THE STATE OF NEW HAMPSHIRE
SUPREME COURT

SUPREME COURT DOCKET NO. 2017-0429

NOVEMBER SESSION

2017 TERM

LISA CENSABELLA
V.
HILLSBOROUGH COUNTY ATTORNEY DENNIS HOGAN

RULE 7 MANDATORY APPEAL OF ORDER OF THE SUPERIOR COURT
HILLSBOROUGH COUNTY SOUTH

BRIEF OF THE PLAINTIFFS'/APPELLANTS' LISA CENSABELLA

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Oral Argument Requested
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS AND STATUTES

Article 1. [Equality of Men; Origin and Object of Government.] All men are born equally free and independent; therefore, all government of right originates from the people, is founded in consent, and instituted for the general good.

[Art.] 8. [Accountability of Magistrates and Officers; Public's Right to Know.] All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted.

RSA 5:29 Definitions. – In this subdivision:

I. "Agency" means any department, office, commission, board, or other unit, however designated, or the executive branch of state government.

II. "Archives" means records having permanent or historical value.

III. "Director" means the director of the division of archives and records management of the department of state.

IV. "Local record" means a record of any county, city, town, district, or authority or of any public corporation or political entity whether organized and existing under charter or under general law, unless the record is designated or treated as a state record under state law.

V. "Record" means document, book, paper, manuscript, drawing, photograph, map, sound recording, video recording, electronic record, microform, or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for library use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications and of processed documents are "nonrecord materials" and are not included within this definition of records.

VI. "Electronic record" means information that is created or retained in a digital format.

VII. "Records center" means the depository of records and archives.

VIII. "State record" means:

(a) A record of a department, office, commission, board, or other agency, however designated, of the state government;

(b) A record of the state legislature;

(c) A record of any court of record, whether of statewide or local jurisdiction; or
(d) Any other record designated or treated as a state record under state law.

RSA 33-A: I (II), (IV)..... p. 11
RSA 33-A: I (II), (IV)33-A:1 Definition of Terms. – In this chapter:
II. "Municipal" refers to a city or town, county or precinct. .
IV. "Municipal records" means all municipal records, reports, minutes, tax records, ledgers, journals, checks, bills, receipts, warrants, payrolls, deeds and any other written or computerized material that may be designated by the board.
V. "Active" means until termination or expiration of obligations or services, cessation of need for further attention, and completion or release of any pending legal processes.

RSA 33-A:3-a (CII)..... p. 11
RSA 33-A:3-a Disposition and Retention Schedule. – The municipal records identified below shall be retained, at a minimum, as follows
CIII. Police, arrest reports: permanently.

RSA 33-A:3-a (CV)..... p. 11
RS 33-A:3-a Disposition and Retention Schedule. – The municipal records identified below shall be retained, at a minimum, as follows
CV. Police, criminal-closed cases: statute of limitations plus 5 years.

RSA 33-A:5-a..... p. 13
RSA 33-A:5-a
33-A:5-a Electronic Records. –
I. Paper municipal records listed in the disposition and retention schedule of RSA 33-A:3-a may be transferred to electronic records, as defined in RSA 5:29, VI, and the original paper records may be disposed of as the municipality chooses, subject to the requirements of other state or federal laws. Such records shall be stored in portable document format/archival (PDF/A) or another file format approved by the secretary of state and the municipal records board.
II. Electronic municipal records listed on the disposition and retention schedule of RSA 33-A:3-a that are to be retained for 10 years or less may be retained solely electronically in their original format if so approved by the municipal committee responsible for the records. The municipality is responsible for assuring the accessibility of the records for the retention period. If the records retention period exceeds 10 years or the municipal committee does not approve retention of the record solely electronically in an approved format, the records shall be transferred to paper, microfilmed, or stored in portable document format/archival (PDF/A) or another approved file format on a medium from which it is readily retrievable. At least once every 5 years from date of creation, the municipal committee shall review documents and procedures for compliance with guidelines issued by the secretary of state and the municipal records board.

RSA 91-A..... passim
RSA 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

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

IV. 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. If a public body or agency is unable to make a governmental record available for immediate inspection and copying, it shall, within 5 business days of 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 reasonably necessary to determine whether the request shall be granted or denied. 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 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.

RSA 91-A:8 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.

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.

RSA 41:68.

41:68 Unauthorized Destruction; Penalty. – All municipal records as defined in RSA 33-A:1, IV belong to the public in perpetuity and shall not be destroyed, maliciously damaged or retained by any person not entitled to keep them. Municipal records shall be destroyed only with the approval of the municipal records board established under RSA 33-A:4-a. Any natural person who violates this section shall be guilty of a misdemeanor and any other person shall be guilty of a felony.

RSA 260: 14

260:14 Records and Certification. –

I. In this section:

(a) "Motor vehicle records" means all applications, reports required by law, registrations, histories, certificates, and licenses issued or revoked by the department relative to motor vehicles and the information, including personal information, contained in them.

(b) "Person" means an individual, organization or entity, but shall not include this state or an agency thereof. "Person" shall include the personal representative of any person injured or killed in the motor vehicle accident, including the person's conservator, executor, administrator, or next of kin as defined in RSA 259:66-a.

(c) "Personal information" means information in motor vehicle records that identifies a person, including a person's photograph or computerized image, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information.

(d) "Legitimate business" means a business which is registered in New Hampshire and which receives compensation in connection with matters of motor vehicle or driver safety or theft, motor vehicle emissions, and motor vehicle market research activities, including survey research.

II. (a) Proper motor vehicle records shall be kept by the department at its office. Notwithstanding RSA 91-A or any other provision of law to the contrary, except as otherwise provided in this section, such records shall not be public records or open to the inspection of any person.

(b) Copies of such records, duly attested and certified by the director, or designee, shall be as competent evidence in any court within this state as the original record or document would be if produced by such person as the legal custodian. A hearings examiner shall be considered a legal custodian of motor vehicle records for the purpose of testifying at a trial.

II-a. The accident report, the technical accident reconstruction report, any repair estimate, or any similar document that constitutes a motor vehicle record that is created or received as a result of any accident or collision involving a vehicle owned or leased by the state, a county, a city, a town, or a local public entity shall be a governmental record subject to inspection and disclosure in accordance with RSA 91-A except when inspection or disclosure would risk exposure of undercover law enforcement activity. Any report of a violation of this title by an employee or official of a county, a city, a town, or a local public entity while engaged in official business in a vehicle owned or leased by the state, a county, a city, a town, or a local public

entity shall be a governmental record subject to inspection and disclosure in accordance with RSA 91-A.

III. Motor vehicle records may be made available pursuant to a court order or in response to a request from a state, a political subdivision of a state, the federal government, or a law enforcement agency for use in official business. The request shall be on a case-by-case basis. Any records received pursuant to this paragraph shall not be further transferred or otherwise made available to any other person or listed entity not authorized under this paragraph. Any records received pursuant to this paragraph shall not be used, further transferred, or otherwise made available to any other person or entity for the purpose of creating or enhancing a federal identification database.

III-a. The name and last known address of the owner of a vehicle used in violation of RSA 236:31-b and the physical characteristics of such vehicle may be made available to the department of transportation or to a nongovernmental contracted agent of the department of transportation for toll collection purposes only as identified by a toll collection system, as defined by RSA 236:31, I(i). Any records received under this paragraph shall not be used for purposes other than for toll collection and shall not be further transferred or otherwise made available to any other person or entity that is not a contracted agent of the department of transportation for toll collection. The nongovernmental contracted agent of the department of transportation for toll collection is prohibited from releasing the motor vehicle records to a third party or from using the records for the collection of debts outside the toll collection system. Notwithstanding the provisions of RSA 260:14, XIV, the department of transportation shall be responsible for ensuring its own and its contracted agent's compliance with this section, and the commissioner, upon determining that the department of transportation or its contracted agent has violated any provisions of this section may issue a written order prohibiting the department of transportation and its contracted agent from receiving motor vehicle records commencing 10 days following the issuance of the order and lasting for no longer than 5 years, unless the commissioner is satisfied that procedures are in place and will be enforced to ensure compliance with this chapter.

III-b. A corporation that is operating under an active DD Form 441 Department of Defense Security Agreement and has a facility located within the state may request that the commissioner grant a waiver to the corporation that would permit it to obtain the name and address of the owner of any motor vehicle that is on or adjacent to the corporation's property within the state of New Hampshire. The corporation shall only use information received under this paragraph for security purposes. The commissioner may grant or renew the waiver for any period up to one year. During the period when the waiver is valid, the police department of jurisdiction shall, upon request, provide to the corporation's security operations center supervisor, or equivalent person, the name and address of the owner of any motor vehicle on or adjacent to the corporation's property within the state of New Hampshire.

III-c. The name and last known address of the owner of a vehicle used in violation of a toll collection system and the physical characteristics of such vehicle may be made available to another state, or to a statutory or nongovernmental contracted agent of such other state for the collection of a toll in such other state as identified by a toll collection system, as defined by RSA 236:31, I(i), whether the vehicle was used in violation of an electronic toll collection system or the vehicle was identified by a toll collection monitoring system when there is no cash option in the toll lanes. Any records received under this paragraph shall not be used for purposes other than for toll collection and shall not be further transferred or otherwise made available to a person or entity that is not a statutory or contracted agent of such other state for toll collection. The other state or statutory or nongovernmental contracted agent of such other state is prohibited from releasing the motor vehicle records to a third party or from using the records for the collection of debts outside the toll collection system. Notwithstanding the provisions of RSA 260:14, XIV, such other state shall be responsible for ensuring its own and its statutory or contracted agent's compliance with this section, and the commissioner, upon determining that such other state or its statutory or contracted agent has violated any provisions of this section may issue a written order prohibiting such other state and its statutory or contracted agent from receiving motor vehicle records commencing 10 business days following the issuance of the order and lasting no longer than 5 years, unless the commissioner is satisfied that procedures are in place and will be enforced to ensure compliance with this chapter.

III-d. A municipal agent appointed pursuant to RSA 261:74-a may provide the name of a person who has registered a motor vehicle together with the permit number, vehicle identification number, and fee paid in such transaction to a nongovernmental contracted agent of a municipality for audit purposes only for the purposes of RSA 41:9, VI and RSA 41:31-c. Any information received by the nongovernmental contracted agent shall not be further transferred or otherwise made available to any other person. The municipal agent shall not provide the requested information without a written request from the nongovernmental contracted agent. The municipal agent shall keep the written request on file together with a copy of the information provided.

IV. (a) Except for a person's photograph, computerized image, and social security number, motor vehicle records shall be made available, upon proof of the identity of the person requesting the records and representation by such person on a form satisfactory to the department that the records will be strictly limited to one of the following described uses:

(1) Motor vehicle manufacturers, or their authorized agents, for use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act.

(2) Insurance companies authorized to write automobile and personal excess liability insurance policies, or by self-insured entities, or their authorized agents, for use in connection with claims investigation activities, anti-fraud activities, rating, or underwriting.

(b) No motor vehicle records made available under this paragraph shall be sold, rented, transferred, or otherwise made available in whole or in part, in any form or format, directly or indirectly, to another person, except that an authorized agent may make such records available to any principal on whose behalf the records were sought if the name of that principal was provided to the department at the time the records were sought.

V. (a) Except for a person's photograph, computerized image and social security number, motor vehicle records may be made available upon proof of the identity of the person requesting the records and representation by such person on a form satisfactory to the department that the use of the records will be strictly limited to one or more of the following described uses, which use shall be specified in the request:

(1) For use by a legitimate business in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research, so long as the name and address of the individual is not disclosed by the department; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

(2) For use with respect to a request for a named person's motor vehicle records in connection with any civil, criminal, administrative or arbitral proceeding in any court or government agency, including the service of process and the execution or enforcement of judgments and orders, pursuant to an order of the court or agency.

(3) For use with respect to a request for a named person's motor vehicle records by a banking or similar institution, in the normal course of business, but only to verify the accuracy of personal information submitted by the individual to the bank and if such information is incorrect, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(4) For use by a legitimate business in research activities, and for use by a legitimate business in statistical reports, so long as personal information is not disclosed by the department.

(5) For use with respect to a request for a named person's motor vehicle records in providing notice to the owners of towed or impounded vehicles.

(6) For use with respect to a request for a named person's motor vehicle records by any private investigative agency or security service licensed by this state for any purpose permitted under subparagraph V(a) other than subparagraph V(a)(8).

(7) For use with respect to a request for a named person's motor vehicle records by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986.

(8) For bulk distribution for surveys, marketing or solicitations, provided that the express consent of each person to whom such motor vehicle records pertain has been obtained. Such consent may be withdrawn at any time.

(9) For use with respect to a request for a named person's motor vehicle records by a public utility, as defined in RSA 362:2 and over which the public utilities commission exercised jurisdiction on July 1, 1996, to perform its public service obligations, provided that the named person's express consent has been obtained. Such consent may be withdrawn at any time.

(10) For use by life insurance companies authorized to write life insurance policies, or their authorized agents, on a case-by-case basis, in connection with claims investigation, rating, and underwriting, provided that the insurance company has provided written notice to the named person that the person's motor vehicle records will be accessed.

(b)(1) A person may elect at any time not to have any personal information pertaining to such person made available as provided in subparagraphs V(a)(1), (2), (3), (4), (5), (6) and (7). A person who so elects shall inform the department in writing, and the department shall not thereafter make the personal information available, nor shall the department make available a list of the persons who have so elected. Any elections previously made under this section shall continue in effect.

(2) The department shall inform members of the public in a clear, simple and conspicuous manner of their right to make the election permitted by this subparagraph at each of its offices at which it requests personal information. The department shall also request that the same be done by municipal agents of the department appointed pursuant to RSA 261:74-a.

(c)(1) No person shall be required to provide his or her written or express consent to the release of personal information as a condition of doing business with any other person or legitimate business.

(2) For purposes of this section, "express consent" means upon knowledge and affirmative agreement of the person to whom the personal information pertains a written statement dated and executed by that person that is separate and distinct from any other document and that contains at least the following:

(A) A specific description of the personal information to be disclosed.

(B) The name of the entity that is authorized to make the disclosure.

(C) Identification of the entity or entities authorized to receive the disclosure and a

specific description of the purpose for which such disclosure will be made.

(D) The expiration date of the authorization, which shall be no more than 2 years from the date of its execution.

(E) A clear, simple, and conspicuous statement that providing express consent to the release of personal information is not required in order to do business with the entity that is authorized to make the disclosure.

(F) An acknowledgment by the person executing the statement that he or she has the right to revoke the authorization at any time.

VI. (a) Except as provided in subparagraph (b), an authorized recipient of personal information for a particular use under the provisions of subparagraph V(a) may not sell, rent, transfer, or make the information available to another person for the same or for any other use.

(b) An authorized recipient of personal information for a particular use under subparagraphs V(a)(1), (4), (8), (9), and (10) may sell, rent, transfer or make the information available to another person for the same use only, subject to the limitations in the particular subparagraph.

(c) An authorized recipient of personal information for a particular use under the provisions of subparagraph VI(b) who sells, rents, transfers or uses the information, or makes the information available to another person, for the same use shall be required by the department to (1) maintain for a period of not less than 5 years records identifying each person who receives the information and the permitted purpose for which the information will be used; and (2) make such records available to the department on request.

VII. A person shall have access to motor vehicle records relating to such person upon proof of identity. Motor vehicle records relating to a person may be made available to any other person upon proof, in such form and manner as the department prescribes, that the notarized, written consent of the person who is the subject of the record has been obtained.

VII-a. Nothing in this section shall prohibit a law enforcement agency of a political subdivision or its employees from releasing the following:

(a) Copies of reports of motor vehicle accidents prepared by the agency, and filed with the division pursuant to RSA 264:25 and RSA 264:26, to an owner, operator, or passenger of a vehicle involved in said accident, pedestrian hit by a vehicle in said accident, owner of property damaged in said accident, or the insurance company of any of the foregoing parties. Such agency may charge a reasonable fee therefor, to be deposited into the general fund of said political subdivision.

(b) Copies of reports of motor vehicle accidents prepared by the agency that are not required to be reported pursuant to RSA 264:25 and RSA 264:26, to an owner, operator, or passenger of a vehicle involved in said accident, pedestrian hit by a vehicle in said accident, owner of property

damaged in said accident, or the insurance company of any of the foregoing parties. Such agency may charge a reasonable fee therefor, to be deposited into the general fund of said political subdivision.

(c) Information obtained by the law enforcement agency that accident participants are required to exchange pursuant to RSA 264:25, to an owner, operator, or passenger of a vehicle involved in said accident, pedestrian hit by a vehicle in said accident, or owner of property damaged in said accident.

VIII. Nothing in this section shall prohibit the department in its discretion from releasing to the public any person's name, age or motor vehicle offenses only.

VIII-a. (a) No person who has been convicted of any offense enumerated in RSA 632-A, RSA 645, or RSA 649-A, or a reasonably equivalent offense under the law of another state or the federal government, shall be entitled to apply for or to receive a waiver from the department of safety relative to retention of the person's driver's license image, likeness, or photograph. Such image, likeness, or photograph shall be retained in the records of the department of safety.

(b) No person who has been convicted of DWI, aggravated DWI, or a reasonably equivalent offense under the laws of another state, shall be entitled to apply for or to receive a waiver from the department of safety relative to retention of the person's driver's license image, likeness, or photograph until at least 10 years after the date of the conviction. Such image, likeness, or photograph shall be retained in the records of the department of safety.

(c) No person who has been convicted of a felony in this state or in any other jurisdiction shall be entitled to apply for or to receive a waiver from the department of safety relative to retention of the person's driver's license image, likeness, or photograph until at least 10 years after the date of conviction. Such image, likeness, or photograph shall be retained in the records of the department of safety.

IX. (a) A person is guilty of a misdemeanor if such person knowingly discloses information from a department record to a person known by such person to be an unauthorized person; knowingly makes a false representation to obtain information from a department record; or knowingly uses such information for any use other than the use authorized by the department. In addition, any professional or business license issued by this state and held by such person may, upon conviction and at the discretion of the court, be revoked permanently or suspended. Each such unauthorized disclosure, unauthorized use or false representation shall be considered a separate offense.

(b) A person is guilty of a class B felony if, in the course of business, such person knowingly sells, rents, offers, or exposes for sale motor vehicle records to another person in violation of this section.

X. The department and any person aggrieved by a violation of this section may bring a civil

action under this section and, if successful, shall be awarded the greater of actual damages or liquidated damages of $2,500 for each violation; reasonable attorneys' fees and other litigation costs reasonably incurred; and such other equitable relief as the court determines to be appropriate.

XI. Neither the state nor its agencies or employees shall be civilly liable for any improper use or release of motor vehicle records to any person obtaining such records as provided in this section.

XI-a. No political subdivision or its agencies or employees shall be civilly liable for any improper use of or release of motor vehicle records to any person obtaining such records as provided in this section.

XII. The commissioner of safety shall adopt rules to implement this section. Notwithstanding any other provisions of law, such rules shall be exempt from the provisions of RSA 541-A.

XIII. Notwithstanding the provisions of RSA 91-A, the department may charge reasonable fees for the release of information under this section. In determining a reasonable fee, the department shall consider factors such as labor and production costs, as well as the market value of the information. All such fees shall be deposited in the fire standards and training and emergency medical services fund established in RSA 21-P:12-d.

XIV. Any person determined by the commissioner, after hearing, to have violated any provisions of this section may be barred from receiving motor vehicle records for a period not to exceed 5 years.

XV. (a) Motor vehicle records obtained from the department under the provisions of subparagraph V(a)(4) and (8) shall be obtained separately for each use specified under subparagraph V(a)(4) and (8), one use to a request, provided that the commissioner may grant a request from a legitimate business for multiple uses if:

(1) The commissioner determines the legitimate business has responsible business practices including, but not limited to, data privacy and security policies.

(2) The legitimate business provides the commissioner with a list of all users of the information, including the name and address of the business, provided, however, that such list shall not be a public record available for public inspection pursuant to RSA 91-A.

(3) The subsequent users are required by the legitimate business to certify compliance with RSA 260:14 and shall be conspicuously informed that they are prohibited from reselling, transferring, or assigning any motor vehicle record information, including personal information.

(4) The legitimate business certifies its compliance with RSA 260:14 on a form prescribed by the department, including posting a bond if required by the commissioner.

(b) All legitimate businesses approved under this paragraph shall be charged a reasonable

fee as determined by the commissioner that reflects the number of multiple uses authorized, the volume of the legitimate business' resale business, and the market value of the information.

XVI. The commissioner may limit the information contained in motor vehicle records released to any person under this section if it is determined by the commissioner that the release of certain personal information is unnecessary.

XVII. The provisions of this section shall be severable if any phrase, clause, sentence or provision is declared contrary to the constitution of this state or the United States.

RSA 625:8(III)(b)

625:8 Limitations. –

I. Except as otherwise provided in this section, prosecutions are subject to the following periods of limitations:

(a) For a class A felony, 6 years;

(b) For a class B felony, 6 years;

(c) For a misdemeanor, one year;

(d) For a violation, 3 months.

(e) For an offense defined by RSA 282-A, 6 years.

II. Murder may be prosecuted at any time.

II-a. [Repealed.]

III. If the period prescribed in paragraph I has expired, a prosecution may nevertheless be commenced:

(a) Within one year after its discovery by an aggrieved party or by a person who has a duty to represent such person and who is himself not a party to the offense for a theft where possession of the property was lawfully obtained and subsequently misappropriated or for any offense, a material element of which is either fraud or a breach of fiduciary duty.

(b) For any offense based upon misconduct in office by a public servant, at any time when the defendant is in public office or within 2 years thereafter.

(c) For any offense under RSA 208, RSA 210, or RSA 215, within 3 years thereafter.

(d) For any offense under RSA 632-A or for an offense under RSA 639:2, where the victim was under 18 years of age when the alleged offense occurred, within 22 years of the victim's eighteenth birthday.

(e) For any offense where destruction or falsification of evidence, witness tampering, or other unlawful conduct delayed discovery of the offense, within one year of the discovery of the offense.

(f) For any offense under RSA 153:24 and RSA 153:5, the state fire code, within one year of its discovery.

(g) For any offense under RSA 641:1 through 641:7, if committed with the purpose to assist in a murder, to conceal a murder, or to conceal or hinder the investigation or apprehension of an individual responsible for murder, at any time.

(h) For any violation-level offense involving a motor vehicle accident resulting in death or serious bodily injury, within 6 months of the accident.

(i) For any offense under RSA 633:7, within 20 years, except where the victim was under 18 years of age when the alleged offense occurred, in which case within 20 years of the victim's eighteenth birthday.

IV. Time begins to run on the day after all elements of an offense have occurred or, in the case of an offense comprised of a continuous course of conduct, on the day after that conduct or the defendant's complicity therein terminates.

V. A prosecution is commenced on the day when a warrant or other process is issued, an indictment returned, or an information is filed, whichever is the earliest.

VI. The period of limitations does not run:

(a) During any time when the accused is continuously absent from the state or has no reasonably ascertained place of abode or work within this state; or

(b) During any time when a prosecution is pending against the accused in this state based on the same conduct.

OTHER AUTHORITIES

HB 437

QUESTION PRESENTED FOR REVIEW

1- Did the trial court err in holding that Lisa Censabella does not have standing in this action?

STATEMENT OF THE CASE

On December 2, 2015 a hearing was held at the New Hampshire Department of Labor involving the termination of Officer Lisa Censabella. See *Appendix* at p. 2 and *Transcript* at p. 13, 16. At the hearing Chief Sean Kelly testified regarding discussions between Officer Censabella and former Weare Sergeant Kimberly McSweeney. See *Appendix* at p. 2 and *Transcript* at p. 14. During the cross-examination Chief Kelly acknowledged that Sergeant McSweeney had resigned from the police department following an internal affairs investigation and that the investigation was referred to Hillsborough County Attorney Dennis Hogan. See *Appendix* at p. 3 and *Transcript* at p. 14-15. On December 28, 2015 Attorney Soltani, as the attorney for Lisa Censabella requested RSA 91-A information from Attorney Hogan regarding the McSweeney matter, without disclosing who he was representing. See *Appendix* at pp. 3, 30, 56. Attorney Hogan did not respond to the request until January 8, 2016, a violation of RSA:91-A:4 (which requires an answer to the request within five business days) and withheld information concerning the criminal investigation. See *Appendix* at pp, 3, 30, 58. Attorney Soltani repeated his requests numerous times from that date through November 21, 2016. See *Appendix* at pp, 3-5, 30-39, 56-111. On November 29, 2016, Attorney Hogan released partial information relative to the criminal investigation of Officer McSweeney. See *Appendix* at pp. 5, 39, 112.

A Petition for Statutory Relief and Permanent Injunction Pursuant to RSA 91-A was filed with the court on March 28, 2017. See *Appendix* at p. 9-10. Defendants filed a Motion to Dismiss on April 12, 2017 claiming that there was no request made in Lisa Censabella's name or

on her behalf and that she was never identified directly and therefore could not have suffered any harm. See *Appendix* at p. 24-26. A hearing was held on April 14, 2017 See *Transcript.* Plaintiff's filed an Objection to the Motion to Dismiss on May 1, 2017 and addressed all the issues raised at the hearing, including a further explanation of the exhibits brought to court. See *Appendix* at p. 29-128. The Notice of Decision granting the Motion to Dismiss was ordered on June 26, 2017 and this appeal followed. See *Appendix* at pp. 134-143.

STATEMENT OF THE FACTS

On December 2, 2015, a hearing was held at the New Hampshire Department of Labor involving the termination of Officer Lisa Censabella of the Weare Police Department. See *Appendix* at p. 2 and *Transcript* at p. 13, 16. In attendance at the hearing were Attorney Tony Soltani who was representing Censabella, Attorney Paul Salafia who was representing Primex, former Weare Police Officer Lisa Censabella, former Weare Police Lieutenant James Carney, Weare Police Chief Sean Kelly and Hearings Officer Danielle N. Hebert. See *Appendix* at p. 2 and *Transcript* at p. 13-14, 16-17. Testimony was provided by the claimant, Lisa Censabella and by Chief Sean Kelly. See *Appendix* at p. 2 and *Transcript* at p. 14, 17, 16. Portions of the contested testimony involved discussions between Censabella and former Weare Sergeant Kimberley McSweeney which in part culminated in Censabella's separation from employment. See *Appendix* at p. 2 and *Transcript* at p. 14.

During cross examination by Attorney Soltani, Weare Police Chief Sean Kelly acknowledged that former Sergeant Kimberly McSweeney had resigned from the police department following an internal affairs investigation. See *Appendix* at p. 2 and *Transcript* at p. 13, 16. The investigation was pursuant to McSweeney being involved in a cruiser accident and allegedly soliciting a firefighter to cut the brakes lines of her cruiser to cover up the accident.

See *Appendix* at p. 2 and *Transcript* at p. 14-15. Chief Kelly testified he referred the investigation to Hillsborough County Attorney Dennis Hogan for potential criminal investigation of McSweeney. See *Appendix* at p. 3 and *Transcript* at p. 15.

On December 28, 2015, Attorney Soltani filed a Right to Know Request pursuant to RSA 91-A with Attorney Hogan, on behalf of Censabella, requesting any and all information, documents, memoranda, reports and other material in whatever form kept and by whatever name called regarding McSweeney. See *Appendix* at pp, 3, 14, 30, 56.

On January 8, 2016, Attorney Soltani received a response from Attorney Hogan relative to the McSweeney Right to Know Request. See *Appendix* at pp., 3, 15, 30, 58.

In Attorney's Hogan's January 8th, 2016 response, he indicated that "it is a matter of interpretation whether each file "regard[s]" McSweeney." The only information Attorney Hogan disclosed regarding McSweeney was that she was a "witness" for eight files. He affirmatively withheld information concerning an ongoing investigation where he neither described the information, nor referred to the description or the statutory exemption by number. See *Appendix* at pp. 3, 15, 30, 58. He simply left the false affirmative impression that no other responsive information existed.

On January 26, 2016, Attorney Soltani filed a renewed Right to Know request relative to McSweeney with Attorney Hogan. Attorney Soltani requested that Attorney Hogan fulfill Attorney Soltani's original Right to Know Request of December 28, 2015 consistent with the mandates of the New Hampshire Supreme Court, RSA 91-A. See *Appendix* at pp. 3, 15, 30, 60.

In a February 2016 in a letter from Attorney Hogan to Attorney Soltani, he claimed that he would need some time to determine an estimate for the number of pages to be released for each of the eight files in which McSweeney was a "witness." See *Appendix* at pp. 3, 15-16, 32.

On March 31, 2016, Attorney Hogan notified Attorney Soltani that the total cost for the amount of pages regarding McSweeney as being a witness was $325.00 dollars. Attorney Hogan, again, not only failed to reveal the investigation of McSweeney; but yet again affirmatively left the reasonable impression that no investigation file existed. See *Appendix* at pp. 3-4 16, 31-32, 63.

On April 8, 2016, Attorney Soltani sent a confirmation letter to Attorney Hogan. In part, Attorney Soltani wrote "I understand that you have fulfilled our request for files "regarding" McSweeney as a witness, defendant, suspect, potential target, target, complainant or involved party as previously identified in my previous correspondence of 12/28/2015 and 01/26/16." In order to mitigate labor and expense, Attorney Soltani requested a copy of the first page of each file identifying the involved party or the name of the defendant. See *Appendix* at pp. 4, 16, 32, 65.

On May 16, 2016 approximately one month later, Attorney Hogan notified Attorney Soltani that his office had searched additional files and found that McSweeney was "involved" in an additional six files. He supplied Attorney Soltani with the additional six face sheets. Again, these files only involved McSweeney as a witness. For the third time, yet again Attorney Hogan purposely failed to supply Attorney Soltani with any information regarding the criminal investigation his office had undertaken against McSweeney; whether the investigation was

completed, or an exemption as to why he was withholding the information. See *Appendix* at pp. 4, 16-17, 33, 66-79. The defendant simply made believe the investigation did not exist.

On July 22, 2016, Attorney Soltani filed yet another in a series of Right to Know requests relative to McSweeney. In Attorney Soltani's request, he alerted Attorney Hogan to the fact that the MuniLaw Group was now aware that McSweeney was referred to Attorney Hogan's Office for a criminal investigation on at least one occasion within the period outlined in each and all of the prior Right to Know Requests. Attorney Soltani asked Attorney Hogan for a proper response with the mandates enunciated by New Hampshire State Law. See *Appendix* at pp. 4, 17, f34, 81.

On August 4, 2016, Attorney Hogan acknowledged, by way of a letter, that he had received the July 22, 2016 Right to Know request along with two other Right to Know requests from Attorney Soltani but did not a provide any documents addressing McSweeney. See *Appendix* at pp. 4, 35, 83-84. On September 29, 2016, Attorney Soltani yet again wrote to Attorney Hogan since as of that date Hogan had failed to properly answer any of the Right to know Request. Attorney Soltani specifically mentioned documents were sent to the Hillsborough County Attorney's Office for a referral of McSweeney for a criminal investigation. See *Appendix* at pp. 4, 17-18, 35, 86-87.

On October 24, 2016, a staff member of the MuniLaw Group telephoned Attorney Hogan at his office relative to the Right to know requests for McSweeney and to inquire as to when Attorney Hogan would respond to the September 29, 2016 request. See *Appendix* at pp.4, 18, 37, 60. Later that afternoon, Attorney Hogan, called the MuniLaw Group and he requested that the Right to Know requests including the July 22, 2016 letter be faxed to his office. See *Appendix* at pp. 4, 37. On October 24, 2016, the MuniLaw Group faxed the Right to Know requests to

Attorney Hogan. A confirmation of the successful transmission of seven pages to fax number 603-627-6527 at approximately 5:59 p.m. was obtained. See *Appendix* at pp. 4, 18, 37, 60.

On October 31, 2016, Attorney Hogan responded to Attorney Soltani claiming he had previously addressed all information in his possession regarding McSweeney. In his October 31, 2016 response, Attorney Hogan also claimed that he never received the Right to Know request dated July 22, 2016 relative to McSweeney. This was in direct contradiction to Attorney Hogan's earlier letter dated August 4, 2016 where he acknowledged receipt of the July 22, 2016 correspondence and in addition to the copies previously faxed to Attorney Hogan on October 24th, 2016 by the MuniLaw Group. See *Appendix* at pp. 5, 18, 38, 106.

On November 21, 2016, Attorney Soltani sent a letter to Attorney Hogan. Attorney Soltani pointed out Attorney Hogan's contradictions regarding the alleged lack of receipt of the July 22, 2016 Right to Know request. Attorney Soltani also informed Attorney Hogan that this was his final request for compliance within the mandates enumerated under RSA 91-A, and that he required a definitive response as to whether Attorney Hogan possessed any records in which McSweeney was being criminally investigated. See *Appendix* at pp 5, 18, 38-39, 109-110.

On November 29, 2016, after eleven months, Attorney Hogan released six pages of information relative to the criminal investigation of McSweeney which had been initiated by Attorney Hogan's office on or about November 24, 2015. Among the documents disclosed to the MuniLaw Group was an email from Chief Sean Kelly of the Weare Police Department. Chief Kelley emailed Attorney Hogan on November 24, 2015 requesting that the Hillsborough County Attorney Office investigate McSweeney to determine whether criminal charges should be brought against McSweeney. See *Appendix* at pp. 5, 19, 39, 112.

Another email disclosed to the MuniLaw Group, dated December 16, 2015 was from Chief Sean Kelley making a request to Attorney Hogan that the McSweeney investigation be closed. In part, Chief Kelley wrote, "Today, the Town of Weare has received the resignation of Sergeant Kim McSweeney effective immediately. With Sergeant McSweeney's resignation, I am closing the associated Weare Police Department Internal Affairs file. With this note, I am asking to withdraw my request to your Office for review of Weare Police Department Internal Affairs case IA-15-019. Please let me know when the file will be available for retrieval." See *Appendix* at pp. 5, 19, 30, 120.

A third email disclosed to the MuniLaw Group dated May 23, 2016 was sent from Attorney Cassie Devine to Attorney Michele Battaglia who are both employed by the Hillsborough County Attorney's Office. In part, Attorney Devine (obviously a Monty Python fan) wrote "Nudge, nudge, wink, wink, say no more. If it wasn't a condition, why did they try to withdraw the file? What am I missing?". See *Appendix* at pp. 5-6, 34, 118.

Another email dated August 11, 2016, from Attorney Michele Battaglia notified Chief Kelly that the Hillsborough County Attorney's Office was declining to go forward with any charges against McSweeney. See *Appendix* at pp. 6, 36, 114.

In his latest response dated November 2016, Attorney Hogan claimed to withhold certain email correspondence from Assistant County Attorney Devine to ACA Battaglia from May 23, 2016 claiming the entire document to include the subject matter, or any other content to be "Attorney Work Product." Also included in Attorney Hogan's response was a series of newspaper articles from the Concord Monitor involving Sergeant McSweeney being tried as Defendant in a Federal Civil Rights Violations case with Soltani as the plaintiff's counsel. The trial began the week of February 18, 2016 during the same time frame Attorney Hogan withheld

and even failed to acknowledge the existence of documents involving McSweeney being investigated by Attorney Hogan's office for possible criminal misconduct. See *Appendix* at pp.5-6, 39, 112.

SUMMARY OF THE ARGUMENT

The New Hampshire Right-to-Know law is far more expansive than its federal counterpart. It also does not include an enabling act allowing for creation or implementation of the rights defined under the statute. There is no requirement under the law that an agent, or attorney identify the requestor on whose behalf he or she is acting. Similarly, judicial imposition of such hurdles does not advance the goals and purposes of the law. The petition sufficiently plead that Lisa Censabella was the client on whose behalf the requests were made. The alleged facts are to be taken as true while considering a motion to dismiss.

Lisa Censabella by all accounts and undeniably was an aggrieved party as defined by law. This is not a case of standing, but an apparent requirement imposed by the respondent that the requestor's identity must be disclosed before he or his office would properly respond to a request under RSA 91-A. This is illegal, and the respondent can point to no legal authority in support of his position. Even if such a requirement were imposed by the respondent, and it somehow was found to be legal, he had an affirmative obligation to inform the petitioner through counsel. Secret rules, never written, and never disclosed cannot, and should not create a last-minute bar to assertion of a citizen's constitutional or legal rights and remedies. Otherwise the very core of RSA 91-A would be frustrated. The respondent's objective is merely to delay and escape the consequences of his misconduct. His attempts are in vain, since the petitioner has standing, and is entitled to all remedies including attorney's fees and costs.

ARGUMENT

I- NEW HAMPSHIRE RIGHT-TO-KNOW LAW

This is likely the most egregious violation of the New Hampshire Right To Know lw ever visited by this court.

"All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted." N.H.CONST. PT. 1 Art. 8.

"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. RSA 91 -A: 1.

"The interpretation of a statute is to be decided ultimately by this court. The ordinary rules of statutory construction apply to our review of the Right-to-Know Law, and we accordingly look to the plain meaning of the words used. To advance the purposes of the Right-to-Know Law, we construe provisions favoring disclosure broadly and exemptions narrowly." Union Leader Corp. v. City of Nashua, 141 N.H. 473, 475, 686 A.2d 310 (1996) (quotation and citations omitted).

It is with this backdrop that the court should view the Respondent's behavior. Mr. Hogan has engaged in a pattern of evasion, diversion, obfuscation, and non-responses, for well

over a year, forcing the petitioner to resort to court for a remedy. He has broken several provisions of the statute, and the very letter of the Constitution which holds him accountable. None of his answers were remotely timely nor responsive up to and including his representation to court. The petitioner through counsel repeatedly urged, nay begged; the respondent to alter his course, and avoid litigation, to no avail. He ignored repeated requests, and whenever he responded, it was untimely and anything but a proper response and anything remotely close to what this court has held to be a proper response. After exactly eleven months, he gave an answer which is entirely surreal, and even then, withheld material which was still in his possession.

His final answer consists of a document purportedly showing a breach of his own office practices, and illustrates that his office did virtually nothing other than make believe an investigation was taking place, to avoid making the record look "short circuit[ed]". See *appendix p. 203* His series of responses illustrate that he could not maintain the same story more than once. Three of his letters contradict each other. Obviously, there is no policy or protocol in effect at the municipal agency for which he is responsible, to ensure compliance with New Hampshire law, and constitution regarding public access to records.

He was required to acknowledge the receipt of the request within five business days and either make the responsive documents available for inspection and copying, or provide a reasonable time frame by which the responsive material would be made available. RSA 91-A:4-IV

He did neither. Even when the respondent appeared before the court he failed to provide a definitive answer or explanation. He was also required to acknowledge the existence of a

document (or documents) and specifically assert a basis for withholding it, or them, permissible under the law. See *transcript p. 61* (unidentified speaker) Reid v. New Hampshire Attorney General, 152 A.3d 860 (2016). During his appearance in court, the respondent appears to have claimed that he has at least the possession of the investigative file in electronic format, but had never before, confirmed actual possession, control, or existence of that document, much less, comply with the law. The respondent did not, ever, proffer a legally cognizable basis to withhold the entire content of the closed investigative file presented to him for criminal prosecution. The respondent also appears to claim that he has disposed of a report involving McSweeney; the surveillance video recording of events surrounding the collision forming the basis for McSweeney's attempted cover-up and potentially evidence tempering or destruction; as well as, the recorded interviews with witnesses.

The respondent also appears to claim that he did not maintain a copy of those materials for his own files, as a part of the municipal records. This assertion challenges credulity. Hillsborough County is a municipal entity, and the responses are public records required to be maintained for at least five years after the expiration of the applicable statute of limitations. RSA 33-A: I (II), (IV)." Police, criminal-closed cases: statute of limitations plus 5 years." RSA 33-A:3-a (CV). "Police, accident files-property damage: 6 years." RSA 33-A:3-a (CII). The statute of limitations for police officers and other public servants does not begin to run until they have separated from service, and they are subject to prosecution for two years after separation from service. RSA 625:8(III)(b). Had he acted properly, in good faith and honesty, the petitioner would have been able to either commence her action with a court for enforcement of RSA 33-A, or sought to amend her petition.

The Respondent is a servant of the people elected for two years. Another County Attorney, yet to be elected, is entitled to have access to documents and evidence, which are within the statute of limitations, and subject to prosecution. New Hampshire is a land governed by laws, and not temporary office holders. The respondent has no right to deprive another elected official who may choose to mete out justice equally for police officers and civilians alike. Hence, the criminal penalty for premature disposition or destruction of people's records. RSA 41:68.

Obviously, Hillsborough County Attorney's office does not, as a matter of course, destroy, damage, or allow its files to be kept by persons not otherwise entitled to keep them, before the minimum time established by law. (See RSA 41:68) If County Attorney Hogan claims that Sean Kelly is an authorized keeper of Hillsborough County records, then anything transferred to Kelly, remains within his control and possession. Respondent Hogan must provide a proper, timely response to Lisa Censabella regarding the vanished records, the whereabouts and status of which remain unknown. It is hard to imagine that the respondent would return all files referred for a criminal investigation without maintaining copies to the same agency which employed the suspect and had an obvious conflict conducting the investigation. This would deprive future County Attorneys of vital records, and effectively nullify people's vote, not to mention violate the very letter of the law.

The petitioner does not claim that she is entitled to a complete copy of everything. On the contrary, the respondent could, with a straight face argue that the accident report itself, is exempt from disclosure, under RSA 260: 14, see also HB 437 (proposed amendment to eliminate the problem regarding disclosure of accident reports.) The petitioner received no answer about the records, either admittedly in the respondent's possession, or those that must legally have been in

his possession. See RSA 33-A:5-a, and RSA 5:29, (Electronic files are same as paper, but if kept for less than 10 years may be kept exclusively electronically, if approved by the county records committee). She received no claimed exemption nor was she ever provided any Vaugh, Curran, Murray, or similar log, index, or roster of withheld material, and the corresponding claimed exemptions. She was legally entitled to an answer which addresses at least the four known sets of records; the investigative file, the accident report, the surveillance video and the witness interviews, along with anything else the respondent may be withholding but the existence of which has not been confirmed through other means of investigation. Only after a response has been tendered, can the petitioner challenge the validity of the claims of exception, which may yet result in another action, depending how seriously the respondent takes the New Hampshire Constitution, RSA 91 -A and this court's precedent. At this point, the petitioner is before this court to establish her right to know. On remedy after a favorable decision she may yet discover what he may have illegally disposed of during the pendency of her right-to-know request, any exceptions claimed by the respondent, and a permanent injunction requiring the respondent to obey the mandates of the law through enactment of adequate and proper procedures to be followed when he receives a 91-A request. The former two should have been done no later than January of 2016, thus the necessity of the latter request. In short, she is prevented from finding out the truth, unless she first establishes her right to a remedy under the law.

II - STANDING

The respondent claims that Lisa is not an aggrieved party and as such, not entitled to relief. The respondent sets forth the appropriate standards for standing, in a case in controversy. However, his reliance is misplaced, and the trial court applied the improper standard.

A- STANDARD FOR MOTION TO DISMISS:

> "In reviewing a trial court's grant of a motion to dismiss, we consider " whether the allegations in the plaintiff's pleadings are reasonably susceptible of a construction that would permit recovery." Sanguedolce v. Wolfe, 164 N.H. 644, 645, 62 A.3d 810 (2013). We assume the plaintiff's pleadings to be true and construe all reasonable inferences in the light most favorable to her. Id. However, we need not assume the truth of statements in the plaintiff's pleadings that are merely conclusions of law. Id. We then engage in a threshold inquiry that tests the facts in the complaint against the applicable law, and if the allegations constitute a basis for legal relief, we must hold that it was improper to grant the motion to dismiss. Id." Cluff-Landry v. Roman Catholic Bishop of Manchester, 169 N.H. 670, 156 A.3d 147, (2017): See also R. Super. Ct. 9 (effective until July 1, 2017).

It was properly, and explicitly asserted that The MuniLaw Group, made this series of requests on behalf of the petitioner, the assertion which was never challenged. See App. Pg 2-3. Para. 4, 5, 6, 14. She, thus, is aggrieved, and entitled to relief. The respondent is has not challenged whether the petitioner is the true person aggrieved, yet in a novel and imaginative fashion, merely claims that he was entitled to know that the original 91-A request, or any subsequent one, was made on her behalf. This is so, so the respondent maintains, even though he never made any request for the identity of the requestor, nor had any publicly available policy or procedure in effect which required the identity of a requestor, under RSA 91-A. The respondent is seeking nothing less than telepathy, conjuring, or diving his self-imposed and unwritten requirements before responding to a 91-A request. Thus, although framed rather cleverly, the question is not one of standing, in the constitutional dimensions; but one where the respondent claims he was entitled to know the name of the client. He is requiring compliance with his secret rules, a year before filing of this action.

The respondent presents no support in law for such proposition, because there are none. Unlike Federal Freedom of Information Act, and many similar statutes in foreign jurisdictions, New Hampshire has chosen to maintain consistency among public servants, and simplicity for citizens by declining to enact a rule enabling statute. This court has acknowledged, perhaps

encouraged, various agencies to adopt procedures for responding to Right-To-Know request; but has never used a deviation from those policies or procedures as a bar to seeking a remedy – much less secret ones. See Taylor V. School Admin Unit #55, (September 21, 2017).

B- DUTY OF GOOD FAITH AND COOPERATION;

In this case, the respondent was not acting exclusively as a prosecutor, but another office holder, an official held to answer and be held accountable by the law. He was, for all intents and purposes, and remains the municipal counsel for Hillsborough County. He is the equivalent of a city or town solicitor or attorney in all civil matters. RSA 21:27-a, RSA 7:34. He, thus has a constitutional responsibility, not to obfuscate, but to cooperate and even guide citizens in obtaining their legal rights. New Hampshire has a long tradition of requiring government actors to cooperate with citizens, and even help them have access to their legal rights. Municipal governments, especially acting through their counsel, are not to engage in mortal combat with a citizen, but are constitutionally required to cooperate and assist citizens in pursuing their legal rights and remedies. "We have consistently held that municipalities have a constitutional obligation to provide assistance to all their citizens under Part I, Article I of our State Constitution. We have used reasonableness as a benchmark for assessing whether municipalities have fulfilled this constitutional obligation." Davis v. Sunapee 2011 WL 13092242 (NH, 2011), internal citations omitted. "We have consistently held that municipalities have a constitutional obligation "to provide assistance to all their citizens" under Part I, Article I of our State Constitution" Carbonneau v. Town of Rye 120 N.H. 96, 990 411 A.2d 1110 (1980); see also Richmond Co. v. City of Concord 149 N.H. 312, 314. 821 A.2d 1059 (2003); Savage v. Rye, 120 N.H. 409, 41 415 A.2d 873 (1980). "In the context of aiding property owners seeking municipal approval to develop their property, our focus has been "aimed at preventing

municipalities from ignoring an application or otherwise engaging in dilatory tactics in order to delay a project." Richmond Co.. 149 N.H. at 315, 821 A.2d 1059. "We note that Rye's attorney has indicated that the town has not foreclosed the possibility of issuing a building permit to the plaintiff. He also indicated that there are alternatives to the plaintiffs proposed septic system, but that the town is "not in the business of telling (the plaintiff) what to do so that he can get approval, he has engineers. The plaintiff has been attempting to develop his land since he purchased it four and one-half years ago. We remind the town that it is their function to provide assistance to all their citizens. See N.H.Const. pt. l, art. 1. We strongly suggest that the town of Rye quickly get "in the business" of attempting to negotiate a workable plan acceptable to both parties. The town's apparent unwillingness to engage in such discussions to date leads us to question seriously whether it is dealing in good faith." Carbonneau v. Town of Rye, 120 N.H. 96 (1980). It is a bit rich on the part of the respondent, to claim failure to identify the client deprives her of her legal remedies, while he readily admits that he had previously sought and obtained the name of yet another client of the same law firm in an independent Right-To-Know request. If the respondent needed to know the identity of the client, he could well have asked, and as in another request, he may well have received the answer. But that choice, whether to identify herself belonged to the client at the time; not to be used as a tool to deny her access to the court a year later.

C- SECRET RULES AS A BAR TO RIGHTS AND REMEDIES

This court has historically shown little patience where administrative rules, even when authorized by statute, detract, or degrade a right recognized and conferred by the legislature.

> "Because the rules at issue here effectively incorporate into New Hampshire's requirements for concealed-carry licenses the requirements established by other states for the issuance of concealed-carry licenses, the rules change the requirements of RSA 159:6, and thus, " add to, detract from, or modify

> the statute which they are intended to implement," Mays, 161 N.H. at 473 (quotation omitted). Accordingly, we conclude that the challenged rules -- requiring [143 A.3d 253] nonresidents to provide proof that they hold resident state licenses in order to obtain concealed-carry licenses in New Hampshire -- are ultra vires and, therefore, invalid. See Formula Dev. Corp. v. Town of Chester, 156 N.H. 177, 182, 934 A.2d 504 (2007) (noting that, to the extent administrative rules added to, detracted from, or modified our interpretation of a statute, the rules were ultra vires)." Bach v. New Hampshire Department of Safety, 169 N.H. 87, 143 A.3d 246, (2016); see also Jean Guy's Used Cars and Parts V. Beecher; 977 A.2d 479, 159 N.H. 38 (N.H. 2009).

Conversely, the respondent can point to no enabling act, no law, no regulation, and no authority which would allow him to enact a rule asking for the identification of the requestor – much less seek to deprive her of a legal remedy to a constitutional right on the basis of her failure to abide by his secret rule. New Hampshire Law, allows any citizen to request information, without enabling any government agent to create hurdles to this right. New Mexico, on the other hand, does allow a request for a name and method to reach a person to receive a response. Yet this is not a hurdle to prevent an anonymous to make a request through an agent.

> "Section 14-2-8(C) has an administrative function; it was not intended to give public bodies notice of who the litigants might be should the public body decide to deny the request. The purpose and intent of IPRA is to provide " all persons" with " the greatest possible information regarding the affairs of government." Section 14-2-5. In order to further this goal, IPRA makes it clear that all public entities must furnish records without regard to who is requesting the records and cannot require disclosure of the reason for inspecting the records. Section 14-2-8(C).
>
> Requiring a person to state the reason for a request, either directly or by implication, could have a chilling effect on the free flow of information and potentially compromise the public entity's prompt compliance with the request. 139, San Juan Agr. Water Users Ass'n v. KNME-TV, 150 N.M. 64, 257 P.3d 884, 2011 -NMSC- 011, (2011)

> "It is also reasonable to expect many instances when parties will request records through agents who may not be available to participate in IPRA enforcement suits. Foreseeable requesting parties include litigants who request records for litigation through attorneys who may not represent them in the IPRA suit, news organizations that make requests through employees who may no longer be employed when the IPRA suit is filed, political parties or public interest

> organizations who make requests through employees or volunteers who are not available for the IPRA suit, and any organization that can act only through human agents who are mobile and mortal by nature. There is no sound justification for requiring those [257 P.3d 892] principals to start the requesting process all over again, with likely identical results, each time an agent becomes unavailable."*139.* San Juan Agr. Water Users Ass'n v. KNME-TV, 150 N.M. 64, 257 P.3d 884, 2011 -NMSC- 011, (2011)

A client may not be deprived of her legal right, because she chose to act through her attorney. The same principles apply with equal strength in New Hampshire. The change to New Hampshire law proposed by the respondent serves no legitimate purpose, which could possibly further the statement of purpose set forth by the legislature.

> "The City argues that Kleven lacks standing to sue under the PDA because Duncan, his attorney, made the requests at issue here. Implicit in this argument is the proposition that a person may not seek relief in the courts under the PDA if that person's attorney communicated the request to the agency. The City reads RCW 42.17.340(1) too narrowly, contrary to the stated purpose of the PDA. The doctrine of standing requires that a claimant must have a personal stake in the outcome of a case in order to bring suit. [9] The record amply supports Kleven's personal stake here. The petition commencing this case, which Duncan signed, clearly alleges that Duncan made the requests for records on behalf of Kleven. As an officer of the court, Duncan is subject to CR II and other sanctions for making false representations to the court. And 111 Wn.App. 291 the City conceded at oral argument Before this court that it had no basis to believe that Duncan's representation in this respect was inaccurate or untrue. In short, there is absolutely nothing in the record to show that Kleven did not have a personal stake in seeking relief under the PDA based on his requests for public records made through his attorney. Kleven v. City of Des Moines, 111 Wn.App. 284, 44 P.3d 887, (Div. 1 2002)" See also Cedar Grove Composting, Inc. v. City of Marysville, 188 Wn.App. 695, 354 P.3d 249 (Wash, Div. 1 2015).

The respondent's reliance on the federal Freedom of Information Act, is entirely misplaced. This court does not follow FOIA precedent blindly, but only looks for guidance where there are similarities and then only when New Hampshire law or rights conferred thereunder remain intact. See Reid Supra. This approach is hardly unique. Quite the opposite it is the prevailing approach among other jurisdictions. This is partially so since the federal courts, unlike their state

counterparts do not presume Congress intended the common law to apply when interpreting statutes.

> "A number of other jurisdictions have also declined to follow federal caselaw when interpreting their own state public records statutes. See, e.g., Graham v. Ala. State Emps. Ass'n, 991 So.2d 710, 720 (Ala.Civ.App.2007) (finding no basis to apply FOIA caselaw when construing the Alabama statute); Bowers v. Shelton, 265 Ga. 247, 453 S.E.2d 741, 743 (1995) (" Because the Georgia Act materially differs from the FOIA, [caselaw interpreting FOIA] is inapplicable."); Magic Valley Newspapers, Inc. v. Magic Valley Reg'l Med. Ctr., 138 Idaho 143, 59 P.3d 314, 316-17 (2002) (finding that FOIA did not apply to a case brought under the Idaho statute); State ex rel. Thomas v. Ohio State Univ., 71 Ohio St.3d 245, 643 N.E.2d 126, 129 (1994) (rejecting FOIA's privacy-public interest balancing test for the Ohio Public Records Act because FOIA did not apply, and the Ohio law contained no similar personal-privacy exception); Kleven, 44 P.3d at 890 (refusing to apply FOIA caselaw to interpret Washington's public disclosure law because the state law provisions differed significantly from the federal law provisions). We agree with the jurisdictions that have rejected federal FOIA interpretations in interpreting their own statutes guaranteeing public access to public records. Both recognized principles of common law and the remedial purposes of our statute lead us to conclude that a previously unnamed principal may enforce IPRA rights, either directly in its own name or through its agent." San Juan Supra.

III- THE REAL ISSUE

The respondent's argument is no more than a ruse to escape attorney's fees, under the mistaken belief that a pro se attorney is not entitled to recover attorney's fees under 91-A:8. But the respondent's reliance on Reid v. Attorney General is misplaced. While this is a question for another day, in that case, Reid a pro se attorney, did not challenge the denial of attorney's fees, and the court never visited the issue. Even if an employee of the firm of The MuniLaw Group were incorrectly disclosed as clients, or to be substituted as parties, under the strictest standard in the United States (except California), they would be entitled to any fees incurred for work by their associates. However, neither petitioner, nor Soltani, nor the law firm, concede that a lawyer

party is not entitled to fees. A pro se attorney could recover attorney fees. See e.g. Giguere v. SJS Family Enterprises, Lid., 155 P.3d 462 (Colo. Ct. App.2006), as modified on denial of reh'g, (Sept. 26, 2006) and cert. denied, 2007 WL 1 113741 (Colo. 2007). Quick & Reilly, Inc. Pertin, 411 So. 2d 978 (Fla. 3d DCA 1982); Parquii corp. v. Ross, 273 or.900, 543 P.2d 1070 (1975). Pullman v. Brill, Brooks, Powell & Yount, 766 S.W.2d 527 (Tex. App. Houston 14th Dist. 1988), supplemented, 763 S.W.2d 505 (Tex. App. Houston 14th Dist. 1988). The New Hampshire supreme court was keen to observe the United States Supreme Court's holding in Kay v. Ehrler, 499 US, 432, 433-35, 1ll s.ct. 1435. 1436. 113 L,Ed32d 486 (1991) "[P]ro se litigant who is not a lawyer is not entitled to attorney's fees [under 42 U.S.C. §1988.". In that sense, the court joined the majority of jurisdictions where non-attorney litigants appearing pro se, could not recover attorney's fees, but may be entitled to other curative measures resulting from vexatious or dilatory conduct.

It is well settled that under the Federal Freedom of Information Act, a pro se attorney is not entitled to attorney's fees. However, the facts in this case have presented themselves in the more strict and constrained context of a FOIA request, where the attorney did not disclose the identity of his client until he had to file suit. Only then, in court ECF filings and complaint, the client's identity was disclosed. The court disposed of the issue, fairly quickly. "Although Plaintiff did not explicitly reference LTJV in his original FOIA request, it is clear that Plaintiff disclosed his client, LTJV, and its interests since the start of this litigation. LTJV is the "real party-in-interest" and the proper focal point of the fees inquiry. Since an attorney-client relationship exists here, the concerns in Falcone, Burka and Defendant's other cited cases do not fit. Thus, Plaintiff, on behalf of his client LTJV, is eligible for an award under FOIA. " Weikamp v. United States Department of Navy, 175 F.Supp.3d 830 (N.D.OH. 2016).

CONCLUSION

The petitioner respectfully prays that this court reverse the trial court in-so-far as the court held she had no standing. Further, the petitioner requests a remand to the trial court with instruction to order the disclosure of the requested material and further proceedings. The petitioner seeks attorney's fees and costs incident to the prosecution and appeal of this case, under RSA 91-A:8, the redemption of a public right and

SUPREME COURT RULE 16(10) COMPLIANCE

The undersigned hereby certifies that he has sent by first class mail two copies of this brief to Attorney Carolyn M. Kirby on this 20th day of November 2017.

REQUEST FOR ORAL ARGUMENT

Plaintiffs wish to be heard orally. Their argument will be presented by Tony F. Soltani and will take no more than 15 minutes as permitted by Supreme Court Rule 18(3).

Respectfully submitted,
Lisa Censabella
By and through her attorneys,
The MuniLaw Group

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SUPERIOR COURT

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NOTICE OF FINAL DECISION

FILE COPY

Case Name: **Lisa Censabella v Hillsborough County Attorney Dennis Hogan**
Case Number: **226-2017-CV-00135**

Enclosed please find a copy of the court's order of June 23, 2017 relative to:

ORDER (ON MO DISMISS)

Unless a post-disposition motion or appeal is submitted, final judgment shall be entered 31 days fror the date of this notice of decision. After the order becomes final and judgment entered, a Certificate Judgment, Writ of Execution, or certified copy of the Final Order may be obtained upon request.

June 26, 2017

Marshall A. Buttrick
Clerk of Court

(564)

C: Tony F. Soltani, ESQ; Carolyn Marie Kirby, ESQ

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

226-2017-CV-00135

LISA CENSABELLA

v.

HILLSBOROUGH COUNTY ATTORNEY
DENNIS HOGAN

ORDER

The plaintiff, Lisa Censabella, has filed a petition against the defendant, Dennis Hogan, in his capacity as the Hillsborough County Attorney, seeking relief pursuant to RSA 91-A, New Hampshire's Right to Know law. The defendant moves to dismiss, asserting that the plaintiff is not an aggrieved party, and, therefore, has no standing to maintain this action.

The Court held a hearing on this matter on April 14, 2017, at which both parties were represented by counsel. The parties have since filed supplemental memoranda. After considering the pleadings, the arguments, and the applicable law, the defendant's motion to dismiss is granted.

Background

The Court draws the following facts from the record. The plaintiff's attorney, Tony Soltani, Esq., had contacted the Hillsborough County Attorney's Office ("HCAO") numerous times seeking the production of certain documents pursuant to RSA 91-A. The Court summarizes some of the parties' communications as follows:

1. On December 28, 2015, Attorney Soltani sent a letter to the defendant seeking production of "any and all information, documents, memoranda, reports, and other material in whatever form kept and by whatever name called regarding Kimberley McSweeney ..." The subject line in the letter is "Re. Right to Know Request- Kimberley McSweeney." This letter did not mention the plaintiff's name or that Attorney Soltani was seeking the information on behalf of a client.

2. On January 8, 2016, the defendant responded to Attorney Soltani's letter. He provided a record of Ms. McSweeney from his "file management systems." He also noted that "You have not identified yourself or your office as representing Kimberly McSweeney. Therefore any personnel information we have is not available to you."

3. On January 26, 2016, Attorney Soltani wrote a letter to the defendant, which stated in part: "I am in receipt of your response dated January 8, 2016 regarding my Right to Know Request." (Emphasis added.) Attorney Soltani also indicated that he did not represent Ms. McSweeney. Again, however, he did not mention that he was seeking the documents on behalf of the plaintiff or any other client.

4. On March 2, 2016, Attorney Soltani wrote four letters to the defendant requesting information regarding Weare, New Hampshire police officers. All of the letters stated "This request is being made under the New Hampshire Right to Know Law (RSA 91-A)." On March 7, 2016, Attorney Soltani wrote a similar letter requesting information regarding State Representative Neal Kurk. These letters did not mention the plaintiff's name nor did they indicate that Attorney Soltani sought the information on behalf of a client.

24

5. On April 8, 2016, Attorney Soltani responded to the defendant's "response dated March 31, 2016 regarding my Right to Know Request of Kimberly McSweeney." In that letter, Attorney Soltani indicated that he was trying to narrow his request to "mitigate the ... expenditure on my client's behalf for material that we may not need." The letter, however, does not mention the client's name.

6. On July 22, 2016, Attorney Soltani wrote a letter to the defendant. Attorney Soltani noted that his law firm, the MuniLaw Group, "initially filed a right to know request ... relative to Sergeant Kimberly McSweeney." The letter does not indicate that Attorney Soltani was seeking the information on behalf of a client.

7. In another follow-up letter dated September 29, 2016, Attorney Soltani indicated that "This Office has been retained to represent former Chief John Velleca." There is no mention of any other clients. At the very end of this letter, it states: "Cc: Client(s)."

8. On November 21, 2016, Attorney Soltani wrote to the defendant in regards to "my Right to Know Requests involving Kimberly McSweeney." (Emphasis added.) In the letter, Attorney Soltani indicated that he was still unsatisfied with the defendant's responses and threatened litigation. There was no mention of the plaintiff's name. At the very end of this letter, it states: "Cc: Client(s)."

9. On November 29, 2016, the defendant wrote to Attorney Soltani. The defendant enclosed "six sheets of paper containing the information you requested in your November 21, 2016 letter." The defendant indicated that "[t]wo portions of the information required redaction."

(Pl.'s Ex. 1; Def.'s Ex. A.)

Unsatisfied with the information received, the plaintiff filed this petition on March 30, 2017. She alleges that she "is a citizen and resident of the State of New Hampshire who has been aggrieved by violations of RSA 91-A occurring between December 28, 2015 through November 29, 2016, by the Defendant Hillsborough County Attorney Dennis Hogan, which violations have not been remedied ..." (Pet. ¶ 6.)

The defendant now moves to dismiss. He asserts that the plaintiff "is not identified directly or indirectly in any of the requests cited in the petition nor do any documents reflect that requests were proffered on her behalf." (Def.'s Mot. Dismiss ¶ 4.) As such, the defendant maintains that the plaintiff lacks standing under RSA 91-A to bring this petition.

Standard of Review

"Generally, in ruling upon a motion to dismiss, the trial court is required to determine whether the allegations contained in the [plaintiff's] pleadings are sufficient to state a basis upon which relief may be granted." K.L.N. Constr. Co. v. Town of Pelham, 167 N.H. 180, 183 (2014) (citation omitted). "To make this determination, the [C]ourt would normally accept all facts pled by the [plaintiff] as true, construing them most favorably to the [plaintiff]." Id. (citation omitted). "When the motion to dismiss does not challenge the sufficiency of the [plaintiff's] legal claim but, instead, raises certain defenses, the trial court must look beyond the [plaintiff's] unsubstantiated allegations and determine, based on the facts, whether the [plaintiff] ha[s] sufficiently demonstrated [her] right to claim relief." Id. (citation omitted). "A jurisdictional challenge based upon lack of standing is such a defense." Id. (citation omitted).

Analysis

It is black letter law that "[f]or a court to hear a party's complaint, the party must have standing to assert the claim." GE v. Comm'r, N.H. Dep't of Revenue

Admin., 154 N.H. 457, 461 (2006) (quotation omitted); see also State ex rel. Thomson v. State Bd. of Parole, 115 N.H. 414, 419 (1975) (noting that the purpose of the law of standing is to protect against improper plaintiffs). "In evaluating whether a party has standing to sue, [the Court] focus[es] on whether the party suffered a legal injury against which the law was designed to protect." Birch Broad., Inc. v. Capitol Broad. Corp., Inc., 161 N.H. 192, 199 (2010) (quotation omitted). Because the defendant's standing argument is statutorily based, the Court is required to interpret RSA 91-A.[1]

"The ordinary rules of statutory construction apply to [the Court's] review of the Right-to-Know Law." N.H. Right to Life v. Dir., N.H. Charitable Trs. Unit, 169 N.H. 95, 102–03 (2016) (quotation omitted). "When examining the language of a statute, [the Court] ascribe[s] the plain and ordinary meaning to the words used." Id. at 103 (quotation omitted). The Court gleans "legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include." Id. (quotation omitted). The Court "also interpret[s] a statute in the context of the overall statutory scheme and not in isolation." Id. (quotation omitted). The Court may also "look to the decisions of other jurisdictions interpreting similar acts for guidance, including federal interpretations of the federal Freedom of Information

[1] There is also a constitutional dimension to the standing inquiry. See Duncan v. State, 166 N.H. 630, 642 (2014) (noting that "[a]lthough the standing requirements under Article III of the Federal Constitution are not binding upon state courts, and although the State Constitution does not contain a provision similar to Article III, as a practical matter, Part II, Article 74 imposes standing requirements that are similar to those imposed by Article III of the Federal Constitution") (internal citations omitted).

Act (FOIA)." Id. (quotation omitted). "Such similar laws, because they are in *pari materia*, are interpretatively helpful . . ." Id.

RSA 91-A:4 provides, in relevant part.

> 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. If a public body or agency is unable to make a governmental record available for immediate inspection and copying, it shall, within 5 business days of 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 reasonably necessary to determine whether the request shall be granted or denied.

RSA 91-A:4, IV. In the event the public body or the agency fails to comply with the "request," "[a]ny person aggrieved by a violation of this chapter may petition the superior court for injunctive relief." RSA 91-A:7.

The issue in this case is whether the plaintiff is a "person aggrieved" and therefore entitled to maintain this action. The term "person aggrieved" is not defined in RSA 91-A. The New Hampshire Supreme Court, however, has held that the "plain and ordinary meaning of the term 'aggrieved'" is one "having a grievance; specifically suffering from an infringement or denial of legal rights." In re Williams, 159 N.H. 318, 324 (2009) (quotation and brackets omitted). Thus, it follows that an "aggrieved party" in the context of RSA 91-A is one who has had his or her right of inspection and/or access to public records denied by a public body. See also McDonnell v. United States, 4 F.3d 1227, 1237 (3d Cir. 1993) (legislative history of FOIA indicated "Congress's intent to identify the person

28

making the request with the person aggrieved when a request is denied"); Osterman v. U.S. Army Corps of Eng'rs, No. CV13-1787-BJR, 2014 U.S. Dist. LEXIS 154058, at *4 (W.D. Wash. Oct. 30, 2014) ("In the context of FOIA, standing is conferred on an individual whose FOIA request has been denied in whole or part.").

Here, it appears undisputed that the plaintiff herself never requested any of the documents she seeks in her petition, and, therefore, never had her right of access denied by the defendant. While her attorney could have requested the documents on her behalf, the plaintiff's name does not appear in *any* of Attorney Soltani's letters to the defendant. See Brown v. EPA, 384 F. Supp. 2d 271, 276-77 (D.D.C. 2005) (holding that plaintiff had standing to challenge denial of attorney's FOIA request that was expressly made on plaintiff's behalf). In one of his letters, Attorney Soltani had written that he represented a party, but it was a different party –a Chief John Velleca. Attorney Soltani also routinely wrote in the first person in many of his letters. See Three Forks Ranch Corp. v. Bureau of Land Mgmt., Little Snake Field Office, 358 F.Supp.2d 1, 3 (D.D.C. 2005) (dismissing FOIA action where attorney "wrote in the first-person and did not specifically state that he was making the request 'on behalf of' Three Forks Ranch" because "an attorney must adequately identify that he is making the FOIA request for his client in order for the client to have standing to pursue a FOIA action").

Indeed, every federal court interpreting FOIA has held that a previously undisclosed client does not have standing to bring an action under these

circumstances. Mahtesian v. U.S. OPM, 388 F. Supp. 2d 1047, 1048 (N.D. Cal. 2005) (noting that under FOIA, "every court that has considered the issue has held that" there is no standing).[2] Because the New Hampshire Supreme Court has repeatedly found federal courts' interpretation of FOIA to be instructive in construing RSA 91-A,[3] the Court finds these cases to be persuasive.

Conclusion

The following orders are entered by the Court:

1. The Court concludes that the plaintiff is not a "person aggrieved" under RSA 91-A:7, and, therefore, does not have standing to proceed with this action.

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[2] See, e.g., Wetzel v. U.S. Dep't. of Veterans Affairs, 949 F. Supp. 2d 198, 202 (D.D.C. 2013) (stating that "courts routinely dismiss FOIA cases for lack of standing by a plaintiff where plaintiff's counsel submitted a request without including plaintiff's name or clearly indicating that the request was being filed on the plaintiff's behalf"); Wingate v. U.S. Dep't of Homeland Sec., No. 8:11-cv-223-T-33AEP, 2012 U.S. Dist. LEXIS 75270, at *2 (M.D. Fla. May 31, 2012) (plaintiffs had no standing when FOIA requests were made by attorney without naming plaintiffs as requesting parties); Fieger v. Fed. Election Comm'n, 690 F. Supp. 2d 644, 649 (E.D. Mich. 2010) ("There must be an identity between the requesting person and the party bringing the lawsuit."); Haskell Co. v. U.S. DOJ, No. 05-1110(RMC), 2006 U.S. Dist. LEXIS 12992, at *2 (D.D.C. Mar. 13, 2006) (dismissing case for lack of standing because FOIA request was "submitted solely by" plaintiff's attorney and plaintiff was "not the real party in interest"); Brown, 384 F.Supp.2d at 276 (D.D.C. 2005) (noting that "several courts have dismissed FOIA claims for lack of standing where plaintiff's counsel submitted a request for documents to an agency without including the plaintiff's name on the request or stating that the request was being filed on behalf of the plaintiff"), see also Craig A. Rolfe, P.L.L.C. v. Lake Templene Improvement Bd., No. 327513, 2015 WL 9487695, at *3 (Mich. Ct. App. Dec. 29, 2015) (client could not maintain Michigan FOIA action where the "facts show that [the attorney] sent FOIA requests in his own name on September 18, 2014 and that these FOIA requests included absolutely no mention of [the client] or the fact that [the attorney] had been retained by [the client]"); Macris v. Guam Mem'l Hosp. Auth., No. CV0117–07, 2008 WL 1749476, at *6 (Guam Apr. 11, 2008) ("Under the Sunshine Act, the agent must identify the principal in making the information request, for the principal to have standing to institute proceedings pursuant to section 10111(b).").

[3] See Reid v. N.H. Att'y Gen., 169 N.H. 509, 522 (2016) (looking to United States Supreme Court's interpretation of term in FOIA); 38 Endicott St. N., LLC v. State Fire Marshal, 163 N.H. 656, 667 (2012) (looking to federal circuit court's interpretation of FOIA), ATV Watch v. N.H. Dep't of Transp., 161 N.H. 746, 753 (2011) (looking to federal's courts interpretation of FOIA regarding reasonableness of search efforts by agency), Lodge v. Knowlton, 118 N.H. 574 (1978) (adopting six-prong test under FOIA for evaluating requests for access to police investigative files).

2. To the extent that plaintiff seeks to go forward with this action, plaintiff shall have thirty (30) days from the date of the Clerk of Court's notification of this order in which to file a motion seeking to correct the issue of standing. If defendant objects to the motion, defendant shall have the customary ten (10) days in which to file an objection.

3. Absent a successful correction of the issue of standing, as determined by the Court, defendant's motion to dismiss shall be granted.

SO ORDERED.

6-23-17
Date

Philip P. Mangones
Presiding Justice

30