



VIRTUAL

WORKSHOP



The Right-to-Know Law for Law Enforcement

October 19, 2022

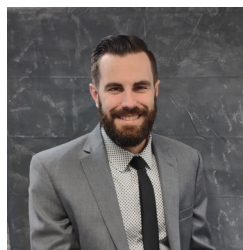
Stephen C. Buckley, Legal Services Counsel
Jonathan Cowal, Municipal Services Counsel

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Today's Presenters



Stephen Buckley
Legal Services Counsel

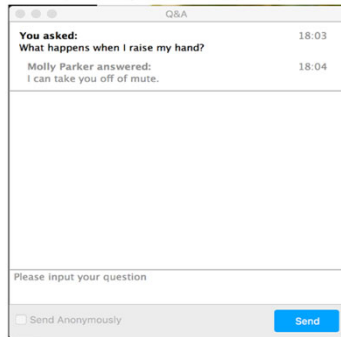


Jonathan Cowal
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How Do I Ask a Question?



The screenshot shows a Zoom Q&A window titled "Q&A". It displays a question: "You asked: What happens when I raise my hand?" with a timestamp of 18:03. Below it, an answer is shown: "Molly Parker answered: I can take you off of mute." with a timestamp of 18:04. At the bottom, there is a text input field with the placeholder "Please input your question", a checkbox for "Send Anonymously", and a blue "Send" button.

The chat function for this workshop has been disabled.

In order to ask a question of our host or a panelists, open the Q&A function found in the Zoom toolbar. Type you questions in the Q&A and they will be answered in the order they are received.

Once your question has been answered, it will then appear under the *Answered* tab.

legalinquiries@nhmunicipal.org/603.224.7447/www.nhmunicipal.org



NHMA's Legal Advisory Services

Open 8:30 a.m. – 4:30 p.m.

- Email: legalinquiries@nhmunicipal.org
- Phone: 603-224-7447

Provide general legal advice

- Not comprehensive legal review of documents
- Not drafting individualized ordinances or charters
- Not reviewing specific applications before local boards
- Not settle intra-municipal disputes

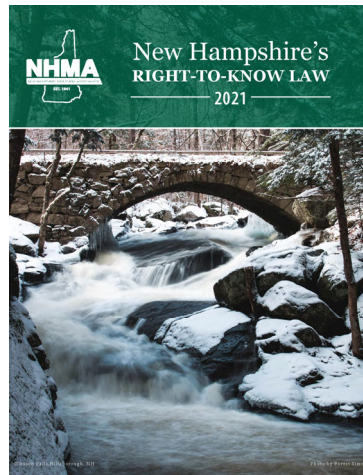
Goal: Response w/in 48 hours

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NHMA's Publication:
New Hampshire's Right-to-Know Law

- ▶ Glossary
- ▶ Law Enforcement Guidance
- ▶ Complete copy 91-A & 33-A
- ▶ Table of Cases
- ▶ Table of Statutes



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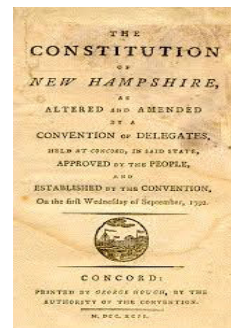
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The Right-to-Know Law RSA Chapter 91-A

PART I, ARTICLE 8 OF THE NH
Constitution: Government ...
should be open,

SECTION 1 OF RSA 91-A:

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.



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RSA 91-A:4, I: Any Citizen Can Request Records



- ▶ No definition of “citizen” in statute or relevant case-law, but, presumably, at least a New Hampshire citizen.
- ▶ Best practice is anyone who shows up should be assumed to qualify as a “citizen” for the purposes of requesting records.
- ▶ This can make online requests tricky.

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What They’re Requesting Must Be “Reasonably Described”



- ▶ Municipal employees must know what they are looking for in the voluminous materials kept by the municipality.
- ▶ Municipal employees do have an obligation to clarify with the citizen what the citizen is requesting. *Salcetti v. City of Keene*, No. 2019-0217 (June 3, 2020) (speaking in *dicta* about a “spirit of collaboration”).
- ▶ This may require a clarifying phone call.

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Search for Records Must Be Reasonable



- ▶ Whatever record is requested must also be met with a reasonably calculated search by the municipality to uncover the record. *ATV Watch v. N.H. Dep't of Transp.*, 161 N.H. 746 (2011).
- ▶ The crucial issue is not whether relevant documents might exist, but whether the agency's search was reasonably calculated to discover the requested documents.
- ▶ This can have major implications in electronic records searches.

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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.

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

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Three Key Steps

STEP 1: Is it a
Governmental Record?

STEP 2: Is the record
exempt from disclosure?

STEP 3: Make available
non-exempt records.

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Is it a
governmental
record?

RSA 91-A:1-a

Any information

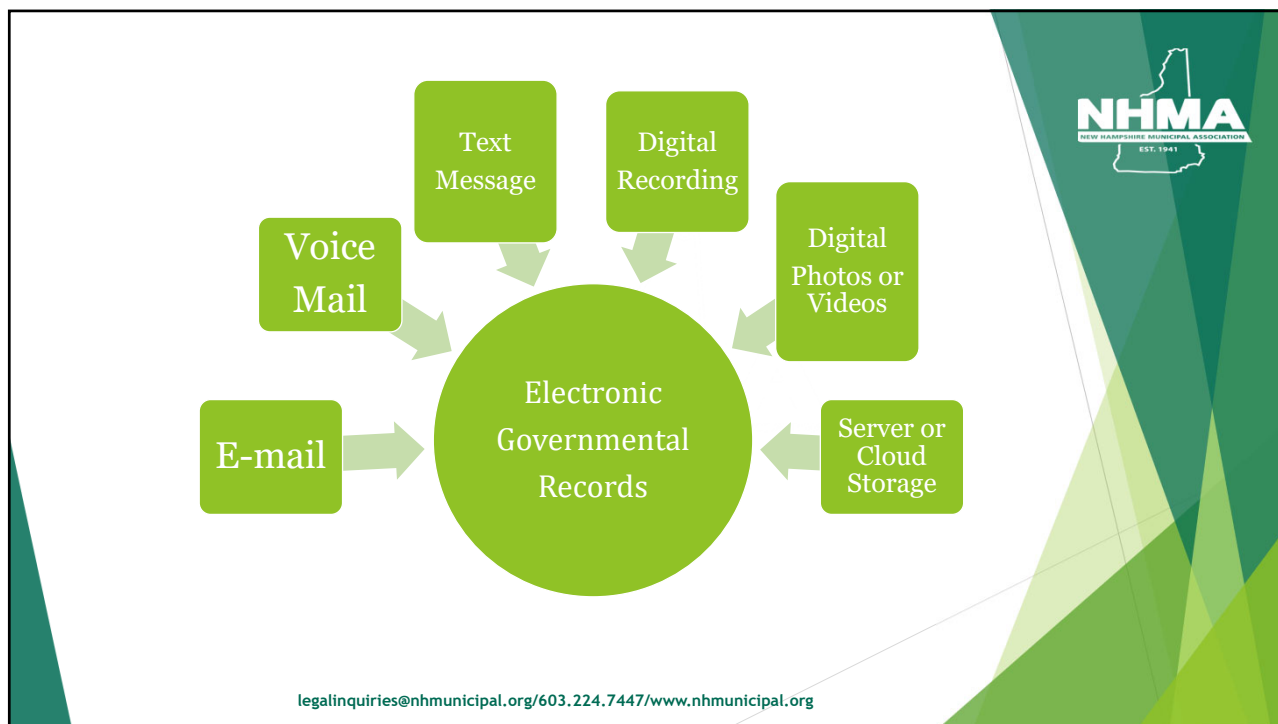
- created
- accepted, or
- obtained

By, or on behalf of,

- any public body, or a quorum or majority thereof or
- any public agency

in furtherance of its official function

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Is the Record Exempt from Disclosure?

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NEW HAMPSHIRE MUNICIPAL ASSOCIATION
EST. 1941

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If Not Exempt, Disclose

- ▶ Right to inspect, copy, and make notes of records
- ▶ →Electronic Records, RSA 91-A:4, V
- ▶ Records should be available on regular business premises during regular business hours
- ▶ Record must be reasonably described
- ▶ There is no obligation to compile, cross reference or assemble records
- ▶ Motive is irrelevant



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We have 5
days...

...right?



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“Something” w/in 5 Days

As of Jan. 1, 2020, municipalities must:

- Provide a written statement of time necessary to determine whether request granted or denied; AND
- *Provide a reason for the delay!*
- Amendment to RSA 91-A:4, IV – HB 396 – 2019 NH Laws Chapter 107

NHMA Suggestion for Reason for Delay –

- Need time to determine whether or not record exists;
- Need time to determine whether it is disclosable;
- If disclosable, need time to determine how much time it will take to make the requested records ready for review or copying

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- ▶ Records must be provided *only* when they are immediately available for release.
- ▶ RTK *does not* give citizens the right to review records in any quantity and wherever kept immediately upon demand.
- ▶ Requiring appointment to review records permitted

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

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- ▶ 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.
- ▶ 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.

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

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No flat fees!

- ▶ **ONLY
REASONABLE
FEES ARE
ALLOWED!**



- ▶ RSA 91-A:4, IV



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Exemptions to Disclosure

- ▶ **RSA 91-A:5** provides a list of records exemptions:
 - ▶ Some are categorical exemptions, such as the master jury list or teacher certification records.
 - ▶ Some require detailed analysis, such as “personnel records whose disclosure would constitute invasion of privacy.”
- ▶ **Other statutes and case law** also contain exemptions.
- ▶ The Right-to-Know Law’s purpose is to provide the utmost information to the public about what its government is up to.
- ▶ When a public body or agency seeks to avoid disclosure of material under the Right-to-Know Law, that entity bears a heavy burden.



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“Internal Personnel Practices” RSA 91-A:5, IV

- ▶ Recent Reinterpretation of Law by N.H. Supreme Court
- ▶ Formerly: “Internal Personnel Practices” was a broad category separate and apart from any privacy balancing test.
- ▶
- ▶ Now, Internal Personnel Practices is no longer a categorical exemption and is likely going to be subject to the same privacy vs. public balancing test as established in a series of recent cases



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Seacoast Online v. Portsmouth



- ▶ Superior Court decision that denied public access to an arbitration ruling concerning the dismissal of a Portsmouth police officer
- ▶ The NH Supreme Court overruled its decision in *Union Leader Corp. v. Fenniman*, 136 N.H. 624 (1993) to the extent that decision too broadly interpreted the “internal personnel practices” exemption under RSA 91-A:5, IV.
- ▶ Henceforth, the “internal personnel practices” exemption only applies to records pertaining to the internal rules and practices governing an agency’s operations and employee relations, and not information concerning the performance of a particular employee.
- ▶ The internal personnel practices exemption in RSA 91-A:5, IV only applies to matters that are inherently minor or trivial, such as rules regarding the use of parking facilities or the regulation of lunch hours.

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Union Leader v. Salem

If governmental records are properly classified as “internal personnel practices” then whether such records are subject to disclosure depends on evaluating whether that disclosure would constitute an invasion of privacy.

- *First, evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. If no privacy interest is at stake, the Right-to-Know Law mandates disclosure.*
- *Second, assess the public's interest in disclosure. Disclosure of the requested information should inform the public about the conduct and activities of their government.*
- *Finally, balance the public interest in disclosure against the government's interest in nondisclosure and the individual's privacy interest in nondisclosure.*

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Provenza v. Canaan

- ▶ Provenza sought to prevent the public disclosure of an internal investigative report that had exonerated him from a claim of excessive force arising out of a traffic stop citing the "internal personnel practices" exemption.
- ▶ Superior Court concluded that the report was subject to disclosure under RSA 91-A. This decision was appealed to the Supreme Court.
- ▶ First, the Court looked to RSA 105:13-b which creates an exception for information in a police officer's personnel file. The Court ruled that the report was not physically in his file and therefore this did not apply.
- ▶ Next, the Court affirmed that there is no categoric exemption for police internal investigative files and they are subject to balancing test.



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Welford v. State Police

- ▶ While the previous cases involved privacy issues involving internal police practices, Welford addresses privacy issues involving private citizens.
- ▶ Persons have an obvious privacy interest in keeping secret the fact that they were subjects of a law enforcement investigation.
- ▶ The relevant public interest is not to find out what the individual himself was 'up to' but rather how the government carried out its statutory duties to investigate and prosecute criminal conduct.
- ▶ Where there is a privacy interest at stake, the requester must produce evidence that would warrant a belief by a reasonable person that alleged Government impropriety might have occurred. Or, at the very least, the requestor must articulate why the requested information serves a public purpose greater than simply exposing the police involvement of another individual.



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Privacy Balancing Test

- First, is a privacy interest at stake that would be invaded by the disclosure. If no privacy interest is at stake, the Right-to-Know Law mandates disclosure.
- Second, assess the public's interest in disclosure. Disclosure of the requested information should inform the public about the conduct and activities of their government.
- Finally, balance the public interest in disclosure against the government's interest in nondisclosure and the individual's privacy interest in nondisclosure.
- *Keep in mind that this balancing test should be done in conjunction with the FOIA exemption factors.



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Health and Safety Exemption

- ▶ 91-A:5 states: "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."
- ▶ Therefore, even if there is a legitimate privacy interest at stake, and there isn't a compelling enough public interest to warrant disclosure, the records may still be disclosed if they are necessary to protect someone's health and safety, subject to the necessary redactions.
- ▶ Care should be given to redact all identifying information about individuals with a privacy interest whose health or safety is not at issue.



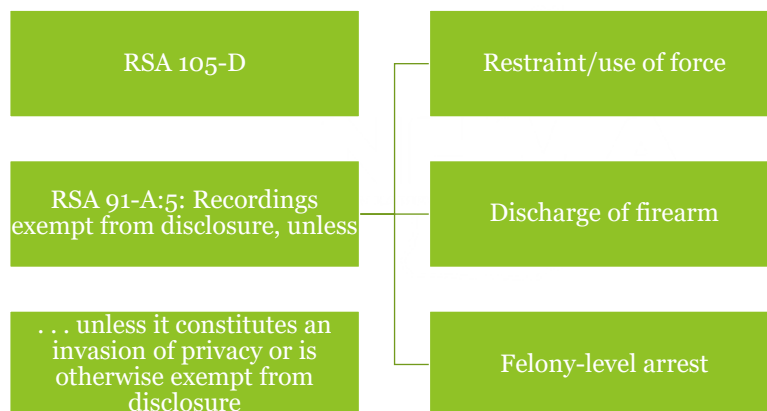
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Laurie List



- ▶ The disclosure of the names on this list does not change the balancing test but may diminish any privacy interest
- ▶ How record requests related to this list are going to fit into the Right to Know Law is yet to be determined
- ▶ Disclosure of this information pursuant to a RTK request is very different than disclosure during a criminal prosecution

Body Worn Cameras (BWCs)



Body Worn Cameras: Record Retention

General rule:

- Permanently destroy/overwrite 30 – 180 days after recording

Exceptions:

- Keep minimum 3 years
 - Deadly force
 - Discharge of firearm
 - Death or serious bodily injury
 - Encounter resulting in complaint
 - Evidence
- Keep for as long as legally required
 - Pending case, court order
 - Retain as training tool

Motor Vehicle Records

- ▶ RSA 260:14, VII, VII-a: Can release accident reports to certain persons:
 - ▶ Owner/Operator
 - ▶ Passenger
 - ▶ Pedestrian Injured
 - ▶ Owner Property Damaged
 - ▶ Insurance Companies
 - ▶ Lawyers
- ▶ Can charge reasonable fee
- ▶ RSA 260:14, XI-a: Liability protection for improper release.

Police Reports



- ▶ Police reports have a privacy interest associated with them and should not be released to anyone who comes asking.
- ▶ A defendant is entitled to a copy of their police report through the discovery process. They are not always given a fully unredacted version! Don't get caught in a situation where the PD is providing a defendant with the information they need to track down a protected witness, spouse, girlfriend, etc.
- ▶ If you are being asked to disclose a police report, apply the same balancing test and make redactions as necessary.

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Arrest and Prosecution Records after Annulment

- ▶ Records maintained by arresting and prosecuting entities documenting conduct underlying an annulled conviction are not categorically exempt from disclosure under RSA 91-A:4, I, which exempts records otherwise prohibited by statute for public inspection. *Grafton County Attorney's Office v. Canner*, 169 N.H. 319, 328 (2016).
- ▶ Note that *Canner* did not address the issue of whether such records may be exempt under another provision of RSA 91-A, such as the work product or privacy exemption of A:5, IV.
- ▶ The Court did say that an annulment does not “turn the public event of a criminal conviction into a private, secret, or secluded fact” and the public “has a substantial interest in understanding how investigations and alleged crimes are conducted, and how prosecutors exercise their discretion when deciding whether to prosecute, reach a plea agreement, or try cases.”

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Rights of Crime Victims

RSA 21-M:8-k, II

To the extent that they can be reasonably guaranteed by the courts and by law enforcement and correctional authorities, and are not inconsistent with the constitutional or statutory rights of the accused, crime victims are entitled to the following rights:

...

(m) The right of confidentiality of the victim's address, place of employment, and other personal information.



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Domestic Violence Victims Addresses

RSA 7:41



Allows victims of domestic violence to designate a substitute mailing address with the AG's office



Substitute mailing address is kept confidential



Must apply to program with AG's office

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Confidentiality of Education Records

RSA 193-D:7



Safe School Zone Statute



Law enforcement and school can exchange only particular information



“Reasonably relates to delinquency or criminal conduct”
– Theft, Destruction, or Violence

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Retention of Police Records, RSA 33- A:3-a

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

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

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

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

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

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

CIII. Police, arrest reports: permanently.

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

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

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

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

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

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

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

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Retention of Correspondence

RSA 33-A:3-a

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

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

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

Main Takeaways

Publishing of the Laurie List has not changed the analysis for disclosure under RTK, but it likely has diminished some privacy concerns

Provenza balancing test should be applied towards requests related to Laurie List documents, but disclosure will be hard to overcome.

For RTK requests relating to non-government employees or actions of government employees not related to their official capacity as a government employee, make sure there is a public interest in government function.

Requesting party should articulate how disclosure relates to government entity and not simply what an individual was up to.

If someone's health or safety is at stake, records can be disclosed subject to redactions.

NH ADOPTS FEDERAL STANDARD FOR DISCLOSURE OF LAW

ENFORCEMENT RECORDS - LODGE V. KNOWLTON 118 N.H. 574 (1978) *



► Freedom of Information Act (FOIA) used to govern disclosure of police investigatory files.

► First, the agency seeking to avoid disclosure must establish that the requested materials were “compiled for law enforcement purposes.

► Second, if the entity meets this threshold requirement, it must then show that releasing the material would have one of the six enumerated adverse consequences.

► *as modified by *Murray v. State Police*, 154 N.H. 579 (2002)



What is a Law Enforcement Agency?

Was the record gathered for law enforcement purposes?

This exemption not just for agencies that are officially designated as law enforcement agencies.

Applies to all records compiled by any type of agency for law enforcement purposes, including in civil and criminal matters.

What are the authorized activities of the agency involved?

A mixed-function agency encompassing both administrative and law enforcement duties can satisfy the threshold requirement by showing that the pertinent records were compiled pursuant to the agency's law enforcement functions.



Montenegro v. City of Dover 162 N.H. 641 (2011)

Thus, to withhold materials under the modified test adopted in *Murray*, an agency need not establish that the materials are investigatory, but need only “establish that the records at issue were compiled for law enforcement purposes, and that the material satisfies the requirements of one of the subparts of” the test.

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Law enforcement records FOIA Exemption Factors



- ▶ Factor A: Interfere with law enforcement proceedings
- ▶ Factor B: Interfere with fair trial
- ▶ Factor C: Invasion of privacy
- ▶ Factor D: Confidential sources
- ▶ Factor E: Disclosing investigative techniques and procedures
- ▶ Factor F: Endangering life or safety



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Factor A: Reasonably Expected to Interfere with Law Enforcement Proceedings



Two step analysis:

- (1) Whether a law enforcement proceeding is **pending** or **prospective**, and
- (2) Whether release of information about it could **reasonably** be expected to cause some articulable harm.

- Pending Investigations: Exempt
- Dormant/Prospective: Exempt, as long as prospective investigation is "concrete"

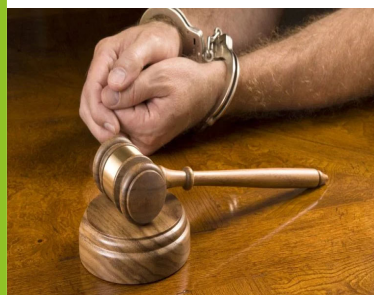
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Factor B: Deprive a Person of Right to Fair Trial or Impartial Adjudication



Two-part test:

- That a trial or adjudication is pending or truly imminent; and
- That it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings.



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What types of information might cause prejudice?

- ▶ Statements about the guilt or innocence of a defendant;
- ▶ The character or reputation of a suspect;
- ▶ Examinations or tests which the defendant may have taken or have refused to take
- ▶ Gratuitous references to a defendant; for example, a reference to the defendant as “a dope peddler;”
- ▶ The existence of a confession, admission or statement by an accused person, or the absence of such;
- ▶ The possibility of a plea of guilty to the offense charged or a lesser offense;
- ▶ The identity, credibility or testimony of prospective witnesses;
- ▶ Any information of a purely speculative nature; and
- ▶ Any opinion as to the merits of the case or the evidence in the case.

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Factor C: Could Reasonably Be Expected to Constitute an Unwarranted Invasion of Privacy

- ▶ Information that would lead to embarrassment, harassment, disgrace, loss of employment or friends .
- ▶ Guards the privacy interests of a broad range of individuals, including government agents, personnel, confidential sources, and investigatory targets.
- ▶ Protects a broad notion of personal privacy, including an individual's interest in avoiding disclosure of personal matters.
- ▶ Notion of privacy encompasses the individual's control of information concerning his or her person, and when, how, and to what extent information about them is communicated to others.

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Generally Exempt Under Factor C to Protect Privacy

- ▶ Mentioning persons not targets of investigations
- ▶ Identities of federal, state, and local law enforcement personnel
- ▶ Identities of both clerical personnel and investigators
- ▶ Names of witnesses and their home and business addresses
- ▶ Trial testimony does not eliminate Exemption 7(C) protection
- ▶ Individuals identified as potential witnesses
- ▶ Passage of time will not ordinarily diminish the privacy protection. The passage of time may actually increase the privacy interest at stake when disclosure would revive information that was once public knowledge, but has faded from memory

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Examples of information that may implicate a privacy interest

- ▶ Legitimacy of children;
- ▶ Sexual orientation;
- ▶ Medical or mental health conditions;
- ▶ Welfare recipient;
- ▶ Consumption of alcohol or a controlled substance;
- ▶ Domestic disturbances and disputes;
- ▶ Names of witnesses who cooperated by providing information to authorities and the information provided by them;
- ▶ Names of subjects of investigation;
- ▶ Names of children;
- ▶ Marital status;
- ▶ Dates of birth;
- ▶ Financial information;
- ▶ Employment information; and
- ▶ The existence of a criminal investigation that does not result in charges against a specific individual.

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EXEMPTION 7 (D) RECORDS WHICH COULD REASONABLY BE EXPECTED TO DISCLOSE THE IDENTITY OF A CONFIDENTIAL SOURCE

Exemption 7(D) is comprised of two distinct clauses:

- ▶ 1st clause protects identity of confidential sources
- ▶ 2nd clause protects all information obtained from the source.

- ▶ Was the source given express promise of confidentiality?

OR

- ▶ Can an assurance of confidentiality be inferred from the circumstances surrounding receipt of the information?

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WHAT CONFIDENTIAL INFORMANT INFORMATION IS PROTECTED?

- Once a source has been deemed confidential, the identity of the source, and in certain circumstances, all of the information obtained by the source would be exempt from disclosure.
- The exemption safeguards not only such obviously identifying information as an informant's name and address, but also all information that would "tend to reveal" the source's identity.



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EXAMPLES OF PROTECTED SOURCES

- ▶ crime victims
- ▶ citizens providing unsolicited allegations of misconduct
- ▶ citizens responding to inquiries from law enforcement agencies
- ▶ private employees responding to OSHA investigators
- ▶ employees providing information about their employers and co-workers
- ▶ prisoners
- ▶ mental healthcare facilities
- ▶ medical personnel
- ▶ commercial or financial institutions and their employees

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EXEMPTION 7(E) - DISCLOSURE WOULD REVEAL TECHNIQUES AND PROCEDURES FOR LAW ENFORCEMENT, OR, WOULD DISCLOSE GUIDELINES FOR LAW ENFORCEMENT INVESTIGATIONS OR PROSECUTIONS

- Provides "categorical" protection for law enforcement techniques and procedures. . . . FOIA sets a "relatively low bar" for withholding under this exemption.
- Courts have uniformly required that the technique or procedure must not be well known to the public.
- "guidelines" = means by which agencies allocate resources for law enforcement investigations (whether to investigate)
- "techniques and procedures" = the means by which agencies conduct investigations (how to investigate).



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Exemption 7(E) encompasses withholding wide range of techniques and procedures, including:

- Immigration enforcement techniques
- Information about databases used for law enforcement purposes
- Surveillance tactics and methods
- Portions of a law enforcement agency's investigations and operations manual
- Funds expended in furtherance of an investigation
- Law enforcement codes, and techniques used to uncover tax fraud
- Techniques and procedures pertaining to the forensic analysis of firearms and computers
- Details of the status of investigatory efforts
- Search and arrest warrant execution techniques
- Suspect threat detection techniques
- Law enforcement checkpoints



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ACLU v. Concord 174 N.H. 653 (2021)

- ▶ City refused to disclose information about covert communications equipment used by Police Department
- ▶ The City did not merely describe a publicly known technique but, instead, a specific means of deploying a currently confidential technique in law enforcement investigations.
- ▶ The Supreme Court ruled the government must only establish that disclosure might create a risk of circumvention of the law.

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EXEMPTION 7(F) REASONABLY BE EXPECTED TO ENDANGER THE LIFE OR PHYSICAL SAFETY OF ANY INDIVIDUAL.



- Protects the safety of any individual.
- Exemption 7(F) can protect the names and identifying information of:
 - non-law enforcement federal employees
 - local law enforcement personnel
 - other third persons in connection with law enforcement matters such as:
 - ✓ names of and identifying information about inmates
 - ✓ private security contractor companies
 - ✓ identities of medical personnel who prepared requester's mental health records would endanger their safety
 - ✓ identifying information about individuals who provided information about alleged criminal activities

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Requests for Use of Force Policy

Could it be concluded that public disclosure of Use of Force protocols, or standard operating procedures, would reasonably be expected to risk circumvention of the law by providing those who wish to engage in criminal activity with the ability to adjust their behavior in an effort to avoid detection?

Using the information in a Use of Force Policy, would those engaging in criminal acts be able to adjust their behavior by disguising their movements and then strike out violently before the officer can appropriately respond?

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OTHER INFORMATION SOURCES



NH Attorney General's Right to Know Memorandum:
<https://www.doj.nh.gov/civil/documents/right-to-know.pdf>

U.S. Department of Justice Guide to the Freedom of Information Act:
<https://www.justice.gov/oip/doj-guide-freedom-information-act-0>

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Recent Questions & Answers



Question: Our department concluded a lengthy investigation involving a fatal overdose. No criminal charges at this time. Due to the possible crime(s) that could be charged the applicable statute of limitations will not be an issue for a number of years to come. We anticipate a 91-A request for our investigative file (hundreds if not thousands of pages/pieces of information). Would a blanket denial for the entire file be warranted?

Answer: Under FOIA exemption A, if the disclosure of the investigative file would be reasonably expected to interfere with law enforcement proceedings the request for release of the file could be denied at this time. Even when an investigation is dormant, Exemption A has been held to be applicable because of the possibility that the investigation could lead to a "prospective law enforcement proceeding." The "prospective" proceeding, however, must be a concrete possibility, rather than a mere hypothetical one. Under *Murray II* your department may have to at least provide an adequate description of the categories of investigation files your department has gathered. In addition, it might become necessary to affirm that a commencement of criminal proceedings is more likely than not.

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Recent Questions & Answers



Question: Are the laws that govern the release of Body-Worn Camera recordings also govern the release of Police Dashboard Camera Recordings?

Answer: The Body-Worn Cameras Statute, RSA 105-D, is very specific when defining what type of video recording is covered. As provided in RSA 105-D:1, I, a body worn camera is defined as “an electronic camera system for creating, generating, sending, receiving, storing, displaying, and processing audiovisual recordings that may be worn about the person of a law enforcement officer.” Unless the camera or video recording system was actually worn by a police officer, the provision of the Right-to-Know Law that exempts such records from disclosure would not apply. RSA 91-A:5, X. A video captured by a dashboard or in-vehicle recording system, and not a system worn by the police officer, the recording would be subject to disclosure under the Right-to-Know Law. In this instance you would employ the privacy balancing test to determine whether there was sufficient public interest in the recording to outweighs the privacy interests of the individuals captured in the video/audio recording.

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Recent Questions & Answers



Question: Our department received a request for all records, including but not limited to, printed documents, electronic documents, e-mails, or any other form of records regarding drunk driving incidents for the period of 01/01/2020 to 01/01/2021. Can we deny this request because it requires the department to pick and choose calls for service and make a new record with that information?

Answer: The fact a person asks for access to records that contain specific information does not amount to a request for a list of records that would have your department “compile, cross-reference, or assemble information into a form in which it is not already kept or reported by” your agency. RSA 91-A:4, VII. Rather, you could deny access to any pending criminal matters that are still active, or, could turn into a pending criminal matter, because releasing the record would interfere with law enforcement proceedings. You could also deny access to older records where no criminal matter is pending or prospective because the record would constitute an invasion of privacy. However, because the request is seeking access to similar records over a period of time, it could be argued that the public interest outweighs any privacy interests of the individuals involved because the group of records sought may reveal information about the decisions made by police officers when dealing with intoxicated motorists

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Economic Forecast for Local Governments Webinar

12:00 noon - 1:30 pm, Thursday, October 27, 2022. Join Christopher Pelletier of Citizens Bank and NHMA's Katherine Heck & Natch Greyes in discussing US interest rate markets and NH specific economic policy considerations as your municipality develops your next budget.

REGISTRATION OPEN!

[REGISTRATION NOW OPEN!](#)



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REGISTRATION NOW OPEN!

NHMA's 81st Annual Conference and Exhibition
Registration Now Open for NHMA's 81st Annual Conference and Exhibition

REGISTRATION is now open

Our theme is *"Getting Used to Different."* This year's conference will be held as a live, in person event in Manchester both days with simultaneous live-streaming for virtual attendees. *Please join us In November!*

Learn More Here!

November 16-17, 2022
DoubleTree by Hilton Manchester Downtown Hotel

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us today!



NHMA'S MISSION

Through the collective power of cities and towns, NHMA promotes effective municipal government by providing education, training, advocacy and legal services.



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