

Right-to-Know, January 2022 Presentation Questions and Answers

#	Question	Answer
1	What if someone who has no 'Public Interest', but comes to your Agency with a Case# and an Arrest # and the money for the report. Should it be common Practice to question them first?	Yes. Police reports should not be given out without first asking if the person requesting the report has a right to obtain it. Generally speaking, individuals do have a privacy interest in the fact that they were investigated by, or had involvement with a police department. Any time someone is requesting a governmental record you should apply the privacy balancing test, determine if someone has a health or safety interest and make any appropriate redactions before providing the document.
2	To clarify, the investigative files are open or closed?	Investigative files are considered governmental records, and therefore they are potentially open to a right-to-know request. This does not mean that they are by default subject to disclosure or should be disclosed without making proper redactions. The same privacy/public interest balancing test applies.
3	A private investigating company submits a 91-A request for police contacts/reports involving private citizens. They were not forthcoming in the reason for their request in writing or verbally when asked. It is believed this is a "fishing expedition". What is the best way to respond to protect individual privacy?	If it appears that there is no public interest at stake, and the person has not articulated a health or safety concern for why they need access to these records it is appropriate to deny the right-to-know request under RSA 91-A:5, citing the privacy exemption.
4	Can you address the question of releasing booking photos after an arrest?	The issue of whether a mug shot may be properly withheld under Exemption 7(C) has been addressed by three appellate courts, with the two most recent decisions finding that such photographs may be appropriately protected, and the earliest decision denying protection when specific circumstances are met. The release of a mug shot could either infringe on a person's right to a fair trial under Exemption 7(B) or be an unwarranted invasion of privacy under 7(C). 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

Right-to-Know, January 2022 Presentation Questions and Answers

5	If documents are scanned and loaded into the electronic report, can the paper copy be shredded or must it be retained?	The statute governing retention of municipal records was amended in 2017 to provide that all paper municipal records, including all law enforcement records, can be scanned or transferred into electronic copies and saved in that format rather than as paper records and then the paper records may be disposed of. However, the records must be saved in PDF/A format. RSA § 33-A:5-a (2017 NH Laws Chapter 96)
6	question about the retention of files..... if a file that is required to be kept for more than 10 years, is being scanned and uploaded onto an external hard drive, is it necessary to keep a paper copy?	As previously stated, police departments now have the option to convert all paper records into electronic records provided that the records are saved in PDF/A format. Thus, if a record is required to be retained for 10 years, that record can be scanned and saved in PDF/A format and the paper copy can be disposed of.
7	Can you go over specifically what needs to be redacted from Bodyworn camera video before it is released? Ex. License plates, conversations between officers on scene, etc.? Additionally, can you clarify if officers must notify citizens that they're being recorded as it relates to 105:D and 570-A (wiretapping)	Officers should always notify individuals that they are being audio and video recorded. Bodycam footage has its own rules outlined in 91-A:5 as far as what types of recordings need to be saved and what does not need to be saved. Most of the recordings that are required to be saved and would be subject to a right-to-know request would also likely be involved in a criminal matter. It is best practice to consult with the county attorney's office/victim witness advocates before releasing any bodycam footage, and the same privacy concerns apply.
8	How would we protect the privacy of a person if someone comes in to view a record, because if they are viewing the original record, it wouldn't be redacted.	One of the acceptable responses under 91-A is to inform the person that the records cannot be immediately disclosed because the agency needs time to review the record for potential redactions.
9	Is running a report from IMC to give information on a Request considered compiling? Ex. they are requesting how many thefts from store from 2015-2020?	Assuming the IMC is an electronic data base from which the police department could submit a query seeking a list of all thefts from a particular store from 2015-2020, the responding department would not be required to produce a list that does not currently exist, but, the department would have to examine the data base and provide access to all the individual theft reports. Since it would probably be administratively easier to simply query the data base and produce the list, it would be a local option whether the list is created and provided, or a separate inventory of each theft event is provided.

Right-to-Know, January 2022 Presentation Questions and Answers

10	Does this mean that dispatchers and officers writing reports names should/could be redacted?	Yes, dispatch records should be redacted to remove personally identifying information about responding police officers and dispatch personnel, as well as any other personally identifying information about crime victims, reporting citizens and witnesses.
11	Landlords request domestic calls often. Are these reports a privacy issue so they cannot be released?	Police records concerning an individual involved in a domestic situation would be considered highly personal, with substantial privacy interests attached. Unless the requesting landlord can show the records are necessary to demonstrate how the responding police department is responding to domestic violence calls, the public interest would be minimal, and the privacy balancing test deem the records not subject to disclosure
12	Is FOIA Right to Know, the same as Discovery? does a defendant have the right to know who is his accuser and who a witness is?	Discovery is totally different from right-to-know. Rules of discovery are covered under the New Hampshire Rules of Criminal Procedure and it is the prosecuting agency's obligation to comply with rules of discovery.
13	How do we word that a request has been denied?	If the denial is due to one or more of the six (6) FOIA exemptions, use the RTK Checklist and cite the applicable exemption, such as "the disclosure would interfere with law enforcement proceedings," or "the disclosure would constitute and unwarranted invasion of privacy."
14	couple more questions. when probation and parole or the state police gunline request information on someone is this considered discovery or a RTK	Transfer of information between government entities is different from providing information to the public under right-to-know and does not require the same privacy analysis.
15	Jonathan Cowell, can you suggest a resource for Criminal Discovery Resources?	Discovery is totally different from right-to-know. Rules of discovery are covered under the New Hampshire Rules of Criminal Procedure, and it is the prosecuting agency's obligation to comply with rules of discovery.
16	What is Discoverable, what isn't etc. Something akin to this class...	The fact that those attending are receiving legal advice from attorneys from NHMA protects our advice and other information from disclosure under the Attorney Client privilege under 91-A:5, XII

Right-to-Know, January 2022 Presentation Questions and Answers

17	Military applicants sign permission to release Juvenile records. I have not released historically. Are my actions appropriate?	Individuals can sign a release to essentially waive their own privacy interests for the release of documents. If someone is requesting a governmental record where they are the subject of the record, that can be released as long as any other person's information is properly redacted.
18	I realized you already answered this question live, however, could you address it again. question about the retention of files..... if a file that is required to be kept for more that 10 years, is being scanned and uploaded onto an external hard drive, it is necessary to keep a paper copy?	The statute governing retention of municipal records was amended in 2017 to provide that all paper municipal records, including all law enforcement records, can be scanned or transferred into electronic copies and saved in that format rather as paper records and then the paper records may be disposed of. However, the records must be saved in PDF/A format. RSA § 33-A:5-a (2017 NH Laws Chapter 96)