What You’ve Always Wanted To Ask About the Right to Know Law
Webinar
Monday, October 16, 2017
Noon – 1:00 pm
Repeat  5:30 pm to 6:30 pm
Center At Triangle Park
Concord, NH 03301
The purpose of this webinar is to allow you the opportunity to ask any questions you might have about New Hampshire's Right-to-Know law, RSA 91-A.

In order to keep questions to related topics, we've structured the session into four sections:

**Records, Public Meetings, Non-public Sessions, and Minutes.**

We also have included some of the questions we are most frequently asked, along with our answers to those questions.

However, we will start each section with an opportunity for you to ask your own questions. If we have time after answering your questions for that section, we will address those that are included in the power point.
Public Records
RSA 91-A:4
Question: A person is requesting a copy of a public record, can we make him or her conform to our policy and procedures?

Answer: Not always. Such policies and procedures are subordinate to the statutory requirements. While the Supreme Court has allowed some slight variance (e.g., time and availability), in most instances decisions have relied on the broad accessibility language and purpose of RSA 91-A.

That said, even if the requester refuses to follow them, such policy/procedures are most helpful to the public body itself. Among other things, they help assure that staff – and therefore the public body - are complying with the statute, and are treating requests consistently, and fairly. See NHSBA sample policy EH, and sample procedures BEDG-R.
**Question:** A person is requesting a copy of a public record, does he or she have to put the request in writing?

**Answer:** No. It is appropriate to request that the person submit the request in writing, but you may not deny a request because it was made orally. If the person will not put the request in writing – you should write it down and offer the person a copy.
Question: I just got a Right-to-Know request for records, do I have 5 days to respond?

Answer: No. The Right-to-Know law requires that if a governmental record is immediately available, it must be immediately provided.

If the record is not immediately available, you have 5 days to:

• Provide the requested record;
• Deny the request in writing, with reasons, e.g.:
  - No such record exists;
  - Request is not sufficiently clear as to records requested; or
  - Any responsive record is exempt from disclosure by 
    – cite legal authority;
• Provide a written response that acknowledges receipt of the request and describes the date by which you expect to either grant or deny the request.
**Question:** How do I deal with unclear or unreasonably large requests for records?

**Answer:** It is appropriate to discuss the request with the person to see if the scope of the request can be clarified or narrowed. The statute does require that the requested records be “reasonably described”. Often people want a particular record, do not know how to describe it, and write an unclear or overly broad request.

Before denying a request on the basis that it did not “reasonably describe” the subject records, it is important that public body exercise reasonable efforts to communicate with the requester to try and clarify the request. It is in the public body’s interest to document such efforts, as well as other compliance actions.
Question: How do I deal with unclear or unreasonably large requests for records? (Continued)

Also, a large request will often influence the amount of time allowed for an appropriate production.

In such cases, the you must still reply in writing within five days with a statement of time necessary to respond to or deny the request. You can also provide the immediately available documents, with the written statement regarding the remainder of the documents.
Public Meetings
RSA 91-A:2
Question: Do we have to post our agenda with the meeting notice?

Answer: Under the statute, the answer is no. In order to properly convene a meeting, 91-A:2 only requires that the Board/committee post notice of the meeting, including the time and the place of the meeting. The notice must be posted at least 24 hours in advance (excluding Sundays and legal holidays) in two appropriate places, one of which may be the District's own website.

There are several positives to posting the agenda, but in doing so, the agendas should be marked "draft", or "proposed", and should have an appropriate notation that the agenda is subject to change.
**Question:** Does the right-to-know law apply to Board sub-committees, even if they are only advisory?

**Answer:** Yes! The definition of "public body" under 91-A:1-a includes any "committee .. of any school district ... or any subcommittee, or subordinate body thereof, or advisory committee thereto."

This means that such committees are subject to all of the notice, minute, non-public session provisions of 91-A which apply to the School Board itself.
Question: Does the public have a right to speak at the meeting?

Answer: No, except that if the Board provides a “public comment” opportunity which is not restricted to addressing items on that meeting’s agenda, the Board cannot restrict who speaks based on the content or viewpoint of the speaker.

Note: This applies only to Board (or committee) “meetings”. It does not apply to the annual meeting, which is a meeting of the legislative body. Nor does it apply to matters requiring a public “hearing”. With the latter, the public has the right to speak, but not to vote.
Question: Can someone bring in a video camera and record our meeting?

Answer: Yes.

- The public may audio or video record a public meeting.
- The person recording is not required to notify the Board or others in attendance.
- The Board may impose reasonable restrictions so as to limit disruptions. These include designating an area for filming, and requiring that cameras be stationary. But even those must be adjusted to reasonably accommodate the recording process.
Question: Can I call or e-mail another Board member regarding School Board business?

Answer: It depends.

- Two Board members are a quorum of a three member board – therefore cannot discuss Board business outside a properly conducted meeting. – For a three member Board – No.

- Members who collectively are less than a quorum can discuss Board business outside a properly conducted meeting, but should do so with caution and not forward the e-mail or engage in the discussion with other members.
**Question**: Can I whisper, text or pass notes with/to another Board member during a meeting?

**Answer**: No, not regarding School Board business. The public has a right to attend and observe/listen to the School Board’s meetings. This means the public gets to hear the Board’s discussions/deliberations. The Board can go into non-public session only in limited circumstances as provided under 91-A:3.
Non-Public Sessions
RSA 91-A:3
**Question:** Can we consider multiple items in a single non-public session?

**Answer:** Yes. However, there must be at least one statutory exception for each and every item stated in the motion to enter non-public.

Also, the Chair should be diligent in keeping discussion of the separate items segregated (i.e., stick to the agenda). Likewise, the minute taker must be disciplined in keeping the minutes for the separate items segregated, either on separate sheets for each item, or at least with starting and ending points.
**Question:** A parent wants to meet with the Board in non-public to discuss an ongoing issue with a teacher, can we meet with the parent?

**Answer:** In almost all instances the Board should not engage in that meeting. Rather, the Board should refer the parent to the building principal, or, if it sounds as if the parent has done that, then to the Superintendent. In most districts, there is a policy outlining the “chain of command”, along with a possible review process in the event that the communications with the principal/superintendent are unsatisfactory. See for instance, NHSBA sample policy KE and KEB.
**Question:** We are in non-public session to discuss hiring a new teacher, then a Member wants to discuss a student discipline matter. OK?

**Answer:** No, if the motion to enter non-public session listed only “The hiring of any person as a public employee,” that is the only permitted subject. Return to public session, then vote in public to enter non-public again to discuss the new matter.
Minutes
RSA 91-A:2 (public)
&
RSA 91-A:3, III (non-public)
General issues regarding minutes…

Although 91-A has several items regarding the minimum content of minutes (both public and non-public – see, e.g., 91-A:2, II, and 91-A:3, III). The statute is silent, however, about the approval process for minutes, whether for public or non-public sessions. For public sessions, draft minutes are made publicly available (w/in 5 days) long before a board reviews and approves the draft. The additional complexities for non-public minutes are that:

(a) non-public minutes (except to the extent sealed) must be available within 3 days;

(b) a vote to seal generally occurs before the minutes exist, and

(c) if the Board considered multiple items in non-public, some items may warrant sealing, and some may not.
**Question:** How do we approve non-public minutes?

**Answer:** There are several approaches, some dependent upon the practices of the Board, some on the issue(s) considered in non-public, and some applying more specifically to issues for which the minutes will be sealed (for instance, some "hearings" which occur during non-public, require a more specific "record", and some issues require more detailed minutes).

In all instances, NHSBA recommends that the Board should consider the content of the minutes before exiting non-public. That discussion should include a general discussion about whether that content warrants a motion to seal the minutes.

We will discuss two acceptable common approaches. *Continued...*
Question: How do we approve non-public minutes? *(Continued)*

**Approach 1:** The minute taker in non-public writes/types the information required under 91-A:2, II and 91-A:3, III while in non-public, for the Board to review immediately. The board can approve the minutes while still in the same non-public. Once in public, the vote to seal would then be based upon the actual minutes. If a vote to seal passes, then the minutes can be sealed then and there. If the Board does not vote to seal, then the non-public minutes may be integrated into or attached to the public minutes.

**Approach 2:** The minute taker prepares the minutes in the same fashion as public (securing notes, etc. while maintaining confidentiality). However, if there was a vote to seal, then the draft should not be disseminated to the Board, but rather delivered and considered only in non-public, with additional copies turned in and destroyed by the recorder.
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Upcoming workshops & information

OCT. 18, 2017
BASICS OF SCHOOL DISTRICT BUDGETING
This workshop will provide information on basic budgeting aspects for school boards, including a review of the SB2 “default budget” provision, review of NHDR A forms, and general recommendations for developing your school district’s budget.

NOV. 8, 2017
PREPARATION FOR ANNUAL MEETINGS
This workshop will focus on information to ensure an effective and productive school district annual meeting and how to gain community-wide support for the boards initiatives.

DEC. 7, 2017
MEETING PROCEDURES & PUBLIC COMMENTS
This webinar will review federal and NH case law on the right to speak at public meetings and will provide tips and techniques for managing the public comment period.

JAN. 20, 2018
2018 NHSBA DELEGATE ASSEMBLY
The Delegate Assembly offers NHSBA members an opportunity to submit, discuss, debate and ultimately vote on NHSBA Resolutions and Statements of Belief. These Resolutions and Statements of Belief guide NHSBA’s legislative advocacy efforts with the New Hampshire Legislature.

FEB. 7, 2018
RESPONDING TO RTK RECORDS REQUESTS
This webinar will sort through which records need to be disclosed immediately, which records need to be review and redaction by legal counsel before disclosure, and the legal requirements of providing electronic or paper delivery for copies.

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