



New Hampshire
Department of Justice

Office of the Attorney General

RSA 91-A: New Hampshire's Right-to-Know Law

Jill Perlow, Senior Assistant Attorney General

Purpose

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. *RSA 91-A:1 Preamble*

NH Constitution, Part I, Article 8: Government...should be open, accessible, accountable and responsive.

General Rule:

Meetings and agency records are public

Overview

- ▶ Who?
 - ❖ Public Bodies & Agencies
- ▶ What?
 - ❖ Meetings
 - ❖ Government Records
- ▶ Where & When?
 - ❖ Meeting Requirements - Notice, Minutes, etc.
 - ❖ Responding to Right to Know Requests
- ▶ How?
 - ❖ Remedies

RSA 91-A

Who? - Public Bodies

- ▶ Boards
- ▶ Agencies
- ▶ Commissions
- ▶ Advisory Committee established by the governor by executive order
- ▶ Committees
- ▶ Subcommittees
- ▶ Subordinate bodies
- ▶ Advisory Committees

What?

MEETINGS

Meeting

- ▶ Public bodies shall not deliberate on matters over which they have supervision, control, jurisdiction, or advisory power outside of a meeting unless exempted from the definition of meeting. RSA 91-A:2-a, I.

Meeting

- ▶ “Meeting” means 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.

What Constitutes a Meeting?

- ▶ Quorum of membership so members may communicate contemporaneously
 - In Person
 - Telephonic* or electronic*
- ▶ For purpose of acting on or discussing matters within their powers/authority
- ▶ 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 the Right-to-Know law. RSA 91-A: 2-a, II

What Does NOT Constitute a Meeting?

- ▶ Chance or social meeting neither planned or intended for purpose of discussing official business.
 - ❖ CAUTION - if quorum of members discuss matters over which they have control.
- ▶ Strategy or negotiations with respect to collective bargaining.
- ▶ Consultation with Legal Counsel
- ▶ Circulation of draft documents which, when finalized, are intended only to formalize previously deliberated decisions.
 - ❖ CAUTION - E-mail simultaneously or sequentially sent to quorum discussing official business.

Meeting Basics*

- ▶ Public Notice
- ▶ Members Physically Present
- ▶ Open to the Public
- ▶ Minutes

*Executive Order 2020-04 and Emergency Order 12 authorizes modified ways of meeting these requirements.

Meeting Basics: Public Notice*

- ▶ Post time and place in two locations
 - May include Board's/Commission's internet website
 - *24 hours* prior to such meeting excluding Sundays and legal holidays
- ▶ An agenda is not required

*EO 12 requires the posting to include how the public can access a remote meeting.

Meeting Basics: Participation*

- ▶ Quorum of the public body shall be physically present at the location specified in the notice.
- ▶ If physical participation not reasonably practical, a member may participate electronically, so long as a quorum is physically present.
 - Must be able to simultaneously hear and speak
 - Reason not practical must be stated in minutes
 - Remote member may vote - Roll call is necessary
 - Must identify persons in the location from which remote member is participating

Meeting Basics: Participation*

- ▶ Executive Order 2020-04 and EO 12 provide an alternative to this requirement in two ways:
 - ❖ Recognizes that the current State of Emergency is grounds for all public bodies to use the emergency meeting procedures that would not require physical participation by a quorum
 - ❖ Authorizes all members and the public to participate remotely, no physical location required

Meeting Basics: Participation*

- ▶ Remote participation requirements:
 - ❖ Members must identify persons in the location from which remote member is participating
 - ❖ Members may vote - Roll call is necessary

Meetings Basics: Open to the Public*

- ▶ Open to public - unless authorized to hold nonpublic session
- ▶ Minutes must be kept
- ▶ Public may record - audio, video, etc.
- ▶ Openness does not provide public right to speak or participate

*EO 12 requires public access by telephone and any other video or electronic means.

Meetings Open to the Public

- ▶ No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

RSA 91-A:2, III (c)

Non-Public Session

- ▶ May meet in nonpublic session for an enumerated reason in RSA 91-A:3, including:
 - Dismissal, discipline, hiring of employees
 - Adversely affect reputation
 - Pending claims or litigation, or consideration of legal advice
 - Consideration of confidential, commercial or financial information that is exempt from disclosure under RSA 91-A:5, IV in an adjudicative proceeding.
- ▶ Specific process for entering non-public session, conducting business during non-public, exiting and sealing minutes. See Appendix B of Attorney General's Office Memorandum on New Hampshire's Right-to-Know law for model non-public session motions.

Meeting Basics: Minutes*

- ▶ Minutes include names of members/persons appearing, brief description of subject matters discussed and all final actions. Must also include who made and seconded each motion
- ▶ No requirement for verbatim transcription
- ▶ Available to public in 5 business days
 - Draft is satisfactory
 - Final minutes must be posted on the website or post and maintain a notice on the website stating where the minutes may be reviewed and copies requested.
- ▶ Minutes considered permanent record
- ▶ Public has right to inspect and copy notes, tapes or other sources used for compiling minutes. RSA 91-A:4, II

*EO 12 authorizes remote meetings, which will need to include recording the remote meeting requirements: identify others in the members' location and roll call votes.

Right to Know Requests

General Rule

- ▶ Citizens have a right to inspect and copy governmental/public records during regular business hours and on regular business premises of the agency.

Responding to a Right to Know Request

- ▶ Determine whether the requested records are immediately available for review. If so, produce them!
- ▶ Minutes or records may not be available immediately because they are:
 - 1) In use
 - 2) Require review or redaction
 - 3) Documents need to be located, or
 - 4) Require consultation with legal counsel.
- ▶ If records cannot be produced immediately, send an acknowledgment of the request within 5 business days that includes an estimate of when a response will be provided.

Remedies for Violation

- Agency liable for costs if Court finds lawsuit necessary to ensure compliance with the statute
- Agency Liable for attorney's fees if Court finds agency knew or should have known conduct was a violation
- Court may invalidate the action taken at a meeting if the circumstances justify invalidation. This is a discretionary decision.
- Court may enjoin future violations
- Court may require officer or employee, to undergo appropriate remedial training, at such person or person's expense
- Civil penalty against officer, employee or other official for “bad faith” violations

Resources

- ▶ AG Right to Know Memo:
<https://www.doj.nh.gov/civil/documents/right-to-know.pdf>
- ▶ AG Emergency Order 12 Memo:
<https://www.doj.nh.gov/documents/emergency-meeting-guidance-checklist.pdf>
- ▶ Template response letters, non-public motions and minutes