

Classification: Public

HUDSON NEW HAMPSHIRE's
Right To Know Policy, Procedures, and Forms

Draft

Release Date:

July 2022

The purpose of this policy 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. In the end, all actions must be made with just intentions and never intended to circumvent the spirit of the law.

Table Of Contents

Section 1.0 - Overview

- 1.1 Purpose
- 1.2 Scope of the policy
- 1.3 Legal Definitions
- 1.4 Overview of the Regulations

Section 2.0 – Obtaining Public Information Requesting Information

- 2.1 Requesting Information
- 2.2 Gathering and Organizing Information
- 2.3 Completing a Public Information Request
- 2.4 Applicable Costs
- 2.4.2.5 Changes to this Policy

Section 3.0 – Other Helpful References

- 3.1 Local storage and data collection policies
- 3.2 Town Email policy
- 3.3 Training Resources
- 3.4 Local Contacts (contact hierarchy tree to a single point of contact)
- 3.5 State contacts
- 3.6 Judicial appeals and legal escalations

Addendum

- Attachment 1: Town RTK Request form

Section 1.0 - Overview

1.1 Purpose

This policy is intended to guide both town personnel, and town residents to effectively and efficiently handle Right To Know requests and any requests for public information (regardless if the request references NH RSA 91A or not). Furthermore, this policy should help avoid any violations of the law whether unintentional or unknown by those associated with such a request. This document serves as a guidance policy and should not be considered a town ordinance or regulations of legal weight. It is recommended that all parties familiarize themselves with the actual law as written under NH RSA 91-A.

- a. This policy is designed to help outline what steps must be taken by the town hall and other town employees to adequately meet the requirements of the state regulations around public information requests.
- b. This policy is also designed to clarify how a Right To Know request should be submitted and received by the interested parties while also outlining proper expectations.

Overall, the town seeks to balance openness and transparency with confidentiality and privacy (in accordance with RSA 91-A) all while trying to be efficient with staff time and town resources.

1.2 Scope

This policy and the subsequent NH state statutes apply to *Governmental Records* maintained by *Public Agencies and Public Bodies*. Specifically to Hudson, this would include but is not limited to; Hudson NH governmental meetings, quasi-governmental meetings, subcommittees, and town departments.

Right To Know requests can only be completed by legal New Hampshire residents as these regulations and rights given by both the NH constitution and the revised statutes annotated apply only to those who permanently reside in the state.

Non-Public exemptions; there are exemptions to the regulations in which information can be considered *Non-Public* and is not subject to release upon request. If the information being requested is protected under non-public exceptions it should be clearly explained to the requesting party. For further details on these exemptions please see NH RSA 91-A3.

General Exemptions: There are other general exemptions to the regulations that should be known under RSA 91-A5. These exemptions include but are not limited to, draft notes, any notes or materials made for personal use, attorney-client privilege communication, information recorded by body worn cameras on police officers, cyber security plans, school records of minors, and similar information.

1.3 Legal Definitions

"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.

"Governmental proceedings" means the transaction of any functions affecting any or all citizens of the state by a public body.

"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."

"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.

"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) The general court including executive sessions of committees; and including any advisory committee established by the general court.
- (b) The executive council and the governor with the executive council; including any advisory committee established by the governor by executive order or by the executive council.
- (c) Any board or commission of any state agency or authority, including the board of trustees of the university system of New Hampshire and any committee, advisory or otherwise, established by such entities.
- (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.

1.4 Overview Of ~~The~~ Regulations

Below is an unofficial and unmaintained outline of the sections within NH RSA 91-A for reference. Please navigate to <http://www.gencourt.state.nh.us/rsa/html/vi/91-a/91-a-mrg.htm> for the most up-to-date information and any changes to the regulations.

RSA 91-A:1 Preamble

RSA 91-A:1-a Definitions

RSA 91-A:2 Meetings open to Public

RSA 91-A:2-a Communication Outside Meetings

RSA 91-A:3 Nonpublic Sessions

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

RSA 91-A:5 Exemptions

RSA 91-A:5-a Limited Purpose Release

RSA 91-A:6 Employment Security

RSA 91-A:7 Violation

RSA 91-A:8 Remedies

RSA 91-A:9 Destruction of Certain Information Prohibited

RSA 91-A:10 Release of statistical Tables and Limited Data Sets for Research

Section 2.0 – Obtaining Public Information

2.1 Requesting Information

RSA 91-A4:1 - “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.”

Requests for records that can be immediately released

Note: Records for immediate release are considered to already be available or easily accessible and currently meeting or have met the requirements of RSA91a.

- a. Requestors should first make a reasonable effort to find the information they seek on the Town website HudsonNH.Gov. By using the Search feature, most past meeting minutes, meeting packets and meeting recordings can be found. Additionally, information on town events, activities, projects and similar may also be found on the town website. When requested, information is not directly accessible on the town website, the requestor should follow process below to request the information.

Request for records that require additional support and resources to provide

- a. All requests for information should be submitted to the Town Administrator’s Office in order to provide a single point of contact for requestors. This process will allow the town to efficiently and effectively disseminate the request to all applicable parties with the intent to meet the legal timeframe in which requests need to be responded to.

Note: The exception to the above recommendations is that all law enforcement records requests must be provided to the Hudson Police Records Division as they have their own legal standard for information release.

- b. The completion of an application is not legally required to request public information, but it is highly recommended that the requesting party complete a request form (Hudson NH Right to Know Request Form) (HYPERLINK THE FORM) for town employees to accurately provide timely information to requestors. Reference the addendum to this policy for more details on the application process.

Note: If the requestor does not complete the form, the department taking the request should do so on behalf of the requester ensuring that the information that is being requested is clearly captured and understood to allow completion of the Right to Know Request.

- c. To confirm the accuracy of the request and to start the timeline as outlined in RSA91-A, it is highly recommended to have the requesting party sign and date the application before submitting it for the processing of the request.

Note: The individual in receipt of the request should make sure to inform the requestor that the details of the request must be considered

- d. Once an application and/or request has been officially received by the Hudson NH Town Administrator's Office, the public body associated with the request has five business days to complete the said request, deny the request or 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.

2.2 Gathering and Organizing Information

- a. Upon receipt of the request by the Hudson NH Town Administrator's Office, a representative from said office shall forward the request as applicable to the department and agency associated with the requested information.

Note: If the department or agency in question utilizes a digital platform that retains the records associated with the RTK request, the Hudson Informational Technology (IT) Department should be the lead department on gathering and providing said information (assuming they have the proper clearances). This recommendation is to balance the rights of the requestor with the availability of resources of the department or agency being requested to provide information and will provide consistent data production for Right to Know Requests.

- b. Either the department associated with the RTK request or the Informational Technology (IT) department, if determined to be the more effective resource, should make every reasonable effort to search and collect all information within the scope of the request, including but not limited to archived information, information both on the digital servers and electronic storage devices as well as information that may have been accidentally or unintentionally transferred between personal emails/accounts by public officials or staff if there is reasonable evidence to assume such.
- c. Information collected for the Right to Know request shall be provided to the requestor in its native format in which it was originally created. This will require no additional time or resources to convert documents and will provide all original information associated with the information that was requested and provided to the requestor.

NOTE: Native Format files will provide file creation date, author, modification dates, date email was sent, original attachments to emails and other relevant data that would be helpful to Right to Know requestors.

Information gathered and produced by a town body shall be submitted to the Town Administrator's office to compile, provide the information to the requestor and complete the Right to Know requestors.

2.3 Completing a Public Information Request

- a. Information that has been gathered should be organized and presented to the requestor, but it should be known that there is no legal obligation for the public body "to compile, cross-reference, or assemble information into a form in which it is not already kept or reported by that body or agency"
- b. Right To Know information shall be provided to the requestor in the in the native format that the information was originally created. The information can also be provided in the following forms if requested by the requestor.
 - a. Printed on paper
 - b. Emailed back to requestor: limited if requested files are too large to send
 - c. Loaded onto a Universal Serial Bus (USB) Hard Drive

Note: Reference section 2.4 to see associated costs with each option when applicable

- c. Any information produced in response to a Right to Know request per RSA 91-A will be copied (if provided in a paper format) and kept in a separate file in the Town Administrator's office along with the corresponding Right to Know request form (Attachment 1), electronic files will be stored on a town file server with a copy of the Right to Know request form.

Note: This historical list of RTK requests can be cross referenced and leveraged when requests come in for the same information allowing for immediate release.

- d. If the town is unable to make a governmental record available for immediate inspection and copying, the Town must, within 5 business days of a request, make such record available, deny the request in writing with reasons, or furnish written acknowledgment of the receipt of the request and a statement of the time reasonable necessary to determine whether the request shall be granted or denied (the Right to Know Form should be used for this purpose).
- e. "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."
- f. Nothing in the law required the Town to provide information to an out-of-state individual. See McBurney v Young, 569 U.S. 221 (2013). Requests from out-of-state individuals will be reviewed and analyzed on a case- by-case basis.
- g. In line with the spirit of NH RSA 91a, governmental agents/agencies should strive to assist the request as much as reasonably possible to reinforce trust, openness and cooperation. Town personnel and/or the individuals who received the RTK request should take reasonable steps to inform the requestor of any other associated records in which may be applicable. This is based on the assumption that town employees and/or governmental agents know more about town records than that average resident.

2.4 Applicable Costs

- a. If permitted by law, the individual requesting a copy of governmental records will be charged the actual cost of providing said copy.
 - a. New copies of paper records will cost the posted public rate as seen in Hudson Town Hall. Paper documents which have already been copied and are available at the time of the request shall not be charged for.
 - b. If the governmental agency provides the Universal Serial Bus Hard Drive, the cost to supply said device will be transferred to the requestor
 - c. Requests for information to be emailed, will be free of charge, unless extenuating circumstances cause the town to incur an unreasonable cost in which case, the cost will be transferred to the requestor

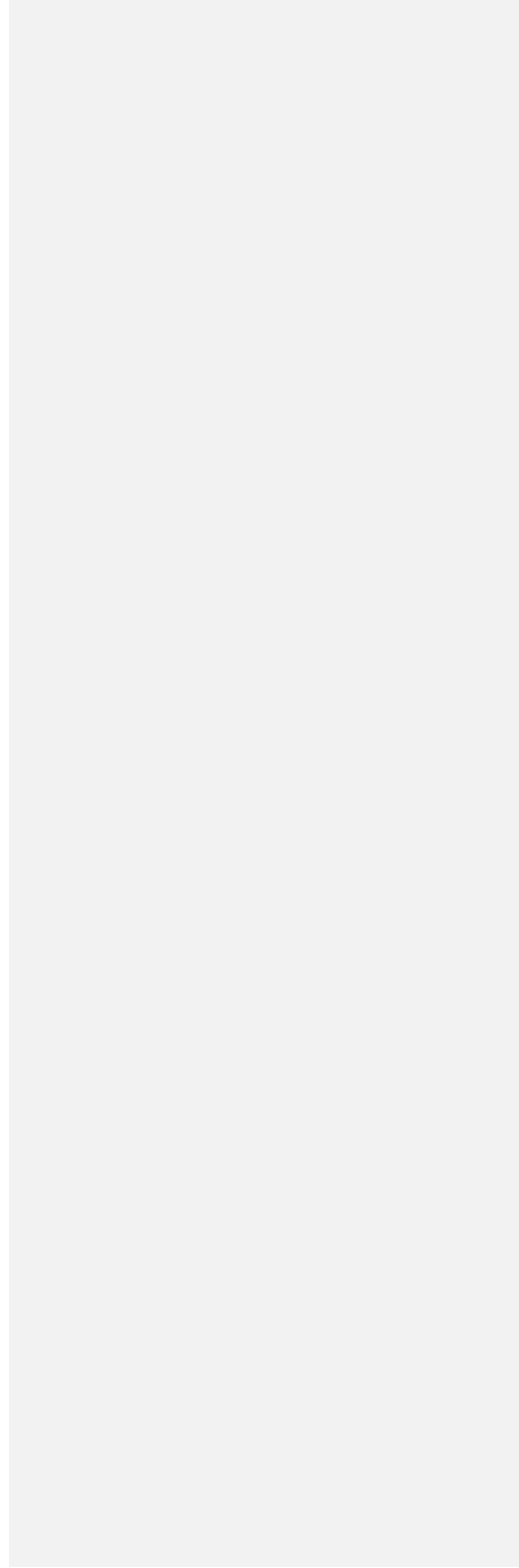
Note: Fees forwarded to the requestor should be a direct transfer of actual costs. No additional profits should be included by the town or governmental agency.

- 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.
- e. 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.
- f. 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.

Formatted: Justified, Line spacing: Multiple 1.15 li, Numbered + Level: 2 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1", No widow/orphan control

Classification: Public

Draft



Classification: Public

2.5 Changes to this policy

- a. Changes to this policy can be presented by either the governmental agency or the public.
- b. Changes that align this policy with new or updated language as seen in latest revision of NH RSA 91a will not require a public hearing. All other changes must hold a public hearing in order to allow input by the public and to further support the transparency, honesty and openness of the local government.
- c. Changes should be presented and/or discussed during a regularly schedule Board of Selectmen's meeting or other properly noticed and authorized Hudson Committee specifically dedicated to Right To Know topics. (i.e Right To Know Committee)

Draft

Section 3.0 – Other Helpful References

3.1 Local storage and data collection policies

- a. Municipal records shall be retained in accordance with N.H. R.S.A. 33-A:3-a.

3.2 Town Email policy

- a. RSA 91-A:4, VI requires that records pertaining to lawsuits or threatened lawsuits be retained for at least 10 years. RSA 91-A:9 prohibits the destruction of “any information with the purpose to prevent such information from being inspected or disclosed in response to a request under this chapter.” The Town may have its own separate retention periods. It is recommended that the Town include the following in the email policy: Never use email or other communication outside a meeting to express ideas, concerns, opinions, etc., on matters related to the business and duties of your public body.
- b. Use an administrative person (i.e., someone who is not a member of the public body) to send an email to members of a public body if you have that option.
- c. Put the recipients’ email addresses in the BCC line of the email to prevent the possibility of “Reply All” and creating a discussion among a quorum of the public body.
- d. Always use official email addresses issued by the municipality, school district, or other governmental entity for communicating town business, because such communications constitute governmental records that will be subject to disclosure.
- e. Leave discussion and deliberation of official matters for a public meeting, a properly held nonpublic session, or a proper “non-meeting,” as discussed later in this chapter.

(make note about the liability incurred when an elected official or volunteer uses their personal email. A resident may go to court to subpoena that private information causing both the town and the individual a costly legal expense)

3.3 Training Resources

- a. The Town Administrator will ensure that respective Town Departments have access to 91-A training resources and stay current with developments in the law.
- b. The Town Administrator will ensure all email users are provided email training to ensure compliance with email use

3.4 Local Contacts (contact hierarchy tree to a single point of contact)

a. Town Clerk - The Hudson NH Town Clerk will be designated the Right to Know Officer. The written request will be submitted to the Town Clerk's Office pursuant to RSA 91-A; the Town of Hudson has established a "Right to Know Request Form" that may be used to submit requests. The Town Clerk will respond to the requestor within five business days and will distribute the request to the appropriate Town department, board, commission, or staff for timely completion of the RTK request. The Town department, board, commission, or staff will submit the information gathered to the Town Clerk when it is complete. The Town Clerk will combine all gathered information and provide this to the requestor to fulfill the RTK Request.

Formatted: Highlight

b. Town Attorney – The Town Attorney may review records to ensure confidential information that is not subject to RSA 91-A is protected from disclosure.

(make note to remove all town attorney contact info from any information being requested so that residents don't reach out to the attorney directly)

c. Department Heads / Staff / Board Members / Commission Members – Department heads, staff, board, and commission members will acknowledge that they have received a Right to Know Request to the Town Clerk via email (do we put a timeline here? Within 5 business days of receiving the request). The members will provide all records to the Town Clerk in their original format when the request has been completed. Staff members shall request assistance from the Town Clerk or Information Technology Director for assistance with information retrieval to ensure the information provided to fulfill the Right to Know Request will comply with RSA 91-A

Formatted: Highlight

d. Information Technology Director – The Town Information Technology Director shall provide all information that is stored on email servers, archive servers, and file servers in their native format for all Right to Know Requests to ensure compliance with RSA 91-A.

e. Town Administrator – The Town Administrator shall ensure that the Right to Know Policy is current and maintained to ensure compliance with RSA 91-A. The Town Administrator shall establish a schedule to review the Right to Know Policy yearly and provide a report for inclusion in the Hudson NH Annual Report.

3.5 State contacts

a. New Hampshire Municipal Association – The NH Municipal Association provides guidance to NH Cities and towns on Right to Know Laws and Regulations.

b. NH Attorney General – The NH Attorney General has provided a Memorandum on New Hampshire's Right to law RSA Chapter 91-A. Hudson NH shall ensure this Memorandum is available to all employees, board, and committee members to ensure Right to Know Requests comply with the Attorney General's Memorandum.

3.6 Judicial appeals and legal escalations

- a. NH Superior Court – Right to Know Violations may be appealed to the NH Superior Court.
- b. NH Supreme Court - Right to Know Violations may be appealed to the NH Supreme Court that fail at the NH Superior Court.

The Statute provides an immediate remedy in Superior Court, where the case is given “high priority on the court calendar.” RSA 91-A:7 A Superior Court ruling on a petition for access is deemed a final judgment, which may be appealed as of right to the New Hampshire Supreme Court. An appeal must be filed within thirty days of the date on the clerk's written notice of the decision on the merits.

State of NH Ombudsman process must be added

Formatted: Indent: Left: 0.5", Border: Bottom: (No border)

Draft

Document Update History: *Revision #* _____

Last input from Hudson Right To Know Committee: _____
Day / Month / Year

Last Input from Hudson Board of Selectmen: _____
Day / Month / Year

Last Input from Town Department Heads: _____
Day / Month / Year

Last Input from Residents (i.e Public input): _____
Day / Month / Year

Classification: Public

Pursuant to the Right to Know Law (NH RSA. 91-A), I am requesting public access, within five business days, to the governmental records reasonably described as follows.

Name of the Public Body associated with request

Describe the records sought with enough detail for the public agency to respond.

Timeframe in question

From / / To / /
Month Day Year Month Day Year

Person Making the Request:

Name: _____ (Print)

Phone: _____ Email: _____ (optional)

Signature of Requestor: _____

For town hall employees only

Name of Governmental Agent: _____ (Print)

Signature of Governmental Agent: _____

If requested information is immediately available; I have chosen to receive it by

- A link to a web address of online directory has been provided
- Printed physical copy (Fees can apply)
- Digital copy loaded on TOWN PROVIDED USB Hard Drive (Fees can apply)
- Digital copy loaded on PERSONAL USB Hard Drive (Preferred choice for large requests)
- Digital copy E-Mailed to me at the contact listed above (Size limited)
- Sent to me via U.S.P.S. mail to: (Fees can apply)

The undersigned has acknowledged that their request has been completed in full and they are in receipt of the requested information upon signing this acknowledgment.

Signature of *Receiver*: _____ (Sign)

Draft

