

PUBLIC MEETINGS

BASIC RULE: All meetings of public bodies must have proper notice and be open to the public.

- *Public body:* All committees, subcommittees, boards, commissions, agencies, etc. that perform a governmental function for a town, city, village district or school district. RSA 91-A:1-a.
- *“Meeting”:* The convening of a quorum (majority) of any public body to discuss or act on any of that body's business, including work sessions. It is a “meeting” whether the members convene in person, by telephone, or electronic communication, or in any other way in which all members may communicate with each other contemporaneously. **However**, legal meetings may never be conducted by email or any other format which does not comply with notice and public accessibility requirements, or which does not allow the public to hear, read or discern the discussion contemporaneously at the noticed meeting location. RSA 91-A:2.
- *What is not a meeting?* Gatherings of fewer than a quorum; consultation with legal counsel; chance or social meetings neither planned nor intended to discuss official matters and at which no decisions are made; strategy or negotiations regarding collective bargaining.
- *Notice:* Minimum of 24 hours (not including Sundays or holidays), either published in a local newspaper or posted in two prominent public places, one of which may be the public body's website. RSA 91-A:2. Other statutes or local rules may require more notice.
- *“Open to the public”:* Anyone, not just local residents, may attend, take notes, record and photograph the meeting. However, except as required in a public hearing, the public has no guaranteed right to speak. RSA 91-A:2.
- *Telephone participation:* Boards may (but do not have to) allow one or more members to participate in a meeting by telephone or other electronic means (RSA 91-A:2), if:
 - Physical attendance is not reasonably practical (note in meeting minutes);
 - All members can simultaneously hear and speak with each other;

- Except in an emergency, a quorum is physically present in the noticed meeting location;
- All parts of the meeting are audible or otherwise discernible to the public in that location.
- *Deliberations:* Public bodies may only deliberate in properly held meetings and may not use communication outside a meeting (such as sequential emails or phone calls) to circumvent the spirit or purpose of the law. RSA 91-A:2-a.

MINUTES: Must be kept for all public meetings and made available to the public upon request within five business days after the meeting (whether or not approved yet). Must include members present, others participating, and a brief description of subjects discussed and final decisions made. RSA 91-A:2.

NONPUBLIC SESSIONS: Meetings or portions of meetings that the public may not attend. Begin in a properly noticed public meeting. A motion for nonpublic session is made and seconded, citing the statutory reason, and a majority roll call vote is taken. Once in the nonpublic session, only the reason(s) cited in the motion may be discussed. Minutes must be kept and (unless the board votes to seal them) made available to the public upon request within 72 hours after the meeting, whether or not approved yet. RSA 91-A:3. Nonpublic sessions are allowed only for reasons listed in RSA 91-A:3, II, including:

- Dismissal, promotion, compensation, disciplining, investigation or hiring of a public employee.
- Matters which would likely adversely affect the reputation of any non-board member.
- Buying, selling or leasing real or personal property if public discussion would give someone an unfair advantage over the municipality.
- Lawsuits filed or threatened in writing against the municipality, until fully adjudicated or settled.
- Preparation for and carrying out of emergency functions related to terrorism.

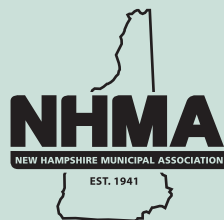
RIGHT TO KNOW LAW

LEGAL INQUIRIES:

800.852.3358, ext. 384

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GOVERNMENTAL RECORDS

DEFINED: Any information created, accepted or obtained by a quorum of a public body, or by a public agency (such as clerk's office, town administrator or police department), in any physical format, received in or out of a meeting, in furtherance of its official function. RSA 91-A:1-a.

BASIC RULE: Governmental records must be made available to the public upon request unless they are exempt from disclosure under RSA 91-A:5 or another statute. Electronic records are treated the same way as paper records in this respect. RSA 91-A:4.

AVAILABILITY: Records must be available during business hours at the premises of the public body. If not immediately available, respond within five business days: provide the record, deny it in writing with reasons, or acknowledge it in writing with a note of the time needed to respond. RSA 91-A:4.

- *Copies:* Anyone may make notes, tapes or copies. Never hand over without supervision or lend records out. Citizens may be charged the actual cost of providing the copies. RSA 91-A:4.
- *Format:* Maintain in a manner accessible to the public. May provide in any format the municipality already has, but if one is more convenient, it must be made available. May provide electronic records by access to a municipal computer, or by a copy in standard or common file formats, a printout, or any other means reasonably calculated to comply with the request. RSA 91-A:4.
- *Motive:* The reason for requesting a governmental record is irrelevant; do not even ask.
- *Raw materials:* Tapes and notes used to compile meeting minutes are governmental records as long as they are retained; policy to discard/reuse after minutes are approved is acceptable.
- *Partial release:* If only part of a record is exempt from disclosure, the remainder should be released. Redact the exempt portion(s).

RETENTION OF RECORDS: RSA Chapter 33-A:3-a governs the length of time records must be kept. Keep electronic records for the same length of time as their paper counterparts. RSA 91-A:4. However, if a record must be kept for more than 10 years, it must also be transferred to paper or microfilm. RSA 33-A:5-a. *Do not destroy a record after a request has been made for it until the request is fulfilled or disputed requests are fully resolved.* RSA 91-A:9.

DELETING ELECTRONIC RECORDS: Electronic records are not subject to disclosure under RSA 91-A after they have been "initially and legally deleted" so that they are no longer readily accessible to the public body or agency. A record is "legally" deleted if the retention period has ended and there are no outstanding or disputed requests for that item. *To "delete," you must empty the "Deleted Items" or "Recycle Bin" folder.* RSA 91-A:4.

EXEMPTIONS TO THE DISCLOSURE REQUIREMENT INCLUDE:

- Records pertaining to internal personnel practices
- Medical, welfare, library user and videotape sales or rental records
- Confidential, commercial or financial information and any other record whose disclosure would be an invasion of privacy
- Notes or materials made for personal use that do not have an official purpose
- Preliminary drafts, notes or memoranda and other records not in their final form and not disclosed, circulated or available to a quorum of a public body
- Some law enforcement records (but not all)
- Written legal advice (until the client shares it with a third party outside the privilege)

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