



# NHSBA

**NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION**

**RIGHT TO KNOW LAW WEBINAR SERIES - PART THREE:  
Use of Digital Communications and Social Media by  
School Board Members: Right to Know Law, First  
Amendment and other Considerations**

*May 14, 2024*

# Index

## Slide Index

**Slide 3 Key Concepts of the Right to Know Law**

**Slide 10 Communications – Electronic and Otherwise: Practice Tips**

**Slide 15 Social Media Engagement by School Districts and School Boards  
Governmental Records**

**Slide 18 Individual Board Member Engagement on Social Media**

## Handouts

**Handout #1 Copy of PowerPoint**

**Handout #2 Right to Know Law Resources**

- Non-Public Sessions Script/Checklist
- At Your Fingertips – Right to Know Law Overview
- Meeting and Communication Flow Chart
- 91-A Excerpts for School Districts

## Upcoming Webinars

**Special Education Law for School Boards**

5/15/24, Noon-1:30pm

**Basics of Collective Bargaining for Board Members**

5/20/24, 6-8pm

# Key Concepts of the Right to Know Law



## Right to Know – Key Concepts

- RSA 91-A:1, the purpose of the Right to Know law 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.*
- Part 1, Article 8 of New Hampshire Constitution:  
*... the public's right of access to governmental **proceedings and records** shall not be **unreasonably restricted**.*
- 91-A both codifies the right of access granted by the Constitution and **establishes the parameters for "reasonable restrictions"** – i.e., exceptions and exemptions to access - contemplated by Article 8.

# Meetings – Key Concepts

**91-A:2, I -**

**“Meeting”** means:

- the convening of a quorum of the body
- “whether in person, by means of telephone, or ***electronic communication, or in any other manner*** that allows all participating members to communicate with each other contemporaneously”;
- to discuss or act upon something over which the public body has supervision, control, jurisdiction or advisory power. (***Referred to here as “official” or “jurisdictional” matters***)
- As used in 91-A:2, I - “electronic communications or in any other manner” includes practically all digital/electronic forms/platforms

# Meetings – Key Concepts

## ***RSA 91-A:2, II***

- If it constitutes a “meeting”, then the law further requires the body (board or committee) to:
  - Provide posted public notice of the meeting;
  - Have a quorum physically present
    - Two exceptions for remote participation under ***91-A:2, III***
  - Allow the public to attend;
  - Conduct deliberations and decision making in public, unless a non-public session exception legally applies;
  - Conduct all votes openly (i.e. no secret ballots);
  - Make appropriate minutes of the meeting; and
  - Must allow non-disruptive video/audio recording – even in secret.

# Meetings – Key Concepts

## *Just in case it wasn't clear...*

- Under 91-A:2-a, I – A public body may “deliberate” upon official matters only *“in meetings held ... in compliance with 91-A:2, II or III.”*
- 91-A:2-a, II provides: “**Communications outside of a meeting**, including sequential communications among members of a public body shall not be used to circumvent the spirit and purpose” of 91-A.

# Governmental Records – Key Concepts

## ***RSA 91-A:1-a, III -***

- “Governmental records” means “[a]ny 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.”
- “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.
  - Computer or other E-device data;
  - Email
  - Text Messages
  - Voicemail
  - Instant Messages
  - Digital Photos



# Governmental Records – Key Concepts

## **RSA 91-A:4 –**

- If a record (paper or digital) is a “governmental record”, every citizen has a right to inspect and/or copy
  - all ***non-exempt*** records
  - *in the custody or control of a public body or agency*
  - during regular or business hours
- If records aren't immediately available, they must be made available later
- Basic analysis to determine if disclosure permitted or required:
  - Is it a governmental record?
  - Does record fall within one or more of the exemptions from disclosure in 91-A:5 or any other (e.g., FERPA)?
  - Is disclosure required under 91-A:4 or other?

# Governmental Records – Practice Tips

- Start with assumption that all digital communications regarding school business are governmental records
- If communication received by individual board member “on behalf of” the board/committee, then would constitute a governmental record
- May query intent of sender as to whether meant for “quorum”
- If governmental record, forward to superintendent to assure record is processed/retained/destroyed pursuant to record retention schedule
- If concerning superintendent, send to chair for further inquiry

# **Communications – Electronic and Otherwise: Practice Tips**



## Pitfalls – Slippery Slopes - Violations

- Simultaneous e-mails sent to a quorum of a public body by a member discussing, proposing action on, school matters
- Forwarding to a board member an email received from another board member regarding a jurisdictional matter.
- Straw polls/ communications seeking “a sense of the board”
- Posting messages regarding jurisdictional matters on any community pages, forums, etc.
- Emojis?
- Failing to delete substantive emails
- Including confidential information in emails
- Using personal devices/email addresses for District matters and District devices/email addresses for personal matters

# Digital Communications – Best Practices

- Never use social media/email/texts to express concerns, arguments, opinions, etc. on jurisdictional issues or matters
- Exercise restraint relative to other issues, you are a representative of your district
- Be mindful of your digital footprint –**Remember - “E” also stands for:**
  - Embarrassing
  - Evidence
  - Eternal
- all discoverable & often subject to RTK requests

# Digital Communication - Best Practices

- Leave discussion (i.e. “deliberation”) of substantive matters for public meetings (*Required under RSA 91-A:2 & 91-A:2-a*)
- NEVER use digital communications to communicate confidential information
- Superintendent or central office should be responsible for sending substantive communications to quorum of board/committee – but not PII/confidential information
- If Board member has something for Board to discuss, check agenda policy, and or communicate the issue to the Chair and/or the Superintendent

# Emails - Best Practices

- Don't use "reply all"
- When communicating on informational matters via email, use BCC for all recipients

*E.g. "Policy committee will need extra time at meeting for first reading/discussion of proposed grant management policy."*

- Include reminders/warnings to other board members – "Please do not respond substantively to this email"
- Use a district provided email address/device for all electronic communications including District business
- Don't use district provided email address/device for communications unrelated to your school board business (*concerns: discovery, electioneering*)

# **Social Media Engagement by School Districts & School Boards**





# Considerations For District Social Media

- Difference between district, school, board and individual board member accounts/sites
- **Public comment availability on District social media implicates same First Amendment (but not NH statutory) issues as public comment during board meetings.**

## **TURN OFF PUBLICLY DISPLAYED COMMENTS**

- **Strong, comprehensive communication plans for districts are essential. (*Sample policy EG*)**
- Plans must recognize how different school constituency groups access and consume information
- Board may designate spokesperson to provide board perspective but may not allow quorum communications outside a meeting

# Considerations For District Social Media

- Not required to allow comment in social media
- If allowing -
  - Time, place, manner restrictions (number of words, number of comments per day, etc.)
  - May not limit or censure protected speech (e.g., profanity is protected)
- Admin, (PR or Comm Officer) should run/monitor school district site
- Best to stick to facts and objective information – especially regarding local issues (i.e., dates, important documents, legal notices, access information, past events, etc.)

# Individual Board Member Engagement on **Social Media**



# Considerations For Social Media Engagement - Individual Board Members

- Board member use of social media implicates not only records & meeting sections of 91-A, BUT ALSO the 1<sup>st</sup> Amendment
- Emerging and evolving issue
  - Is an individual member's social page a government page?
  - If so, it is subject to 1<sup>st</sup> Amendment analysis
  - Allowing ANY public comments, subjects the page to the same analysis that applies to public comment at your board meetings
  - If forum is created, blocking, deleting or filtering comments based upon viewpoint violates 1<sup>st</sup> Amendment
- *Knight v. Trump*, 928 F.3<sup>rd</sup> (2<sup>nd</sup> Cir., 2019)

# Considerations For Social Media Engagement - Individual Board Members

- Lindke v. Freed, \_\_\_ U.S. \_\_\_, March 15, 2024
  - A public official (e.g., school board member)
  - With authority to speak on a particular matter
  - Who exercises that authority in part through social media posts
  - Engages in state action relative to 1<sup>st</sup> Amendment, and
  - Therefore, is subject to individual liability under 42 U.S.C. § 1983
  - If forum is created, blocking, deleting or filtering comments based upon viewpoint violates 1<sup>st</sup> Amendment
- Don't forget that being in a lawsuit is almost as bad as losing one

# Considerations For Social Media Engagement - Individual Board Members

- Even on private page, the public is likely aware you are a school board member.
- Think before posting – Front page? Public memory?
  - *“Jefferson Parish School Board member resigns over politically-divisive social media posts” – WWNO, 1/10/2022*
  - *“Loudoun County School Board member resigns amid controversy” – WTOP, 10/15/2021*
  - *“Clear Creek Amana School Board member resigns over Facebook comment about South Carolina mass shooting” – Iowa City Press-Citizen, 4/9/2021*

# Considerations For Social Media Engagement - Individual Board Members

- *“Union County School Board Member Resigns Over ‘Inappropriate’ Facebook Posts”* – WFAE, 6/29/2020
- *“Brewster school board member resigns after controversial Facebook posts”* – Rockland/Westchester Journal News, IoHud, 6/13/2020
- If the Board’s time and energy is focused on your social media posts, it is not focused on:
  - Students
  - Quality of instruction
  - The District’s interests

## Considerations For Social Media Engagement - Individual Board Members

- Be clear when communicating personal views or recollections – your statements reflect your views.
- Failure to be clear regarding individual/official capacity, may create both messaging and notice issues -
  - Litigation exposure
  - Possible limited insurance coverage for members
- May not share confidential information (PII, information from non-public).



# Considerations For Social Media Engagement - Individual Board Members

- Although individual member communications do not “represent” the board, they do project an image of the board
- Never post statements how you plan to vote on a matter
- Minimize “meeting” risk – do not comment re board business on other pages or in response to other member’s comments
- Avoid content portraying other members in a bad light.
- Highlight positive things (events) happening in the District
- Reference district and board meeting links.

# Considerations for Social Media

## **Disclaimers:**

Many of the potential risks created by board member inclusion of board information on personal pages can be minimized by appropriate notices/disclaimers included prominently on the Board member's page and even comments.

***Sample Disclaimer:*** *This page is administered by \_\_\_\_\_  
\_\_\_\_\_. Although \_\_\_\_\_ is an elected member of the  
School Board, he/she created and maintains this \_\_\_\_\_  
\_\_\_\_\_ in his/her personal capacity. The page is in no way affiliated with  
or sanctioned by the \_\_\_\_\_ School District or its School Board. No  
comment or post on this page may be construed as a communication  
by, to or with the \_\_\_\_\_ School District, the School Board, or  
any of its members. Furthermore, no comment posted on this page  
may be considered as a communication, - or an endorsement of a  
communication - by or on behalf of the \_\_\_\_\_ School District or its  
School Board.*

***But TURN OFF COMMENTS AND LIKES!***

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RTK Pt 3 Digital Communications 2024.5

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## 2023-24 Right to Know Law Meeting Resources

1. Non-Public Sessions Script/Checklist .....	2
2. Right to Know Law: Meeting and Communication Flow Chart.....	4
3. At Your Fingertips – Right to Know Law Overview .....	5
4. 91-A Excerpts for School Districts.....	7



**SCRIPT/CHECKLIST FOR NON-PUBLIC SESSIONS & MINUTES 2023-24**

THE \_\_\_\_\_ SCHOOL BOARD

**MINUTES OF NON-PUBLIC SESSION**

DATE: \_\_\_\_\_

Issue # \_\_\_\_\_ (If more than one issue to be discussed in same non-public)

Members Present: (Name each) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Motion to enter Nonpublic Session made by \_\_\_\_\_ seconded by \_\_\_\_\_

Specific Statutory Reason cited as foundation for the nonpublic session:

- \_\_\_ 91-A:3, II (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 public meeting, and (2) requests that the meeting be open, in which case the request shall be granted.*
- \_\_\_ 91-A:3, II(b): *The hiring of any person as a public employee.*
- \_\_\_ 91-A:3, II(c): *Matters which, if discussed in public, would likely affect adversely the reputation of any person, **other than a member of this board**, unless such person requests an open meeting. This exemption shall extend to include 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.*
- \_\_\_ 91-A:3, II(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.*
- \_\_\_ 91-A:3, II(e): *Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed by or against this board or any subdivision thereof, or by or against any member thereof because of his or her membership therein, until the claim or litigation has been fully adjudicated or otherwise settled.*
- \_\_\_ 91-A:3, II(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.*
- \_\_\_ 91-A:3,II (k): *Consideration by school board of entering into a student or pupil tuition contract authorized by RSA 194 or RSA 195-A, **which, if discussed in public, would likely benefit** a party or parties whose interests are adverse to those of the general public or of district that is considering a contract, including any meeting between the school boards, or committees thereof, involved in the negotiations. (Additional language in statute for final votes.)*
- \_\_\_ 91-A:3,II (l): *Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.*
- \_\_\_ 91-A:3,II (m): *Consideration of whether to disclose minutes of a nonpublic session due to a change in circumstances under paragraph III. However, any vote on whether to disclose minutes shall take place in public session.*

Roll Call vote to enter nonpublic session:	_____	Y	N
	_____	Y	N
	_____	Y	N
	_____	Y	N

Pause public meeting recording (if applicable).

Entered nonpublic session @ \_\_\_\_\_ am/pm Discussion regarding Issue # began @ \_\_\_\_\_ am/pm.

**SCRIPT/CHECKLIST FOR NON-PUBLIC SESSIONS & MINUTES 2023-24**

**NON-PUBLIC MINUTES**

Board members present: \_\_\_\_\_

Other persons present during nonpublic session (necessary personnel only): \_\_\_\_\_

Identification of subject matter discussed and final actions taken/decisions made. (All actions or decisions **must reflect how each member voted** (e.g., roll call/unanimous vote (91-A:3, III), & the first and second of every motion 91-A:2, II): \_\_\_\_\_

Discussion on Issue ended @ \_\_\_\_ a.m./p.m.

Motion to leave nonpublic session and return to public session by \_\_\_\_\_, seconded by \_\_\_\_\_ (Reflect how each voted) \_\_\_\_\_

Re-start public meeting recording (if applicable).

Public session reconvened at \_\_\_\_\_ a.m./p.m.

**“SEALING” NON-PUBLIC MINUTES**

Under RSA 91-A:3, III. *Minutes of proceedings in nonpublic sessions 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, taken in public session, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of this board, or render the proposed action of the board ineffective, or pertain to terrorism. 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.*

Motion made to seal these minutes \_\_\_ indefinitely or for \_\_\_ years, because publication would:

- \_\_\_\_\_ Affect adversely the reputation of any person other than a member of this board
- \_\_\_\_\_ Render a proposed action ineffective
- \_\_\_\_\_ Pertains to preparation or carrying out of actions regarding terrorism

**NOTE: f sealing regarding a discussion under 91-A:3, II(m), minutes must be unsealed (disclosed) as soon as practicable after the transaction has closed or the public body has decided not to proceed with the transaction.**

Roll Call Vote to seal minutes:

_____	Y	N	_____	Y	N
_____	Y	N	_____	Y	N
_____	Y	N	_____	Y	N

Motion to Seal (Requires 2/3 Vote): **PASSED / DID NOT PASS** (circle one)

*The following information to be recorded in the Sealed Minutes Log: (a) name of public body; (b) date, time and location of meeting; (c) start and end time of NP session; (d) grounds under 91-A:3, II to enter NP; (e) basis for sealing minutes; (f) date minutes sealed; (g) date/period, if any, given in motion to seal for review of minutes (w/in 9 years 10 mos.) to be unsealed; (h) date, if any, of a subsequent decision to unseal the minutes.*

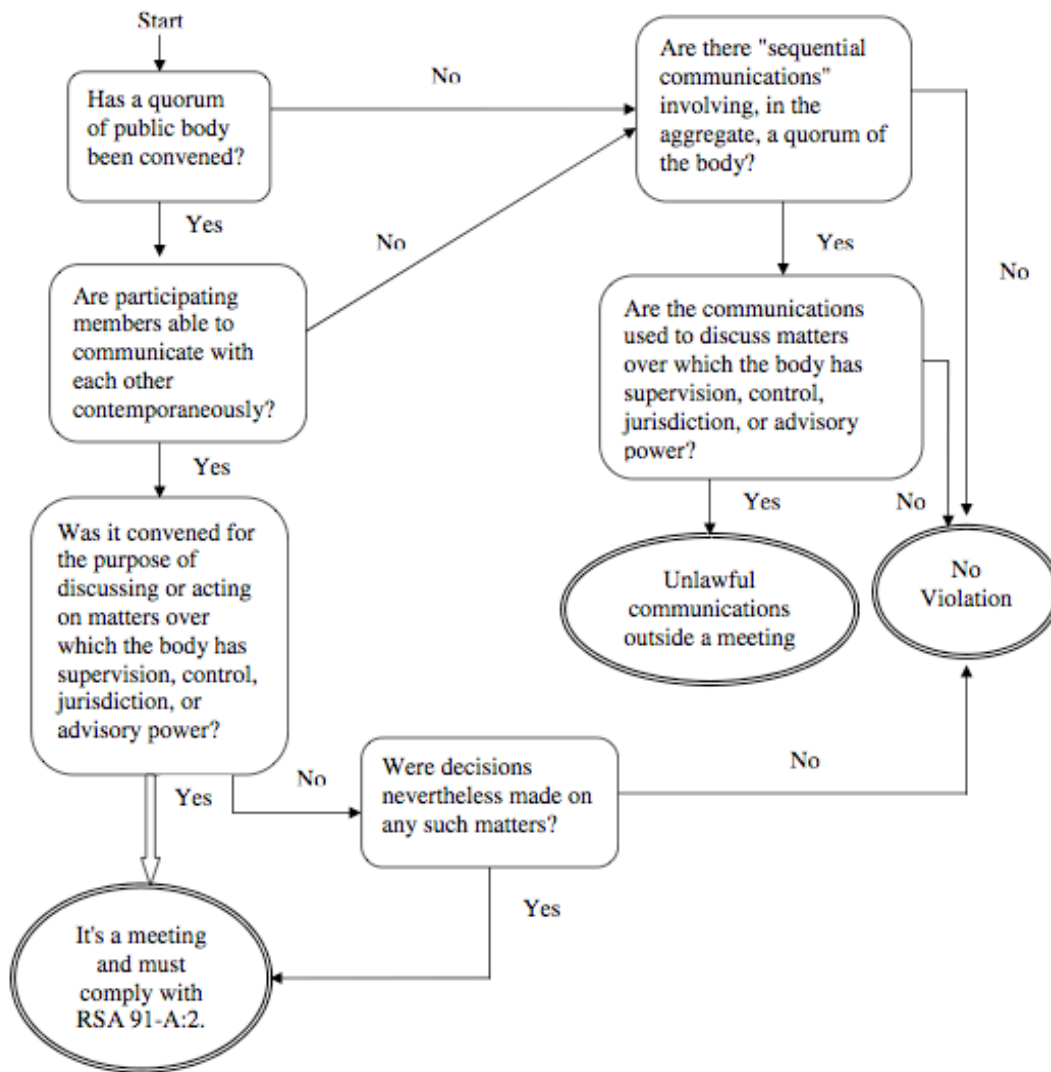
*Even if Non-Public Minutes are sealed, the Public Minutes must include the Motion to Enter (with the basis(es), as well as the Motion to Seal (and basis), with roll call votes for each.*

These minutes recorded by: \_\_\_\_\_

# MEETING AND COMMUNICATION FLOWCHART

## Is It a Meeting?

Use this flow chart to determine whether communications among members of a public body constitute a meeting subject to the Right to Know Law, or, if they do not constitute a meeting, whether they are unlawful communications outside a meeting.



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# NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION

## AT YOUR FINGERTIPS

### New Hampshire's Right to Know Law – RSA 91-A

*Summary only, refer to statute or contact NHSBA or district counsel for specifics*

#### **I. General Provisions (meetings and records):**

- The purpose of the law “is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people,” (91-A:1) a right established under N.H. Const. pt.1 Art. 8.
- RSA 91-A describes the exclusive “reasonable restrictions” restrictions to public access to meetings and records.
- The provisions of the Right to Know Law apply equally to boards and their sub- or advisory committees.
- The meetings requirements apply to communications in whatever form: person-to-person, telephonic, digital, etc. Likewise, the records provisions pertain to information in any physical form – hard copy, digital, electronic, etc.
- Statute only distinguishes between meeting and emergency meetings. Absent an emergency (see discussions in sections IV and V), all meetings are subject to same requirements relative to notice, minutes, location, etc.

#### **II. Meetings Open to the Public: RSA 91-A:2, I**

- A “meeting” means the convening of a quorum of a board/board committee to discuss or act upon matters over which the board has supervision, control, or jurisdiction. A meeting does NOT include:
  - (1) Chance social encounters not intended for discussing or acting upon official matters (provided no decisions are made);
  - (2) Strategy or negotiations with respect to collective bargaining; or
  - (3) Consultation with legal counsel.
- Any person may record (video and/or audio) and publish any portion of a public meeting, without prior notice, subject only to limitations regarding meeting disturbances.

#### **III. Minutes of Public Meetings: RSA 91-A:2, II**

- Minutes shall be recorded and open to public inspection within 5 business days of the meeting (3 days for non-public).
- Minutes should include the names of board members, persons appearing before the board, a brief description of the subject matter discussed, all final decisions made, and the identities of persons who first or seconded any motion.
- The district’s website must either include meeting minutes, or indicate when/where minutes may be inspected.

#### **IV. Notice of Public Meetings – Regular, Special & Emergency: RSA 91-A:2, II**

- Absent an emergency (see next bullet), notice of the time and place of each meeting shall be posted in 2 places (one of which may be district’s website), or a local newspaper, at least 24 hours in advance (excluding Sundays and holidays).
- 24-hour notice may be waived only if the chair determines that “immediate un-delayed action is imperative (i.e., an “emergency”). In such instance, notice must be posted as soon as practicable with additional notice by other means that are available. *See section V for “emergency” for purposes of waiving physical location for meeting.*

#### **V. Public Location & Quorum Required – Special Circumstance Remote Participation: RSA 91-A:2, III**

- All public meetings require a physical location at which the public may attend and see/hear all parts of the meeting.
- A quorum of the public body must be in physical attendance at the meeting location absent a determination by chair that “immediate action is imperative and physical presence of quorum is not practicable” (i.e., an emergency).
- If a quorum is present, the board may allow additional members participate remotely if his/her/their physical attendance is not reasonably practicable. Such members will be deemed present for all purposes, including voting.
- In the instance of remote participation by any board member (1 or more), (a) all votes must be roll call; (b) public and members must be able to hear/see all parts of meeting; (c) members must disclose others present in remote location; and (d) minutes must include the nature of the emergency or the reason a member’s attendance is not reasonably practicable.

#### **VI. Non-Public Sessions: RSA 91-A:3, I and II**

- Boards may only enter non-public session pursuant to majority vote, roll-call, upon motion first and seconded.
- The vote to enter non-public session shall state the statutory reference for entering non-public session.
- Non-public sessions may only include matters permitted under 91-A:3, II; Only the following matters may be discussed in non-public session (the statute includes others which do not pertain to schools):
  - (1) The dismissal, promotion, compensation, disciplining, or investigation of changes of a public employee;
  - (2) The hiring of any person as a public employee;
  - (3) Matters that would adversely affect the reputation of any person, other than a member of the board;
  - (4) Consideration of the acquisition, sale, or lease of real estate or personal property;

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- (5) Consideration of pending claims or litigation against the school district;
- (6) Consideration of entering a tuition agreement to the extent necessary to maintain competitive position;
- (7) Consideration of legal advice (even when counsel is not present);
- (8) Consideration of matters relating to the preparation for any carrying out of emergency functions;
- (9) Consideration of whether to unseal minutes due to change in circumstances (vote must be in public).
- Discussions and decisions shall be confined to the matters set out in the motion to enter non-public session.

**VII. Minutes of Non-Public Sessions: RSA 91-A:3, III**

- Minutes and decisions made in non-public session must be available within 72 hours of the meeting, unless sealed.
- Boards may seal minutes of non-public session only if 2/3 majority roll call vote in public that divulgence would:
  - (1) Adversely affect the reputation of a person, other than a member of the board;
  - (2) Render a proposed action ineffective; or
  - (3) Relate to carrying out emergency functions.
- Sealed minutes re: sale/lease/purchase of property must be disclosed when transaction complete/suspended.
- Sealed minutes must be reviewed or unsealed w/in & every 10 years
- District must keep a log of all sealed non-public minutes (see last sentence of 91-A:3, III for required information).

**VIII. Minutes and Records Available for Public Inspection: RSA 91-A:4**

- Every citizen has the right to inspect public records, incl. e.g., minutes of meetings, & materials used to compile minutes.
- Citizens have the right to make memoranda, abstracts and photographic copies of the records or minutes.
- If records are not available for immediate release, the school district must:
  - (1) Make the records available within 5 business days;
  - (2) Deny the request in writing with the specific exemption authorizing the withholding and a brief explanation of how the exemption applies to the record withheld; or
  - (3) Provide a written acknowledgement of the request and a statement of the time necessary to determine whether the request shall be granted or denied.
- No fees are permitted for assembling, producing or allowing inspection. The district may, however, charge the “actual” cost of physical reproduction (e.g., per page copies, flash drive).

**IX. Records Exempt from Public Disclosure: RSA 91-A:5 (other exemptions may be found in other laws)**

- Personal school records of students (RSA 91-A:5, III)
- Records pertaining to internal personnel practices, or other records whose disclosure would constitute an invasion of privacy (RSA 91-A:5, IV) (balancing test required);
- Teacher certification records from the Department of Education (RSA 91-A:5, V);
- Records pertaining to the preparation for and carrying out of emergency functions (RSA 91-A:VI);
- Unique pupil identification information collected in accordance with applicable law (RSA 91-A:5, VII);
- Personal notes without official purpose, made before, during, or after public proceedings (RSA 91-A:5, VIII);
- Preliminary drafts, notes, etc. not in final form & not circulated or made available to a quorum (RSA 91-A:5, IX).

**X. Remedies, Violations, Breaches of Confidentiality**

- RSA 91-A:8, I. The district will be liable for attorney fees and costs incurred in a lawsuit if the court finds the lawsuit was necessary to make public documents available.
- RSA 91-A:8, I. The court may award fees personally against school officials if the board officer or district employee acted in bad faith in refusing to allow access to a public meeting or to provide a public record.
- RSA 91-A:8, II. The court may invalidate board action taken at a meeting held in violation of the Right to Know Law.
- RSA 42:1-a, II. A board member or district officer may be removed from office if he/she divulges information that:
  - (1) The school board voted to withhold from the public pursuant to RSA 91-A:3, III; or
  - (2) The board member knew/should have known information was exempt from disclosure, divulgence is an invasion of privacy, would adversely affect reputation of non-board member, OR render board action ineffective.

**XI. Court / Right to Know Law Ombudsman: RSA 91-A:7 through 91-A:7**

- RSA 91-A:7-7-d. In 2022, the Legislature passed HB481, created 2yr trial period in which “Right to Know Law Ombudsman” and Super Ct. have concurrent jurisdiction re RTK disputes.





# **RSA 91-A – NH’s RIGHT TO KNOW LAW**

## **Excerpts Pertinent to School Districts and SAUs**

### *As of September 2023*

*[Parts not pertinent to School Districts or School Administrative Units Omitted]*  
*New language from 2023 Legislative Session bold and italicized.*

**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) .....
  - (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 nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. The names of the member who made or seconded each motion shall be recorded in the minutes. Subject to the provisions of RSA 91-A:3, minutes 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.
- II-a. If a member of the public body believes that any discussion in a meeting of the body, including in a nonpublic session, violates this chapter, the member may object to the discussion. If the public body continues the discussion despite the objection, the objecting member may request that his or her

objection be recorded in the minutes and may then continue to participate in the discussion without being subject to the penalties of RSA 91-A:8, IV or V. Upon such a request, the public body shall record the member's objection in its minutes of the meeting. If the objection is to a discussion in nonpublic session, the objection shall also be recorded in the public minutes, but the notation in the public minutes shall include only the member's name, a statement that he or she objected to the discussion in nonpublic session, and a reference to the provision of RSA 91-A:3, II, that was the basis for the discussion.

- II-b. (a) If a public body maintains an Internet website or contracts with a third party to maintain an Internet website on its behalf, it shall either post its approved minutes in a consistent and reasonably accessible location on the website or post and maintain a notice on the website stating where the minutes may be reviewed and copies requested.
- (b) If a public body chooses to post meeting notices on the body's Internet website, it shall do so in a consistent and reasonably accessible location on the website. If it does not post notices on the website, it shall post and maintain a notice on the website stating where meeting notices are posted.
- 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. 2016, 29:1, eff. Jan. 1, 2017. 2017, 165:1, eff. Jan. 1, 2018; 234:1, eff. Jan. 1, 2018. 2018, 244:1, eff. Jan. 1, 2019.

### **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: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 by or against the public body or any subdivision thereof, or by 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) ~~[parole applications]~~
  - (g) ~~[prison/jail security]~~
  - (h) ~~[business finance authority]~~

- (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) [exempt information under 91-A:5, IV in an adjudicative proceeding to RSA 541 or RSA 541-A.]~~
- (k) Consideration by a school board of entering into a student or pupil tuition contract authorized by RSA 194 or RSA 195-A, which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general public or the school district that is considering a contract, including any meeting between the school boards, or committees thereof, involved in the negotiations. A contract negotiated by a school board shall be made public prior to its consideration for approval by a school district, together with minutes of all meetings held in nonpublic session, any proposals or records related to the contract, and any proposal or records involving a school district that did not become a party to the contract, shall be made public. Approval of a contract by a school district shall occur only at a meeting open to the public at which, or after which, the public has had an opportunity to participate.
- (l) Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.
- (m) Consideration of whether to disclose minutes of a nonpublic session due to a change in circumstances under paragraph III. However, any vote on whether to disclose minutes shall take place in public session.

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 of such sessions shall record all actions in such a manner that the vote of each member is ascertained and recorded. 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 taken in public session, 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. For all meetings held in nonpublic session, where the minutes or decisions were determined to not be subject to full public disclosure, a list of such minutes or decisions shall be kept and this list shall be made available as soon as practicable for public disclosure. This list shall identify the public body and include the date and time of the meeting in nonpublic session, the specific exemption under paragraph II on its face which is relied upon as foundation for the nonpublic session, the date of the decision to withhold the minutes or decisions from public disclosure, and the date of any subsequent decision, if any, to make the minutes or decisions available for public disclosure. Minutes related to a discussion held in nonpublic session under subparagraph II(d) shall be made available to the public as soon as practicable after the transaction has closed or the public body has decided not to proceed with the transaction.

#### **IV. [EFFECTIVE 10/3/23 – HB321]**

- (a) ***A public body or agency may adopt procedures to review minutes of meetings held in nonpublic session and to determine by majority vote whether the circumstances that justified keeping meeting minutes from the public under RSA 91-A:3, III no longer apply. If the public body determines that those circumstances no longer apply, the minutes shall be available for release to the public pursuant to this chapter.***

*(b) In the absence of an adopted procedure to review and determine whether the circumstances no longer apply for meeting minutes kept from the public, the public body or agency shall review and determine by majority vote whether the circumstances that justified keeping meeting minutes from the public under RSA 91-A:3, III no longer apply. This review shall occur no more than 10 years from the last time the public body voted to prevent the minutes from being subject to public disclosure. Meeting minutes that were kept from the public prior to the effective date of this paragraph that are not reviewed by the public body or agency within 10 years of the effective date of this paragraph shall be subject to public disclosure without further action of the public body.*

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. 2015, 19:1; 49:1; 105:1, eff. Jan. 1, 2016; 270:2, eff. Sept. 1, 2015. 2016, 30:1, eff. Jan. 1, 2017; 280:1, eff. June 21, 2016. 2021, 163:1. 2021, 172:1. **2023, 189:1, eff. Oct. 3, 2023.**

#### **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. (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.
- (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.
- (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.
- 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. 2016, 283:1, eff. June 21, 2016. 2019, 163:2.

**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.
- X. Video and audio recordings made by a law enforcement officer using a body-worn camera pursuant to RSA 105-D except where such recordings depict any of the following:
  - (a) Any restraint or use of force by a law enforcement officer; provided, however, that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.
  - (b) The discharge of a firearm, provided that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.
  - (c) An encounter that results in an arrest for a felony-level offense, provided, however, that this exemption shall not apply to recordings or portions thereof that constitute an invasion of privacy or which are otherwise exempt from disclosure.
- XI. Records pertaining to information technology systems, including cyber security plans, vulnerability testing and assessments materials, detailed network diagrams, or other materials, the release of which would make public security details that would aid an attempted security breach or circumvention of law as to the items assessed.
- XII. Records protected under the attorney-client privilege or the attorney work product doctrine.

**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. 2016, 322:3, eff. Jan. 1, 2017. 2019, 54:1. 2021, 163:2.

**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. – [omitted; not pertinent]**

**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.

**NHSBA NOTE: In 2022, the NH Legislature passed HB481 adopting a temporary amendment to RSA 91-A:7, and adopting temporary sections 91-A:7-a through 91-A:7-d. Together, the provisional sections create a trial “Office of the Right-to-Know Ombudsman”, whose purpose is to “provide the public with a simpler, less expensive, and faster alternative process to resolve complaints under RSA 91-A.” Unless the Legislature takes further action prior to July 1, 2025, the following section 91-A:7, will take replace the above 91-A:7, and 91-A:7-a through 91-A:7-d will expire.**

**[RSA 91-A:7 effective until July 1, 2025; see also RSA 91-A:7 set out below.]**

**91-A:7 Violation. –**

- I. 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.
- II. In lieu of the procedure under paragraph I, an aggrieved person may file a complaint with the ombudsman under RSA 91-A:7-a and in accordance with RSA 91-A:7-b.
- III. A person's decision to petition the superior court forecloses the ability to file a complaint with the ombudsman pursuant to RSA 91-A:7-b.
- IV. A person's decision to file a complaint with the ombudsman forecloses the ability to petition the superior court until the ombudsman issues a final ruling or the deadline for such a ruling has passed.

**[RSA 91-A:7 effective July 1, 2025; see also RSA 91-A:7 set out above.]**

**The below language is identical to 91-A:7 as it appeared prior to the 2022 amendment, with the exception of the highlighted language, which was added by way of HB481.**

**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. **Subject to objection by either party, all documents filed with the petition and any response thereto shall be considered as evidence by the court. All documents submitted shall be provided to the opposing party prior to a hearing on the merits.** 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. 2018, 289:1, eff. Jan. 1, 2019. 2022, 250:2, eff. July 1, 2022; 250:5, eff. July 1, 2025.

**[RSA 91-A:7-a repealed by 2022, 250:6, effective July 1, 2025.]**

#### **91-A:7-a Office Established. –**

*There is hereby established the office of the right-to-know ombudsman to be administratively attached to the department of state under RSA 21-G:10. The ombudsman shall be appointed by the governor and council and shall have the following minimum qualifications:*

- I. Be a member of the New Hampshire bar.*
- II. Have a minimum of 5 years full-time practice of law in any jurisdiction.*
- III. Be experienced with and knowledgeable of the provisions of this chapter and all New Hampshire laws regarding right-to-know.*
- IV. Annually, complete a minimum of 3 hours of continuing legal education courses or other training relevant to the provisions of this chapter.*

**Source.** 2022, 250:3, eff. July 1, 2022.

**[RSA 91-A:7-b repealed by 2022, 250:6, effective July 1, 2025.]**

#### **91-A:7-b Complaint Process. –**

- I. Any party aggrieved by a violation of this chapter shall have the option to either petition the superior court or file a signed, written complaint, along with a \$25 fee, with the office of the ombudsman, established under RSA 91-A:7-a. The ombudsman shall have the discretion to waive the \$25 fee upon a finding of inability to pay. Any signed, written complaint filed with the ombudsman shall attach, if applicable, the request served on the public agency or official and the written response of the public agency or official. The complaint shall be deemed sufficient if it states facts constituting a violation of this chapter.*
- II. Once a complaint has been filed and provided by the ombudsman to the public body or public agency, the public body or public agency shall have 20 calendar days to submit an acknowledgment of the complaint and an answer to the complaint, which shall include applicable law and, if applicable, a justification for any refusal to or delay in producing the requested governmental records, access to meetings open to the public, or otherwise comply with the provisions of this chapter. This 20-day deadline may be reasonably extended by the ombudsman for good cause.*
- III. In reviewing complaints, the ombudsman shall be authorized to:*
  - (a) Compel timely delivery of governmental records within a period not less than 14 days or more than 30 days unless an expedited hearing is warranted, regardless of medium and format, and conduct a confidential in-camera review of records where the ombudsman concludes that it is necessary and appropriate under the law.*
  - (b) Compel interviews with the parties.*
  - (c) Order attendance at hearings within a reasonable time if the ombudsman determines that a hearing is necessary. Such hearings shall be open subject to the provisions of RSA 91-A.*

- (d) *Issue findings in writing to all parties.*
  - (e) *Order a public body or public agency to disclose requested governmental records within a reasonable time, provide access to meetings open to the public, or otherwise comply with the provisions of this chapter, subject to appeal.*
  - (f) *Make any finding and order any other remedy to the same extent as provided by the court under RSA 91-A:8.*
- IV. *The ombudsman may draw negative inferences from a party's failure to participate and comply with orders during the review process.*
  - IV. *The ombudsman shall determine whether there have been any violations of this chapter and issue a ruling within 30 calendar days following the deadline for receipt of the parties' submissions. This 30-day deadline may be extended to a reasonable time frame by the ombudsman for good cause. The ombudsman may also expedite resolution of the complaint upon a showing of good cause. Rulings on expedited complaints shall be issued within 10 business days, or sooner where necessary.*
  - V. *The ombudsman shall, where necessary and appropriate under the law, access governmental records in camera that a public body or public agency believes are exempt in order to make a ruling concerning whether the public body or public agency shall release the records or portions thereof to the public. The ombudsman shall maintain the confidentiality of records provided to the ombudsman by a public body or public agency under this section and shall return the records to the public body or public agency when the ombudsman's review is complete. All records submitted to the ombudsman for review shall be exempt from the public disclosure provisions of RSA 91-A during such review.*
  - VI. *Nothing in this section shall affect the ability of a person to seek relief in superior court under RSA 91-A:7, I in lieu of this process.*

Source. 2022, 250:3, eff. July 1, 2022.

**[RSA 91-A:7-c repealed by 2022, 250:6, effective July 1, 2025.]**

**91-A:7-c Appeal and Enforcement. –**

- I. *Any party may appeal the ombudsman's final ruling to the superior court by filing a notice of appeal in superior court no more than 30 calendar days after the ombudsman's ruling is issued. The ombudsman's ruling shall be attached to the document initiating the appeal, admitted as a full exhibit by the superior court, considered by the judge during deliberations, and specifically addressed in the court's written order. Citizen-initiated appeals shall have no filing fee or surcharge. The public body or public agency shall pay the sheriff's service costs if the public body or public agency, or its attorney, declines to accept service. Nothing in this section shall prevent a superior court from staying an ombudsman's decision pending appeal to the superior court.*
- II. *On appeal, the superior court shall treat all factual findings of the ombudsman as prima facie lawful and reasonable, and shall not set them aside, absent errors of law, unless it is persuaded by a balance of probabilities on the evidence before it that the ombudsman's decision is unreasonable.*
- III. *If the ombudsman's final ruling is not appealed, the ombudsman shall, after the deadline has passed, follow up with all parties, as required, to verify compliance with rulings issued.*
- IV. *The ombudsman's final rulings which are not appealed may be registered in the superior court as judgments and enforceable through contempt of court. If such action is necessary to enforce compliance, all costs and fees, including reasonable attorney fees, shall be paid by the noncompliant public body or public agency.*

Source. 2022, 250:3, eff. July 1, 2022.

**[RSA 91-A:7-d repealed by 2022, 250:6, effective July 1, 2025.]**

**91-A:7-d Rulemaking.** –

*The ombudsman shall adopt rules pursuant to RSA 541-A relative to:*

- I. *Establishing procedures to streamline the process of resolving complaints under this chapter.*
- II. *Hearing procedures.*
- III. *Other matters necessary to the proper administration of RSA 91-A:7-a through RSA 91-A:7-c.*

**Source.** 2022, 250:3, eff. July 1, 2022.

**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.

**91-A:10 Release of Statistical Tables and Limited Data Sets for Research.** – *[Omitted, not pertinent]*

*Compiled by the New Hampshire School Boards Association for NHSBA Members. Note that as RSA 91-A is amended almost every year, NHSBA updates this resource as often as necessary (usually in late Fall or early Spring.)* wjp/quick/RSA 91-A as of 2023-3 Excerpts for School Districts

