

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

CASE NO. 2019-0150

PAUL MARTIN

v.

CITY OF ROCHESTER

**RESPONDENT CITY OF ROCHESTER'S
MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFF'S BRIEF IN SUPPORT OF HIS APPEAL
FROM A JUDGMENT OF THE STRAFFORD SUPERIOR COURT**

NOW COMES THE CITY OF ROCHESTER, (the "City") Respondent in the above-captioned matter, and by and through the City Attorney's Office, submit this Memorandum of Law in Opposition to the Plaintiff's Brief in accordance with Supreme Court Rule 16(4)(b), and in support thereof states as follows:

THE UNDERLYING CASE

The parties conduct a Final Hearing on the Merits on November 29, 2018 in the Stafford County Superior Court (Houran, J.). Following submission of Summations/Memorandum of Law by the parties on December 28, 2018, the Court issued a Final Order on the Merits on February 8, 2019 (the "Order"). See Petitioner's Brief, pp. 20-39. The Order contains an extensive Factual Background section which outlines the facts as determined by the trial Court. See Petitioner's Brief, pp.20-29. The City accepts the trial Court's recitation of the facts and relies on them herein.

ARGUMENT

The Technical Review Group is Not a “Public Body”

The question before this Court, as was before the trial Court, is whether the City’s Technical Review Group (TRG) is a “public body,” “advisory committee,” or “agency” within the meaning of RSA 91-A:1-a, VI (d) and therefore subject to the “open meeting” requirements of RSA 91-A:2. “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 (1996) (internal quotations and citations omitted). The trial Court concluded, correctly, that the TRG, within the “plain meaning” of the statute is not a public body and not subject to the open meeting requirements of the statute. See Petitioner’s Brief, pp. 32.

The most cited and noteworthy cases in RSA 91-A jurisprudence regarding access to meetings revolve around whether the entity itself is private in nature or public in nature. In *Bradbury v. Shaw*, this Court determined that an Industrial Advisory Committee established by the Mayor of Rochester and consisting of prominent businessmen, newspapermen, and city councilors was a board of the City under RSA 91-A:1, IV. *Bradbury v. Shaw*, 116 N.H. 388, 390 (1976). The Committee in *Bradbury* was appointed by the Mayor, derived its authority from the Mayor¹, devoted it’s time to the sale of city-owned land, contacted private developers it believed might be interested in doing business in the city, and gathered information it believed that potential investors might find useful. *Id.* at 389. In *Union Leader Corp. v. New Hampshire Hous.*

¹ At the time of that case, Rochester still had a Strong Mayor form of government. The City had not switched to the Manager-Council form of government under which it operates today.

Fin. Auth., 142 N.H. 540 (1997), this Court found that the New Hampshire Housing Financial Authority performed “the essential government function of providing safe and affordable housing to the elderly and low income of our State” and, thus, fell within the auspices of RSA 91-A for the purpose of providing the public access to its documents. *Id.* at 547. Finally, in *Prof'l Firefighters of N.H. v. Health Trust*, 151 N.H. 501 (2004), this Court ruled that the Local Government Center (LGC) Health Trust was a quasi-public entity subject to the governmental records provisions of RSA 91-A because the entity performed “essential government functions.” *Id.* at 504-05.

The public-private dichotomy debate does not exist in the present case. The City agrees that the TRG is part of a public entity. The TRG consists of employees of the City, which is a municipal corporation. The City maintains the governmental records of the TRG pursuant to RSA 33-A and provides the public with open access to said records pursuant to RSA 91-A: 4. The TRG is not, however, a “public body” subject to the open meetings provisions of RSA 91-A: 2.

The TRG, according to the testimony of City Manager Blaine Cox, is best described as a self-directed work team. Tr. Trans. p.34. According to Cox, a self-directed work team is a group of staff founded around a particular topic area or charge. Tr. Trans. p. 34. The group is then left to decide how to operate to fulfill that charge. Tr. Trans. p. 34. The role of the City Manager is to appoint the members of the team and to give it its overall charge. Tr. Trans. p. 34. The TRG was founded by the City Manager to assist applicants by providing comments and suggestions on land use plans in order to ensure compliance with various City regulations, laws, and policies. Tr. Trans. p. 9. As testified to by both Director of Planning James Campbell and Economic Development Director Karen Pollard, the TRG exists for the benefit of the applicants in order to

guide them through the City's sometimes-labyrinthine land use/control systems. Tr. Trans. pp.75-80; 104-15. The TRG does not exist in the City Charter, the City Ordinance, the City Site Plan Regulations, or the City Subdivision Regulations. Tr. Trans. p. 37. The TRG is not a separate department. Tr. Trans. p. 36. The TRG does not have its own budget. Tr. Trans. p. 36. The TRG does not have the authority or power to approve, disapprove, delay, impede, facilitate, foster, or otherwise permit any land use proposals within the City. Tr. Trans. pp.173-174. The TRG does not answer to the Mayor, the City Council, the Planning Board, or the Zoning Board of Adjustment. Tr. Trans. p. 35. Those bodies have no input on how the group operates, nor on its membership or its charge. The City Manager, in his sole discretion, controls all aspects of the TRG's existence. Tr. Trans. pp. 34-35.

The Plaintiff's contention that the TRG is, in and of itself, a public body is therefore incorrect as a matter of law. If an applicant met individually with the Chief Planner, there would be no question that the interaction would not be a "public meeting." If an applicant met individually with the City Engineer, there would be no question that the interaction would not be a "public meeting." The same is true as to all other individual members of the TRG meeting one-on-one with an applicant. The TRG, as a self-directed work team of employees, is not greater than the sum of its parts. Just because there are multiple employees meeting with a member of the public, it does not cause that group of employees to morph into a "public body" as that term is defined in RSA 91-A:1-a, VI. It also does not cause that interaction to become a "public meeting" as defined in RSA 91-A: 2, I.

It cannot become lost in this case that the work of the TRG would happen even if the TRG did not exist. Each member of the TRG must analyze and comment on proposed land use applications as part of their duties with the City of Rochester. As both Director Campbell and

Chief Planner Seth Creighton testified, the component members of the TRG do their jobs even if the applicant does not agree to appear before the TRG. Further, as Campbell, Pollard, and Creighton all testified to, the members of the TRG discuss proposed land use applications with applicants before they submit an application, prior to the TRG, during the TRG, after the TRG, before the Planning Board, after Planning Board, and well after the Planning Board has approved a project. Tr. Trans. p.76; 111-113; 178-179. The TRG is merely a convenient mechanism to streamline a process which must occur in order for these City employees to help applicants achieve their vision. If the TRG did not exist, the analysis conducted by its members would still happen and, as noted above, those individual interactions between an applicant and a member of City staff would never, and will never, be considered a “public meeting.”

Further, the TRG is not, as the Plaintiff contends, an “advisory committee” to a public body, namely the Planning Board. RSA 91-A:1-a, I defines an “Advisory Committee” as “any committee, council, commission, or other like body whose primary purpose is to consider an issue or issues designated by the appointing authority so as to provide such authority with advice or recommendations.” The TRG cannot be an “advisory committee” to the Planning Board because the Planning Board is not the “appointing authority.” As stated above and testified to by City Manager Cox, the appointing authority for the TRG is the City Manager. While there may be an ancillary effect upon the Planning Board based upon the work of the TRG, again, the primary purpose of the employees group is to assist the applicant in obtaining its desired approvals. These City employees are not only required to provide this assistance by din of their job requirements, but the New Hampshire Constitution places an obligation upon the City pursuant to Part I, Article 1 to provide assistance to all of its citizens seeking approval from the Planning Board. *Richmond Co. v. City of Concord*, 149 N.H. 312, 315 (2003).

Strong evidence which shows that the TRG exists for the benefit of the applicant and not to serve as advisors to the Planning Board is how the TRG handles lot line revision applications. Tr. Trans. p. 170. RSA 674:4 and Section 2.7 of the Rochester Subdivision regulations require Planning Board approval *after* a public hearing for a minor lot line revision or a boundary change agreement. Despite these statutory hurdles, these types of applications are considered relatively straightforward and less cumbersome on an applicant. As such, as testified to by Director Campbell, the TRG does not examine lot line revision applications and discourages applicants from requesting a TRG review of such applications. Tr. Trans. p. 170. Even though these types of applications are only approved by the Planning Board, the TRG feels no compulsion to review them because such review would offer little assistance to the applicant. If the TRG were truly in existence for the benefit of the Planning Board, logically the TRG would review all applications that come before the Planning Board; that does not happen. Director Pollard and Director Campbell explained that the TRG operates to make the City more “business friendly” for applicants, not to make life easier on the Planning Board. Tr. Trans. p. 75; 174-175.

In terms of issues raised in the present case, the Planning Board² maintains the sole authority to grant or deny land use applications. The Planning Board has not ceded any of that authority to the TRG. As testified to by Campbell, Pollard, and Creighton, the Planning Board does not merely accept the recommendations of City staff; it conducts its own analysis of each application that comes before it and makes its own, independent judgments. Tr. Trans. pp. 80-81; 109-111; 172-173. As stated above, the Planning Board has no say in the composition, charge, or conduct of the TRG. The same can be said of the Planning Board vis-a-vis the TRG. The existence of and the work of the TRG does nothing to limit the purview or the authority of the

² Obviously, the Zoning Board of Adjustment (ZBA) approves variances and special exceptions, but the ZBA was never raised by the Plaintiff.

Planning Board. In fact, the Plaintiff testified to this in regards to several sidewalk waivers requested by the applicant on the Jeremiah Lane/Stuart Acres project. The Plaintiff stated that City staff recommended that these waivers not be granted. Tr. Trans. p. 148-149. The Plaintiff then testified that the Planning Board deliberated on the issue for over one-half hour before ultimately voting to grant the waivers over the objections of City staff. Tr. Trans. p. 148-149. The relationship between the TRG and the Planning Board is no different from the relationships between any City board and City staff. The City staff is there to assist these boards, but City staff does not make decisions for these boards and does not limit their authority in any way, shape, or form.

Without question, the TRG is part of a “public agency” and susceptible to RSA 91-A governmental records requirement. It is also without question, that this group of employees put together by the City Manager under the label TRG is not a “public body.” As the TRG is not a public body, its meetings are not “public meetings.” Public employees meet with each other and members of the public every day in various numbers, various locations, and on a myriad of issues. The Plaintiff himself testified that he met with then-City Manager Daniel Fitzpatrick and undersigned counsel to discuss Planning Board procedure. Tr. Trans. p. 158. Was that a “public meeting”? The Plaintiff offers no intelligible principle to guide government employees to know when simply doing their job would morph into an event requiring notice to the public, a venue, and public seating capacity.

In further support of this, the Attorney General of New Hampshire commented on this notion in footnote #4 to his “Memorandum on New Hampshire’s Right-to-Know Law, RSA Chapter 91-A” issued on March 20, 2015³. In footnote #4, the Attorney General states:

³ <https://www.doj.nh.gov/civil/documents/right-to-know.pdf>

“[m]embers of the former Right to Know Commission have publicly commented that the inclusion of ‘agency’ in the definition of municipal public body was unintended. The Right-to-Know law otherwise distinguishes a public agency from a public body. Generally, public bodies are subject to the open meeting requirements of the Right-to-Know law and public agencies are not. Such municipal agencies and authorities are subject to the governmental records requirements of the Right-to-Know law because they fall within the definition of public agency...Applying public meeting requirements to an agency would be impractical and **it is expected a court would find application of the public meeting requirement on a municipal public agency an absurd construction of the statute.**” (emphasis added)

The relief requested by the Plaintiff could only be granted by acquiescing to the absurd construction of RSA 91-A which the Attorney General warned against. Subject to certain exceptions, all government records produced by, for, with, and in the possession of the City must be made available to the public for review. Government records related to the TRG are no exception and the City does not dispute this point. However, as the New Hampshire Supreme Court has recognized, “not all organizations that work for or with the government are subject to the right to know law.” *Bradbury v. Shaw* at 389. The same axiom applies to municipal actors and the open meetings provisions of the Right to Know law. Not every “meeting” conducted by, for, with, or on City property are “public meetings.” Not all combinations of City employees create “public bodies.” Simply being on the public payroll does not turn one’s daily work activities into a public access event. Even though records are required to be maintained and examined, “[t]he Right to Know law does not guarantee the public an unfettered right of access to all governmental workings.” *Prof’l Firefighters of N.H. v. Health Trust* at 707.

The City Manager created the TRG for a limited purpose and specifically created it so that it was “not [a] public meeting[] so it [would] not be necessary to allow the public to attend.” See **Trial Exhibit A** and **Trial Exhibit B**. A group of employees with no foundation in the City Charter, City Ordinance, Land Use Regulations, with no budget, no authority, no power, and which can be disbanded at the whim of the City Manager cannot be what the framers of the Right to Know law had in mind when they defined “public bodies” and required their meetings be open to the public. If gatherings of the TRG are a public meeting under RSA 91-A:2 then this principle could be extended to any activity of a municipality and, thus, permanently damage and cripple governmental operations. At that point, the City of Rochester and the State of New Hampshire would be squarely in the realm of the absurd which the Attorney General feared. The trial Court refused to tread into that realm by ruling that the TRG is “not a City ‘agency’ (nor is it board, committee, subcommittee, or subordinate body or the like of any City ‘agency’).” This Court should not disturb that well-reasoned opinion of the trial Court.

The City’s Copying Fee Structure Does Not Inhibit the Public’s Access to Governmental Records

At the outset, the Plaintiff claims in his Complaint that the City’s policy on charging for document copies “deters access to governmental records.” Yet, the Plaintiff himself never testified that the City’s fee structure has denied him access to governmental records. The Plaintiff submitted **NO** evidence that anyone has ever been denied access to government records based on the City’s fee structure. The Plaintiff has failed to establish a *prima facie* case that a violation of RSA 91-A has occurred. The Plaintiff has failed to prove that a person has been “aggrieved” by the City’s fee structure as required by RSA 91-A:7. Further, the Plaintiff has failed to prove that “access to governmental records” has been affected by the City’s fee

structure. Access to governmental records and copying records are two entirely different concepts. RSA 91-A:4, I the requires City to provide access to governmental records for inspection and copying. Inspection requires no fee to be paid. If a citizen wants to make a copy of the record, he or she may copy the record himself or herself or request the City to make a copy. The fee structure is only triggered when the citizen requests the City to make the copies. The citizen may inspect the records for free and may make their own copies for free. The fee structure does not, in any way, “deter access to governmental records” as claimed by the Plaintiff. Since citizens may inspect and copy governmental records to their hearts’ content without ever paying over a dime to the City, it is impossible to see how the City’s fee structure impacts access to governmental records.

To the extent the Plaintiff is claiming that the City is charging too much for copies, he again has failed to prove his case. RSA 91-A:4, IV states that the City may charge the actual cost of providing a copy. In *Kelley v. Hooksett Assessing Office*, Merrimack Superior Court, Case 11-CV-566, the Court (Smukler, J.) in an October 12, 2011 Order stated that the actual cost includes “all direct, indirect, and overhead costs factors.” In considering these factors, Judge Smukler decided that a charge of \$0.50 per page did not exceed actual costs. In order to produce a copy, the City must pay costs associated with the copier leasing agreement, the cost of paper, the cost of electricity, the cost to open the building, the cost to keep the building climate controlled, etc. Cox testified that, in his capacity as City Manager and in his former capacity as Finance Director, he believed that the City’s fee structure represented a reasonable calculation of the actual cost to make a copy. Tr. Trans. p. 42. Moreover, a survey of the fee structure for sister municipalities around the State show that the City’s fee structure is consistent with or, in many cases, less expensive. Derry charges \$0.25 per copy, Dover charges \$0.50 per copy, Portsmouth

charges \$2.00 for the first page and \$0.50 for every page thereafter, Somersworth charges \$10.00 for up to ten pages and \$1.00 per page for every page thereafter, Manchester charges \$1.00 for the first page and \$0.50 per page for every page thereafter, Laconia charges \$1.00 per page, Nashua⁴ charges \$0.75 for the first page and \$0.10 per page thereafter, and Claremont charges \$0.25 per page. See Trial Exhibit D.

Given the information presented to the trial Court, the trial Court found that “the copying fees assessed by the City are commensurate with the actual cost of providing the copy” consistent with RSA 91-A:4, IV. See Petitioner’s Brief, p.38. This Court is not asked to interpret RSA 91-A when reviewing this portion of the Order. The statute states that a person requesting a copy of a governmental record may be charged “the actual cost of providing the copy.” The trial Court made a factual determination that the City was charging the actual cost of providing a copy. When a trial Court renders a decision after a trial on the merits, this Court will uphold its factual findings and rulings unless they lack evidentiary support or are legally erroneous. *Vention Med. Advanced Components v. Pappas*, 171 N.H. 13, 28 (2018). This Court does not decide whether it would have ruled differently than the trial Court, but rather, whether a reasonable person could have reached the same decision as the trial Court based upon the same evidence. *Marist Bros. of N.H. v. Town of Effingham*, 171 N.H. 305, 309 (2018). As such, this Court will defer to the trial Court’s judgment on such issues as resolving conflicts in the testimony, measuring the credibility of witnesses, and determining the weight to be given evidence. *Id.* Nothing in Petitioner’s Brief or in a review of the record could lead this Court to conclude that a reasonable person could not have reached the same decision as the trial Court based upon the

⁴ Nashua also charges a research fee. The first half-hour is free and every hour thereafter is \$25.00 per hour. Rochester has no research fee.

evidence before it. Therefore, based upon this established standard of review, this Court should uphold the trial Court's Order on the issue of fees.

CONCLUSION

As the appealing party, the Plaintiff has the burden of demonstrating reversible error. *Gallo v. Traina*, 166 N.H. 737, 740 (2014). Based upon reviewing the trial Court's well-reasoned Order, the Plaintiff's challenge to it, the City's response, the relevant law, and the recorded submitted on appeal, including the trial transcript, this Court should conclude that the Plaintiff has not demonstrated reversible error and the trial Court's Order should be affirmed in its entirety. *Id.*

WHEREFORE, the City of Rochester respectfully requests that:

- A. The Court AFFIRM the decision of the trial Court (Houran, J.) in all parts; and
- B. For any such other relief as the Court deems just.

Respectfully submitted,

THE CITY OF ROCHESTER

By and through its attorney,
THE OFFICE OF THE ROCHESTER
CITY ATTORNEY

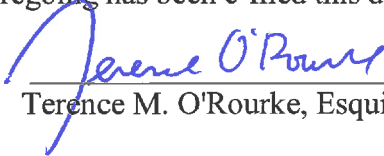
Dated: October 24, 2019

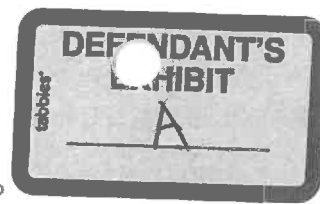


Terence M. O'Rourke, Esq
City Attorney
N.H. Bar Number 18648
31 Wakefield Street
Rochester, NH 03867
(603) 335-7564

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been e-filed this date of October 24, 2019.


Terence M. O'Rourke, Esquire



STATEMENT:

The purpose of the TRG is to review projects that are submitted for review to the Planning Board, including site plans and subdivisions. The applicant/agent presents plans to the TRG which comments on the plans and suggests changes in accordance with various City regulations, laws, and policies.

PROCEDURE:

The Chief Planner is chair of the Technical Review Group. He creates an agenda of meetings for the year and distributes this to the TRG members and to engineers/agents. Meetings are held at 10:00 on Tuesdays, on the Tuesday the week after new submittals and the week prior to Planning Board regular meetings and workshops.

He sends an email to the TRG a few days before to remind them of the meeting and lets them know which projects will need signoffs. It is helpful also to email the preliminary Planning Board agenda. If there are no commercial projects to discuss it is helpful to point that out to the Economic Development Manager so that she need not attend.

The TRG members sign off on the sign off sheet when a project is ready for final action by the Planning Board. The sign off sheets are scanned and emailed to the Planning Board prior to the meeting.

Members should sign off on projects by the TRG meeting prior to the Planning Board meeting at which approval is expected. If members cannot attend the meeting or are not ready to sign off they should come to the planning office or email their signoff and comments by the end of Tuesday so that their comments can be incorporated into the Staff Recommendations which are written and mailed out on Wednesday, the next day.

The TRG members include:

- Chief Planner, who chairs the group
- City Engineer
- Director of Code Enforcement
- Fire Marshall
- Police Captain
- Economic Development Manager
- Representative of the Conservation Commission

TRG meetings are not public meetings so it is not necessary to allow the public to attend. No notice is needed.

Staff does not take minutes but the Planning Board has designated a member to attend and take notes which are then forwarded to the Planning Board.

SUBJECT: Technical Review Group (TRG)

STATEMENT:

The purpose of the TRG is to review projects that are submitted for review to the Planning Board, including site plans and subdivisions. The applicant/agent presents plans to the TRG which comments on the plans and suggests changes in accordance with various City regulations, laws, and policies.

PROCEDURE:

The Economic Development Manager or designee is chair of the Technical Review Group. The Planning Department creates the schedule of meetings for the year and distributes the schedule to the TRG members and to engineers/agents. Meetings are held at 10:00am on Thursdays, on the Thursday the week after new submittals and the week prior to Planning Board regular meetings and workshops.

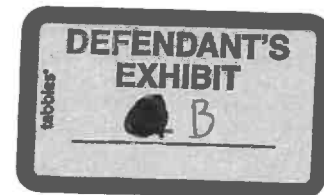
An email is sent to the TRG a few days before the meeting to remind them of the upcoming meeting and to let them know which projects will need signoffs. If there are no commercial projects to discuss it is helpful to point that out to the Economic Development Manager, or designee, so that they need not attend.

The TRG members will need to complete the sign off sheet when a project is ready for final action by the Planning Board.

Members should sign off on projects by the TRG meeting prior to the Planning Board meeting at which approval is expected. If members cannot attend the meeting or are not ready to sign off they should come to the planning office or enter their comments into Viewpermit by the end of the day Friday following the TRG meeting so that their comments can be incorporated into the Staff Recommendations.

The TRG members include:

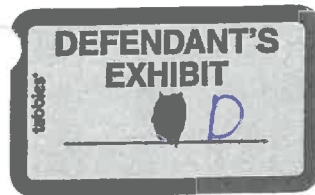
- Chief Planner or designee,
- City Engineer
- Director of Code Enforcement
- Fire Marshall
- Police Captain
- Economic Development Manager, or designee (who chairs the group)
- Representative of the Conservation Commission



TRG meetings are not considered public meetings for public notice purposes so no notices need to be sent. There are no minutes taken for the meeting

The Chief Planner, or designee, sends an email to the applicant shortly after the meeting recapping the issues that were raised and the procedure that will be followed thereafter. He copies the TRG on this email.

*****NOTE:** *If there are no new cases, an email is sent to the TRG group letting them know there will not be a meeting.*



Search


[Discover Derry](#) [Departments](#) [Government](#) [Business Resources](#)
[Economic Development](#) [Find It Fast](#)

1. Dog License

Home » Departments » Town Clerk


 2. Birth, Death,
Divorce, & Marriage
Certificates

9. Fee Schedule

3. Marriage License

Marriage License

\$50.00 (Takes approx. 45 min.
please plan accordingly)
 4. Election
Information
Vital Records Certified
Copies
 \$15.00 (Birth, Death, Marriage, Di-
vorce)
(first copy issued at \$15.00, each
additional copy, \$10.00)

 5. Boards &
Committees
VSX (VR Changes after 6
mos)

\$10.00

AOP after 1st year

\$10.00

 6. Dredge & Fill
Permits

Dog License

\$10.00

Spayed/Neutered dog

\$7.50

Dog 4 to 7 months old

\$7.50

 7. Landlord
Affadavit
Senior citizen
(owner)....1st dog

\$3.00

Late Fees

\$1.00 per month

8. Ordinances

Penalties for Unlicensed
Dog

\$25.00 plus Licensing & Late fees

9. Fee Schedule

UCC Search

\$15.00

Community

Articles of Agreement

\$5.00

Volunteer Form

Town Seal of Document

\$3.00

Town Charter

Photocopies

\$.25 per page

Notarial Acts

\$varies

Contact Info

Phone:

(603) 432-6105

Fax:

(603) 432-8176

Address:

Derry Municipal

Center

14 Manning Street

Derry, NH 03038

United States

See map: Google

Maps

Town of Derry, 14 Manning Street, Derry, NH 03038 (603) 432-6100

[Website Disclaimer](#)

[Virtual Towns & Schools Website](#)

[Login](#)



PUBLIC RECORD REQUEST FORM
NH RSA 91-A

Thank you for your request. The City of Dover will respond to your request pursuant to the provisions of RSA 91-A. If the records are not immediately available for inspection, your request will be responded to within 5 business days. See RSA 91-A:4, IV. Responsive public records will be available for inspection during the City's normal business hours. Copies may be provided by the City for \$.50 per page.

I, _____ of _____

am making a request for the following public records described as

(Date)

(Signature)


(Phone)

(Email)

**CITY OF PORTSMOUTH
LEGAL DEPARTMENT
MEMORANDUM**

DATE: June 7 2018

TO: JOHN P. BOHENKO, CITY MANAGER

FROM: SUZANNE M. WOODLAND, DEPUTY CITY ATTORNEY 

RE: RECOVERY OF COSTS OF PUBLIC RECORDS

This memorandum responds to Councilor Perkins' inquiry with regard to the recovery of costs for public record requests under RSA 91-A. In short, the City may charge only for the cost of "copying" records. The City may not charge for searching, retrieving or producing records for inspection.

Under the current fee schedule, the City charges \$2.00 for the first page and \$.50 thereafter for print copies. The City also makes available electronic records on flash drives if the records are already in electronic form. Requesting parties can bring in their own flash drive for loading or the City can supply one at a cost of \$8.00. Some departments also handle specialized, recurring requests with fixed fees for set information (for example assessing charges \$75.00 for Standard Assessing Mailing List File). The City is not required to mail records requested and typically the Legal Department does not do so when it handles requests.

As discussed with Councilor Perkins, the current public records statutory scheme does not take into account: the ease or difficulty of identifying records, particularly electronic records; the volume of records requested, whether the requester is a resident or a nonresident; or the purpose of the request. The City also receives inquiries from out-of-town and out-of-state businesses seeking general information sometimes requiring significant effort in response.

Finally, I note that the current right to know statutory scheme does not well reflect the modern municipal corporation which has several specific challenges:

- Municipalities including Portsmouth have a mix of paper records and electronic records that are not centrally indexed or organized;
- Municipalities today literally create hundreds if not thousands of electronic records daily because it is not only e-mail communication that creates

an electronic record but each electronic journal entry in the finance department, each draft of a document or spreadsheet, each issuance of a sewer bill and each electronic time entry from an employee clocking into work create a "record" as examples. Not all of the records are "public records" as defined by statute but the volume of electronic transactions makes it difficult to identify responsive documents to broad requests; and

• Records which are not "public records" or are otherwise exempt from disclosure are often not easily segregated or separated from other electronic records that are public records without individual review of the record prior to production. This is particularly an issue if the request is broad in time or scope.

It is interesting to note that federal and state courts have begun to incorporate in their rules and rulings the need for proportionality in responding to electronic discovery requests to better balance the burden of electronic record production with the nature and scope of the claim. This balance does not exist under the Right-to-Know law.



CITY HALL HOURS

M-F 8:00 a.m. to 4:30 p.m.

Wed 6:00 a.m. to 6:00 p.m.

One Government Way Somersworth, NH 03876 | 603-687-4262

Administrative Services
 Citizen Online Police Reporting
 City Ordinances
 Command Staff
 Current Cases
 Department History
 Forms & Reports
 Frequently Asked Questions
 Investigations Division
 Local Links
 Patrol Divisions

E-Mail Newsletter

GO

☒ SafeSubscribe

For Email Marketing you can trust



Calendar

June 2018						
Mon	Tue	Wed	Thu	Fri	Sat	Sun
					1	2
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	
« May		Jul »				

Frequently Asked Questions

General FAQ

How can I obtain a copy of a police report?

To obtain a copy of a police report, you can come in to the police department and fill out a report request form or you can get a copy of a report request form in the forms & reports section of our website. You can either bring or mail the form in to the police department, or e-mail it to [Cheryl Robinson](#) in records. At the time of pick up, you pay \$10 for up to ten pages of the report; any pages beyond ten cost \$1 per page. Black and white pictures, if needed, are included in this fee. We do not take credit cards or debit cards – cash or check only.

If you would like your report mailed to you, we must receive payment and a stamped self-addressed envelope in advance of mailing. There is no set number of days for you to receive the report. You will receive a phone call or e-mail notifying you when your report is ready for pick up and the actual cost of the report.

What is a letter of good conduct?

A letter of good conduct states that the requesting party has no criminal arrest record with the Somersworth Police Department. Employers, the housing authority, or a state/federal agency may require letters of good conduct. The requesting party must make the request in person. Any outside agency that wants information about someone must provide a signed release from the person they are requesting the information about.

How can I obtain a copy of my adult criminal/driving record for the state of New Hampshire?

You may obtain your own criminal record or driving history from the State of New Hampshire by completing the appropriate form which may be provided by the [Records Division](#). If you wish further information, you can always call the main number at State Police Headquarters at (603) 271-3636 and ask for criminal records or the motor vehicle department. There are fees involved in obtaining both a criminal record and motor vehicle record.

How can I obtain a concealed carrying license?

To obtain a concealed carrying license you can get the permit forms from the police department by visiting or download them from the website; the state also has the required forms. The forms must be filled out correctly with no false information. Forms must be submitted to the dispatcher and an officer will verify your residence with a visit. The application will go on for further verification after this. The permit is good for four years and costs \$10. You will be notified by phone when it is ready for pick up.

How do I pay parking tickets?

Parking tickets may be mailed to the Police Department by using the envelope provided or you may deliver the ticket to a drop box located in the Police Station lobby.

How do I pay a citation from the DMV?

There is now a new payment option to pay your ticket online through the State of New Hampshire. To pay your ticket online, visit <http://www.nh.gov/payticket>. There are three items required to be able to pay your ticket online:

1. A ticket issued **WITHIN THE PAST 30 DAYS**.
2. A valid e-mail address.
3. A valid Master Card or Visa Credit Card.

You can also use your printer to print a receipt once you have paid your ticket. For help, you can call (603) 227-4010.

How do I obtain a restraining order?

Access to Governmental Records

The City of Manchester believes that a key tenet in a democratic society is the openness in the conduct of public business by ensuring both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people. The public has the right to inspect, during regular business hours and at the appropriate department location, all public governmental records and request copies except those records that are temporarily unavailable or are specifically exempted by law. It is recommended that you read the [Access to Governmental Records – Policy and Procedures Guide](#) in its entirety before requesting access to records so that you know exactly what to expect and what will be expected of you during your visit.

Written requests for governmental records, which reference right-to-know or NH RSA 91-A, received by the City of Manchester are to be administered through the Office of the City Clerk in coordination with the City Solicitor and appropriate department(s). To request access to records, fill out the [Access to Governmental Records Form](#) and submit the form to the department that has custody of the record or to the Office of the City Clerk. The City Clerk will then direct your request to the appropriate department(s).

Public records are available to view at no charge to the requestor. Should you want copies of governmental records however, the policy for copy fees in the City of Manchester, adopted by the Board of Mayor and Aldermen, is \$1.00 for the first copy and \$.50 for each additional copy, whether in electronic form or paper form. The City of Manchester also charges the actual cost of postage and required envelope(s) for any postal mailings associated with record requests and the actual cost of electronic media storage (i.e. DVD, CD-ROMs, thumb drives, memory sticks, etc.), if available. Only City provided electronic media storage devices will be used to make electronic copies of records.



LACONIA POLICE DEPARTMENT
Laconia, New Hampshire

RECORDS REQUEST

TODAY'S DATE: _____

Your Name: _____

Phone Number: _____

Report Number (if known): _____

Date of Incident: _____

Location of Incident: _____

Names of parties involved: _____

REPORT COST IS \$1.00 PER PAGE

**You will be contacted by someone in Administration
when your request has been completed**

**EXACT CHANGE IS GREATLY APPRECIATED
WHEN PICKING UP YOUR REPORT!!!**

Copies

Current fee policy for duplication of records is \$0.75 for the first page of each document and 10 cents per page thereafter. (There are other fees associated with certification, vital records, checklists, and misc. other records, however.)

Research

There is no charge for the first 30-minutes of research conducted by the City Clerk's Office staff, thereafter the rate is \$25/hour.

Fee includes the following:

1. Up to 12 photocopies for most orders with a citation of the source;
2. A report of search indicating all sources searched if information is not located; and/or
3. When applicable, a listing of suggested sources for additional research.

The City Clerk's Office is not authorized or staffed to engage in comprehensive genealogical research or to verify family relationships.

Deposit

There are costs associated with any records search and/or duplication. Persons submitting a request for records may be asked to sign an agreement to pay for the costs or recovery and/or duplication and/or to provide a deposit against the anticipated costs.

Email, Mail and/or Fax Delivery

Certified records cannot be emailed or faxed. Small file documents that exist in digital form may sometimes be emailed as an attachment, staff and resources permitting. There is no fee for this service. There is a \$1, prepaid fee required for a fax in addition to any duplication costs. If there is a request that the record be mailed, postage must be prepaid in addition to any duplication costs. The City Clerk's Office assumes no responsibility for delivery of email or fax documents, though we will maintain a record of when the document was sent via email or fax and to what email address or fax number.

CLAREMONT

[Home](#) | [Contact](#) | [Employment](#) | [FAQ](#) | [Sign Up to Receive Our Email Updates](#)

60

What's new in Claremont.

[Government](#) [Departments](#) [Current Topics & Projects](#) [Applications, Forms & Permits](#) [Schools](#) [Codes & Ordinances](#) [GIS Mapping](#)
[General Facts](#) [Local Resources](#) [Make a Payment](#) [Boards & Committees](#) [Meeting Minutes](#) [FAQ](#) [Main Street Reconstruction Project](#)APPLICATIONS,
FORMS & PERMITS[Request for Information](#)[Citizen Complaint Form](#)[Employment Application](#)[Raffle Permit Application](#)[List By Department](#)[GO BACK](#)

REQUEST FOR INFORMATION

Please note that all fields marked * are required.

Please provide the following information in order to expedite a response to your request for release of public information. All requests for public documents, other than City publications, will be considered requests for information under RSA 91A, more commonly known as the "Right to Know" law. Under the provisions of RSA 91A, the Department of Planning and Development has 5 business days of the date of this request to respond. If we are unable to provide the requested documents within 5 business days, we will respond to you within that time in writing why we are not able to meet the 5 day deadline. If the documents you request do not exist or are exempt from disclosure under state law, we will also respond in writing as to why the Department is unable to provide the documents requested.

State law also permits the City to charge fees either for copying the documents or researching their existence. However, you will not be charged both a copying and a research fee.

First Name:*

Last Name:*

E-mail:

Address:*

City:⁹

State: Zip:

Telephone #*

()

Information Requested:*

please check all that apply

Publications:

☐ Zoning Ordinance - \$50.00 ☐ Subdivision Regulations - \$10.00

☐ Site Plan Review Regulations - \$10.00

Book - Zoning Ordinance, Subdivision and Site Plan Review Regulations Book - \$60.00

☐ Master Plan - \$50.00 ☐ Tax Cards and Map - \$1.00 per page

7 Deeds, Plans, Large Map, Blueprint Copy, Small Zone Map - \$10.00 per copy

Γ Large Zone Map - \$35.00 per copy

Copies:

☐ 8 1/2"x 11" - \$0.25 per page
 ☐ 8 1/2"x 14" - \$0.50 per page

11"x 17" - \$1.00 per page

requested information.

Electronic Signature

Signature:*

☐ I agree that my electronic signature, above, is equivalent to a handwritten signature and is binding for all purposes related to this transaction.*

Verify your humanity:

I'm not a robot

reCAPTCHA
Privacy - Terms

Submit Form

[Residents](#) | [Economic Development & Business](#) | [Visitors](#) | [Contact Us](#) | [ADA](#) | [Sitemap](#)

© Copyright 2018 City of Claremont, NH | 58 Opera House Square, Claremont NH 03743 | Phone: 603-542-7026 | Email: info@claremontnh.com

powered by
osivertech