



The Right-to-Know Law for Libraries and Library Trustees

May 2015

New Hampshire's Right-to-Know Law, RSA 91-A, clearly applies to public libraries and library trustees. RSA 202-A:3-a states:

A public library established or accepted by a town or city shall be deemed a "public agency," and the library trustees a "public body," for purposes of RSA 91-A, and they shall be subject to all applicable provisions of that chapter; provided, however, that any books, documents, records, or other information maintained by a public library that is exempted or protected from disclosure by other provisions of law shall not be subject to disclosure under RSA 91-A.

I. PUBLIC MEETINGS

WHAT IS A MEETING?

It is the convening of a *quorum* of a *public body*, "whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate contemporaneously," for the purpose of discussing or acting upon any public business. RSA 91A:2, I. This includes work sessions!

What is a *quorum*? A majority of any board or committee constitutes a quorum, unless an applicable law or rule states otherwise. RSA 21:15.

What is *not* a meeting? The law makes it clear that certain gatherings and communications are *not* meetings subject to the Right-to-Know law (see RSA 91-A:2, I). The only ones likely to be relevant to library trustees (and even those would rarely apply) are (1) consultation with legal counsel, and (2) circulation of draft documents which, when finalized, are intended only to formalize decisions previously made in a public meeting (but other provisions of the law may apply—for example, the documents may be subject to disclosure).

WHAT IS A PUBLIC BODY?

All "public bodies" are required to have open meetings under the law. As indicated above, RSA 202-A clearly states that a board of library trustees is a public body. In addition, any subcommittee of the board and any advisory committee to the board is also a public body. RSA

91-A:1-a, VI. On the other hand, the library staff is not a public body, and staff meetings therefore are not subject to the law.

WHAT NOTICE IS REQUIRED?

All meetings must have at least 24-hour notice (not counting Sundays and holidays) prior to the meeting. Notice must be either published in a newspaper or posted in two public places. RSA 91-A:2, II. Local ordinances can be more strict about notice. If so, they must be complied with. If the municipality or the public body has an Internet website, it may (but is not required to) use the website as one of the two public places for posting notice.

Emergencies. If a public body has an urgent need for a meeting, leaving no time to give proper notice, the 24-hour requirement is waived, but the nature of the emergency must be stated in the minutes of the meeting. Notice must still be posted as soon as practicable, and any other means that are reasonably available must be employed to inform the public about the meeting. RSA 91-A:2, II.

OPEN TO THE PUBLIC

Anyone (not just local residents) must be permitted to attend any public meeting. They may take notes, tape record, take photos and videotape. However, the Right-to-Know Law does not grant anyone the right to *speak* at the meeting. RSA Chapter 91-A ensures only a right to attend, not a right to participate. The board *may* allow members of the public to speak at a meeting, for example during a “public comment” period; if it does, it must apply the same rules to all who want to speak.

MINUTES OF PUBLIC MEETINGS

Minutes must be kept of all public meetings, and must be available to the public upon request within five business days after the close of the meeting. Minimum content of meeting minutes includes: (1) names of members present; (2) other people participating (it is not necessary to list everyone present, however); (3) a brief summary of subject matter discussed; and (4) any final decisions reached or action taken.

NONPUBLIC SESSIONS: EXCEPTIONS TO THE PUBLIC MEETING REQUIREMENT

Nonpublic sessions are meetings (or portions of meetings) that the public does *not* have the right to attend. Nonpublic sessions are allowed only for the reasons specified in RSA 91-A:3, II. The allowable reasons for nonpublic sessions that are likely to be relevant to library trustees are:

1. The dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against the employee, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted. RSA 91-A:3, II(a). *Notice that this section does not create a right to a meeting for an employee.* The right to a meeting must arise from some other source, such as a collective bargaining agreement, a personnel policy, or a state statute.

2. The hiring of a public employee. RSA 91-A:3, II(b).
3. Matters that, if discussed in public, would adversely affect the reputation of someone *other than a member of the public body*. However, if that person requests it, the meeting must be public. RSA 91-A:3, II(c).
4. Consideration of the acquisition, sale, or lease of real or personal property, where public discussion would benefit a party whose interests are adverse to the general public. RSA 91-A:3, II(d).
5. Consideration of lawsuits threatened in writing or filed against the body or one of its members. RSA 91-A:3, II(e).

HOW TO ENTER NONPUBLIC SESSION

1. The body must first meet in a properly noticed public meeting.
2. A motion to go into a nonpublic session must be made and seconded, stating which specific reason listed in RSA 91-A:3, II is relied upon.
3. A roll call vote must be taken, and requires the affirmative vote of the majority of members present. Only the matters specified in the motion can be discussed in the nonpublic session.

MINUTES OF NONPUBLIC SESSIONS

Minutes must be kept of the proceedings and actions of nonpublic sessions. *These minutes must be released to the public within 72 hours* (less than half the time frame for regular meetings), unless two-thirds of the members present, in a recorded vote, decide to seal the minutes because release of the minutes would adversely affect someone's reputation (other than a board member), or public release of the minutes public would render the action just taken ineffective, or the information pertains to terrorism.

REMOTE PARTICIPATION IN A PUBLIC MEETING

A public body *may*, but is *not required* to, allow one or more members to participate in a meeting by telephone or other electronic communication—but only if the member's attendance is “not reasonably practical.” *See* RSA 91-A:2, III. The reason that in-person attendance is not reasonably practical must be stated in the minutes of the meeting.

Except in an emergency, at least a quorum of the public body must be physically present at the location of the meeting. An “emergency” means that “immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action.” The basis for determining an emergency must be included in the minutes.

Each part of the meeting must be audible “or otherwise discernable” to the public at the physical location of the meeting. All members of the public body must be able to hear and speak to each other simultaneously during the meeting, and must be audible or otherwise discernable to the public in attendance. All votes taken during such a meeting must be by roll call vote.

COMMUNICATIONS OUTSIDE A MEETING

RSA 91-A:2-a, limits the use of communications outside a public meeting. The bottom line is that discussion and action on official matters should occur only in a properly held meeting.

1. *No deliberations outside a public meeting.* Public bodies may deliberate on matters of official business “only in meetings held pursuant to and in compliance with the provisions of RSA 91-A:2, II or III”—*i.e.*, only in properly noticed public meetings. There is an exception for those events that are exempted from the definition of a “meeting,” including (among others) consultations with legal counsel.
2. *No circumvention of spirit or purpose of the law.* Communications outside a meeting, “including, but not limited to, sequential communications among members of a public body,” shall not be used “to circumvent the spirit and purpose of this chapter.” This is intended primarily to prevent public bodies from skirting the “meeting” definition by deliberating or deciding matters via a series of communications, none of which alone involves a quorum of the public body, but which in the aggregate include a quorum.

II. GOVERNMENTAL RECORDS

WHAT IS A GOVERNMENTAL RECORD?

The law defines a “governmental record” as “any *information* created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function.” See RSA 91-A:1-a, III. The word “information,” in turn, is defined as “knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic, or other physical form.” See RSA 91-A:1-a, IV.

There are several important points here:

1. *Information in physical form.* “Information” may be “written, aural, visual, [or] electronic,” but in any case must be in some *physical form*. This part of the Right-to-Know Law affects not *knowledge*, but *records*.
2. *Created, accepted, or obtained by a public body.* Information (such as a written communication) will constitute a governmental record when it is “created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, . . . in furtherance of its official function.”

3. *Created, accepted, or obtained by a public agency.* Information also constitutes a governmental record if it is “created, accepted, or obtained by, . . . any public agency in furtherance of its official function.” As indicated above, a public library is a public agency under the statute.
4. “In furtherance of its official function.” A governmental record is one created, accepted, or obtained by a public body or a public agency *in furtherance of its official function*. Personal correspondence, for example, is not subject to disclosure.

PUBLIC DISCLOSURE REQUIREMENT

RSA 91-A:4 governs the public disclosure and inspection of governmental records. The statute requires the following:

1. “Except as otherwise prohibited by statute,” records must be available for inspection and copying during the regular business hours and on the regular business premises of the public body or agency – unless a record is temporarily unavailable because it’s actually being used. RSA 91-A:4, IV says that when a public body or agency is not able to make a record available for immediate inspection, it must do so within 5 business days, or deny the request with written reasons, or acknowledge the request with a statement of the time necessary to determine whether the request will be granted or denied.
2. Any citizen may make notes, tapes, photos, or photocopies of a governmental record. The governmental agency or official is permitted by RSA 91-A:4, IV to make copies and charge the person requesting them the “actual cost” of copying. This does not appear to authorize charging for the cost of labor to retrieve and copy the records, although that question has not been definitively addressed by the New Hampshire Supreme Court.
3. Governmental records maintained in electronic form may be disclosed by copying them to an electronic medium; however, if that is not reasonably practical, or if the person making the request asks for the records in a different format, the public body or agency may provide a printout of the records “or may use any other means reasonably calculated to comply with the request.” RSA 91-A:4, V.
4. The motives of the person requesting the information are not relevant, and should not even be asked about.
5. Materials (tapes, notes, etc.) used to compile official meeting minutes are governmental records, too. These materials may be destroyed after the official minutes are prepared, but they are subject to disclosure until destroyed.
6. Records maintained in electronic form must remain accessible for the same periods as their paper counterparts. RSA 91-A:4, III-a. A record in electronic form is no longer subject to disclosure once it has been “initially and legally deleted.” RSA 91-A:4, III-b. A record cannot be “legally” deleted until the expiration of any statutory retention periods. An electronic record is deemed to have been “deleted” only if it is no longer

readily accessible to the public body or agency itself. The mere transfer of an electronic record to a “deleted items” folder or similar location does not constitute deletion.

EXEMPTIONS TO PUBLIC DISCLOSURE REQUIREMENT

RSA 91-A:5 exempts certain records from public disclosure. The exemptions most likely to be relevant to libraries and library trustees are the following:

1. Records pertaining to internal personnel files or practices, including internal investigation documents relating to public employees. This exemption has been applied to records related to such matters as hiring and firing, work rules, and discipline. *Salaries and lists of employees, however, are not exempt from disclosure*. Criminal history records obtained pursuant to a background check are confidential under RSA 41:9-b.
2. Medical or welfare information, *library user*, and videotape sale or rental records. See RSA 201-D:11, discussed below, for further information on library user records.
3. Confidential, commercial or financial information and other records whose disclosure would be an invasion of privacy.
4. Notes or other materials made for personal use that do not have an official purpose.
5. Preliminary drafts, notes and memoranda, and other documents not in their final form and not disclosed, circulated or available to a quorum or a majority of a public body.

EXEMPTIONS UNDER OTHER LAWS

Confidentiality of Library User Records. RSA 201-D:1 specifically governs disclosure of library user records.

1. Library records that contain the names or other personal identifying information regarding users **is confidential** and should not be disclosed except as stated below. This information includes, but is not limited to: library, information system, and archive records related to circulation and the use of library materials.
2. Disclosure is permitted as necessary for library operations, or by the consent of the user, or by subpoena/court order, or as required by statute.
3. Statistical information may be released so long as it does not identify any individuals.

Copyright Law. Federal law always preempts any inconsistent state law. If the copying of records under the Right-to-Know Law would violate federal copyright law, the copyright law prevails, and the records should not be copied. See also RSA 202-A:3-a, which states that “any books, documents, records, or other information maintained by a public library that is exempted or protected from disclosure by other provisions of law shall not be subject to disclosure under RSA 91-A.”

Appendix A – Basic Definitions and Rules

“Governmental record” means (91-A:1-a):

any information → **“Information”** means knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic, or other physical form.

created, accepted,
or obtained by, or
on behalf of,

any public body, → **“Public body”** means any legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto.

or

any public agency → **“Public agency”** means any agency, authority, department, or office of the state or of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision.

**in furtherance of
its official function.**

Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body.

Right to inspect and copy governmental records (91-A:4):

Every citizen

during the **regular or business hours** of all public bodies or agencies,

and **on the regular business premises** of such public bodies or agencies,

has the **right to inspect all governmental records** in the possession, custody, or control of such public bodies or agencies,

and **to copy and make memoranda or abstracts** of the records or minutes so inspected,

except as otherwise prohibited by statute or RSA 91-A:5.

“Meeting” means (91-A:2, I):

the **convening** of a **quorum** of the membership of a **public body**,

or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members,

whether **in person**, by means of **telephone** or **electronic communication**, or **in any other manner** such that all participating members are able to communicate with each other contemporaneously,

for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power.



“Public body” means any legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto.

Meetings open to the public (91-A:2, II)

All meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, **shall be open to the public**.

Except in an emergency . . . , a **notice of the time and place** of each such meeting, including a nonpublic session, shall be **posted in 2 appropriate places**, one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town **at least 24 hours**, excluding Sundays and legal holidays, **prior to such meetings**.

Minutes of all such meetings, including **names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions**, shall be promptly recorded and **open to public inspection not more than 5 business days after the meeting**.

Communications outside a meeting (91-A:2-a)

Unless exempted from the definition of "meeting" under RSA 91-A:2, I, **public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with the provisions of [the Right-to-Know Law]**.

Communications outside a meeting, including sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of this chapter.

Appendix B – Record Retention Requirements

The Right-to-Know Law does not address *how long* records must be kept; it merely requires that so long as governmental records *are* kept, they must be available for inspection and copying. Retention requirements for municipal records are contained in a separate statute, RSA 33-A. That statute establishes retention periods for over 150 different types of records. The requirements most applicable to libraries are:

Library registration cards	Current year plus one year
Library user records	Not required to be retained
Cash receipt and disbursement book	6 years after last entry, or until audited
Checks	6 years
Correspondence—administrative	1 year
Correspondence—transitory	Retain as needed for reference
Federal 1099 and W-2 forms	7 years
Insurance policies	Permanently
Invoices and bills	Until audited plus one year
Job applications—successful	Retirement or termination plus 50 years
Job applications—unsuccessful	Current year plus 3 years
Meeting minutes	Permanently
Payrolls	Until audited plus 1 year
Personnel files	Retirement or termination plus 50 years
Time cards	4 years