

New Hampshire – State Public Record Laws

Citations	<p>RSA 91-A http://www.gencourt.state.nh.us/rsa/html/vi/91-a/91-a-mrg.htm</p>
Exemptions to Disclosure	<p>The following records are exempt from disclosure:</p> <ul style="list-style-type: none"> • Work papers • Confidential info • Notes/materials made for personal use and that lack official purpose (including notes and materials made prior to, during, or after a governmental proceeding) • Preliminary drafts/notes/memoranda/other docs • The Act exempts “confidential, commercial, or financial information” from disclosure “and other files whose disclosure would constitute invasion of privacy.” “The terms ‘commercial or financial’ encompass information such as ‘business sales statistics, research data, technical designs, overhead and operating costs, and information on financial condition’.” <i>Id.</i> at 554 (quoting <i>Landfair v. United States Dept. of Army</i>, 645 F. Supp. 325, 327 (D.D.C. 1986)). <p>ADDITIONAL EXEMPTIONS RSA 91-A:5</p> <ul style="list-style-type: none"> • Internal personal practices • New Hampshire Supreme Court rejects the proposition that under the Right-to Know Law, when a document contains facts, rather than contemporaneous opinions or suggestions not based on fact, it is public, regardless of its stage in policy development as inconsistent with the premise that the focus of the exemption is on the pre-decisional posture of the document. <i>ATV Watch v. N.H. Dep't of Transp.</i>, 161 N.H. 746, 20 A.3d 919, 2011 N.H. LEXIS 56 (N.H. 2011). • Nothing in the language of RSA 91-A:5, VIII, supports the premise that when a “note” is circulated within or without the agency it is by definition agency business. <i>Id.</i> • Pursuant to <i>N.H. Right to Life v. Dir.</i>, N.H. Charitable Trusts Unit, 169 N.H. 95, 143 A.3d 829, 2016 N.H. LEXIS 55 (N.H. 2016), it appears that in certain circumstances e-mails are exempted from public records disclosure under the state Public Records Act.
Access Rights	<ul style="list-style-type: none"> • Every citizen • Regular business hours • Response due w/in 5 business days of request, and if not immediately available, give explanation and estimate of when will be available; deny in writing w/ reasons; statement of time reasonably necessary to determine whether to grant or deny request • If fee for copy is established by law, no additional fees/costs can be charged • Employment contracts = public records • Violations – can petition superior court for injunctive relief; reasonable attorney’s fees and costs only if court finds suit was necessary to enforce compliance; can be awarded to defendant if plaintiff’s suit was in bad faith, frivolous, unjust, vexatious, wanton, or oppressive; fees not awarded unless court finds custodian knew or should have known that the conduct was in violation or if parties by agreement provide no fees shall be paid; violation in bad faith, court will impose civil penalty between \$250 and \$2000 and reimburse agency for attorney’s fees or costs; remedial training at person’s expenses • Can get access to statistical tables and limited data sets for research, but only if requestor provides written details on requestor’s qualifications, purposes, etc., and signs agreement

	<p>not to use or further disclose the info except as permitted by the agreement or required by law – response for such request due w/in 10 days of receipt (request must be written); denial of such request must be in writing and identify the specific criteria upon which denial is based, and/or specific state/federal law/reg prohibiting release; otherwise, agency shall provide the data or set a date on which it will be provided; fees based on cost of providing copy in format requested, and custodian must provide requestor w/ written description of basis for fee [91-A:10]</p>
Destruction of Public Records	<ul style="list-style-type: none">• If request denied on ground of alleged exemption, record must not be destroyed for at least 90 days, and must not be destroyed during pendency of any lawsuit challenging the denial [91-A:9]• RSA 33-A:3-a states that records must only be disposed of pursuant to records retention schedule