

Covering the Courts  
2022–2023

# Right to Know in NH

## How to Effectively Use NH's Right-to-Know Law

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### What is the public's Right-to-Know in New Hampshire?

The public's Right-to-Know in New Hampshire is a law that allows citizens to access public documents created, received, and owned by public bodies and agencies. The Right-to-Know Law applies to records held by "public bodies," which generally includes, among other things, any "board or commission of any state agency or authority" and any local "legislative body, governing body, board, commission, committee, [or] agency." [The law can be read HERE.](#)

The process of requesting and receiving records from government agencies under the Right-to-Know Law requires a written request to the government agency. The request should be as specific as possible and should include the type of records you are seeking, and the names of any specific documents. The government agency then has five business days to respond to the request by providing the records, letting you know when they can reasonably respond, or denying the request.

When drafting tailored requests, it is important to provide as much detail as possible. This includes the type of records you are seeking, the specific documents you want, and the date range of the records you are looking for. If communications are sought, I recommend using precise date limitations and being specific as to who the senders and recipients should be. It is also important to be aware of any exemptions that may apply to the records you are requesting.

The format in which documents can be received varies depending on the type of record requested. Generally, records can be provided in paper form or electronically, depending on the government agency's capabilities. However, the Law does not impose a duty upon the agency to deliver records in the electronic format preferred by a requester, so long as the chosen format did not diminish ease of use or the public's access to the information. The agency has no obligation to create documents in response to a request.

Under the Right-to-Know Law, government agencies can charge fees to cover "the actual cost of providing the copy," which includes the cost of copying and mailing the documents.

## What is the process of requesting and receiving records from government agencies under the Right-to-Know Law?

The law has a presumption in favor of transparency. The preamble to New Hampshire's Right-to-Know Law states: "Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people." – RSA 91-A:1.

The Law "helps further our State Constitutional requirement that the public's right of access to governmental proceedings and records shall not be unreasonably restricted."<sup>1</sup>

Further, the Right-to-Know Law has a firm basis in the New Hampshire Constitution. In 1976, Part 1, Article 8 of the New Hampshire Constitution was amended to provide as follows: "Government ... 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."<sup>2</sup>

New Hampshire is one of the few states that explicitly enshrines the public's right of access in its Constitution.<sup>3</sup> While New Hampshire already had RSA chapter 91-A to address the public's right to access information, the Bill of Rights Committee for the 1974 Constitutional Convention argued that the right was "extremely important and ought to be guaranteed by a constitutional provision."<sup>4</sup>

Consistent with these principles, courts resolve questions under 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."<sup>5</sup>

Courts therefore construe "provisions favoring disclosure broadly, while construing exemptions narrowly."<sup>6</sup> "[W]hen a public entity seeks to avoid disclosure of material under the Right-to-Know Law, that entity bears a heavy burden to shift the balance toward nondisclosure."<sup>7</sup>

Access to records under the Statute is not governed by the requester's purpose.<sup>8</sup> The Statute places no restrictions on use of information. Once a record is made public anyone may use it for any purpose.

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<sup>1</sup> Goode v. N.H. Legis., Budget Assistant, 148 N.H. 551, 553 (2002).

<sup>2</sup> Goode v. N.H. Legis., Budget Assistant, 148 N.H. 551, 553 (2002).

<sup>3</sup> Associated Press v. State, 153 N.H. 120, 128 (2005).

<sup>4</sup> Lawrence Friedman, The NH State Constitution 53, 2<sup>nd</sup> edition, 2015.

<sup>5</sup> Union Leader Corp. v. N.H. Housing Fin. Auth., 142 N.H. 540, 546 (1997) (citation omitted).

<sup>6</sup> Goode, 148 N.H. at 554 (citation omitted).

<sup>7</sup> Murray v. N.H. Div. of State Police, 154 N.H. 579, 581 (2006) (emphasis added).

<sup>8</sup> Union Leader Corp. v. City of Nashua, 141 N.H. 473 (1996) (plaintiff's motives irrelevant).

## How do you draft tailored requests?

The law affirms that the timing and the need for requests need to be reasonably described.

### What does reasonably described mean?

- RSA 91-A:4, IV(a): “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.”
- Highly context-specific analysis.
- As noted above, for emails and communications, consider date limitations or narrowing request to certain senders/receivers.

### A request may be called burdensome.

A reasonable search is required before a public body raises a burdensome defense. Blanket denials before such a search are inappropriate.<sup>9</sup>

### Timing and the Substance of a Response to Your Request

RSA 91-A:4, IV says,

(b) If a public body or agency is unable to make a governmental record available for immediate inspection and copying the public body or agency shall, within 5 business days of a request:

- (1) Make such record available;
- (2) Deny the request; or
- (3) Provide a written statement of the time reasonably necessary to determine whether the request shall be granted or denied and the reason for the delay.

(c) A public body or agency denying, in whole or part, inspection or copying of any record shall provide a written statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

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<sup>9</sup> Colquhoun v. City of Nashua, No. 2021-0253, 2022 N.H. LEXIS 128, at \*15-16 (Oct. 26, 2022) (“As we explained in *ATV Watch v. New Hampshire Department of Transportation*, an agency is not required to undertake an exhaustive search for requested documents. Rather, the adequacy of an agency's search for documents is judged by a standard of reasonableness. *ATV Watch*, 161 N.H. at 753. We conclude that the City should have known, in light of our decision in *ATV Watch*, that it was required to undertake a reasonable search.”).

## What types of costs are appropriate under the law?

- RSA 91-A:4, IV(d) says: “(d) 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.
- No cost or fee shall be charged for the inspection or delivery, without copying, of governmental records, whether in paper, electronic, or other form. 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.”
- 50 cent/page copy fee deemed reasonable.

*Martin v. City of Rochester*,<sup>10</sup> says “The city charges a fee for making copies of city records or files: for black and white photocopies, the fee is fifty cents per page for the first ten pages and ten cents per page thereafter. At trial, the city presented evidence of fee schedules from New Hampshire municipalities that are similar to its own. The city manager testified that the city charges only for the cost of copying, not for the labor associated therewith, and that the cost of copying includes the cost of leasing copy machines, machine maintenance, capital costs, and the cost of paper .... On the record before us, we conclude that the evidence presented to the trial court was sufficient such that a reasonable person could draw the same conclusion that the court did.”

### SAMPLE Right to Know Request

*Pursuant to the Right to Know Law (RSA. 91-A), I am requesting public access, within 5 business days, to the governmental records reasonably described as follows: all records, no matter what form, including but not limited to, printed documents, electronic documents, e-mails, or any other form of records regarding \_\_\_\_\_ for the period from (date) to (date).*

*Per RSA 91-A:4 IV(c) If you deny any portion of this request, please cite the specific exemption used to justify the denial to make each record, or part thereof, available for inspection along with a brief explanation of how the exemption applies to the information withheld. Please let me know when these records are available for inspection, or you may email the records to me at \_\_\_\_\_.*

<sup>10</sup> Martin v. City of Rochester, 173 N.H. 378 (2020)

## What is the format in which documents can be received?

Ability of Agency to Provide Printout.

- The Statute permits a public body that maintains records in a computer storage system to “copy governmental records requested to electronic media using standard or common file formats” rather than producing the original document. RSA 91-A:4, V.

As noted above, the body is Not Required to Provide Information in Format Requested.

- RSA 91-A:4, IV and V do not impose a duty upon the agency to deliver records in the electronic format preferred by a requester, so long as the chosen format did not diminish ease of use or the public’s access to the information.<sup>11</sup>

No Obligation to Create Documents:

- RSA 91-A:4,VII states: “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.”<sup>12</sup>

Requiring a Requester to Appear in Person:

- The New Hampshire Supreme Court has held that requiring that a requester appear in person at the agency offices in order to obtain copies of the records on the thumb drive was consistent with RSA 91-A:4, I, which provided that the right of access for purposes of inspection and copying of governmental records existed during the regular or business hours and on the regular business premises of all public bodies or agencies.<sup>13</sup>

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*Free classes on NH’s Right-to-Know Law and other First Amendment topics are held at the Nackey S. Loeb School of Communications. For more information, contact Laura Simoes at [lsimoes@loeb.school.org](mailto:lsimoes@loeb.school.org) or visit [loeb.school.org](http://loeb.school.org).*

<sup>11</sup> Taylor v. Sch. Admin. Unit #55, 170 N.H. 322 (2017)

<sup>12</sup> See also Hawkins v. N.H. Department of Health and Human Services, 147 N.H. 376 (2001).

<sup>13</sup> Taylor v. Sch. Admin. Unit #55, 170 N.H. 322 (2017)