THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2021-0253

Laura Colquhoun
(Plaintiff/Appellant)

v.

City of Nashua
(Defendant/Appellee)

Rule 7 Mandatory Appeal form the New Hampshire Superior Court,
Hillsborough County, Southern District

Case No. 226-2021-CV-00163

OPENING BRIEF FOR PETITIONER/APPELLANT LAURA COLQUHOUN

Oral Argument Requested (15 minutes)

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QUESTION PRESENTED

1. Whether the trial court erred when it did not award attorney's fees to the plaintiff pursuant to RSA 91-A:8, where the plaintiff requested email communications between two, specifically identified, senior City of Nashua officials for a two-month period, and the City of Nashua denied this request as "overbroad and not reasonably described" under RSA 91-A:4, IV

STATEMENT OF FACTS AND OF THE CASE

On March 11, 2021, the plaintiff submitted a Right-to-Know request to the defendant City of Nashua that read in pertinent part as follows:

> Under NH Right-to-Know, please provide me with all email communications between Ms. Kleiner and Mr. Richard Vincent for the period of January 1, 2021 to March 1, 2021.

Addendum at 32.

On March 18, 2021, the City of Nashua responded with a letter that restated the plaintiff's request, and then read in pertinent part as follows:

> This request for "all email" is overbroad and not reasonably described under RSA 91-A:4, IV. Therefore, this request is denied.

Addendum at 34. The City then turned to the statute governing the disposition of municipal records, stating that:

> Under RSA 33-A:3-a, XXVII[1] transitory correspondence is required to be retained only as needed for reference. The statute does not dictate the manner in which it shall be maintained. As such, each individual sender or recipient of transitory correspondence is free to retain, in whatever manner they see fit, any correspondence they need for as long or as short a period as they require for reference. With this in mind, any request for just "emails" does not describe governmental records in a manner that allows then to be reasonably identified or searched for.

[1] The defendant's letter erroneously excluded statutory section to Title 33-A, however it is clear that the reference is plainly intended to refer to RSA 33-A:3-a. Accordingly, the plainly intended reference is included in this statement of facts.

Addendum at 35. The letter concluded by stating that, "even under the assumption that an email was retained under RSA 33-A:3-a, XXV through XXVII, the bare description of "emails" fails to constitute a reasonable description of a governmental record." Addendum at 36. The denial letter contains neither a request for more specific information about the records sought nor any suggestion as to how the plaintiff might narrow the request.

Following receipt of this response, the plaintiff filed a complaint in Hillsborough County Superior Court, Southern District, on March 25, 2021. Addendum at 28. In response to the filing of suit, the defendant wrote a letter to counsel dated March 31, 2021, stating that, "[f]ollowing the City's denial, Ms. Colquhoun made no further attempt to clarify or narrow this request." Addendum at 54. The letter from the City attorney's office then continued, stating:

> In light of Ms. Colquhoun's decision not to provide further guidance or clarification the City has provided information below in response to what it can only presume might be the intent and reasonable focus of Ms. Colquhoun's request. However, for the reasons stated in the City's response on March 18, 2021, there is no way to confirm that any response by the City will consists of "all email communications" in earnest satisfaction of Ms. Colquhoun's broadly worded request. Particularly given the expansive use of email as a method of transitory correspondence, the City can confirm to no level of certainty what fraction of "all email communication" Ms. Kleiner and Mr. Vincent retained during the 59 days subsumed in the Plaintiff's request.

Addendum at 55.

The City then indicated that it had, "searched its readily available files and found approximately 547 email messages, equivalent to roughly 937 printed pages, sent be and between Kim Kleiner and Rick Vincent during the period of January 1, 2021, to March 1, 2021. Addendum at 55.

On the same date the defendants sent the letter to counsel, March 31, 2021, the City submitted its answer to the complaint. Addendum at 45. The City's answer added, by way of further answer, responses claiming that the request was "likely to produce hundreds of pages of

email communication between the two of them," Addendum at 49, ¶A, and that "after these hundreds of pages are extracted it would remain necessary to examine each page to identify any confidential information or other material exempted from the disclosure requirements of RSA 91-A. Addendum at 49, ¶F. The City also added that "it is unlikely that 'all email communications' between these two individuals would be captured since it is likely that many such communications would have been removed from the email program and filed by subject matter." Addendum at 50. ¶G. The City stated that its conclusion was based on an order in an unrelated case in which the trial court "cited with approval the cases of *Freedom Watch, Inc. v. Department of State,* 925 F.Supp.2d 55, 62 (D.D.C.2013) and *Dale v. I.R.S.,* 238 F.Supp.2d 99, 104 (D.D.C.2002) for the proposition that requests for "all communications" and "all documents" are too broad because they do not describe records sufficiently to allow a professional employee familiar with the area in question to locate responsive records." Addendum at 50, ¶H. Finally, the City added "[n]othwithstanding the above issues the City has determined to attempt to fulfill the request to the extent it is able and has so informed Complainant's counsel." Addendum at 51, ¶J.

Six days after the defendant sent the above referenced letter and answered the complaint, April 5, 2021, the Court held a hearing on the plaintiff's petition. Addendum at 20. Following the hearing the Court issued an Order granting relief as to the Right-to-Know production but denying the plaintiff's request for attorney's fees. Addendum at 19-27, rejecting the argument that the request would be burdensome, Addendum at 24-25, and rejecting the argument that the request was overbroad.

The trial court then turned to the question of whether it would award attorney's fees under RSA 91-A:8, I. The court wrote that, "an agency shall be liable for reasonable attorney's

fees and costs incurred if the trial court finds that: (1) the agency violated any provisions of RSA chapter 91-A; (2) the lawsuit was necessary in order to make the information available; and (3) the agency knew or should have known that the conducted engaged in was a violation of RSA chapter 91-A." Addendum at 26. The court held that it was unable to make such a finding. First, the court held that the New Hampshire Supreme Court has "never defined the limits of a reasonably described request." Addendum at 26. Further, the trial court added that the legislature had "considered a bill to re-define the term in more specific language." Addendum at 26-27. Finally, the court found that "such a determination is highly context specific." Addendum at 27. Based on these findings, the trial court found that, "it has not been shown that the City knew or should have known that the plaintiff's request was reasonably described, Addendum at 27, and denied the request for attorney's fees.

This appeal followed.

SUMMARY OF THE ARGUMENT

The trial court erred when it denied the plaintiff's request for attorney's fees. In its ruling on the merits of the plaintiff's Right-to-Know case seeking disclosure of email records sent between two senior government officials, covering a fifty-nine day period, the trial court rejected all of the claims made by the defendant. The trial court rejected the City's claim that the request did not reasonably describe the records sought. It further rejected the City's claim that the request was overbroad, finding that the request "[sought] a clearly delineated group of documents." Finally, he trial court rejected the City's denial of the request because, based on its record keeping practices, it could not be sure that it would be able to produce all of the requested records.

In light of these findings on the merits, the trial court should have found that the the defendant knew, or should have known, that it was violating the Right-to-Know law when it denied the plaintiff's clearly worded request. The trial court relied on distinguishable New Hampshire and foreign precedent, as well as the legislative history of a failed amendment to RSA 91-A to support its denial of attorney's fees.

The plaintiff's request was narrowly drawn, plainly worded, and the defendant's knew or should have known that they were required to produce the requested records.

ARGUMENT

Together with Part I, Article 8 of our Constitution, the Right-to-Know law is the crown jewel of government transparency in New Hampshire." *Seacoast Newspapers, Inc, v. City of Portsmouth,* 173 N.H. 325, 337 (2020). The purpose of the Right-to-Know law is stated in its preamble, which reads:

> 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 provision of attorney's fees is critical to securing the rights guaranteed by the [Right-to-Know] statute." *Bradbury v. Shaw,* 116 N.H. 388, 391 (1976). "Without this provision, the statute would often be a dead letter, for the cost of enforcing compliance would generally exceed the value of the benefit gained." *Id.* "The attorney fee provision was enacted so that the public's right to know would not depend upon the ability of individuals to finance litigation." *Id.* While the specific words and parameters of the attorney's fee provision have been amended by the legislature over the years, the principle that the availability of attorney's fees encourages fair dealing and open government and compliance with the Right-to-Know law remains unchanged. See also, *First Amendment Coalition v. United States Department of Justice,* 878 F.3d 1119,

1126 (9th Cir.2017)("The fees provision has as its fundamental purpose the facilitation of citizen access to the courts to vindicate the public's statutory rights and a grudging application of the attorney fees provision would be clearly contrary to congressional intent.")(Internal quotations omitted).

Under RSA 91–A:8, attorney's fees shall be awarded if the trial court finds that: (1) "such lawsuit was necessary in order to make the information available"; and (2) "the public body, public agency, or person knew or should have known that the conduct engaged in was a violation of [RSA chapter 91–A]." This Court has stated that "it will defer to the trial court's findings of fact unless they are unsupported by the evidence or erroneous as a matter of law." *Professional Firefighters of New Hampshire v. Local Government Center, Inc.*, 159 N.H. 699, 710 (2010).

Here, the trial court denied the plaintiff's entitlement to attorney's fees because it found that, "it has not been shown that the City knew or should have known that the plaintiff's request was reasonably described." Addendum at 39. The trial court based this conclusion on the arguments that "the supreme court has never defined the limits of a reasonably described request." Addendum at 38, (citing *Ettinger v. Town of Madison Planning Bd.,*162 N.H. 785, 792 (2011). Therefore, the trial court concluded, "it has not been shown that the City knew or should have known that the plaintiff's request was reasonably described." Addendum at 39.

The trial court's ruling on attorney's fees directly contradicts its own findings. The trial court found that "the plaintiff's request is not overbroad. Indeed, it seeks a clearly delineated group of documents." Addendum at 38. The defendant denied the initial request because it asserted that the request did not reasonably describe the records sought. The trial courts order correctly rejected this contention and any reasonably reading of the plaintiff's request shows that the court was correct in this regard. The request is utterly clear and the trial court should have

found that the defendant either knew, or should have known, that its denial of the plaintiff's request based on the argument that it did not reasonably describe the records sought was contrary to its obligations under the Right-to-Know law.

The trial court's reliance on *Ettinger* is misplaced. *Ettinger* involved a nuanced question, "whether a public body's closed session to discuss the written advice of counsel who is absent fits within the 'consultation with legal counsel' exclusion of RSA 91-A:2, I(b)." *Id.* at 792. This Court concluded by stating, "[w]e cannot say that, lacking guidance form this court on the narrow issue before it, the Board should have known that its nonpublic session violated the Right-to-Know law." *Id.* By its plain terms, this Court's *Ettinger* ruling recognized that it was deciding a very narrow issue. It is equally clear that the Court was not establishing a standard that the Supreme Court must provide definitive guidance on a statutory provision before a trial court is permitted to exercise judgment. However, *Ettinger* does not hold that an opinion of this Court is necessary to define the scope and application of the attorney fee provision in all cases.

Unlike *Ettinger,* this is not a close or subtle case. The plaintiff's request involved no nuanced determination about the applicability of the attorney-client privilege or the attorney consultation exemption under 91-A. A plain reading of the request makes is abundantly clear precisely what records the plaintiff was seeking, a fact that the trial court expressly recognized. The plaintiff's request sought copies of emails between the City's director of administrative services and its head assessor during a 59-day period. Under *any* reasonable interpretation of "reasonably described" in RSA 91-A:4, IV, the defendants should have been able to identify the requested records. The defendant may have had other objections, which indeed it raised and the trial court addressed, but the records sought by the request could hardly have been more clearly described.

The two Pennsylvania cases cited in the trial court's order actually support the plaintiff's claim that her request reasonably described the documents sought. As correctly described by the trial court, the holding in *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette,* 119 A.3d 1121 (Pa. Commw.Ct.2015) is that *all emails* of a single individual as they pertain to her duties *for over one year* was insufficiently specific under Pennsylvania's right to know law. *Id.* 119 A.3d at 1126-27. (Emphasis added). In *Easton Area Sch. Dist. v. Baxter,* 35 A.3d 1259, 1265 (Pa. Commw.Ct. 2012), the court found that *all emails* sent or received by any school board member during a 30-day period *did* sufficiently specify the records sought because the request was for a realtively short period of time, and not a period of years. *Id.* (distinguishing *Mollick v. Township of Worcester,* 32 A.3d 859 (Commw.Ct.Pa. 2011)).

The plaintiff's request here had two relevant features, both of which support the obvious finding that the request was reasonably described under the case law cited by the trial court. First, the request was for a limited period of time – 59 days. While this is 29 days longer than the period in *Baxter,* it is far less than the year-long time frame in *Post-Gazette.* More importantly, the description of records sought here was more specific that the request in either *Baxter* or *Post-Gazette* because the plaintiff here did not seek *all emails* sent or received by the public official. Rather, the plaintiff here sought only email communications *between* two specifically identified, senior government officials. The fact that the plaintiff identified email communications between two specific people makes her request far narrower, and the records more easily identifiable, than the requests in either of the Pennsylvania cases.

The trial court's reliance on legislation that was considered and rejected by the New Hampshire General Court likewise does not support the trial court's decision on attorney's fees.

House Bill 1170 of the 2020 legislative session[2] was introduced by Rep. Schmidt of Nashua. As the trial court's order correctly notes, the bill proposed a definition of "reasonably described" to the Right-to-Know law, which read as follows:

> "Reasonably described" means a document is identified with necessary specificity to allow a public employee to retrieve it without making an extensive search and, at a minimum, by date or range of dates no exceeding 30 days, by type, which means by letter minutes or a report, and by title or subject matter.

Addendum at 40. The important thing to note about the legislation is not that it was proposed, but rather that it was rejected, and why it was rejected. The judiciary committee report in the house calendar in support of its inexpedient to legislate recommendation read as follows:

> Rep. Hopper for Judiciary. This bill adds a definition of "reasonably described" to a right-to-know request Although it is well intentioned, if passed, it could be used to deny right-to-know requests when someone does not know the required information. Vote 19-0.

Addendum at 41-42. The inexpedient to legislate recommendation was accepted on the consent calendar. Addendum at 43-44. The legislative history cited by the trial court thus supports a reading that the legislature considered and rejected the Nashua legislator's attempt to narrow the meaning of a "reasonably described" record and to require a more specific description of the records sought. The General Court soundly rejected this proposal. The fact that a bill was introduced therefore should not be used as evidence that the legislature intended the statute to be read narrowly. To the contrary, it supports the position that the legislature intends the Right-to-Know law to be read broadly and for the "reasonably described" standard to be favorable to requestors.

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[2] The trial court's order appears to contain a typo, erroneously identifying the bill in question as being introduced in the 2019 session.

The weakness of the arguments advanced by the City, and the obviousness of their non-applicability to this case reveals that the City knew or should have known that the records were reasonably described and that the City knew or should have known that it was obligated to produce the requested records. The FOIA cases cited by the City in its answer, which are distinguished and rejected by the trial court in its opinion on the merits, highlight to degree to which the plaintiff's very narrow and specific request meets any standard of reasonableness. In its answer, the City asserted that: (1) the search required by the request was burdensome due to the volume of records requested (¶¶A, B, D, E, F, and G); (2) that a search was unlikely to locate "all email communications" and would therefore be incomplete (¶G); and (3) that in an unrelated case the trial court relied on *Freedom Watch* and *Dale* for the proposition that a request for "all records" or "all communications" was too broad. None of the information advanced by the City suggests in any way that the request did not reasonably described the records sought or that the City could not understand that what records the plaintiff sought in her request. Indeed, each of the City's asserted additional facts suggest that it knew exactly what records were described by the request, but that it either did not want to devote the resources necessary to produce them or it was uncertain of its ability to locate all the properly identified records. These are very different concerns than a claim that a request failed to reasonably describe the records sought.

The defendant's reliance on *Freedom Watch* and *Dale* are particularly absurd. In *Freedom Watch,* the court described the requested files as follows:

> [A]ll correspondence, memoranda, documents, reports, records, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, facsimile logs, telephone records call sheets, tape recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, electronic mail, and other documents and things that refer or relate to the following in any way, within (10) business days as set forth below....

> Thereafter, a list of 63 categories of records was described…ranging from '(1)[i]nternational sanctions (diplomatic, economic, military, or otherwise) created and/or signed into law by they United States…or the European Union against the country of Iran,' to (6) '[a]ny and all enumerated documents and things which discuss Iran in the context of American politics and/or elections from 1992 to the present.' As to each category, Freedom Watch requested "all" records that "refer or relate to that category."

Freedom Watch, 925 F.Supp.2d at 55. Thus, the plaintiff in *Freedom Watch* sought records kept or maintained in a broad range of media and forms and further sought records that *"refer or relate"* to other broadly identified items. *Dale v. I.R.S.,* 238 F.Supp.2d 99 (D.D.C.2002), involved a request that was nearly as broad. The plaintiff in *Dale* sought access to, "[a]ny and all documents, including but not limited to files, that *refer or relate* in any way to Billy Ray Dale" *Id.,* 238 F.Supp.2d at 101 (Emphasis added). Dale's request included, "*all* Internal Revenue Service offices, departments, detachments, bureaus, operating locations, field offices, agencies, divisions, directorates, center headquarters, and/or other Internal Revenue Service organizations and entities." *Id.*

Both *Freedom Watch* and *Dale* thus share at least three factors in common that are not present in the plaintiff's request. First, in both cases, the requestor sought a wide swath of records that could exist in or on many media. Second, the requestor sought records from across the country. Third, in each case the requestor sought records that "refer or relate" to a specific subject. The plaintiff's request, in contrast, concerns only email that originally existed within the City of Nashua.[3] Further, the request seeks only *email* communications between two specifically identified individuals over a limited period of time. Finally, the request does not request documents that "refer or relate" to a limited topic and therefore requires the responding agency to engage in interpretation of the request. The trial court itself found that, "here, the plaintiff's

[3] At the hearing, the City argued that the burden imposed by the plaintiff's request "comes not from the request itself but from its method of organizing its records." The trial court properly rejected this argument. Addendum at 24.

request is not overbroad. Indeed, it seeks a clearly delineated group of documents." Addendum at 24. The defendant's reliance on these federal precedents is thus unreasonable and betrays the claim that the City did not know, or should not have known, that its denial of the request on grounds that it did not reasonably describe the records sought violated the Right-to-Know law.

CONCLUSION

For the forgoing reasons, the plaintiff request that this Honorable Court reverse the ruling of the trial court and remand for further proceedings consistent with such an order.

REQUEST FOR ORAL ARGUMENT

The plaintiff/appellant requests 15 minutes oral argument.

RULE 16(3)(i) CERTIFICATION

Counsel hereby certifies that the appealed decision is in writing and is appended to this brief.

Respectfully submitted,
LAURA COLQUHOUN
By her attorneys,
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/s/Richard J. Lehmann

August 26, 2021

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STATEMENT OF COMPLIANCE

As undersigned counsel, I hereby certify that pursuant to New Hampshire Supreme Court Rule 26(7), this brief complies with New Hampshire Supreme Court Rule 26(2)-(4). Further, this brief complies with New Hampshire Supreme Court Rule 16(11), which states that "no other brief shall exceed 9,500 words exclusive of pages containing the table of contents, tables of citations, and any addenda containing pertinent texts of constitutions, statutes, rules, regulations, and other such matters." Counsel certifies that the brief contains less than 9,500 words (including footnotes) from the "Questions Presented" to the "Request for Oral Argument" sections of the brief.

/s/Richard J. Lehmann

Richard J. Lehmann

ADDENDUM TO THE BRIEF

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THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
No. 2021-CV-00163

Laura Colquhoun

v.

City of Nashua

ORDER

The plaintiff, Laura Colquhoun, has brought a petition in which she seeks access to records from the City of Nashua's (the "City") assessing department (the "Department"). On April 5, 2021, the Court held a hearing on the plaintiff's petition. After consideration of the evidence, arguments, and the applicable law, the Court finds and rules as follows.

Background

On March 11, 2021, the plaintiff made a written request for access to public records relating to the Department. (See Compl. at Ex. A.) The request stated, in part: "[u]nder NH Right-to-Know, please provide me with all email communications between Ms. Kleiner [the City's Administrative Services Director] and Mr. Richard Vincent [the City's Chief of Assessing] for the period of January 1, 2021 to March 1, 2021." (Id.) The City denied the request on March 18, 2021, stating: "[t]his request for 'all email' is overbroad and not reasonably described under RSA 91-A:4, IV." (Id. at Ex. B.) This action followed on March 25, 2021. (Id.)

In its answer, the City clarified that the request was not reasonably described because it was unreasonably burdensome to locate 'all emails' as were requested. (See Answer ¶¶ A–I.) The City also included a letter its attorney wrote to the plaintiff

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Hillsborough Superior Court Southern District
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dated March 31, 2021. (Answer Unmarked Attach.) In the letter, the City stated that its search for the requested records produced "547 email messages, equivalent to roughly 937 printed pages, sent by and between Kim Kleiner and Rick Vincent during the period of January 1, 2021 and March 1, 2021." (Id.) Given the large number of potentially responsive documents, the City asked the plaintiff if she could provide further clarification about the subject-area of her request. Additionally, the City stated that it had "no way to confirm that any response by the City will consist of 'all email communications'" and that it could "confirm to no level of certainty what fraction of 'all email communications'" were located in its search. (Id.) By way of further explanation, the City stated its "default email retention period" is 45 days, however "it is possible Ms. Kleiner or Mr. Vincent personally retained emails beyond that period (such as by printing them, or filing them electronically–but not by date) thereby making it difficult to search for those emails without further description." (Id.)

Six days later, on April 5, 2021, the Court held a hearing on the plaintiff's petition. During the hearing, the plaintiff argued that the request was sufficiently described to allow the City to locate the requested documents. Alternatively, the City argued that the request was not "reasonably described" for two reasons. (Hr'g at 9:24–25, 9:43). First, the City noted that emails that may be responsive to the request could be found in any of the approximately 29,000 files related to the individual parcels assessed by the Department. (Id. at 9:24–25.) Thus, the City had no easy way to ensure that its response would capture all of the requested emails. Second, the City argued, as a general matter, that Right-to-Know requests for "any and all" documents are overbroad. (See, e.g., id. at 9:20–22.)

Analysis

"The purpose of the Right-to-Know Law 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." N.H. Right to Life v. Dir., N.H. Charitable Trs. Unit, 169 N.H. 95, 103 (2016) (quotation omitted). "Thus, the Right-to-Know Law furthers our state constitutional requirement that the public's right of access to governmental proceedings and records shall not be unreasonably restricted." Id. (quotation and citation omitted). "Although the statute does not provide for unrestricted access to public records, [the Court] resolve[s] questions regarding the Right-to-Know Law with a view to providing the utmost information in order to best effectuate these statutory and constitutional objectives." Id. (quotation omitted). "As a result, [the Court] broadly construe[s] provisions favoring disclosure and interpret[s] the exemptions restrictively." Id. (quotation omitted).

A. Reasonably Described

The issue before the Court is whether the plaintiff's Right-to-Know demand "reasonably described" the requested information. See RSA 91-A:4, IV (requiring a public body to make available any "reasonably described" governmental record upon request). As the supreme court has never defined the term "reasonably described" as used in RSA 91-A:4, IV, the Court "look[s] to other jurisdictions construing similar statutes for guidance, including federal interpretations of the federal Freedom of Information Act (FOIA), 5 U.S.C. §§ 552 et seq, [and] resolve[s] questions regarding the Right-to-Know Law with a view to providing the utmost information in order to best

effectuate the statutory and constitutional objectives." Censabella v. Hillsborough County Atty., 171 N.H. 424, 426 (2018).

Under FOIA, a reasonably described request "would be sufficient if it enabled a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort." Marks v. United States (Dep't of Just.), 578 F.2d 261, 263 (9th Cir. 1978). Indeed, "FOIA does not authorize [a governmental body] to deny a FOIA email request categorically, simply and solely because the request does not reference the sender, recipient, subject, and time frame." MuckRock, LLC v. Cent. Intelligence Agency, 300 F. Supp. 3d 108, 136 (D.D.C. 2018). However, the determination of whether a request is reasonably described "is highly context-specific." Am. Oversight v. U.S. Envtl. Prot. Agency, 386 F. Supp. 3d 1, 15 (D.D.C. 2019). "While the linchpin inquiry is whether the agency is able to determine precisely what records are being requested, an agency need not honor a request that requires an unreasonably burdensome search or would require the agency to locate, review, redact, and arrange for inspection vast quantities of material." Id. (internal quotations and citations omitted). "This is so because FOIA was not intended to reduce government agencies to full-time investigators on behalf of requestors." Id. (internal quotations omitted). "Thus agencies . . . often engage in cooperative discussion to narrow and focus requests for the benefit of both the agency and the requester." Id.

The City first argues that the request was not reasonably described because it was asking for all email communications. (See, e.g., H'rg at 9:20–22.) The City pointed to a footnote in the Court's order on another matter as the basis for this belief. (Hr'g at 9:20–21); see Ortolano v. City of Nashua, Hills. Cnty. Super. Ct. S. Dist., No. 226-2020-

CV-00133, at 4 n.2 (Jan. 12, 2021) (Order, Temple, J.). However, the plaintiff's request is distinguishable from the request posed in Ortolano. In Ortolano, a request was made for "[a]ll communications between the Assessing Department and KRT Appraisal (including Rob Tozier, KRT's Vice President) related to the state-required five-year full statistical re-evaluation of all properties in the City of Nashua for 2018." Ortolano, No. 226-2020-CV-00133, at 4 n.2. In ruling on the plaintiff's motion for summary judgment, the Court found that the aforementioned request did not, for the purposes of the plaintiff's motion, reasonably describe the requested meeting notes at issue. Id. at 4. Additionally, the Court noted that "courts tend to frown on requests for 'all communications' because they do 'not describe the records sought sufficiently to allow a professional employee familiar with the area in question to locate responsive records.'" Id. at 4 n.2 (quoting Freedom Watch, Inc. v. Dep't of State, 925 F. Supp. 2d 55, 62 (D.D.C. 2013)). For further explanation, as discussed in Freedom Watch, a request can be found to be broad and sweeping if it is for "all records" that "relate" to a certain topic without further reference to a time period or subject matter of such communication. 925 F.Supp.2d at 62. The present request does not pose similar concerns. The plaintiff's request identifies a finite timeframe of 59 days (January 1, 2021 to March 1, 2021) and limits the scope of the request (emails between Ms. Kleiner and Mr. Vincent). Moreover, the plaintiff's request is for a specific type of communications (emails). The fact that the plaintiff is requesting copies of all of the emails does not render her request to be so broad or sweeping that a professional employee of the agency who was familiar with the subject area of the request is unable

to locate the record with a reasonable amount of effort. Accordingly, the Court finds that the plaintiff's request was reasonably described.

The City next argues that the request is not reasonably described because the request would be extremely burdensome and therefore the request should be deemed overbroad. The Court disagrees. Although it is true that "an agency need not honor a request that requires an unreasonably burdensome search or would require the agency to locate, review, redact, and arrange for inspection a vast quantity of material," Am. Oversight, 386 F. Supp. 3d at 15, the mere fact "that a request is burdensome does not deem it overbroad, although it may be considered as a factor in such a determination," Com., Dep't of Envtl. Prot. v. Legere, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012). Here, the plaintiff's request is not overbroad. Indeed, it seeks a clearly delineated group of documents. The City even states that the burden comes not from the request itself but from its method of organizing its records. (See Hr'g at 9:24–25, 9:42–43.) However, a requestor cannot control how an agency catalogues or organizes its files. "As such, an agencies failure to maintain the files in a way necessary to meet its obligations under the [Right-to-Know Law] should not be held against the requestor." Legere, 50 A.3d at 265; see also Salcetti v. City of Keene, No. 2019-0217, 2020 WL 3167669, at *8 (N.H. 2020) ("Right-to-know requests often require a public official to retrieve multiple documents . . .") (non-precedential). "To so hold would permit an agency to avoid its obligations . . . simply by failing to orderly maintain its records." Legere, 50 A.3d at 265. Moreover, the City's argument that a request must be reasonably described based on how the City keeps its records is unpersuasive. (See Hr'g at 9:43); see Hawkins v. N.H. Dep't of Health & Human Services, 147 N.H. 376, 379 (2001) (records must be

"maintained in a manner that makes them available to the public"). The request must only be sufficient to enable a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort, which does not require the requestor to have knowledge of the City's particular filing system. The fact that the City does not organize or store the responsive emails in a way that permits them to be easily located does not render the request overbroad.

Finally, the City argues that the request is overbroad because its searches are unlikely to be able to discover every responsive record. (Hr'g at 9:26.) However, this misconstrues the City's burden. "[T]he adequacy of an agency's search for documents . . . is judged by a standard of reasonableness." ATV Watch v. N.H. Dep't of Transp., 161 N.H. 746, 753 (2011) (quoting Church of Scientology Intern. v. U.S. Dep't of Just., 30 F.3d 224, 230 (1st Cir. 1994) (analyzing FOIA)). Accordingly, "[t]he crucial issue is not whether the relevant documents might exist, but whether the agency's search was reasonably calculated to discover the requested documents." Id. Therefore, the mere possibility that the City may not locate and produce all responsive documents does not render the request overbroad.

In conclusion, Right-to-Know "requests are not a game of Battleship. The requester should not have to score a direct hit on the records sought based on the precise phrasing of his request." Gov't Accountability Project v. U.S. Dep't of Homeland Security, 355 F.Supp.3d 7, 12 (D.D.C. 2018). Here, the Court finds that the request reasonably described the records such that it enabled "a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort." Marks, 578 F.2d at 263. Accordingly, the Court orders

the City to conduct a reasonable search for responsive records in accordance with its burden under the Right-to-Know law. See ATV Watch, 161 N.H. at 753. Before doing so, the Court orders the parties to meet and confer within fourteen days and engage in a good faith effort "to narrow and focus requests for the benefit of both the [City] and the requester." Am. Oversight, 386 F. Supp. 3d at 15; see also Gov't Accountability Project, 355 F. Supp. 3d at 13.

B. Costs and Attorney's Fees

The applicable portion of RSA 91-A:8, I provides:

> If any body or agency or employee or member thereof, in violation of the provisions of this chapter, refuses to provide a public record . . . such body, agency, or person 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 make the information available to the proceeding open to the public. Fees shall not be awarded unless the court finds that the body, agency or person knew or should have known that the conduct engaged in was a violation of this chapter.

In other words, "an agency shall be liable for reasonable attorney's fees and costs incurred if the trial court finds that: (1) the agency violated any provision of RSA chapter 91–A; (2) the lawsuit was necessary in order to make the information available; and (3) the agency knew or should have known that the conduct engaged in was a violation of RSA chapter 91–A." 38 Endicott Street North, LLC v. State Fire Marshal, N.H. Div. of Fire Safety, 163 N.H. 656, 669 (2012) (internal quotations omitted).

Here the Court cannot make such a finding. As stated above, the supreme court has never defined the limits of a reasonably described request. See Ettinger v. Town of Madison Planning Bd., 162 N.H. 785, 792 (2011) (affirming denial of attorney's fees where court had never previously interpreted exemption at issue). Indeed, the legislature unsuccessfully considered a bill to re-define the term in more specific

language. See Adding a Definition of "Reasonably Described" to the Right-To-Know Law, HB 1170, 2019 Session (N.H. 2019) ("'Reasonably described' means a document is identified with necessary specificity to allow a public employee to retrieve it without making an extensive search and, at a minimum, by date or range of dates not exceeding 30 days, by type, which means by letter minutes or a report, and by title or subject matter." (emphasis added)). Additionally, such a determination is highly context specific. See Am. Oversight, 386 F. Supp. 3d at 15. For example, courts have found a request for all emails that fails to identify a subject matter to be overbroad. See, e.g., Pa. Dep't of Educ. v. Pittsburgh Post-Gazette, 119 A.3d 1121, 1127 (Pa. Commw. Ct. 2015) (finding request for all emails of a single individual as they pertain to her duties for a year overbroad). Alternatively, a similar request with a short timeframe may be found to be sufficiently described. See, e.g., Easton Area Sch. Dist. v. Baxter, 35 A.3d 1259, 1265 (Pa. Commw. Ct. 2012) (finding request for all emails sent or received by any school board member in thirty-day period to be sufficiently specific because of short timeframe). This is not to say that a plaintiff cannot be awarded attorney's fees after a request under the Right-to-Know Law is denied for not being reasonably described. The Court merely finds that, in this instance, it has not been shown that the City knew or should have known that the plaintiff's request was reasonably described. Accordingly, the Court does not find that the plaintiff is entitled to an award of attorney's fees or costs.

So ordered.

Date: May 12, 2021

Hon. Charles S. Temple,
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 05/14/2021

Colquhoun v. City of Nashua
2021-CV-00163

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Hillsborough Superior Court Southern District
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THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SOUTHERN DISTRICT

SUPERIOR COURT

Laura Colquhoon

v.

City of Nashua

Docket No. 226-2021-CV-00163

COMPLAINT AND REQUEST FOR EXPEDITED HEARING PURSUANT TO RSA 91-A:7

NOW COMES Laura Colquhoon, by and through counsel, and respectfully submits the within complaint for violation of RSA 91-A, the New Hampshire Right-to-Know law, and Part II, Article 8 of the New Hampshire Constitution, and states as follows:

I. Parties

1. The plaintiff Laura Colquhoon is an individual with a residence located at 30 Greenwood Drive, Nashua, New Hampshire.

2. The defendant City of Nashua is a body corporate with a principal place of business located at 229 Main Street, Nashua New Hampshire.

II. Jurisdiction

3. This court has jurisdiction over this matter pursuant to RSA 491:7 and RSA 91-A:7.

III. Venue

4. Venue is proper in this court as the plaintiff and defendant either reside in, or are located in, the southern district of Hillsborough County.

IV. Facts

5. On March 11, 2021, the plaintiff made a written request for access to public records that read in pertinent part as follows:

> Under NH Right-to-Know, please provide me with all email communications between Ms. Kleiner and Mr. Richard Vincent for the period of January 1, 2021 to March 1, 2021.

The full text of the plaintiff's correspondence is attached hereto as Exhibit A.

6. Ms. Kleiner is the Administrative Services Director for the City of Nashua. Mr. Vincent is the Chief of Assessing in the property assessing department of the City of Nashua.

7. By letter dated March 18, 2021, the City, through its Office of Corporation Counsel, responded in pertinent part as follows:

> This request for "all email" is overbroad and not reasonably described under RSA 91-A:4, IV. Therefore, this request is denied.

The full text of the Nashua Corporation Counsel's Office response is attached hereto as Exhibit B.

8. "Together with Part I, Article 8 of our Constitution, the Right-to-Know Law is the crown jewel of government transparency in New Hampshire. " *Seacoast Newspapers, Inc. v. City of Portsmouth*, 173 N.H. 325, 338 (2020).

9. Part I, Article 8 of the New Hampshire Constitution provides that:

> 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. I, art. 8.

10. The preamble of the Right-to-Know Law states in part, that:

> [t]he 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.

11. The purpose of the Right-to-Know Law is to "provide the utmost information to the public about what its government is up to." *Seacoast Newspapers*, 173 N.H. at 338)(quoting *Goode v. N.H*, 148 N.H. 551, 555 (2002)).

12. The statute furthers "our state constitutional requirement that the public's right of access to governmental proceedings and records shall not be unreasonably restricted." *Clay v. City of Dover*, 169 N.H. 681, 685 (2017).

13. RSA 91-A:4, IV(a) requires only a "record reasonably described" in a request, not a record described with absolute specificity. "Although a requester must 'reasonably describe' the records sought, an agency also has a duty to construe a [Right-to-Know] request liberally." See, *Amadeo-Vickery v. Town of Salem*, Hillsborough County Superior Court, Northern District, Docket No. 216-2020-CV-00877 *4 (Feb. 15 2021)(quoting *Nation Magazine, Wash. Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995)(itself quoting FOIA, 5 U.S.C. § 552(a)(3), citation omitted))(See Exhibit C).

14. The plaintiff requested: (1) email communications; (2) between two senior public officials; (3) during a two-month period of time; (4) that occurred during the two complete months immediately preceding the request. This request is not "unreasonably described." To the contrary, it is perfectly clear and unambiguous to anyone reading is reasonably, let alone liberally. Any claim that Nashua is not, "able to determine precisely what records were requested" is absurd.

15. Accordingly, the plaintiff requests that this court grant relief by ordering the City of Nashua to disclose the requested records immediately.

16. The plaintiff further requests that this court award costs and reasonable attorney's fees pursuant to RSA 91-A:8, II.

WHEREFORE, the plaintiff requests that this Honorable Court:

A. Issue an order requiring the City of Nashua to search for and produce all documents described in the plaintiffs Right-to-Know request dated March 11, 2011; and

B. Issue an order stating that the plaintiffs are entitled to costs and reasonable attorney's fees; and

C. Schedule a high priority hearing pursuant to RSA 91-A:7; and

D. Grant such other relief as may be just and proper.

RESPECTFULLY SUBMITTED
Laura Colquhoon
By her attorneys,
LEHMANN MAJOR LIST, PLLC

/s/Richard J. Lehmann

March 25, 2021

Richard J. Lehmann (Bar No. 9339)
6 Garvins Falls Road
Concord, N.H. 03301
(603) 731-5435
rick@nhlawyer.com

EXHIBIT A

30 Greenwood Dr
Nashua, NH 03062

March 11, 2021

Mr. Steve Bolton
City of Nashua
29 Main Street
Nashua, NH 03062

Dear Mr. Bolton:

Under NH Right-to-Know, please provide me with all email communications between Ms. Kleiner and Mr. Richard Vincent for the period of January 1, 2021 to March 1, 2021.

I am requesting this information be sent to me electronically and therefore no fees should be required. This information is not being sought for commercial purposes.

The New Hampshire Right to Know Law requires a response time of five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records. If you can provide the written documentation sooner, that would be appreciated.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Sincerely,

Laura Colquhoun

603-402-9339

EXHIBIT B

Steven A. Bolton
Corporation Counsel
BoltonS@nashuanh.gov

Celia K. Leonard
Deputy Corporation Counsel
LeonardC@nashuanh.gov

229 Main Street
P.O. Box 2019
Nashua, NH 03061-2019

CITY OF NASHUA
OFFICE OF
CORPORATION COUNSEL

Dorothy Clarke
Deputy Corporation Counsel
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Jesse Neumann
Attorney/RTK Coordinator
NeumannJ@nashuanh.gov

T: (603) 589-3250
F: (603) 589-3259
Legal@nashuanh.gov

March 18, 2021

Laura Colquhoun
30 Greenwood Drive
Nashua, NH 03062

Via email only to lauracolquhoun2@gmail.com

RE: RTK request received March 11, 2021

Dear Ms. Colquhoun,

The City is in receipt of your request dated March 11, 2021, under NH RSA 91-A, the "Right-to-Know" law.

Your request stated in part:

> [P]lease provide me with all email communications between Ms. Kleiner and Mr. Richard Vincent for the period of January 1, 2021 to March 1, 2021.

This request for "all email" is overbroad and not reasonably described under RSA 91-A:4, IV. Therefore, this request is denied.

Under RSA 33-A XXVII transitory correspondence is required to be retained only as needed for reference. The statute does not dictate the manner in which it shall be maintained. As such, each individual sender or recipient of transitory correspondence is free to retain, in whatever manner they see fit, any correspondence they need for as long or as short a period as they require for reference. With this in mind, any request for just "emails" does not describe governmental records in a manner that allows them to be reasonably identified or searched for.

Further, RSA 33-A, does not mandate a particular method or manner for retention of any correspondence, but rather a schedule for disposition and retention. With this in mind, even under the assumption that a particular email is subsumed within the definition of

"correspondence," such an email is not required to be maintained in any specific manner or file location, regardless of its individual retention timeline. Therefore, even under the assumption that an email was retained under RSA 33-A:3-a, XXV through XXVII, the bare description of "emails" fails to constitute a reasonable description of a governmental record.

Sincerely,

/s/ Jesse B. Neumann
Jesse B. Neumann
Attorney/RTK Coordinator

cc: File #2021-500

EXHIBIT C

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. **SUPERIOR COURT**
NORTHERN CIRCUIT

Andrea Amodeo-Vickery

v.

Town of Salem

Docket No. 216-2020-CV-00877

ORDER

Petitioner Andrea Amodeo-Vickery brings this action seeking disclosure of specific documents pursuant to RSA 91-A, New Hampshire's Right-to-Know Law. The Court held a hearing on January 4, 2021. For the following reasons, the Petitioner's request is GRANTED.[1]

On September 18, 2020, Petitioner sent a letter to Christopher Dillon, Town Manager of Salem, requesting certain information under the Right-to-Know Law. In pertinent part, she requested:

> Any and all written correspondence between you and/or Anne Fogarty and any employee of the NH Attorney General's Office wherein you described said past, present[,] or future accidental disability retirees as committing "fraud" in regard to their disability claims[.]

(Compl. Ex. 1 (emphasis added).) The Town, through counsel, sent three letters in response asking for an extension of time to comply. The first on September 22, 2020, asserted COVID-19-related reasons, (id. Ex. 2); the second and third on October 26 and 29, 2020, explaining that the Town had been a victim of a cyberattack, (id. Ex. 4).

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[1] In its Answer, the Town objected to venue in Hillsborough County. Where Petitioner resides in Hillsborough County, however, venue is proper pursuant to RSA 507:9.

This is a Service Document For Case: 216-2020-CV-00877
Hillsborough Superior Court Northern District
2/16/2021 10:39 AM

On November 24, 2020, the Town responded to Petitioner's information request with one ten-page document. (Id. Exs. 6, 7.) That same day, Petitioner followed up with the Town, saying their response "did not answer in any way" the above-quoted request. (Id. at 8.) The Town told Petitioner that "there are no such emails or correspondence that exist responsive to" that request. (Id. at 9.)

Around this time, Petitioner submitted a similar Right-to-Know request to the Attorney General's (AG's) office. This request sought, in pertinent part:

> Any and all written correspondence, including emails, between you and any employee of the Town of Salem wherein said past, present[,] or future accidental disability retirees were described as engaging in possibly fraudulent activity in regard to their disability claims.

(Ans. Ex. B (emphasis added).) The AG's office responded with documents Bates Stamped 1-188, (id.), including emails between the Town and the AG's office, (see Compl. Ex. 10). In one email, Mr. Dillon asked to meet with the AG's office "to make [them] aware of possible fraudulent activity" regarding disability claims. (Id.) In another, Ms. Fogarty, the Town's Human Resources Director, followed up with information about a police "duty related disability retirement" case that went to arbitration. (Id.) In another email, Mr. Dillon addressed the unusually high number of police disability retirees in Salem with the AG's office, noting, "I do not think what is going on is right and I believe the tax payers are being unfairly charged." (Id.) He also asked the AG's office if they are going to investigate further. (Id.) The AG's office responded stating they "hope to be able to let [him] know shortly whether or not [they] will open a criminal investigation in the issues [he's] raised." (Id.)

Petitioner alleges that the Town's representation that it had no documents responsive to her request is plainly false, given the documents she received from the

AG's office. She seeks an injunction compelling the Town to produce any additional records they may be withholding; attorney's fees and costs pursuant to RSA 91-A:8, I; and civil penalties imposed on the Town and Mr. Dillon pursuant to RSA 91-A:8, IV.

"The purpose of the Right-to-Know Law 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.'" N.H. Civil Liberties Union v. City of Manchester, 149 N.H. 437, 438 (2003) (quoting RSA 91-A:1). The law "furthers our state constitutional requirement that the public's right of access to governmental proceedings and records shall not be unreasonably restricted." N.H. Right to Life v. Dir., N.H. Charitable Trs. Unit, 169 N.H. 95, 103 (2016); see also N.H. CONST. pt. 1, art. 8 ("Government . . . 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."). "Although the statute does not provide for unrestricted access to public records and proceedings, to best effectuate the statutory and constitutional objective of facilitating access to all public documents and proceedings, [the Court] resolve[s] questions regarding the Right-to-Know Law with a view to providing the utmost information." Lambert v. Belknap Cty. Convention, 157 N.H. 375, 379 (2008). Consistent with this statutory purpose, the Court may "look to other jurisdictions construing similar statutes for guidance, including federal interpretations of the federal Freedom of Information Act (FOIA)." Censabella v. Hillsborough Cty. Attorney, 171 N.H. 424, 426 (2018).

The Town highlights the differences between Petitioner's requests, noting that her request to the Town sought documents describing certain individuals as "committing fraud," while her request to the AG's office sought documents describing certain

individuals as "possibly engaging in fraudulent activity." The Town argues that the requests are clearly different, and therefore, it did not fail to respond to Petitioner's request because it did not find any documents describing certain individuals as "committing fraud."

RSA 91-A:4, IV(a) requires only a "record reasonably described" in a request, not a record described with absolute specificity. "Although a requester must 'reasonably describe' the records sought, an agency also has a duty to construe a [Right-to-Know] request liberally." Nation Magazine, Wash. Bureau v. U.S. Customs Serv., 71 F.3d 885, 890 (D.C. Cir. 1995) (quoting FOIA, 5 U.S.C. § 552(a)(3), citation omitted).

Construing Petitioner's request to the Town consistent with the statute's interest of disclosure, the Court finds Petitioner's request extended to documents that discuss potential and suspected fraud by disability retirees. The Town unreasonably interpreted Petitioner's request in the narrowest possible sense to situations where Town officials described individuals as definitively committing fraud. Upholding the Town's refusal to disclose documents while following such a limited reading of Petitioner's request would require those who submit Right-to-Know requests to use magic words to receive information. This high burden is inconsistent with RSA 91-A's purpose of open, reasonable access to government records.

The Town also argues that Petitioner, an attorney, is seeking to obtain information relevant to a case she is litigating in Rockingham County. See Morin v. Town of Salem, Rockingham Cty. Super. Ct., No. 218-2019-CV-523. A review of the complaint in that case, see Ans. Ex. A, reflects that the subject matter of that case is not related to fraudulent activity by disability retirees. Moreover, "[t]he requester's motives in seeking disclosure are irrelevant to the question of access." Censabella, 171 N.H. at 427. Without

commenting on the admissibility of records received through a Right-to-Know disclosure, “there are no restrictions on the use of the records, once disclosed.” Id. “As a general rule, if the information is subject to disclosure, it belongs to all.” Id.

Based on the foregoing, the Town’s failure to disclose documents responsive to Petitioner’s request is in violation of RSA 91-A:4, IV. The Court finds that disclosure of those records is warranted.

The statute also states that a violation of the Right-to-Know Law entitles Petitioners to recover “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.” RSA 91-A:8, I. The Court must also find that the Town “knew or should have known that the conduct engaged in was in violation of this chapter.” Id.

The Town’s interpretation of Petitioner’s request yielded no responsive documents. Because the Town argued at the hearing that it considered a liberal reading of Petitioner’s request a wholly new request, the Court finds that the Town would not have turned over responsive documents in compliance with RSA 91-A:4 without this lawsuit. Further, given that Right-to-Know requests are considered in accordance with the statutory policy of ensuring “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 Court finds that the Town knew or should have known it was violating the statute by reading Petitioner’s request in such a restrictive way. Thus, in accordance with RSA 91-A:8, I, Petitioner is awarded reasonable attorney’s fees and costs.

Petitioner also requests civil penalties against the Town and Mr. Dillon. Under RSA 91-A:8, IV, "[i]f the court finds that an officer, employee, or other official of a public body . . . 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." "[S]uch person . . . may also be required to reimburse the public body . . . for any attorney's fees or costs it paid pursuant to [RSA 91-A:8, I]." Id.

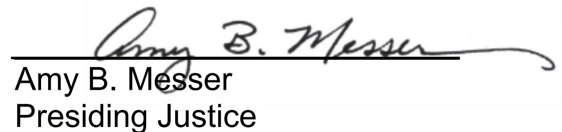
As the statute allows only for civil penalties to be imposed on a person, and not a governing body, the Court cannot institute a civil penalty under the statute as against the Town. As against Mr. Dillon, the Court finds that the current record does not reflect that he violated the statute in bad faith. Though Petitioner alleges the Town, through Mr. Dillon, engaged in a pattern of dilatory tactics and ultimately did not provide documents responsive to the Right-to-Know request that is the subject of her Petition, she has not shown specific actions taken by Mr. Dillon that warrant the imposition of civil penalties on him personally. Mr. Dillon worked with Town counsel in responding to the requests, provided responsive documents to the two additional requests, and there was to at least to some minimal extent an argument regarding whether the request as submitted included a request for documents describing "possibly fraudulent activity". Although the Court finds that the Town construed the request too narrowly in light of the dictates and spirit of 91-A, the Court does not find there is sufficient evidence of bad faith for a finding of civil penalties. Therefore, her request for civil penalties is DENIED.

Consistent with the foregoing, the Court issues the following orders:

1. The Town shall disclose any documents it has that are responsive to Petitioner's request, in accordance with RSA 91-A:4, within five business days of the Clerk's notice of this decision.
2. Petitioner's request for reasonable attorney's fees and costs pursuant to RSA 91 A:8, I is GRANTED. Petitioner shall file her request for reasonable attorney's fees and costs within thirty (30) days;
3. Petitioner's request for civil penalties under RSA 91-A:8, IV is DENIED.

SO ORDERED.

February 15, 2021
Date



Amy B. Messer
Presiding Justice

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STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
DOCKET NO. 226-2021-CV-00163

Laura Colquhoun

v.

City of Nashua

CITY OF NASHUA'S ANSWER

NOW COMES the City of Nashua, Defendant, in the above-captioned action, by counsel, and by way of Answer states as follows:

I. Parties

1. The plaintiff Laura Colquhoon is an individual with a residence located at 30 Greenwood Drive, Nashua, New Hampshire.

ANSWER TO 1: The allegations of section 1 of the Complaint are admitted except that the correct spelling of the Complainant's surname is "Colquhoun." Accordingly throughout this answer "Colquhoon" will be treated as if it read "Colquhoun."

2. The defendant City of Nashua is a body corporate with a principal place of business located at 229 Main Street, Nashua New Hampshire.

ANSWER TO 2: The allegations of section 2 of the Complaint are admitted.

II. Jurisdiction

3. This court has jurisdiction over this matter pursuant to RSA 491 :7 and RSA 91-A: 7.

ANSWER TO 3: Section 3 of the Complaint states a conclusion of law for which no Answer is required

III. Venue

4. Venue is proper in this court as the plaintiff and defendant either reside in, or are located in, the southern district of Hillsborough County.

<u>ANSWER TO 4</u>: Section 4 of the Complaint states a conclusion of law for which no Answer is required.

IV. Facts

5. On March 11, 2021, the plaintiff made a written request for access to public records that read in pertinent part as follows:

> Under NH Right-to-Know, please provide me with all email communications between Ms. Kleiner and Mr. Richard Vincent for the period of January l, 2021 to March 1, 2021.

The full text of the plaintiff's correspondence is attached hereto as Exhibit A.

<u>ANSWER TO 5</u>: It is admitted that the Complainant's request is attached and it is asserted that it speaks for itself.

6. Ms. Kleiner is the Administrative Services Director for the City of Nashua. Mr. Vincent is the Chief of Assessing in the property assessing department of the City of Nashua.

<u>ANSWER TO 6</u>: The allegations of section 6 of the Complaint are admitted.

7. By letter dated March 18. 2021, the City, through its Office of Corporation Counsel, responded in pertinent part as follows:

> This request for "all email" is overbroad and not reasonably described under RSA 91-A:4, IV. Therefore, this request is denied.

The full text of the Nashua Corporation Counsel's Office response is attached hereto as Exhibit B.

ANSWER TO 7: It is admitted that the City' response is attached and it is asserted that it speaks for itself.

8. "Together with Part I, Article 8 of our Constitution, the Right-to-Know Law is the crown jewel of government transparency in New Hampshire. "S*eacoast Newspapers, Inc. v. City of Portsmouth,* 173 N.H. 325, 338 (2020).

ANSWER TO 8: Section 8 of the Complaint states no allegation of fact that need be admitted or denied.

9. Part I, Article 8 of the New Hampshire Constitution provides that:

> 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. I, art. 8.

ANSWER TO 9: Section 9 of the Complaint states no allegation of fact that need be admitted or denied.

10. The preamble of the Right-to-Know Law states in part, that:

> [t]he 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:I.

ANSWER TO 10: Section 10 of the Complaint states no allegation of fact that need be admitted or denied.

11. The purpose of the Right-to-Know Law is to "provide the utmost information to the public about what its government is up to." Seacoast Newspapers, l 73 N.H. at 338) (quoting Goode v. N.H, 148 N.H. 551, 555 (2002)).

ANSWER TO 11: Section 11 of the Complaint states no allegation of fact that need be admitted or denied.

12. The statute furthers "our state constitutional requirement that the public's right of access to governmental proceedings and records shall not be unreasonably restricted.'" Clay v. City of Dover, 169 N .H. 68 l, 685 (2017).

ANSWER TO 12: Section 12 of the Complaint states no allegation of fact that need be admitted or denied.

13. RSA 91-A:4, IV(a) requires only a "record reasonably described" in a request, not a record described with absolute specificity. "Although a requester must reasonably describe' the records sought, an agency also has a duty to construe a [Right-to-Know] request liberally." See, *Amadeo-Vickery v. Town of Salem, Hillsborough County Superior Court, Northern District,* Docket No. 216-2020-CV-00877 *4 (Feb. 15 2021)(quoting *Nation Magazine, Wash. Bureau v. U.S. Customs Sen-*. 71 F.3d 885, 890 (D.C. Cir. l 995)(itself quoting FOIA, 5 U.S.C. § 552(a)(3), citation omitted))(See Exhibit C).

ANSWER TO 13: Section 13 of the Complaint states no allegation of fact that need be admitted or denied.

14. The plaintiff requested: (1) email communications: (2) between two senior public officials; (3) during a two-month period of time; (4) that occurred during the two complete months immediately preceding the request. This request is not '·unreasonably described." To the contrary, it is perfectly clear and unambiguous to anyone reading is reasonably, let alone

liberally. Any claim that Nashua is not, ·'able to determine precisely what records were requested" is absurd.

ANSWER TO 14: See answer to section 5, above. The further allegations of section 14 are denied.

15. Accordingly, the plaintiff requests that this court grant relief by ordering the City of Nashua to disclose the requested records immediately.

ANSWER TO 15: Section 15 of the Complaint states no allegation of fact that need be admitted or denied.

16. The plaintiff further requests that this court award costs and reasonable attorney's fees pursuant to RSA 91-A:S, II.

ANSWER TO 16: Section 16 of the Complaint states no allegation of fact that need be admitted or denied.

BY WAY OF FURTHER ANSWER THE CITY STATES:

A. A search of the in box, sent folder, deleted folder, and all other folders on the email program located on the desk top computers of Ms. Kleiner and Mr. Vincent are likely to produce hundreds of pages of email communications between the two of them, the vast majority of them being duplicated at least once.

B. Such volume is made even more likely since Mr. Vincent's employment with the City began approximately January 1, 2021.

C. Ms. Kleiner is Mr. Vincent's immediate superior.

D. As Mr. Vincent's employment commenced the Nashua Assessing Department was in the midst of several projects which would have caused much communication between the two.

E. These projects include a city wide full measure and list revaluation of the approximately 29,000 parcels of property located in the City, the physical remodeling of the portion of City Hall wherein the Assessing Department is located, the reassignment of the department's clerical personnel following the recent departure of the longtime supervisor of the clerical area, the upgrade to the latest addition of the computer assisted mass appraisal software utilized by the department, and the digitizing of department records.

F. After these hundreds of pages are extracted it would remain necessary to examine each page to identify any confidential information or other material exempted from the disclosure requirements of RSA 91-A.

G. Even then it is unlikely that "all email communications" between these two individuals would be captured since it is likely that many such communications would have been removed from the email program and filed by subject matter. Obtaining these emails would require a hand search of thousands of files containing tens of thousands of documents. Other transitory communications likely have been deleted completely and no longer exist.

H. This Court on January 12, 2021 in addressing a Motion for Partial Summary Judgment in the matter of *Laurie Ortolano v. City of Nashua*, 2020-CV-00133 cited with approval the cases of *Freedom Watch, Inc. v. Dep't of State,* 925 F. Supp. 2d 55, 62 (D.D.C. 2013) and *Dale v. I.R.S.,* 238 F. Supp 2d 99, 104 (D.D.C. 2002) for the proposition that requests for "all communications" and "all documents" are too broad because they do not describe records sufficiently to allow a professional employee familiar with the area in question to locate responsive records.

I. In reasonable reliance on this decision the City determined that the request at issue here was similarly too broad to be reasonably described.

J. Notwithstanding the above issues the City has determined to attempt to fulfill the request to the extent it is able and has so informed Complainant's counsel. See attached letter of March 31, 2021.

WHEREFORE the Defendant, City of Nashua, prays that the Court:

i. Deny the Complainant's prayers for relief and

ii. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

THE CITY OF NASHUA

By its Attorneys,
Office of Corporation Counsel

Dated: March 31, 2021

/s/ Steven A. Bolton

Steven A. Bolton, (NH Bar #67)
Corporation Counsel
Celia K. Leonard, Esquire (NH Bar #14574)
Deputy Corporation Counsel
229 Main Street - P. O. Box 2019
Nashua, New Hampshire 03061-2019
(603) 589-3250
LeonardC@nashuanh.gov

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2021, a copy of the foregoing Answer of City of Nashua was served via the electronic filing system to Richard J. Lehmann, Esquire.

/s/ Steven A. Bolton
Steven A. Bolton, Esquire

ATTACHMENT

Steven A. Bolton
Corporation Counsel
BoltonS@nashuanh.gov

Celia K. Leonard
Deputy Corporation Counsel
LeonardC@nashuanh.gov

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CITY OF NASHUA
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March 31, 2021

Richard J. Lehmann
Lehmann Major List, pllc
6 Garvins Falls Road
Concord, N.H. 03301

Via email only to rick@nhlawyer.com

RE: RTK request received March 11, 2021

Attorney Lehman,

On March 11, 2021, the City received a request from Laura Colquhoun, under NH RSA 91-A, the "Right-to-Know" law.

That request stated in part:

> [P]lease provide me with all email communications between Ms. Kleiner and Mr. Richard Vincent for the period of January 1, 2021 to March 1, 2021.

On March 18, 2021, the City denied this request as overbroad and not reasonably described under RSA 91-A:4, IV. Following the City's denial, Ms. Colquhoun made no further attempt to clarify or narrow this request. On March 26, 2021, your office subsequently filed a complaint against the City of Nashua (Docket # 226-2021-CV-00163), on Ms. Colquhoun's behalf, in response to the City's denial of this request.

The Office of Corporation Counsel would like to express its disappointment that Ms. Colquhoun chose this particular occasion to abstain from providing further commentary or clarification regarding her request. As you and your client are both aware, "The salutary purpose of the Right-to-Know Law . . . is best served when the members of the public and the governmental bodies are guided by a spirit of collaboration." *Salcetti v. City of Keene*, 2020 WL 3167669, at *10 (slip op. June 3, 2020).

In the past, Ms. Colquhoun has not shied away from providing further clarification regarding the City's responses to her requests, even when documents were provided forthwith under a "liberal" interpretation of Ms. Colquhoun's often unclear and ambiguous requests. In fact, it is not unheard of for Ms. Colquhoun to complain about receiving materials she specifically requested. *See* City File # 2021-446 and 446A (Ms. Colquhoun requested "electronic copies of 2020 abatement applications and **supporting documentation**," but then complained "I did not request the property cards be sent to me so please do not waste my time," when provided with property record cards that had been attached to abatement applications as supporting documentation.) (emphasis added.)

In light of Ms. Colquhoun's decision not to provide further guidance or clarification, the City has provided information below in response to what it can only presume might be the intent and reasonable focus of Ms. Colquhoun's request. However, for the reasons stated in the City's response on March 18, 2021, there is no way to confirm that any response by the City will consist of "all email communications" in earnest satisfaction of Ms. Colquhoun's broadly worded request. Particularly given the expansive use of email as a method of transitory correspondence, the City can confirm to no level of certainty what fraction of "all email communications" Ms. Kleiner and Mr. Vincent retained during the 59 days subsumed in the Plaintiff's request.

Further, the default email retention period in a user's outlook folder is 45 days. In light of this there can be no certainty as to the completeness of any email records prior to January 25, 2021 (i.e.: 45 days before Ms. Colquhoun's request was submitted). However, it is possible Ms. Kleiner or Mr. Vincent personally retained emails beyond that period (such as by printing them, or filing them electronically--but not by date) thereby making it difficult to search for those emails without further description.

City's Response: The City has searched its readily available files and found approximately **547** email messages, equivalent to roughly **937** printed pages, sent by and between Kim Kleiner and Rick Vincent during the period of January 1, 2021, to March 1, 2021. Each of these pages will require individual review for redaction or exemption in order to protect private and confidential information. Due to prior Right-to-Know requests as well as other Legal Department obligations and deadlines, this request will take some time. Please expect a response or update by April 27, 2021.

Sincerely,

/s/ Jesse B. Neumann
Jesse B. Neumann
Attorney/RTK Coordinator

cc: File #2021-500

2020 SESSION

20-2217
01/10

HOUSE BILL ***1170***

AN ACT adding a definition of "reasonably described" to the right-to-know law.

SPONSORS: Rep. J. Schmidt, Hills. 28

COMMITTEE: Judiciary

ANALYSIS

This bill inserts a definition of "reasonably described" for purposes of retrieval of public records under the right-to-know law.

- -

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
20-2217
01/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty

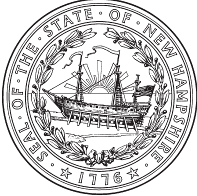
AN ACT adding a definition of "reasonably described" to the right-to-know law.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Paragraph; Right-to-Know Law; Definition Added. Amend RSA 91-A:1-a by inserting after paragraph VI the following new paragraph:

VII. "Reasonably described" means a document is identified with necessary specificity to allow a public employee to retrieve it without making an extensive search and, at a minimum, by date or a range of dates not exceeding 30 days, by type, which means by letter, minutes, or a report, and by title or subject matter.

2 Effective Date. This act shall take effect January 1, 2021.



State of
New Hampshire

HOUSE RECORD

Second Year of the 166th General Court

Calendar and Journal of the 2020 Session

Web Site Address: www.gencourt.state.nh.us

Vol. 42 Concord, N.H. Friday, March 6, 2020 No. 10

Contains: House Deadlines; House Bills Amended by the Senate; Revised Fiscal Notes; Reports; Meetings and Notices

HOUSE CALENDAR

MEMBERS OF THE HOUSE:

The House will be meet on **Wednesday, March 11th and Thursday, March 12th at 9:00 a.m. both days.** Please be prepared for long session days.

I know that all of you are concerned about ways to keep yourselves, your colleagues and your constituents healthy in light not only of the COVID-19 virus, but also of influenza, rhinovirus and other ongoing heath threats. A bipartisan group of House leadership met with personnel from NH DHHS for an update. We are passing along this information for your consideration.

Here is a list of steps you can take to reduce the risk of spreading diseases, whether influenza, rhinovirus or COVID-19:

- Stay home if you are sick.
- Wash your hands frequently.
- Refrain from touching your face, eyes, nose or mouth.
- Consider not shaking hands, especially in multiple serial handshaking environments. For most of us, this takes real effort.

Please start taking these steps now, before the disease has a chance to spread. In particular, I ask House members to be considerate of their colleagues, and to stay home if they are ill.

For more information, NH DHHS has a Novel Coronavirus COVID-19 web page, updated daily, with information which may be helpful to you or your constituents. Included is information on the status of COVID-19 in NH, travel warnings, frequently asked questions, links for health care providers and patients, advice for schools and businesses, and links to various CDC information pages. The web page is here: https://www.dhhs.nh.gov/dphs/cdcs/2019-ncov.htm

A more complete set of Frequently Asked Questions is here: https://www.dhhs.nh.gov/dphs/cdcs/documents/covid-19-faq.pdf

We hope this information will be of help to you and your constituents.

Stephen J. Shurtleff, Speaker of the House

NOTICE

There will be a meeting of the chairs and vice chairs on **Tuesday, March 10th at 9:30 a.m.** in Rooms 210-211.

Stephen J. Shurtleff, Speaker of the House

NOTICE

There will be a Democratic caucus on **Tuesday, March 10th at 2:00 p.m.** in Representatives Hall.

Rep. Doug Ley

practice has ceased. In addition, there is substantial documentation that a global trade in organs exists in which poor people are offered cash to donate kidneys. The committee deeply appreciates the intentions of the sponsor. However, there is no evidence that Medicaid payments are being made for unethically obtained organs, and the broader issue of the unethical procurement of organs is beyond the purview of the NH General Court. **Vote 20-0.**

HB 1623-FN, relative to telemedicine and substance use disorder. **OUGHT TO PASS WITH AMENDMENT.**
Rep. William Marsh for Health, Human Services and Elderly Affairs. This bill, as amended, merges the intent of the bill as drafted with SB647 and is the language agreed to by all the stakeholders. In brief, this bill creates four safe harbors where opioids may be prescribed by telemedicine without an initial face-to-face visit so that we can expand the availability of medically assisted treatment (MAT) for substance use disorder in NH. This would allow MAT via telemedicine in Veterans Affairs (VA) clinics across our state, as is already happening in Maine. This would allow MAT via telemedicine in county correctional facilities, as qualified clinicians are not available everywhere. This would allow MAT via telemedicine in hospital emergency rooms (ER), as ER doctors are not trained in this field, and patients presenting to ERs need to initiate treatment when they need it. Lastly, it would allow MAT via telemedicine in each of the Doorways programs, expanding capacity in these programs. **Vote 20-0.**

HB 1628-FN, increasing the age for vaping. **INEXPEDIENT TO LEGISLATE.**
Rep. Walter Stapleton for Health, Human Services and Elderly Affairs. This bill is in conflict with federal law which in 2019 raised the minimum age from 18 to 21 nationwide for the sales of all tobacco products. The bill only raised the age to 19 for the sale of tobacco products. In the committee hearing, there was testimony that a bill coming to us from the Senate had more review and stakeholder participation to produce better legislation. **Vote 20-0.**

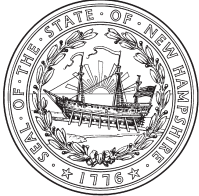
HB 1639-FN, relative to “In and Out Medical Assistance.” **OUGHT TO PASS WITH AMENDMENT.**
Rep. Kendall Snow for Health, Human Services and Elderly Affairs. This bill will direct the Department of Health and Human Services to update the income limits for Medicaid recipients on the “spend down” program. Currently, these recipients are not eligible for coverage until they have spent down to a monthly remaining income of $591, a standard set in 1990. HB 1693 increases that cap to $901. Recipients with severe mental illness are not able to spend down so their spend down requirement is met by mandated uncompensated care by healthcare providers, usually the mental health centers. This overdue increase will assist these clients and will also reduce uncompensated care, which amounted to $7,400,000 last year. The amendment offers the department a choice of two methods of computation, and extends the effective date to June 30, 2021. **Vote 20-0.**

HB 1703, establishing a working group on food waste. **OUGHT TO PASS WITH AMENDMENT.**
Rep. Lucy Weber for Health, Human Services and Elderly Affairs. Currently, a significant portion of the trash put into our landfills is food waste. The bill as originally drafted created a working group to consider all aspects of reduction of food waste. The amendment narrows the scope of the bill to promote food recovery, that is, ensuring that food that might otherwise go to waste and then end up in a landfill is used to the maximum extent consistent with health and safety. Specific language was added to include an appointee from the Department of Environmental Services and one from the Department of Health and Human Services at the agencies’ request. As amended, the bill brings together a number of stakeholders, including the grocery and restaurant industries, the schools, farm to school programs, food producers and experts on sustainability, among others. The group is charged with reviewing current regulations and safety guidelines, reviewing current initiatives nationally and regionally to promote food recovery, making recommendations to remove barriers to food recovery in NH, and suggesting legislative, rule or policy changes needed to promote food recovery in NH. **Vote 19-1.**

HB 1705-FN, relative to adverse childhood experiences and the family support clearinghouse. **OUGHT TO PASS.**
Rep. Joe Schapiro for Health, Human Services and Elderly Affairs. This bill expands and clarifies various aspects of the family support clearing house which was created by last year’s SB 14, a multi-faceted mental health bill. Recommended by the Legislative Study Committee on Adverse Childhood Experiences (ACEs), this bill makes explicit that referrals shall be made to programs and services related to prevention, intervention, and mitigation of trauma related to ACEs. **Vote 19-0.**

JUDICIARY

HB 1170, adding a definition of “reasonably described” to the right-to-know law. **INEXPEDIENT TO LEGISLATE.**
Rep. Gary Hopper for Judiciary. This bill adds a definition of “reasonably described” to a right-to-know request. Although it is well intended, if passed, it could be used to deny right-to-know requests when someone does not know the required information. **Vote 19-0.**



State of
New Hampshire

HOUSE RECORD

Second Year of the 166th General Court

Calendar and Journal of the 2020 Session

Web Site Address: www.gencourt.state.nh.us

Vol. 42 Concord, N.H. Wednesday, March 11, 2020 No. 7

HOUSE JOURNAL NO. 6 (Cont'd)

Thursday, March 5, 2020

Rep. Ley moved that the House adjourn.
Motion adopted.

HOUSE JOURNAL NO. 7

Wednesday, March 11, 2020

The House assembled at 9:00 a.m., the hour to which it stood adjourned, and was called to order by the Speaker.

Prayer was offered by House Chaplain, Reverend Kate Atkinson, Rector of St. Paul's Church in Concord.
O God, in this time of fear and uncertainty, as we place limits on our lives and daily activities in the hope that we will be safe from the disease that threatens our world, help us to live with confidence and determination, even as we take precautions to lower the risks we face. Give us hearts of compassion for those afflicted by COVID-19, those who are isolated in quarantine, and those whose very livelihood is threatened by restrictions they must endure. Give us courage to continue to live each day to the full, recognizing the many ways You bless us with abundant life, even when there are things we must let go of. And help us to remember that this too shall pass: that, when it does, our world may be changed but will still be whole; and we will have a fresh appreciation of the life You have given us, in all its fragility and beauty, O God of healing hope, and promise.

Representative Wendy Chase, member from Rollinsford, led the Pledge of Allegiance.

The National Anthem was sung by Corporal Victoria Jollimore from the 39th Army Band, New Hampshire Army National Guard.

LEAVES OF ABSENCE

Reps. Baroody, Burns, Callum, Kittredge, Alicia Lekas, Lundgren, Massimilla, McGhee, Merlino, Oxenham, Pantelakos, Plumer and Wazir, the day, illness.
Reps. Aldrich, Buco, Chirichiello, Conley, Eisner, Gourgue, Graham, Higgins, Hunt, Khan, Lang, McBride, Mombourquette, Rodd, Spang, St. Clair, Vallone, Vose and Feeney, the day, important business.
Reps. DiSilvestro, L'Heureux and Wendy Thomas, the day, illness in the family.

INTRODUCTION OF GUESTS

Joe DePalma, guest of Rep. Hennessey. David, Jennifer, Jacob and Allison Hunger, Kendra Middleton, Grant and Vivian Jones, guests of Rep. Williams. Girl Scouts of the Green and White Mountains, guests of Rep. Weber.

CONSENT CALENDAR

Rep. Ley moved that the Consent Calendar with the relevant amendments as printed in the day's House Record be adopted.
HB 1637-FN, establishing a kinship navigator program in the department of health and human services, by Rep. McGuire.
HB 1397, relative to the referral of debts for collection, removed by Rep. Sylvia.
HB 1464-FN, relative to insurance coverage for yoga therapy as an alternative or substitute for opioids, removed by Rep. Sylvia.
HB 1508, relative to paper receipts, removed by Rep. Sylvia.
HB 1690, prohibiting paper billing fees, removed by Rep. Sylvia.
HB 1697-FN, relative to prescription drug discount prohibition, removed by Rep. Sylvia.

(o) A representative of the Northeast Resource Recovery Association, appointed by that association.
(p) A representative of the New Hampshire farm to school program, appointed by that program.
(q) A representative of a company that provides food services to schools.
II. Unless otherwise indicated, members shall be appointed by the commissioner of the department of health and human services.
III. The food recovery working group shall:
(a) Review state and federal laws, policies, and guidelines relative to food safety and food recovery.
(b) Examine national and regional initiatives to increase food recovery and recommend changes to help promote food recovery in New Hampshire.
(c) Assess New Hampshire's food industry including food manufacturers, restaurants, and retail food stores, to understand any regulatory barriers to food recovery.
(d) Review policies in New Hampshire schools and universities and recommend changes to promote food recovery in New Hampshire.
(e) Explore such other matters as the working group deems necessary and recommend related legislative, rule, or policy changes.
IV. The food recovery working group shall make a final report of its findings to the speaker of the house of representatives, president of the senate, the chairs of the house and senate standing committees with oversight of health and human services, the governor, the commissioner of the department of health and human services, and commissioner of the department of education by November 1, 2021 and shall file an initial proposal of any rule changes with the office of legislative services by November 1, 2021.
V. The working group shall meet no later than 60 days after the effective date of this section.
3 Repeal. RSA 143:30, relative to the food recovery working group, is repealed.
4 Effective Date.
I. Section 3 of this act shall take effect November 1, 2021.
II. The remainder of this act shall take effect upon its passage.

AMENDED ANALYSIS

This bill establishes a working group on food recovery.
This bill is a request of the study committee on recycling and solid waste, established pursuant to 2019, 265 (HB 617).

HB 1705-FN, relative to adverse childhood experiences and the family support clearinghouse. **OUGHT TO PASS.**
Rep. Joe Schapiro for Health, Human Services and Elderly Affairs. This bill expands and clarifies various aspects of the family support clearing house, which was created by last year's SB 14, a multi-faceted mental health bill. Recommended by the Legislative Study Committee on Adverse Childhood Experiences (ACEs), this bill makes explicit that referrals shall be made to programs and services related to prevention, intervention, and mitigation of trauma related to ACEs. Vote 19-0.

HB 1170, adding a definition of "reasonably described" to the right-to-know law. **INEXPEDIENT TO LEGISLATE.**
Rep. Gary Hopper for Judiciary. This bill adds a definition of "reasonably described" to a right-to-know request. Although it is well intended, if passed, it could be used to deny right-to-know requests when someone does not know the required information. Vote 19-0.

HB 1176, establishing a committee to study the attorney general's authority over certain municipal and county employees. **OUGHT TO PASS.**
Rep. Sandra Keans for Judiciary. This bill provides for a study committee to hopefully establish a guide for the citizenry as to how elected officials are to be disciplined or suspended, if at all, after a criminal conviction, or at least perceived incompetency in carrying out their duties. Many officials at the county level: sheriff, attorney, registrar of deeds, are all elected directly by the voters. Many of them have visibility or are known. Occasionally, a person is elected without any history. If their managerial skills are less than optimal, what system is in place to protect the public? Recent events have caused the Attorney General, the chief law enforcement official in the state to insert the Department of Justice into a county situation. While there may be prosecutorial difficulties taking place, we must be clear how the Department of Justice involves itself with constitutionally elected positions. This study can provide a system for communications and training for all involved before a crisis. Vote 17-2.

HB 1192-FN, relative to forfeiture of seized personal property. **OUGHT TO PASS WITH AMENDMENT.**
Rep. Michael Sylvia for Judiciary. This bill, as amended, addresses two areas where our criminal asset forfeiture law can be circumvented. One part tightens language requiring that criminal complaints must be filed prior to a petition for forfeiture. The second part prohibits transfer of assets for forfeiture to the federal equitable sharing program unless it involves $100,000 or more in cash. Both measures assure that the majority of forfeitures are the result of criminal activity. Vote 16-1.