



School District Governance Association of New Hampshire

Model Policy approved Dec. 2, 2017

Right to Know

Policy Code(s): KBA, EH

Policy Text	Annotation
<p>The Superintendent is hereby designated the custodian of all records, minutes, documents, writings, letters, memoranda, electronic files, or other written, typed, copied, or developed materials possessed, assembled, or maintained by this District.</p>	<p>Confirms the Superintendent's responsibility for management of records and of Right to Know compliance.</p>
<p>General Intent</p>	
<p>It is the general policy of the board to maximize transparency of government in accordance with Article 8 of the New Hampshire Constitution, which states that "the public's right of access to governmental proceedings and records shall not be unreasonably restricted". RSA 91-A defines the basic legal obligation for providing public information, but it is not the policy of this district to use RSA 91-A as a shield against public requests for information.</p>	
<p>1. All requests for public information are to be forwarded to the Superintendent immediately upon receipt. The Superintendent shall thereupon make a determination as to how best to fulfill the request, and if there are any specific obstacles to fulfilling the request. The Superintendent shall act on the request in a timely manner as follows:</p>	
<p>(a) Available public records shall be provided without delay.</p>	<p>Prevent abuse of the 5-day grace period in the Right to Know statute</p>
<p>(b) If the requested records must be physically located, gathered or redacted, the Superintendent may use the latitude provided under RSA 91-A:4, IV (reference below) to respond to the requester within 5 days with an estimate of when the information will be provided.</p>	

<p>(c) If the requested records do not exist, or fall within a specific exemption of RSA 91-A:5, (reference below) the Superintendent shall promptly inform the requestor. If records exist, but are exempt from disclosure, specific reasons for nondisclosure shall be provided. In such a case, the Superintendent is expected to advise the requestor as to how the intent of the request might be satisfied by existing public documents. If a request cannot be fulfilled, even after discussing alternate means of satisfying the requesting party, the Superintendent shall so inform the requestor in writing, with copies to the full School Board, stating the specific reason.</p>	
<p>2. In accordance with RSA 91-A:4, if the Superintendent finds the information to be public in nature, he or she shall direct it be provided in the least costly manner acceptable to the requestor.</p>	
<p>(a) Electronically available documents will be emailed to the requestor, unless the requestor has asked that such documents be provided via an alternate method. Such an email transmission may contain a link to the source document on the district web site, rather than an embedded file.</p>	
<p>(b) Paper documents will not be copied, unless requested. The requestor may review the original documents in person at the Superintendent's office.</p>	
<p>(c) If paper copies are requested, the requestor is to be charged the actual cost of reproduction as allowed by RSA 91-A, and no more than the lowest locally published consumer rate per page.</p>	
<p>(d) All electronic documents provided in response to public records requests will be published at the same time on the School District web site (if not previously so published) in the expectation that information of interest to one member of the public may also be of interest to others. Request should not be posted, only the result.</p>	
<p>(e) Electronic records will be provided in the output format most convenient to the requestor, as long as that format is supported by the source system. For example, financial records will normally be provided as a spreadsheet file.</p>	

<p>(f) If a request calls for a document which might be exempt under RSA 91-A, such as drafts, working papers, and advice from attorneys on procedural matters, the Superintendent shall provide the requested information unless there are specific reasons, such as (but not limited to) student or employee confidentiality, legal liability, or discretion around security matters.</p>	
<p>(g) If a request calls for answers or assembly of information which would not be fulfilled by providing an existing school district record, the Superintendent shall exercise reasonable efforts within the existing workload of the school district staff to fulfill such a request.</p>	
<p>3. If the Superintendent finds the information <u>not</u> to be public in nature, even after discussing alternate means of satisfying the request, he or she shall so inform the requestor in writing, stating the specific exemption under RSA 91-A.</p>	
<p>4. If the Superintendent is unable to ascertain whether or not the information requested is public in nature, he or she shall seek approval from the School Board to request, on behalf of the Board, an opinion from the Board's attorney as to the nature of the information. Such opinion requests will be made within ten (10) days of the original request for the information. The Superintendent shall notify the person requesting such information that an opinion is to be requested of the attorney and shall notify such person immediately upon receipt of an answer from the attorney. Any such legal opinion shall be made public.</p>	<p>Constrain the use of public legal resources to contest Right to Know requests</p>
<p>5. In the event a request is denied by the Superintendent, the requestor may petition the Board for review. The Board shall review such a petition in public. The opportunity for review does not preclude any rights of the requestor or of the School District, including the right of the requestor to go to court without exercising the Board review process. If the requestor is a member of the Board, that member retains full rights to participate in the Board review, including both deliberation and voting.</p>	<p>Right of appeal to the School Board in the event a Right to Know request is denied</p>

<p>6. In the event the School District is sued for denial of an information request, it is the policy of the board to minimize expenditure of public funds in defending such a suit until the Board has reviewed the issue and determined that it should be defended. The Superintendent is not authorized take legal action unless specifically authorized by the Board.</p>	
<p>7. The Superintendent shall maintain a log of all information requests made, whether under RSA 91-A or otherwise, including the description of the request, date requested, the final disposition of the request, date fulfilled, and the name of the requestor. The Superintendent shall report regularly, to the School Board and to the public, all details contained in the log.</p>	<p>Tracking and public reporting of school district fulfillment of Right to Know requests</p>
<p>References</p>	
<p>RSA 91-A:4, Minutes and Records Available for Public Inspection</p>	<p>Each public body or agency shall, upon request for any governmental record reasonably described, make available for inspection and copying any such governmental record within its files when such records are immediately available for such release. If a public body or agency is unable to make a governmental record available for immediate inspection and copying, it shall, within 5 business days of request, make such record available, deny the request in writing with reasons, or furnish written acknowledgment of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied. If a computer, photocopying machine, or other device maintained for use by a public body or agency is used by the public body or agency to copy the governmental record requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public body or agency. No fee shall be charged for the inspection or delivery, without copying, of governmental records, whether in paper, electronic, or other form. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of governmental records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.</p>

RSA 91-A:5, Exemptions

The following governmental records are exempted from the provisions of this chapter:

...

III. Personal school records of pupils.

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy.

Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a public body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

V. Teacher certification records in the department of education, provided that the department shall make available teacher certification status information.

VI. Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

VII. Unique pupil identification information collected in accordance with RSA 193-E:5.

VIII. Any notes or other materials made for personal use that do not have an official purpose, including but not limited to, notes and materials made prior to, during, or after a governmental proceeding.

IX. 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 the members of a public body.

...

Article 8 of the NH Constitution: Accountability of Magistrates and Officers; Public's Right to Know	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.
------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------