

Dear LEACT Commission,

I am President of [Right to Know New Hampshire](#) (RTKNH). RTKNH is a nonprofit, nonpartisan citizen coalition working to improve access to New Hampshire state, county, and local government including all law enforcement agencies. We advocate to strengthen New Hampshire state laws, particularly the Right-to-Know law known as RSA 91-A, as well as Right-to-Know governmental policies.

Part I, Article 8 of the New Hampshire Constitution and the Right-to-Know law are the fundamental prerequisites for a self-governing people. As the legislature made clear in the preamble to the Right-to-Know law: "Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people." The Right-to-Know Law helps further our State Constitutional requirement that "the public's right of access to governmental proceedings and records shall not be unreasonably restricted."

As highlighted by a recent [video by the New England First Amendment Coalition](#), the following issues exist in regards to achieving proper law enforcement accountability and transparency:

- Lack of availability of law enforcement records which are public records per RSA 91-A
- Excessive charges for copies of law enforcement records

Availability of Records

The public has a right to records which helps them understand what law enforcement is doing on our behalf. These records inform the citizens so they can hold public employees accountable for their actions. For example, all video and audio recordings made by a law enforcement officer using a body-worn camera, which are not considered an invasion of privacy, should be available to the public. Currently, most recordings are exempt from public disclosure.

Until recently, personnel records were categorically exempt from public disclosure. The following recent NH Supreme Court Rulings now require a determination of whether certain personnel records will continue to be exempt based on a balancing test between privacy interests and a public's interest in disclosure.

- [2019-0135, Seacoast Newspapers, Inc. v. City of Portsmouth](#)
- [2019-0206, Union Leader Corporation & a. v. Town of Salem](#)

When it comes to the behavior of the law enforcement officers, in their official capacity, they should have no privacy or confidentiality interest in nondisclosure. Law enforcement officers perform vital functions on behalf of the public, and their misconduct creates the potential for considerable social harm. Officers are trusted with one of the most basic and necessary functions of civilized society, securing and preserving public safety.

Disclosure of misconduct is in the public interest. Yet, today, the names of law enforcement officers (150 in [2015](#) and 260 in [2019](#)) who received due process and remain on the [Exculpatory Evidence Schedule \(EES\)](#) are shielded from the public's right to know.

All citizens have the right to know which officers have engaged in misconduct, what they did, and what is being done to prevent it from happening again.

Law enforcement officers, by the nature of their duties and power, must be held to a higher standard. That higher standard must include transparency regarding their misconduct. Their conduct must be open to public scrutiny to allow for adequate checks and balances. Transparency ensures bad behavior cannot hide behind a veil of secrecy. Secrecy erodes the public's trust and nurtures an environment which allows greater harm to those which law enforcement officers swear to protect.

Cost of Records

RSA 91-A:4(IV) allows law enforcement agencies to charge the "actual cost" of providing copies of public records. The City of Concord charges 25 cents for each page requested, which approximates a true actual cost. However, many other law enforcement agencies charge exorbitant minimum rates for records, which greatly exceeds the 'actual cost' allowed by law. For example:

- [NH State Police](#) charges \$ 25.00
- [Berlin](#) charges \$20.00
- [Sandown](#) charges \$15.00
- [Derry](#) and [Somersworth](#) charge \$10.00

Charging citizens such high fees to access records allows public agencies to construct toll booths along the information highway on route toward the truth. These high fees are financial deterrents as citizens run out of money long before they can discover the veracity of law enforcement's decisions and actions.

In summary, as James Madison explained centuries ago: "The right of freely examining public characters and measures, and of free communication among the people, is the only effectual guardian of every other right."

Only with full transparency can citizens freely examine the character and measures of law enforcement officers. And transparency is a prerequisite for full accountability to the people.

Please include transparency requirements in all of your recommendations.

Respectfully,

David Saad

President

Right to Know NH

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