



NEW HAMPSHIRE MUNICIPAL ASSOCIATION



How to Handle Voluminous Records Requests

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Our Presenters



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Start by asking, “Is it a governmental record?” (RSA 91-A:1-a)



GOVERNMENTAL RECORDS



CREATED, ACCEPTED, OR OBTAINED BY QUORUM OF A *PUBLIC BODY*



Records created, accepted, or obtained by ***less than*** a quorum of a public body ***is not*** a governmental record.

An email exchange between an individual governing body member and a constituent is not a governmental record because it was not obtained by a quorum of a public body.

If the governing body member is acting on behalf of the entire public body, an email exchange with a constituent would likely be a governmental record.



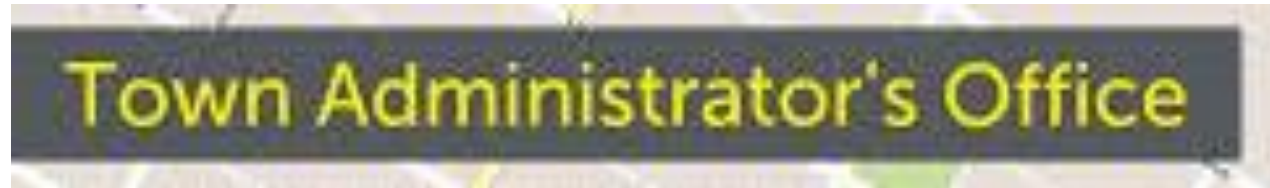
CREATED, ACCEPTED, OR OBTAINED BY A *PUBLIC AGENCY*



A “public agency” is any agency, authority, department, or office of the town, school district, or village district. RSA 91-A:1-a, V.



Information constitutes a governmental record if it is “created, accepted, or obtained by, or on behalf of, ... any public agency in furtherance of its official function.” RSA 91-A:1-a, III.



ACCESS TO GOVERNMENTAL RECORDS

The provisions of RSA Chapter 91-A are construed in a manner favoring disclosure and interpreting the exemptions to disclosure restrictively.



An individual's motives in seeking disclosure of public records are irrelevant to the question of access under the Right-to-Know Law.



AVAILABILITY OF GOVERNMENTAL RECORDS

PUBLIC RECORDS

AVAILABLE
HERE

Governmental records should be available during the regular business hours of the public body or agency, **BUT:**

- A record may be temporarily unavailable because it is being used by public officials.
- Citizens can be asked to make an appointment to review records.



We have



...right?



Brent v. Paquette, 132 N.H. 415 (1989)

RTK ***does not*** direct that records be provided immediately upon request. Records must be provided when they are immediately available for release.

RTK ***does not*** give citizens the unfettered right to review governmental records in any quantity and wherever kept immediately upon demand.



Brent v. Paquette, 132 N.H. 415 (1989)

Public offices function more efficiently where record keepers plan their days around pre-arranged appointments, and not be forced to interrupt their work whenever a citizen “drops by” to inspect a public record.

RTK ***does not*** require the official to explain why the record was not immediately available if the official provides the citizen with the record within five days.



New Hampshire Civil Liberties Union v. City of Manchester, 149 N.H. 437 (2003)

Requestor sought: photographs taken by police officers of people who were stopped but not arrested.

RTK does not require document compilation.

To “compile” is “to collect and assemble (written material or items from various sources) into a document or volume or a series of documents or volumes.”





In 2013, the US Public Interest Research Group gave New Hampshire what letter grade for providing online access to government spending data?

1. A
2. A-
3. B
4. B-
5. C



New Hampshire Civil Liberties Union v. City of Manchester, 149 N.H. 437 (2003)

RTK requests often require a public official to retrieve multiple documents.

The ruling in *Brent v. Paquette* shields agencies from having to create a new document in response to a RTK request, it does not shelter them from having to assemble existing documents in their original form.



ATV Watch v. DRED, 155 N.H. 434 (2007)

The time period for responding to a Right-to-Know request is absolute: make public records available when they are immediately available for release, or otherwise, *within five business days of RTK request*:

- (1) make the records available;
- (2) deny the request in writing with reasons; or
- (3) acknowledge receipt of the request in writing with a statement of the time reasonably necessary to determine whether the request will be granted or denied.



ATV Watch v. NH Dept. of Transportation, 161 N.H. 746 (2011)



Records sought: all governmental records in the custody or control of NHDOT related to motorized use of New Hampshire's rail trails that were purchased with Federal Transportation Enhancement Funds.



ATV Watch v. NH Dept. of Transportation, 161 N.H. 746 (2011)

Duty to search for records: the agency must show beyond material doubt that it has conducted a search reasonably calculated to uncover all relevant documents. This burden can be met by producing affidavits that are relatively detailed, nonconclusory, and submitted in good faith. Once the agency meets its burden to show that its search was reasonable, the burden shifts to the requester to rebut the agency's evidence by showing that the search was not reasonable or was not conducted in good faith.



Organize the RTK Document Production Process

- Appoint or identify one employee who is responsible.
- Keep a log of all RTK requests, noting date of receipt, date of initial response, and final response.
- Consider policy like Auburn's that governs RTK requests.



Review Request

- Is the request reasonably described?
- Is the request from a NH citizen?
- Does the request seek information that is exempt from disclosure?
- Is the request from an attorney or law firm already in litigation with the town?
- Does the request raise red flags such that town counsel should be consulted?



Search For and Evaluate Time Necessary to Assemble response



- Physical vs. electronic files
- Time allocation calculation
- Keep diary of places searched and time spent



Response

- Send acknowledgement of receipt letter within 5 business days.
- Provide estimate of time to produce.
- Provide notice of copying cost.
- State that if cost is greater than \$50 will require prepayment.
- Special production costs.



SUBJECT: [REDACTED]
Address: [REDACTED]

Telephone: [REDACTED]

Represented by council: [REDACTED]
[REDACTED]



Date of Interview: February 28, 2006

Following a series of discussions between counsel, [REDACTED] consented to a "free talk" interview to be conducted at the offices of the United States Attorney for the District of Arizona, in Phoenix, AZ. [REDACTED] was accompanied by counsel [REDACTED] throughout the interview. AUSA [REDACTED] and NPS Supervisory Special Agent [REDACTED] were present for the government.

As noted, it was previously agreed upon that this interview would take place under the provisions of a "free talk" agreement. A copy of that agreement is attached [See Attachment # 17].

[REDACTED]

Finally, in 1981 or 1982 [REDACTED] was selected for the position of [REDACTED] at Hubbell Trading Post, in Ganado, AZ, working for Southwest Parks and Monuments Association, later known as Western National Parks Association. [REDACTED] estimated [REDACTED] salary at HTP as approximately \$12 per hour, for a forty-hour work week. [REDACTED] added that [REDACTED] was routinely paid an additional monthly bonus check based upon the volume of sales realized at the trading post; typically around \$800 or \$900 per month. [REDACTED] stated that [REDACTED] usually cashed [REDACTED] paychecks and bonus checks at the Tee Bonito (NM) branch of the Bank of America.

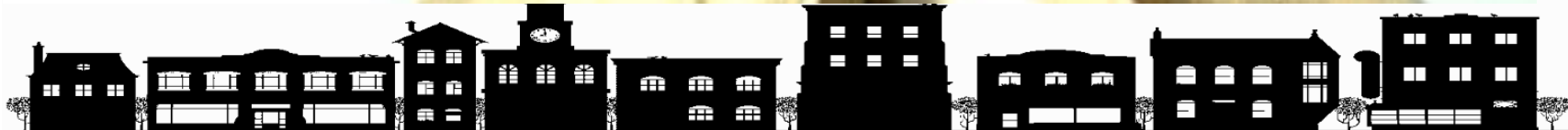
[REDACTED]

REDACT EXEMPT
INFORMATION.



A background image showing several coins of various denominations falling through the air against a light blue background. The coins are in motion, creating a sense of falling money.

**REASONABLE
FEES
ALLOWED.**







9:00 am—4:30 pm

Wednesday, September 12
Derryfield Banquet Facility
Manchester

Thursday, September 20
Mountain Club on Loon
Lincoln



2018

Budget & Finance Workshops

Sponsored by:



Register online at www.nhmunicipal.org under Calendar of Events

Cost is \$90 and includes continental breakfast, lunch, and a copy of NHMA's 2017 edition and 2018 supplement of *The Basic Law of Budgeting: A Guide for Towns, Village Districts, and School Districts*.

Fundamentals of the Municipal Budget Process

Using the 2017 edition of NHMA's *Basic Law of Budgeting* and the 2018 *Supplement* as a guide, this full-morning session will address all aspects of the municipal budget process focusing on appropriations, gross-basis budgeting, separate vs. special warrant articles, multi-year contracts, transfers, lapses, spending limitations, no-means-no, duties of official budget committees, disallowed appropriations, special budget requirements under the SB 2 process (official ballot voting) including recent law changes, and other topics. This session is a must for members of governing bodies, budget committees, and other local officials involved in the budget process. Ample time will be provided for questions and answers.

Presented by: Stephen Buckley, NHMA Legal Services Counsel, and Margaret Byrnes, NHMA Staff Attorney II.

How to Pay for the Budget You Want

This session will address the numerous ways to finance the municipal budget including user fees, reserve and special revenue funds, unanticipated revenue, use of fund balance, long-term debt, leases, Tax Increment Financing (TIF), and of course property taxation. The importance of multi-year planning using capital improvement plans will be explained, as well as an overview of state aid available to municipalities.

Presented by: Stephen Buckley, NHMA Legal Services Counsel and Barbara Reid, NHMA Government Finance Advisor.

Understanding the Property Tax System

This session will describe how the property tax system works, including school, county and village district components of property tax rates. Participants will better understand the difference between "assessed" and "equalized" property values, how those values are used in the tax rate setting process, and how to estimate budgetary impacts on the property tax rate in their municipality.

Presented by: Barbara Reid, NHMA Government Finance Advisor.

Data Analysis for Decision-Making

The final session of the day will explore the information and data available to municipal officials and the public on the New Hampshire Public Finance Consortium website. This Data Model was developed to provide access to consistent and timely data about New Hampshire local governments utilizing financial information reported annually by cities and towns to the Department of Revenue Administration, along with other information, with a goal of helping to analyze trends and provide relevant comparisons.

Presented by: Barbara Reid, NHMA Government Finance Advisor.





2 Right-to-Know Workshops

Each \$75 and includes breakfast and publication
NHMA offices, 25 Triangle Park Drive, Concord

The Right-to-Know Law (RSA Chapter 91-A) affects every aspect of local government in our state. Every board, committee, commission, and advisory committee in every town, city, and village district in New Hampshire must comply with this law, which requires that discussions and actions of these bodies take place in a public meeting, subject to exceptions.

Public Meetings and Nonpublic Sessions

9:00 am—12:30 pm
Friday, September 28

Join Legal Services Counsel Stephen Buckley and Staff Attorney Margaret Byrnes, who will discuss the requirements for holding a proper public meeting, as well as the exceptions to the meeting requirement (the so-called "non-meeting"). Then the attorneys will discuss the purposes for which public bodies may hold a nonpublic session, as well as the procedural requirements for a proper nonpublic session. This workshop will also address difficult "meeting" issues, such as communications outside a meeting and electronic means of communicating. There will be ample time for questions and answers.

Who Should Attend?

Everyone in Municipal Government



Includes Top Ten Compliance Tips
Public Meeting & Governmental Records Posters
Is it a Meeting Flow Chart
Remote Participation Checklist
And More!

Attendees receive the NHMA publication, *A Guide to Open Government: New Hampshire's Right-to-Know Law*.

The Right-to-Know Law and Governmental Records

9:00 am—12:30 pm
Tuesday, October 16

Join NHMA's Legal Services Counsel Stephen Buckley and Staff Attorney Margaret Byrnes who will share strategies to assist municipalities in handling governmental record matters arising under the Right-to-Know Law. Guidance will be provided on determining what is a governmental record, where records must be stored, and when and how access and copies of public records must be provided. This workshop will also address what records are exempt from disclosure, along with whether a record request that would require a search for multiple documents must be fulfilled or whether a request impermissibly seeks to create a record that does not exist. In addition, guidance will be provided on the retention of governmental records and how claims under the Right-to-Know Law are enforced.

***RSA 91-A Impacts Every
Aspect of Municipal
Government in our State.***

For registration information, visit
www.nhmunicipal.org
under Calendar of Events.
Questions? Call 800.852.3358 or email
NHMARegistrations@nhmunicipal.org



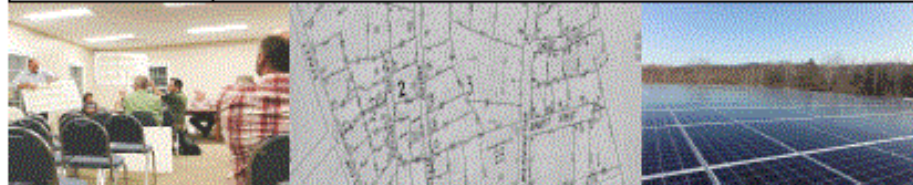


2018 Municipal Law Lecture Series

\$90 for three lectures / \$35 per lecture

These lectures are intended for members of the New Hampshire Municipal Association particularly for municipal officials with an interest in or responsibility for any aspect of municipal land use regulation, including members of planning and zoning boards, planners, land use administrators, select boards, town and city councilors, building inspectors, code enforcement officers, and public works personnel.

	<i>Lecture 1</i>	<i>Lecture 2</i>	<i>Lecture 3</i>
	<i>Planning Board Procedural Basics</i>	<i>How to Read a Survey Plan</i>	<i>Solar Power & Land Use</i>
Presenters:	C. Christine Fillmore, Esq. Gardner, Fulton & Waugh, PLLC Diane M. Gorrow, Esq. Soule, Leslie, Kidder, Seyward & Loughman, PLLC	Stephan Nix, Esq., Licensed Land Surveyor Nate Miller, AICP, Deputy Director Southern NH Planning Commission	Clayton R. Mitchell, Ph.D., Esq. University of NH John T. Ratigan, Esq. Donahue, Tucker & Ciandella, PLLC
Locations:			
Cheshire County Hall 12 Court Street Keene	Wednesday September 26 7:00 pm—9:00 pm	Wednesday October 3 7:00 pm—9:00 pm	Wednesday October 10 7:00 pm—9:00 pm
Derry Municipal Ctr., 14 Manning Street Derry	Wednesday October 10 7:00 pm—9:00 pm	Wednesday September 26 7:00 pm—9:00 pm	Wednesday October 3 7:00 pm—9:00 pm
Stratham Municipal Ctr. 10 Bunker Hill Ave. Stratham	Wednesday October 3 7:00 pm—9:00 pm	Wednesday October 10 7:00 pm—9:00 pm	Wednesday September 26 7:00 pm—9:00 pm
NHMA Offices 25 Triangle Park Drive Concord	Saturday, October 20 9:00 am—4:00 pm Continental Breakfast & Registration begin at 8:30 am		



For registration information, visit www.nhmunipal.org
under Calendar of Events.
Questions? Call 800.852.3358 or email NHMAregistrations@nhmunipal.org.





Sharing Ideas: *Shaping the Future*

2018 Annual Conference

Wednesday and Thursday, November 14 & 15, 2018

Manchester Downtown Hotel, Manchester, NH





*for attending
our webinar today!*

Mission Statement

The New Hampshire Municipal Association is a nonprofit, non-partisan association working to strengthen New Hampshire cities and towns and their ability to serve the public as a member-funded, member-governed and member-driven association since 1941. We serve as a resource for information, education and legal services. NHMA is a strong, clear voice advocating for New Hampshire municipal interests.

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