to trade secrets to the Environmental Protection Agency, provided that the Environmental Protection Agency guarantees the same degree of confidentiality		Trade secret, confidential

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	provided by the department. A "trade secret" means any confidential formula, pattern, device or compilation of information which is used in the employer's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. A trade secret is known to the employer and those employees to whom it is necessary to confide it;		
151:2-d Criminal Record Check Required under Title: XI Hospitals and Sanitaria	III. (a) Upon receipt of a notarized criminal conviction record release authorization form from a home health care provider, the division of state police shall conduct a criminal conviction record check pursuant to RSA 106- B:14 and provide the results to the home health care provider. The home health care provider shall maintain the confidentiality of all criminal conviction records received pursuant to this section.		Criminal conviction record
151:5-c Proceedings of Residential Care Facility Quality Assurance Program; confidentiality under Title XI: Hospitals and Sanitaria	III. Records of a quality assurance program in a licensed residential care facility, including those of its functional components and committees as defined by the facility's quality assurance plans, organized to evaluate matters relating to the care and treatment of residents and to improve the quality of care provided, and testimony by owners or members, or both, on the board of directors of the residential care facility, medical and clinical staff, employees, or the committee attendees relating to activities of the quality assurance program, shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena, or admission into evidence in any judicial or administrative proceeding. However, information, documents, or records otherwise available from original sources shall not be construed as immune from discovery or use in any such civil or administrative action merely because they were presented to a quality assurance program, and any person who supplies information		Records, Treatment

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	or testifies as part of a quality assurance program, or who is a member of a quality assurance program committee, shall not be prevented from testifying as to matters within his or her knowledge, but such witness shall not be asked about his or her testimony before such program, or opinions formed by him or her, as a result of committee participation. Further, a program's records shall be discoverable in either of the following cases: (a) A judicial or administrative proceeding brought by a licensed residential care facility, its quality assurance program, or owners and/or board of directors, to revoke or restrict the license or certification of a staff member; or (b) (b) A proceeding alleging repetitive malicious action or personal injury brought against a staff member.		
151-D:2 Proceedings of Quality Assurance Program; confidentiality under Title XI: Hospitals and Sanitaria	I. Records of an ambulatory care clinic's quality assurance program, including those of its functional components and committees as defined by the organization's quality assurance plans, organized to evaluate matters relating to the care and treatment of patients and to improve the quality of care provided, and testimony by members on the board of directors of the ambulatory care clinic, medical and clinical staff, employees, or other committee attendees relating to activities of the quality assurance program shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena, or admission into evidence in any judicial or administrative proceeding. However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil or administrative action merely because they were presented to a quality assurance program, and any		Records, Treatment, Confidential

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	person who supplies information or testifies as part of a quality assurance program, or who is a member of a quality assurance program committee, may not be prevented from testifying as to matters within his or her knowledge, but such witness may not be asked about his or her testimony before such program, or opinions formed by him or her, as a result of committee participation. Further, a program's records shall be discoverable in either of the following cases: (a) A judicial or administrative proceeding brought by an ambulatory care clinic, its quality assurance program, or its board of directors, to revoke or restrict the license, certification, or privileges of a physician or staff member; or (b) A proceeding alleging repetitive malicious action and personal injury brought against a physician or staff member.		
151-G:5 Confidentiality under Title XI: Hospitals and Sanitaria	All information of any type submitted to or collected by the commission, including, but not limited to, written, oral, and electronic information; records and proceedings of the commission, including, but not limited to, oral testimony and discussions, notes, minutes, summaries, analyses, and reports; and information disseminated by the commission or its members to acute care hospitals and ambulatory surgical centers, shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena, or admission into evidence in any judicial, administrative, or other type of proceeding. The provision of information to the commission and the dissemination of information by the commission shall not be deemed to void, waive, or impair in any manner the confidentiality protection of this section or which the information may have under any other law or regulation.		Confidential, privilege, records

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
151-G:6 Administration under Title XI: Hospitals and Sanitaria	The activities of the Foundation for Healthy Communities and its employees or agents shall be subject to the same confidentiality provisions as those that apply to the commission.		Confidential
155:74 Complaints; Investigations; Confidentiality	II. The name of any person registering a complaint regarding noncompliance shall not be divulged by the department of health and human services in any correspondence or meetings, nor shall it be made available over the telephone, unless specific written approval has been given to do so by the complainant. All complaints, except names, shall be a public record for purposes of RSA 91-A. The name of any complainant who requests anonymity, however, shall not be revealed under RSA 91-A.		Complaints, noncompliance, confidential
159:6-a confidentiality of Licenses.	Notwithstanding the provisions of RSA 91-A:4 or any other provision of law to the contrary, all papers and records, including applications, pertaining to the issuance of licenses pursuant to RSA 159:6 and all licenses issued pursuant to said section are subject to inspection only by law enforcement officials of the state or any political subdivision thereof or of the federal government while in the performance of official duties or upon written consent, for good cause shown, of the superior court in the county where said license was issued.		Licenses, records
159-D:2 Confidentiality	I. If the department of safety conducts criminal background checks under RSA 159-D:1, any records containing information pertaining to a potential buyer or transferee who is not found to be prohibited from receipt or transfer of a firearm by reason of state or federal law, which are created by the department of safety to conduct the criminal background check, shall be confidential and may not be disclosed by the department or any officers or employees to any person or to another agency. The department shall destroy any such records after it communicates the corresponding approval number		Criminal background checks, confidential, records

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	to the licensee and, in any event, such records shall be destroyed within one day after the day of the receipt of the licensee's request.		
161-C:3-a Confidentiality of Records and Information; Information From Financial Institutions under Title XII Public Safety and Welfare	The records and information made available to the client or the client's authorized representative shall not include information provided to the department that is prohibited from release by federal law, state statute, state case law, or by contract or agreement between the department and another entity if such contract or agreement prohibits release of such information.		Confidential
161-F:14 Access to Facilities, Residents, and Records under Title XII Public Safety and Welfare	The representative of the office shall maintain the confidentiality of all books, files, medical records, or other records inspected under the provisions of this paragraph except as they may pertain to the resolution of the ongoing investigation.		Records, confidentiality
161-F:57 Access to Files; Confidentiality	The files maintained by the department which relate to investigations of alleged instances of abuse, neglect, or exploitation shall be disclosed only with the written consent of the victim, or his guardian or attorney, or if such disclosure is required by court or administrative order.		Abuse; neglect
161-I:6-a Criminal Record Check Required	III. (a) Upon receipt of a notarized criminal conviction record release authorization form from an other qualified agency, the division of state police shall conduct a criminal conviction record check pursuant to RSA 106-B:14 and provide the results to the other qualified agency. The other		Record, criminal, confidential

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	qualified agency shall maintain the confidentiality of all criminal conviction records received pursuant to this section.		
167:30 Confidential Character of Public Assistance Record under Title XII: Public Safety and Welfare	Whenever under provisions of law names and addresses of recipients of assistance or child welfare services under this chapter or RSA 161 are furnished to or held by any other agency or department of government, such agency or department of government shall be required to adopt regulations necessary to prevent the publication of lists thereof or their use for purposes not directly connected with the administration of this chapter or RSA 161		Confidential, child welfare
169-B:19 Dispositional Hearing under Title XII Public Safety and Welfare	III-c. (e) The provisions of RSA 169-B:34 through 169-B:38, relating to confidentiality of proceedings and records, shall apply to all de novo trials conducted pursuant to this section.		Confidential, records, de novo trials
169-C:25 Confidentiality under Title XII: Public Safety and Welfare	I. (a) The court records of proceedings under this chapter shall be kept in books and files separate from all other court records. Such records shall be withheld from public inspection but shall be open to inspection by the parties, child, parent, grandparent pursuant to subparagraph (b), guardian, custodian, attorney or other authorized representative of the child.		Records, inspection
169-C:34-a Multidisciplinary Child Protection Teams and Title XII: Public Safety and Welfare	III. The department may share information from its case records to the extent permitted by law with members of a multidisciplinary child protection team in order to assist the team with its investigation and evaluation of a report of abuse or neglect. Multidisciplinary child protection team members shall be required to execute a confidentiality agreement and shall be bound by the confidentiality provisions of RSA 169-C:25 and RSA 170-G:8-a.		Multidisciplinary, investigation,
170-B:23 Confidentiality of Records under Title XII: Public Safety and	Notwithstanding any other law concerning public hearings and records: II. All papers and records, including birth certificates, pertaining to the adoption, whether part of the permanent record of the court or of a file in the division, in an agency or office of the town clerk or the bureau of vital		Records, inspection

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
Welfare	records and health statistics are subject to inspection only upon written order of the court for good cause shown, except as otherwise provided in RSA 170- B:24. III. Nothing contained in this section or RSA 170-B:24 shall prevent the department or the licensed child-placing agency from sharing with the adoptive parents all information it has available about the minor child being placed for adoption. The department or the licensed child-placing agency shall delete any information, which would tend to identify a birth parent.		
170-C:14 Confidentiality of Records under Title XII: Public Safety and Welfare	Any other law concerning public hearings and records notwithstanding: I. All hearings held in termination proceedings shall be in closed court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, and representatives of the agencies present to perform their official duties. II. All papers and records, including birth certificates, pertaining to the termination, whether part of the permanent record of the court or of a file in the department, in an agency or office of the town clerk or the division of vital records administration are subject to inspection only upon written consent of the court for good cause shown.		Records, children, termination
170-E:7 State Registry and Criminal Records Check; Revocation of Registration and Withholding of State Funds under Title XII: Public Safety and Welfare ****	(b) The department shall submit the criminal history records release form to the New Hampshire division of state police, which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.		Records, criminal history,

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F
New Hampshire Statutes, Court Decisions, and Court Rules Making Information Confidential or Non-public

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
170-E:23 Confidentiality and Investigations under Title XII: Public Safety and Welfare	State registry files and all other related confidential information kept by any state agency may be used by the department for the purpose of investigation and licensure. The department shall strictly observe the confidentiality requirements of the agency from which it receives information.		Confidential, investigations
170-E:29 State Registry and Criminal Records Check.	V. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the confidentiality of information collected under this section and to the release, if any, of such information.		
170-E:49 Confidentiality and Investigations under Title XII: Public Safety and Welfare	The department may request and shall receive cooperation from other state agencies in connection with investigations and licensure. Because certain information kept by other state agencies and requested by the department may be confidential, the department shall strictly observe the confidentiality requirements of the agency from which it receives information.		Confidential, investigations
170-G:8-a Record Content; Confidentiality; Rulemaking under Title XII: Public Safety and Welfare	II. The case records of the department shall be confidential. (a) The department shall provide access to the case records to the following persons unless the commissioner or designee determines that the harm to the child named in the case record resulting from the disclosure outweighs the need for the disclosure presented by the person requesting access:		Child, disclosure, confidential
172:8-a Confidentiality of Client Records under Title XII: Public Safety and Welfare	No reports or records or the information contained therein on any client of the program or a certified alcohol or drug abuse treatment facility or any client referred by the commissioner shall be discoverable by the state in any criminal prosecution. No such reports or records shall be used for other than rehabilitation, research, statistical or medical purpose, except upon the written consent of the person examined or treated. Confidentiality shall not		Records, reports

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	be construed in such manner as to prevent recommendation by the commissioner to a referring court, nor shall it deny release of information through court order pursuant to appropriate federal regulations.		
173-B:22 Confidentiality under Title XII Public Safety and Welfare	All persons who are employed, appointed, or who volunteer under this chapter shall maintain confidentiality with regard to persons served by the coordinator and grantees and files kept by the coordinator and grantees, except for reasons of safety for other shelter residents or staff.		Confidentiality
173-C:2 Privilege under Title XII: Public Safety and Welfare	I. A victim has the privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made by the victim to a sexual assault counselor or a domestic violence counselor, including any record made in the course of support, counseling, or assistance of the victim. Any confidential communication or record may be disclosed only with the prior written consent of the victim. This privilege terminates upon the death of the victim		Communication, counseling, confidential
189:13-a School Employee and Volunteer Background Investigations under Title XV: Education	The school administrative unit, school district, or charter school shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph. If the criminal history records information indicates no criminal record, the school administrative unit, school district, or charter school shall destroy the information received immediately following its review of the information.		Education, confidential, criminal record
193-D:7 Confidentiality under Title XV: Education	Notwithstanding any other provision of law, it shall be permissible for any law enforcement officer and any school administrator to exchange information relating only to acts of theft, destruction, or violence in a safe school zone regarding the identity of any juvenile, police records relating to a juvenile, or other relevant information when such information reasonably relates to delinquency or criminal conduct, suspected delinquency or suspected criminal conduct, or any conduct which would classify a pupil as		Safe School zone, records, delinquency

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	a child in need of services under RSA 169-D or a child in need of protection under RSA 169- C		
201-D:11 Library User Records; Confidentiality under Title XVI: Libraries	Library records which contain the names or other personal identifying information regarding the users of public or other than public libraries shall be confidential and shall not be disclosed except as provided in paragraph II. Such records include, but are not limited to, library, information system, and archival records related to the circulation and use of library materials or services.		Library, records, Confidential
227-C:11 Confidentiality of Archeological Site Location Information under Title XIX: Public Recreation	Information which may identify the location of any archeological site on state land, or under state waters, shall be treated with confidentiality so as to protect the resource from unauthorized field investigations and vandalism. Toward this end, state agencies, departments, commissions, institutions and political subdivisions, permittees and private landowners with preservation and conservation agreements shall consult with the commissioner before any disclosure of information to insure that the disclosure would not create a risk to the historic resource or that it is done in a manner to minimize the risk. Such information is exempt from all laws providing rights to public access. Disclosure for the public record for tax assessment, transfer, sale or other consideration of the property shall receive careful consideration to minimize the risk to the resource.		Archeological, exempt
236:31 Evasion of Tolls and Charges under Title XX: Transportation	VI. (a) The department, and any designee of the department, shall maintain the confidentiality of all information acquired in connection with the administration and enforcement of toll evasion, including but not limited to credit and account data, photographs or other images, and all personally identifying information obtained relative to owners of vehicles. Such information shall not be a public record subject to disclosure under RSA 91-A and shall be used solely for enforcement of this section.		Toll, data,

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F
New Hampshire Statutes, Court Decisions, and Court Rules Making Information Confidential or Non-public

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
237:16-e Confidentiality of Records under Title XX: Transportation	Notwithstanding RSA 91-A or any other provision of law, all information received by the department that could serve to identify vehicles, vehicle owners, vehicle occupants, or account holders in any electronic toll collection system in use in this state shall be for the exclusive use of the department for the sole purpose of administering the electronic toll collection system, and shall not be open to any other organization or person, nor be used in any court in any action or proceeding, unless the action or proceeding relates to the imposition of or indemnification for liability pursuant to this subdivision. The department may make such information available to another organization or person in the course of its administrative duties, only on the condition that the organization or person receiving such information is subject to the limitations set forth in this section. For the purposes of this section, administration or administrative duties shall not include marketing, soliciting existing account holders to participate in additional services, taking polls, or engaging in other similar activities for any purpose.		Vehicle, confidential, electronic toll
260:14 – Motor Vehicles under Chapter XXI: Motor Vehicles	II. (a) Proper motor vehicle records shall be kept by the department at its office. Notwithstanding RSA 91-A or any other provision of law to the contrary, except as otherwise provided in this section, such records shall not be public records or open to the inspection of any person.		Motor Vehicle records
263:56-b Revocation or Denial for Drugs or Alcohol Involvement under Title XXI: Motor Vehicles	Notwithstanding RSA 169-B:35 or any other law regarding confidentiality any court which convicts or makes a finding that an offense described in this section has occurred involving a person who meets the age limits specified in this section shall forward a notice of such conviction or finding to the director. The director shall maintain the confidentiality of notices received.		Confidential, convicts
275:51, III-a Enforcement under	III-a. Records compiled pursuant to employee interviews under paragraphs II and III are not subject to disclosure by the department. The commissioner		Labor, employee interviews

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
Title XXIII: Labor	may release such information to public officials when such information is necessary to perform their duties. If the commissioner determines that a person or employer has violated any provision of this subdivision or any rule adopted under this subdivision, that person or employer shall be provided with a report specifying the statute and rules that have been violated and a summary of supporting evidence.		
275:62 Right to Leave Work under Title XXIII: Labor	An employer shall maintain the confidentiality of any written documents or records submitted by an employee relative to the employee's request to leave work under this subdivision.		Employee records, Confidential
277-B:15-a Client List; Confidentiality under Title XXIII: Labor	Client lists shall remain confidential except that the commissioner may share such information with other appropriate state agencies.		Client lists
281-A:21-b Confidentiality of Workers' Compensation Claims under Title XXIII: Labor	Proceedings and all records of the department of labor with respect to workers' compensation claims, not only to DOL injury reports containing personal employee information, under RSA 281-A shall be exempt from RSA 91-A. Nothing in this section shall prohibit the department of labor from releasing information on a person's claim or claims to the person, the person's legal representative, attorney, health care providers, employer, the employer's workers' compensation insurer, the attorneys for the employer or employer's insurer, or state and federal agencies with relevant jurisdiction. Notwithstanding the provisions of this section, information relating to a person's claim or claims may be released to other parties only with the prior written permission of the claimant.	*Premium Research Servs. V. N.H. Dep't of Labor*, 162 N.H. 741 (2011).	Workers' compensation, confidential
282-A:117-123 and 91-A:6 Records exempt from	Each employing unit shall keep true and accurate work records for such periods of time and containing such information as the commissioner may by rules prescribe. Such records shall be open to inspection and subject to be		Confidential; employment

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
inspection	copied or reproduced by the commissioner, or his authorized representatives in this state at any reasonable time and as often as may be necessary at a place selected by the commissioner. The commissioner may, at his discretion, notify any employer of the prospective benefit rights of any individual in his employ. The commissioner may upon petition for cause authorize such records as he requires be maintained to be physically located in a state other than New Hampshire; however, when such petition is allowed, such records may, in the sole judgment of the commissioner, be examined at the department administrative office in this state or at their location outside this state. Where examination occurs outside this state, a penalty equal to all costs attendant thereupon, solely as computed by the commissioner, shall be paid by the employer to the department.		
282-A:118 Reports or Statement; Confidentiality under Chapter XXIII: Labor	The commissioner or his authorized representatives and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports or statements, with respect to persons employed by it, which either deems necessary for the effective administration of this chapter. Information thus obtained or obtained from any individual, claimant or employing unit pursuant to the administration of this chapter shall be held confidential and shall not be published or open to public inspection in any manner revealing the individual's or employing unit's identity except: -Refer to law for exceptions including information shared with the United States Census Bureau related to the employment dynamics program.		Labor; employment
282-A:119 Summary, Duplication, etc.; Admissibility under Chapter XXIII: Labor	The commissioner may cause to be made such summaries, compilations, photographs, duplications, or reproductions of any records, reports, or transcripts thereof, as he may deem advisable for the effective and economical preservation of the information contained therein. Such summaries, compilations, photographs, duplications or reproductions, duly		Labor; employment

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	authenticated, shall be admissible in any proceeding under this chapter if the original record or records would have been admissible therein.		
282-A:120 Destruction of Records under Chapter XXIII: Labor	The commissioner may by rules order the destruction, after reasonable periods, of any and all records, reports, transcripts or reproductions thereof, or other papers kept pursuant to the administration of the unemployment compensation law, which are not considered by him as necessary to the administration of this chapter.		Labor; employment
282-A:121 Penalty under Chapter XXIII Labor	Any employee of the department of employment security, member of an appeal tribunal, or any individual, corporation, association, partnership or other type of organization, who lawfully obtains or sees records, reports or information obtained in the administration of this chapter who violates any provision of this subdivision shall be guilty of a misdemeanor.		Employment security;
282-A:123 Records Unavailable for Legal Process under Chapter XXIII: Labor	No records of any type in any form whether copies, compilations or reproductions pertaining to any individual or employing unit obtained in the course of or growing out of the administration of this chapter, or oral testimony relative thereto, as to either a specific person or in general shall be available for use in any proceeding, administrative or judicial; except that a necessary party to a proceeding directly and primarily concerned with workmen's compensation or an employer-employee relationship may by the use of valid judicial process obtain such records as directly relate to the necessary parties to the proceeding, and otherwise as is provided by this chapter. In matters unrelated to those enumerated previously, such records and oral testimony shall be available for use in any proceeding, administrative or judicial, where the state is a necessary party. No oral or written policy statements, opinions, advice, instructions or information of the department as to a specific person or in general shall be available for use in any proceeding, administrative or judicial through any means, and any		Reproductions; employment;

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	process which attempts to obtain such shall be null and void.		
282-A:118 Reports or Statement; Confidentiality under Title XXIII: Labor	Information thus obtained or obtained from any individual, claimant or employing unit pursuant to the administration of this chapter shall be held confidential and shall not be published or open to public inspection in any manner revealing the individual's or employing unit's identity except: Look up exceptions		Inspections, confidential
311 Unauthorized practice of law – investigations confidential	311:7-b Investigation by Attorney General. – I. The attorney general may investigate any complaint of unauthorized practice of the law V. Investigations under this section shall be confidential. Any person participating in the investigation who, except as required in the discharge of the person's official duties, discloses to any person, other than to a person under investigation, the name of any person under investigation or any witness examined, or any other information obtained in the investigation is guilty of a misdemeanor.		
318:5-a Rulemaking Authority under Title XXX: Occupations and Professions	The board shall adopt rules, pursuant to RSA 541-A, relative to XVIII. Disclosure and confidentiality relative to the New Hampshire Rx advantage program, pursuant to RSA 161-L:3		Confidential
326-B:15 Criminal History Record Checks under Title	The board shall maintain the confidentiality of all criminal history records information received pursuant to this section.		Criminal history records

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
XXX Occupations and Professions			
326-E:5 Duties and Powers of the Board under Title XXX: Occupations and Professions	II. In addition, the board shall: (e) Keep information confidential in accordance with the confidentiality requirements of RSA 328-F.		
326-E:7 Rights of Consumers under Title XXX: Occupations and Professions	III. Any person may submit a complaint in writing to the board regarding any licensee, entity, or other person potentially in violation of this chapter or of RSA 328-F. Confidentiality shall be maintained subject to state and federal law.		Licensee
328-A:15 Rights of Consumers; Confidentiality under Title XXX: Occupations and Professions	II. The home address and telephone numbers of physical therapists and physical therapist assistants shall not be public record and shall be kept confidential by the board unless they are the only addresses and telephone numbers of record.		Telephone numbers, records, confidential
328-C:5-a Confidentiality of Information under Title XXX: Occupations and Professions	I. Unless waived by the person to whom the information pertains, the following information relative to certified marital mediators, applicants for certification, and formerly certified marital mediators which may be in the possession of the board shall be confidential and shall not be subject to disclosure, except as provided in paragraph II, absent an order of the court: (f) Any information deemed confidential under RSA 91-A or other applicable law.		Certified marital mediators, confidential
328-D:3-a Criminal History Record	IV. The board shall review the criminal record information prior to making a licensing decision and shall maintain the confidentiality of all criminal		Criminal record, licensing,

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
Checks under Title XXX: Occupations and Professions	history records received pursuant to this section.		confidential
328-F:24 Investigations and Disciplinary Proceedings under Title XXX: Occupations and Professions	II. Unless used in disciplinary proceedings or required to be disclosed by an order of a court, the following information obtained during investigations shall be held confidential and shall be exempt from the disclosure requirements of RSA 91-A: (a) Complaints received by the board. (b) Information and records acquired by the board during its investigation. (c) Reports and records made by the board as a result of its investigation. (d) Patient or client records, including clinical records, files, oral and written reports relating to diagnostic findings or treatment of licensees' patients or clients and oral and written information from which the identity of licensees' patients or clients or their families can be derived.		Investigations, Complaints, records, reports
329:13-b Physician Effectiveness Program under Title XXX: Occupations and Professions	III. Notwithstanding the provisions of RSA 91-A, the records and proceedings of the board, compiled in conjunction with a physician effectiveness peer review committee, shall be confidential and are not to be considered open records unless the affected physician so requests; provided, however, the board may disclose this confidential information only: (a) In a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order; (b) To the physician licensing or disciplinary authorities of other jurisdictions; or (c) Pursuant to an order of a court of competent jurisdiction.		Records, physician
329:20-a Report to	All licensed physicians practicing ophthalmology in this state shall report,		Physicians, report,

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
Blind Services Program, Bureau of Vocational Rehabilitation under Title XXX: Occupations and Professions	with the permission of the patient, all cases of vision examination results of 20/200 or less, in the better eye, after correction, to the blind services program, bureau of vocational rehabilitation, department of education. Such report shall contain the name and address of the examined individual, date of birth, the amount of vision in both eyes, and the cause of visual impairment. The information contained in said report shall be treated as confidential by the bureau.		
329:26 Confidential Communications under Title XXX: Occupations and Professions	Confidential relations and communications between a patient and any person working under the supervision of a physician or surgeon that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with such supervising physician or surgeon.		Physician, privileged
329:29 Proceedings of Medical Review Committee under Title XXX: Occupations and Professions	All proceedings, records, findings and deliberations of medical review committees of a duly established county or state medical society or of any such committees of the board of medicine are confidential and privileged and shall not be used or available for use or subject to process in any other proceeding. The manner in which a medical review committee and each member thereof deliberates, decides or votes on any matter submitted to it is likewise confidential and privileged and shall not be the subject of inquiry in any other proceeding.		Medical review committee, privileged, confidential
329:29-a Proceedings of Physician Practice Quality Assurance Program; Confidentiality under Title XXX: Occupations and	II. Records of a quality assurance program, including those of its functional components and committees, as defined by the physician practice's quality assurance plans, and testimony by persons participating in or appearing before the quality assurance program or its functional components or committees, relating to the activities of the quality assurance program shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena, or admission into evidence in any judicial or		Physician , assurance program,

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
Professions	administrative proceeding.		
330-A:28 Investigations and Complaints under Title XXX: Occupations and Professions	I. The board shall investigate possible misconduct by licensees and other matters within the scope of this chapter. Investigations may be conducted formally, after issuance of a board order setting forth the general scope of the investigation, or informally, after a board vote to seek additional information, without such an order. In either case, information gathered subsequent to the initiation of and during such investigations shall be exempt from the public disclosure provisions of RSA 91-A, except to the extent such information may later become the subject of a public disciplinary hearing. The existence of a complaint and status of the investigation, without disclosing the identity of those involved, shall be subject to the disclosure provisions of RSA 91-A. The board may disclose information acquired in an investigation to law enforcement only if it involves suspected criminal activity, to health licensing agencies in this state or any other jurisdiction if the licensee has or is seeking additional licenses, or as required by specific statutory requirements or court orders. A licensee under this chapter shall be promptly informed of the nature and scope of any pending investigation.		Investigations
330-A:32 Privileged Communications under Title XXX: Occupations and Professions	The confidential relations and communications between any person licensed under provisions of this chapter and such licensee's client are placed on the same basis as those provided by law between attorney and client, and nothing in this chapter shall be construed to require any such privileged communications to be disclosed, unless such disclosure is required by a court order.		License,
332-B:14 Disciplinary	All such investigations and preliminary hearings shall be confidential and		Investigations,

APPENDIX F
New Hampshire Statutes, Court Decisions, and Court Rules Making Information Confidential or Non-public

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
Action; Civil Penalty under Title XXX: Occupations and Professions	exempt from the provisions of RSA 91-A, provided that the board shall make public any action taken under RSA 332-B:14, III resulting from a preliminary hearing or investigation.		hearings,
332-I:2 Patient Information under Title XXX: Occupations and Professions	(e) The health care provider shall not reveal confidential communications or information without the consent of the patient, unless provided for by law or by the need to protect the welfare of the individual or the public interest		Confidential communications
339-D:3 Inventory Reporting under Title XXXI: Trade and Commerce	II. All reports filed pursuant to this section shall be an exempt record and confidential pursuant to RSA 91-A:5, IV, and shall be maintained for the sole and confidential use of the director of the governor's council on energy, except that the reports may be disclosed to the appropriate energy agency or department of another state with substantially similar confidentiality statutes or regulations with respect to such reports.		Energy, reports,
351-A:1 Videotape Rental or Sales Records; Confidentiality under Title XXXI: Trade and Commerce	I. Videotape rental or sales records which contain the names or other personal identifying information regarding the renters or purchasers of videotapes shall be confidential and shall not be disclosed by any person or other entity renting or selling such videotapes except as provided in paragraph II.		Sales records, confidential
354-B:2 Civil Action by Attorney General under Title XXXI: Trade and Commerce	II. The civil action brought by the attorney general shall be filed in the superior court or, in the case of a child under the age of 17, either in superior court or the district court in the county or judicial district where the alleged violator resides or where the alleged conduct occurred. In the case of a child under the age of 17, all such proceedings shall be confidential.		Civil action, minor
356:10 - Official	Any procedure, testimony taken or document or object produced under this		Investigation

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
Investigation under Chapter XXXI: Trade and Commerce	chapter shall be kept confidential by the attorney general before the institution against the person of an action brought under this chapter for the violation under investigation unless confidentiality is waived by the person or disclosure is authorized by the superior court.		
358-A:8- Subpoena; Production of Books, Examination of Persons, etc. under Chapter XXXI: Trade and Commerce	VI. USE OF INFORMATION. Any information, testimony, or documentary material obtained under the authority of this section shall be used only for one or more of the following purposes: (a) In connection with investigations instituted under this chapter or for the prosecution of legal proceedings instituted under this chapter or other provisions of the RSA; and (b) In connection with any formal or informal program of or request for information exchange between the department of justice and any other local, state or federal law enforcement agency. However, no information or material obtained or used pursuant to the authority of this section shall be released publicly by any governmental agency except in connection with the prosecution of legal proceedings instituted under this chapter or other provisions of the RSA. In addition, any information, testimony or documentary material obtained or used pursuant to a protective order shall not be exchanged or released, as provided herein, publicly except in compliance with such protective order.		
361-A:6-a Examinations under Title XXXIII-A: Retail Installment Sales	(c) All reports pursuant to this section shall be privileged and although filed in the department as provided in subparagraph (b) shall not be for public inspection. The comments and recommendations of the examiner shall also be confidential information and shall not be available for public inspection.		Sales
365:8 Rulemaking Authority under Title	The commission shall adopt rules, pursuant to RSA 541-A, relative to: IV. Standards and procedures for the handling of confidential information, in		

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
XXXIV. Public Utilities	accordance with RSA 91-A.		
378:43 Information Not Subject to Right-to-Know Law under Title XXXIV. Public Utilities	I. (a) Any information or records that a telephone utility provides to the public utilities commission or its staff as part or in support of a filing with the commission or in response to a request that the information or records be provided to the commission or its staff shall be maintained confidentially and shall not be considered public records for purposes of RSA 91-A, if the information or records satisfy the requirements of paragraph II.		Telephone utility,
383:7 Compensation; Assistants under Title XXXV. Banks and Banking; Loan Associations; Credit Unions	IV. The banking department shall submit the criminal history records release form to the New Hampshire division of state police, which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.		Criminal history records
383:10-b Confidential Information under Title XXXV. Banks and Banking; Loan Associations; Credit Unions	All records of investigations and reports of examinations by the banking department, including any duly authenticated copy or copies thereof in the possession of any institution under the supervision of the bank commissioner, shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the commissioner, the ends of justice and the public advantage will be sub served by the publication thereof. The commissioner may furnish to the federal supervisory authorities and to independent insuring funds which he deems qualified such information and reports relating to the institutions under his supervision as he deems best. On motion for discovery filed in any court of competent jurisdiction, in aid of any pending action, the court, after		Investigations,

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	hearing the parties, may order the production of such records, investigations and reports for use in such action whenever it is found that justice so requires, subject to such reasonable safeguards imposed by the court as may be necessary to prevent use by unauthorized persons or publicity of irrelevant portions thereof.		
383:10-e Confidential of Consumer Complaints under Title XXXV. Banks and Banking; Loan Associations; Credit Unions	The commissioner may disclose to the public the number and type of complaints or inquiries filed by consumers against a particular person or entity; provided, however, that no such disclosure shall abridge the confidential of consumer complaints or inquiries.		Consumer complaints
384:60-a Examination of Out-of-State Banks and Bank Holding Companies under Title XXXV. Banks and Banking; Loan Associations; Credit Unions	The commissioner is further authorized to enter into agreements with out-of-state and federal bank regulatory agencies for purposes of sharing and protecting the confidentiality of any New Hampshire banking department examination report, work papers or other examination information and the examination report, work papers or other examination information of the out-of-state state or federal bank regulatory agency.		Examination report,
384-F:33 Confidentiality of Examination Reports under Title XXXV. Banks and Banking; Loan Associations; Credit Unions	The confidentiality provisions of RSA 383:10-b shall apply to reports of examinations under this chapter.		Banks; reports; examinations

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F
New Hampshire Statutes, Court Decisions, and Court Rules Making Information Confidential or Non-public

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
392:9-a Confidentiality under Title XXXV. Banks and Banking; Loan Associations; Credit Unions	The commissioner may, at his or her discretion on request or otherwise, determine that confidential information received in connection with any petition or application of or concerning a public trust company should not be publicly available, in which case such information shall be confidential communications, shall not be subject to subpoena, and shall not be disclosed unless, in the judgment of the commissioner, the ends of justice and the public advantage will be served by the disclosure of the information.		Confidential communications, fiduciary
397-A:5 License Application; Requirements; Investigation under Title XXXV. Banks and Banking; Loan Associations; Credit Unions	(c) The department shall submit the criminal history records release form to the New Hampshire division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.		Criminal history records,
397-A:20 Administration by Commissioner; Rulemaking under Title XXXV. Banks and Banking; Loan Associations; Credit Unions	VII. In adopting rules, preparing forms, setting standards, and in performing examinations, investigations, and other regulatory functions authorized by the provisions of this chapter, the commissioner may cooperate, and share information pursuant to confidentiality agreements, with regulators in this state and with regulators in other states and with federal regulators in order to implement the policy of this chapter in an efficient and effective manner and to achieve maximum uniformity in the form and content of applications, reports, and requirements for mortgage bankers and brokers, where practicable.		Banks
399-A:3 Application and Fees under Title XXXVI. Pawnbrokers	(d) The department shall submit the criminal history records release form to the New Hampshire division of state police, which shall conduct a criminal history records check through its records and through the Federal Bureau of		Criminal history records

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
and Moneylenders	Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.		
399-D:5 License Application; Requirements; Investigation under Title XXXVI. Pawnbrokers and Moneylenders	(h) The department shall submit the criminal history records release form to the New Hampshire division of state police, which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.		Criminal history records
400-A:15-b Confidentiality of Provider's Personal Information under Title XXXVII. Insurance	I. Health insurers and other third party payers shall not display a medical provider's home address, date of birth, or social security number on documents provided to subscribers for the purpose of claim payment unless the provider has provided that information for the purposes of claim payment. II. The provisions of this section shall apply to group hospital and medical expense policies subject to RSA 415, group health service plan contracts issued pursuant to RSA 420-A, and to health maintenance organization policies and plans issued pursuant to RSA 420-B.		Health insurers
400-A:25 – Certain Records of the Insurance Dept. under Chapter XXXVII: Insurance	I. Unless otherwise provided by law, all records and documents of the insurance department are subject to public inspection pursuant to the rightto-know law, RSA 91-A. Notwithstanding the provisions of RSA 91-A, the commissioner may determine by order that it is in the public interest to make public additional records and documents or to hold certain records and documents confidential within the insurance department		insurance
400-A:36-c	All financial analysis ratios and examination synopses concerning insurance		Financial analysis

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
Confidentiality under Title XXXVII. Insurance	companies that are submitted to the department by the National Association of Insurance Commissioners' Insurance Regulatory Information System are confidential and shall not be disclosed by the department. Nothing contained in this title shall prevent or be construed as prohibiting the commissioner from disclosing any other material or information obtained by the commissioner in line with the duties of the commissioner's office so long as the governmental or regulatory agency or office receiving the information agrees in writing to keep it confidential and in a manner consistent with this title.		ratios; examination synopses
400-A:37 Examinations under Title XXXVII. Insurance	(a) Except as provided in subparagraph IV(c)(2) and in this subparagraph, documents, materials, or other information, including, but not limited to, all working papers, and copies thereof created, produced or obtained by or disclosed to the commissioner or any other person in the course of an examination made under this title, or in the course of analysis by the commissioner of the financial condition or market conduct of a company shall be confidential by law and privileged, shall not be subject to RSA 91-A, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties		Insurance
401-B:8 Confidential Treatment under Title XXXVII. Insurance	I. Documents, materials, or other information in the possession or control of the insurance department that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to RSA 401-B:6 and all information reported pursuant to RSA 401-B:3, II(l) and (m), RSA 401-B:4, and RSA 401-B:5, shall be confidential by law and privileged shall not be subject to RSA 91-A,		Insurance

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may make public all or any part in such manner as may be deemed appropriate. II. Neither the commissioner nor any other person shall be permitted or required to testify at any private civil action concerning any confidential documents, materials, or information subject to RSA 401-B:8, I. III. The commissioner may share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph I, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in RSA 401-B:7 [NOTE – see conditions set forth in subsections (a)-(d)]. IV-V. The sharing of information by the commissioner shall not constitute a delegation of regulatory authority or rulemaking and no waiver of any applicable privilege or claim of confidentiality shall occur as a result of disclosure or sharing.		
402-C:14 Conduct of	I. CONFIDENTIALITY OF COMMISSIONER'S HEARINGS. The		Hearings

APPENDIX F
New Hampshire Statutes, Court Decisions, and Court Rules Making Information Confidential or Non-public

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
Hearings in Summary Proceedings under Title XXXVII. Insurance	commissioner shall hold all hearings in summary proceedings privately unless the insurer requests a public hearing, in which case the hearing shall be public. II. CONFIDENTIALITY OF COURT HEARINGS. The court may hold all hearings in summary proceedings and judicial reviews thereof privately in chambers, and shall do so on request of the insurer proceeded against.		
402-D:16 Record Retention under Title XXXVII. Insurance	III. Records submitted to the commissioner in accordance with this section that contain personal identifying information, shall be treated as confidential by the commissioner and shall not be subject to RSA 91-A. However, in order to assist in the performance of the commissioner's duties, the commissioner may share documents, materials, or other information, including the confidential documents, materials, or other information with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners (NAIC) and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities; provided, that the recipient agrees to maintain the confidentiality of the information provided.		National Association of Insurance Commissioners; insurance commissioner
404-F:8 Confidentiality; Prohibition on Announcements; Prohibition on Use in Ratemaking under Title XXXVII. Insurance	All RBC reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and RBC plans, including the results or report of any examination or analysis of an insurer performed pursuant hereto and any corrective order issued by the commissioner pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer which are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of		Insurance, examination

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	enforcement actions taken by the commissioner pursuant to this chapter or any other provision of the insurance laws of this state.		
408-C:8 Commission Records and Enforcement under Title XXXVII. Insurance	I. The commission shall promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions. II. Except as to privileged records, data and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data or information to the commission; provided, that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, that, except as otherwise expressly provided in this chapter, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.		Official records, trade secrets.
420-J:5-e General Provisions Regarding External Review under Title XXXVII. Insurance	III. An independent review organization shall maintain all standards of confidentiality. The records and internal materials prepared for specific reviews by an independent review organization under this section shall be exempt from public disclosure under RSA 91-A.		Insurance,

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
420-J:10 Confidentiality of Insurer Records under Title XXXVII. Insurance	Data or information pertaining to the diagnosis, treatment, or health of a covered person obtained from the person or from a provider by a health carrier is confidential and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this chapter and as allowed by any applicable state or federal law; or upon the express consent of the covered person; or pursuant to statute or court order for the production of evidence or the discovery thereof; or in the event of a claim or litigation between the covered person and the health carrier where the data or information is pertinent, regardless of whether the information is in the form of paper, is preserved on microfilm, or is stored in a computer retrievable form.		Diagnosis, treatment,
420-J:11 Confidentiality of Insurance Department Records under Title XXXVII. Insurance	All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to RSA 400-A:37, and, unless otherwise provided in this chapter, all information reported and maintained pursuant to this chapter shall be given confidential treatment and shall not be made public by the commissioner or any other person, except to insurance departments of other states, unless the commissioner after consultation with the affected parties, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may disclose all or any part thereof in such manner as the commissioner may deem appropriate.		Insurance, policyholders
436:123 Confidentiality under Title XL. Agriculture, Horticulture and Animal Husbandry	II. With the exception of the state and federal veterinarians, acting in their official capacity, state board members and agents of the board shall not make available to any other regulatory or enforcement agency not involved in the program, or to the public, information obtained in the course of such help or inspection unless:		veterinarians

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F
New Hampshire Statutes, Court Decisions, and Court Rules Making Information Confidential or Non-public

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
463:9 Confidentiality of Proceedings under Title XLIV. Guardians and Conservators	II. Records, reports, and evidence submitted to the court or recorded by the court shall be confidential insofar as they relate to the personal history or circumstances of the minor and the minor's family. For cause shown, the court may authorize disclosure under such terms and conditions as the court may deem appropriate.		
471-C:20, VII Notice and Publication of Lists of Abandoned Property, under Title XLVI	Any information or records required to be furnished to the division of abandoned property shall be confidential except as is otherwise necessary in the proper administration of this chapter. Notwithstanding any other provision of law, any identifying information set forth in any report, record, claim, or other document submitted to the treasurer pursuant to this chapter concerning unclaimed or abandoned property is a confidential record and shall be made available for public examination or copying only in the discretion of the treasurer or the treasurer's designee.		Abandoned Property
485-A:18 Investigation and Inspection; Records under Title L. Water Management and Protection	III. Any other provisions of law notwithstanding, upon a showing satisfactory to the department by any person that any record, report, or information or any particular part thereof, to which the department has access, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the department shall consider such record, report, information or particular part thereof confidential, and it shall thereafter not be disclosed to the public. All financial information shall be considered confidential for purposes of this chapter. Nothing in this section shall preclude the department from transmitting any such confidential information to any agency of the United States having jurisdiction over water pollution, provided that such agency is authorized by law to maintain the confidentiality of such information and agrees to maintain the confidentiality of any such information. In no case, however, shall effluent data, standards or limitations, names or addresses of permit applicants or		Trade secrets, environment

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	permittees, nor permit applications or permits be considered confidential information.		
490-C:5-b Confidentiality and Disclosure of Information under Title LI. Courts	I. (a) Unless waived by the person to whom the information pertains, the following information, if any, relative to certified guardians ad litem, applicants for certification, and formerly certified guardians ad litem which may be submitted to the board on or in conjunction with application, supplemental application, application renewal, recertification, and reinstatement forms shall be confidential and exempt from the disclosure requirements of RSA 91-A, unless disclosure is required pursuant to an order of the court:		Guardian ad litem
516:36 Witnesses under Title LIII. Proceedings in Court	Written Policy Directives to Police Officers and Investigators. – I. In any civil action against any individual, agency or governmental entity, including the state of New Hampshire, arising out of the conduct of a law enforcement officer having the powers of a peace officer, standards of conduct embodied in policies, procedures, rules, regulations, codes of conduct, orders or other directives of a state, county or local law enforcement agency shall not be admissible to establish negligence when such standards of conduct are higher than the standard of care which would otherwise have been applicable in such action under state law. II. All records, reports, letters, memoranda, and other documents relating to any internal investigation into the conduct of any officer, employee, or agent of any state, county, or municipal law enforcement agency having the powers of a peace officer shall not be admissible in any civil action other than in a disciplinary action between the agency and its officers, agents, or employees. Nothing in this paragraph shall preclude the admissibility of otherwise relevant records of the law enforcement agency which relate to the incident under investigation that are not generated by or part of the internal	Until an internal investigation produces information that results in the initiation of disciplinary process, public policy requires that internal investigation files remain confidential, see RSA 516:36, II (1997); *Fenniman*, 136 N.H. at 626, 620	Internal investigation, personnel, law enforcement,

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	investigation. For the purposes of this paragraph, "internal investigation" shall include any inquiry conducted by the chief law enforcement officer within a law enforcement agency or authorized by him.	A.2d at 1041, and separate from personnel files. See RSA 275:56; RSA 516:36, II; N.H. Admin. Rules, Lab 802.07. *Pivero v. Largy*, 143 N.H. 187, 191 (1998)	
519-B:8 Confidentiality and Admissibility under Title LIII. Proceedings in Court	I. Except as provided in this section, all proceedings before the panel, including its final determinations, shall be treated as private and confidential by the panel and the parties to the claim. (a) The findings and other writings of the panel and any evidence and statements made by a party or a party's representative during a panel hearing are not admissible in court and shall not be submitted or used for any purpose in a subsequent trial and shall not be publicly disclosed except as follows: (1) Any testimony or writings made under oath may be used in subsequent proceedings for purposes of impeachment. (2) The party who made a statement or presented evidence may agree to the submission, use, or disclosure of that statement or evidence. (b) If the panel findings as to both questions under RSA 519-B:6, I(a) and (b) are unanimous and unfavorable to the defendant, the findings are admissible in any subsequent trial of the medical injury case. (c) If the panel findings as to any question under RSA 519-B:6, I are unanimous and unfavorable to the plaintiff, the findings are admissible in	RSA 519-B:8, I(a), and III, have been held unconstitutional in the case of *In re Southern New Hampshire Medical Center* 164 N.H. 319 (2012),	proceedings

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
	any subsequent trial of the medical injury case. II. The confidentiality provisions of this section shall not apply if the findings were influenced by fraud. III. The deliberations and discussion of the panel and the testimony of any expert, whether called by a party or the panel, shall be privileged and confidential, and no such person may be asked or compelled to testify at a later court proceeding concerning the deliberations, discussions, findings, or expert testimony or opinions expressed during the panel hearing, unless by the party who called and presented the nonparty expert, except such deliberation, discussion, and testimony as may be required to prove an allegation of fraud.		
522:1 Authority for Test under Title LIII. Proceedings in Court	I. In a civil action in which paternity is a contested and relevant issue, the mother, child, and putative father shall submit to blood, tissue typing, and/or genetic marker tests which may include, but are not limited to, tests of red cell antigens, serum proteins, and deoxyribonucleic acid (DNA) analysis. The genetic samples collected shall be subject to safeguarding and confidentiality procedures and used exclusively for purposes of paternity testing. Testing shall be ordered as follows:		DNA
651-C:2 DNA Analysis Required under Title LXII. Criminal Code	IV. The division may contract with third parties for the purposes of this subdivision. Any DNA sample sent to third parties for analysis shall be coded to maintain confidentiality concerning the donor of the sample.		DNA
RULE 40. PROCEDURAL RULES OF COMMITTEE ON JUDICIAL	(a) Except as provided in this section, all proceedings before the committee, and all information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the committee in the course of its work, shall be confidential. No member of the committee or its staff and no employee of the committee shall disclose such proceedings,		Judicial conduct

APPENDIX F
New Hampshire Statutes, Court Decisions, and Court Rules Making Information Confidential or Non-public

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
CONDUCT under Rules of the Supreme Court of the State of New Hampshire	information, communications, materials, papers, files, or transcripts, except in the course of official duty and as otherwise authorized in this section. [NOTE – see conditions set forth in subsections (b)-(j)].		
RULE 8-2. CONFIDENTIALITY OF REPORTS under New Hampshire Superior Court Administrative Rules	Each probation report shall be kept in a sealed envelope which shall be resealed after use, and shall not be examined without permission of the Court, or as required by statute		Probation
Family Division Rule 5.8 CONFIDENTIALITY under New Hampshire Circuit Court Rules	The existence of a guardianship case or the fact that a guardianship hearing is on the docket is not confidential. However, guardianship hearings shall be closed to the public, except for persons other than the parties, their counsel, witnesses and agency representatives whom the Court may, in its discretion, admit. Records, reports and evidence shall be confidential to the extent that they contain information relating to the personal history or circumstances of the minor and the minor's family. If any person other than a party wishes to review a case file, a motion must be filed and submitted to the Court for consideration		Guardian, minor, ward
PROTOCOL 5. CONFIDENTIALITY under New Hampshire Court Rules	All parties, witnesses, and others present shall be advised by the court, pursuant to RSA 169-C:25 II, that it shall be unlawful to disclose information concerning the hearing that may identify a child or parent who is involved in the hearing without the permission of the court. Any person who knowingly violates this provision shall be guilty of a misdemeanor.		Child, negligence, abuse
GUIDELINE II. RECORDS SUBJECT TO	The public right of access to specific court records must be weighed and balanced against nondisclosure interests as established by the Federal and/or New Hampshire Constitution or by statutory provision granting or requiring		Public access

This comprehensive list may not contain a reference for every New Hampshire Statute, Supreme Court decision, or court rule which makes information confidential or non-public. There are many federal statutes and decisions by courts which establish privacy interests or make information held by government non-public or confidential. Questions regarding specific information which is not addressed by these statutes, should be referred to legal counsel. This list is based on the New Hampshire Revised Statutes Annotated as amended through the 2014 session of the Legislature. Before relying on this information, verify the authority, check to ensure there have been no subsequent revisions made to the statutes, and check for new court decisions.

APPENDIX F New Hampshire Statute, Court Decisions, and Court Rules Making Information Confidential or Non-public			
Statutory Exemptions	Key Text/Summary	Case Law	Key Terms
INSPECTION under New Hampshire Court Rules	confidentiality. Unless otherwise ordered by the court, the following categories of cases shall not be open to public inspection: juvenile cases (delinquency, CHINS, abuse/neglect, termination of parental rights, adoption); pending or denied application for search or arrest warrants; grand jury records; applications for wire taps and orders thereon; and any other record to be kept confidential by statute, rule or order. Before a court record is ordered sealed, the court must determine if there is a reasonable alternative to sealing the record and must use the least restrictive means of accomplishing the purpose. Once a court record is sealed, it shall not be open to public inspection except by order of the court.		

381077.doc