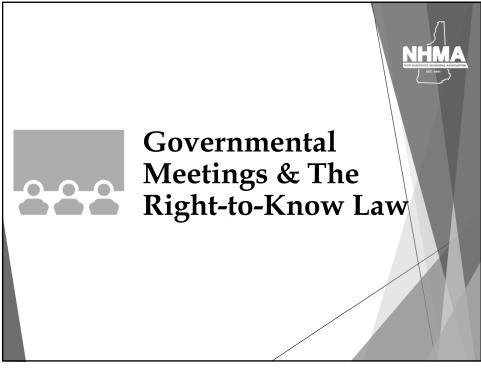


Agenda

- ▶ Natch: Governmental Meetings & the Right-to-Know Law Nonpublic sessions. 1:30 pm to 2:30 pm
- ➤ Steve: Governmental Records & The Right-to-Know Law Record Retention Remedies.

 2:30 pm to 3:30 pm



COVID-19 Effects on Gov't

- ▶ Governor declared State of Emergency on March 13, 2020.
- ► Governor prohibited gatherings of 10 or more people on March 23, 2020.
- ► Governor issued closure of non-essential business and stay at home order on March 26, 2020.
- ► CDC & Department of Health & Human Services (DHHS) guidance has been to encourage "social distancing."
 - "[r]emaining out of crowded public places where close contact with others may occur, such as shopping centers, movie theaters, stadiums, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible."
- ▶ CDC & DHHS also recommending that those 60 years or older stay home and avoid exposure to public locations as much as possible.
- Yet, RSA 91-A and the State Constitution require "open meetings."

COVID-19 Effects Cont.

- Events rapidly unfolding on an international national, and state scale.
- ➤ We anticipate that there may be future Executive Orders which will impact the functioning of municipal government.
- ➤ We anticipate that the legislature may be addressing some issues which have arisen as municipalities have worked to ensure the safety of their officers, employees, and citizens.
- ► NHMA providing updates at: https://www.nhmunicipal.org/covid-19-resources
- ► Check the State of NH Emergency Order Page: https://www.governor.nh.gov/news-media/emergency-orders/index.htm

7

Overview of How RTK Governs Meetings Content

- I. What is a "meeting"?
- II. What is not a meeting, i.e., a
 "nonmeeting"?
- III. What are the requirements for holding a proper "meeting"?
- IV. How to hold meetings virtually.

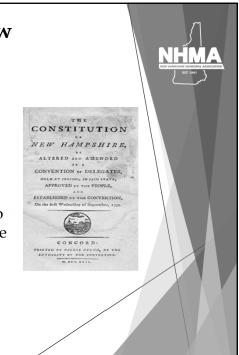


The Right-to-Know Law RSA Chapter 91-A

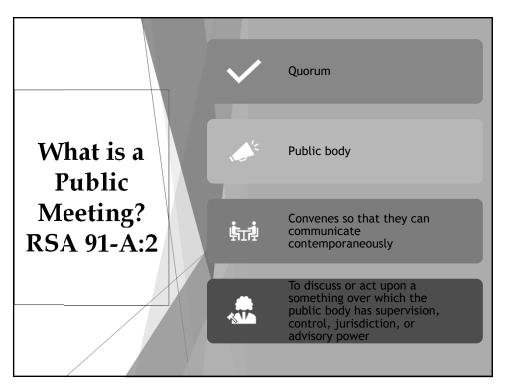
PART I, ARTICLE 8 OF THE NH Constitution: Government ... should be open,

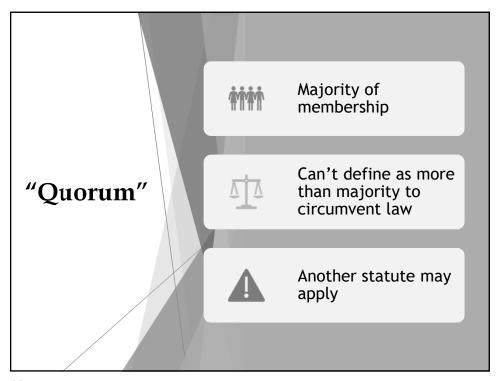
SECTION 1 OF RSA 91-A:

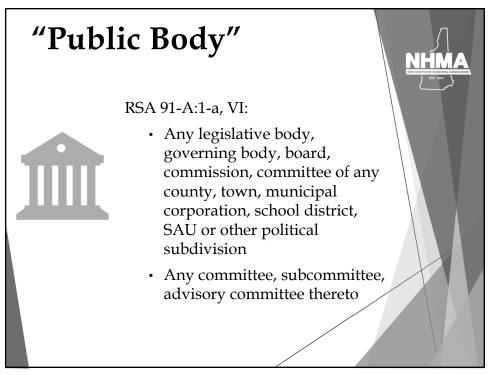
The purpose of this chapter is to ensure both the greatest possible public <u>access</u> to the **actions**, **discussions** and **records** of all public bodies, and their <u>accountability</u> to the people.

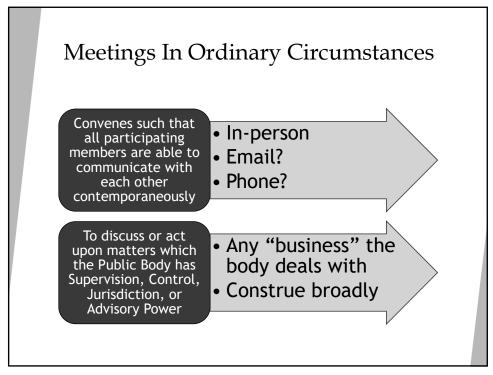


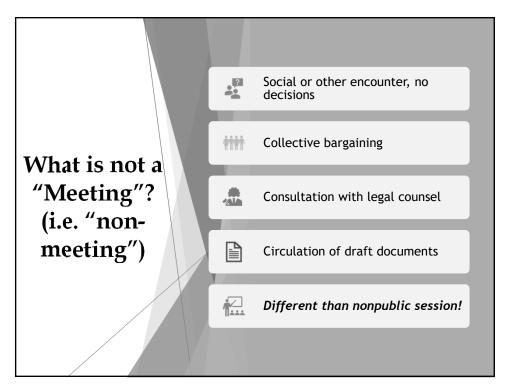
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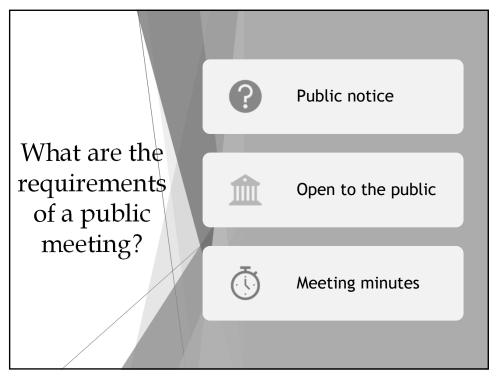


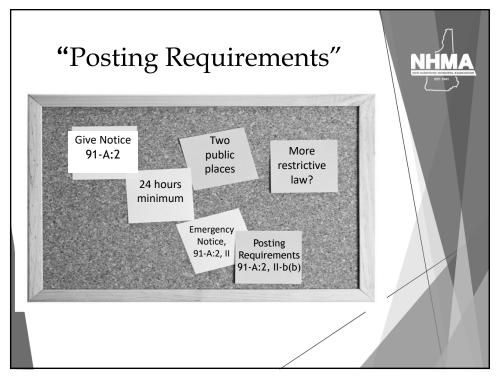








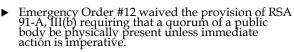


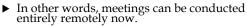


"Emergency": a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body. That presiding officer shall post a notice of the time and place of "Emergency" such meeting as soon as practicable. Notice Further, the presiding officer Requirements shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. "Emergency" meetings do not require 24-hour notice posted in 2 public places but should provide as much notice as practical. 17

"All meetings . . . shall be open to the public." RSA 91-A:2, II. "Each part of a meeting **Ordinary** required to be open to the public shall be audible or **Procedures:** otherwise discernable to the public at the location specified in the meeting notice as the **Meetings** location of the meeting." "Open to the Public's has right to record, etc. Public" No secret ballot voting. **Public Comment?**

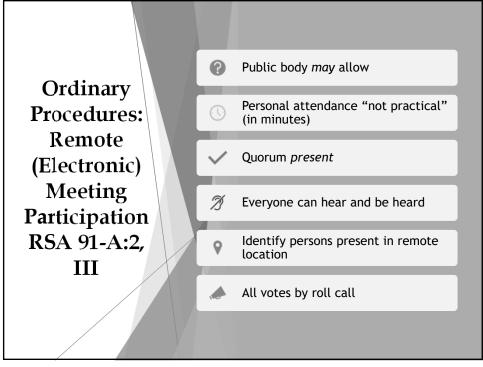
Procedures During the Pandemic, Part I





- Emergency Order #12 does <u>require</u> that any remote meeting have a telephonic connection for the public.
 - ▶ Other technological options are encouraged:
 - ► Conference call lines
 - ▶ Streaming services
 - ► Etc.
- Promote available technological options as well as access information in all notices of meeting.
- Chair should clearly and succinctly explain process at beginning of meeting -
 - ► E.g. Public comment period and how that will work.

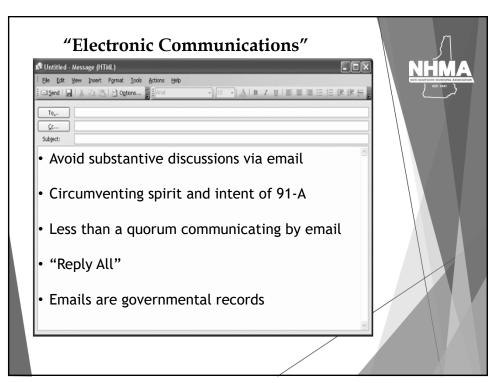
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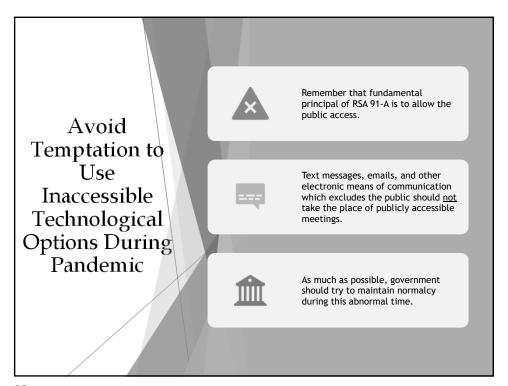


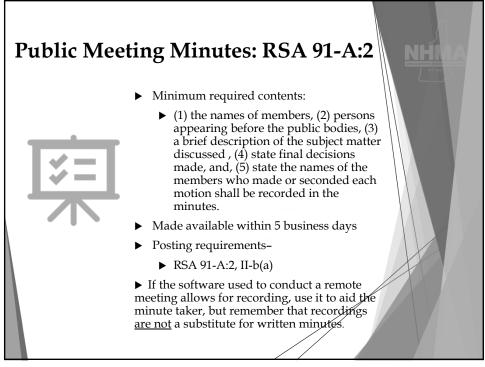
Procedures During the Pandemic, Part II

- ▶ Boards participating remotely must still:
 - ► identify the reason why the in-person attendance of any remote board members is not reasonably practicable in the minutes of the meeting;
 - identify any persons present in the location where the board member is calling from; and
 - ▶ take all votes by roll call.
- ► In addition, there must be a mechanism for the public to alert the public body during the meeting if there are problems with access.
 - ► Intended to allow the body to know whether there is an issue with the conference call overall, not an issue with the public just hearing a particular speaker.
- ➤ The meeting must be adjourned if it is determined that the public is unable to access the meeting, e.g. the conference call software stops functioning.

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Nonpublic Sessions RSA 91-A:3

It's a nonpublic session, not a nonpublic meeting

A nonpublic session is different from a "nonmeeting"

Nonpublic session is the exception, not the rule

Nonpublic sessions are permitted, not required

Boards meeting remotely should consider technological options for holding nonpublic sessions: e.g. starting a separate call

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When May a Public Body Enter Nonpublic Session?* RSA 91-A:3, II



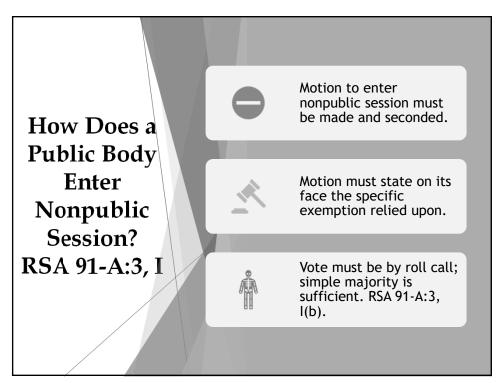
- Public employee (specific employee)
- Hiring
- Reputation
- Real or personal property
- Lawsuits
- Emergency preparation
- Discuss legal advice
- Discuss student tuition contract

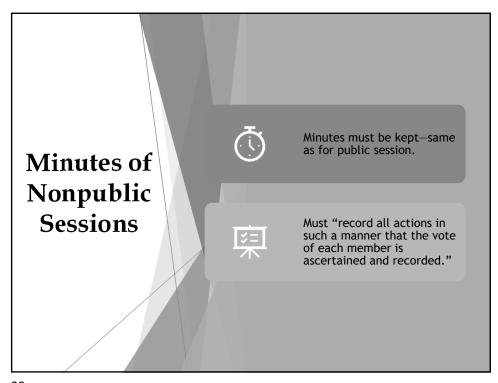
*Most common, but not complete list

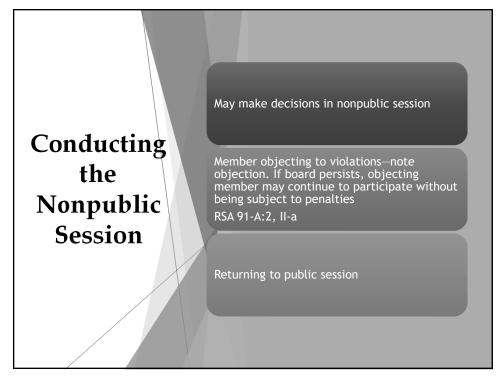
Entering Nonpublic Session for COVID-19

- ▶ RSA 91-A:3, II(i) Consideration of matters relating to the preparation for and the carrying out of 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.
 - ▶ Conversation must focus on *deliberate act* that is being thwarted.
 - Basic conversation about COVID-19 does <u>not</u> qualify Virus will not change its spread based on knowing what the government is planning.
 - However, news reports have indicated that known infected have purposefully evaded quarantine. Planning for that <u>may</u> qualify.

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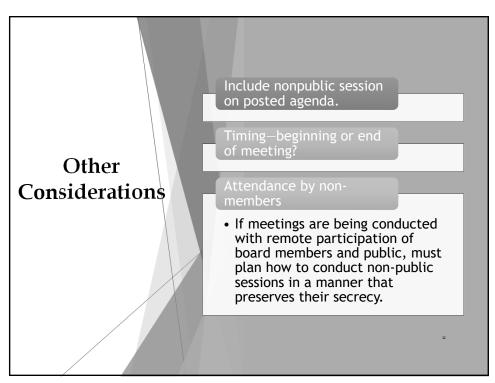


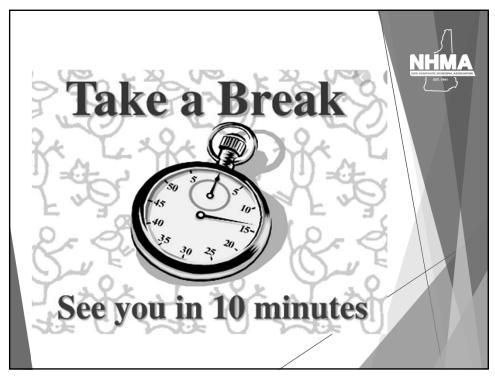
Disclose or Seal

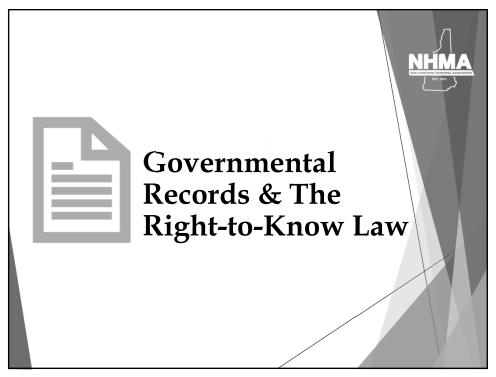
Minutes must be publicly disclosed within 72 hours <u>unless</u> board determines, by 2/3 vote <u>taken in public session</u>, that:

- Disclosure would have adverse effect on reputation;
- Disclosure would "render the proposed action ineffective"; or
- Discussion in nonpublic session pertained to terrorism.

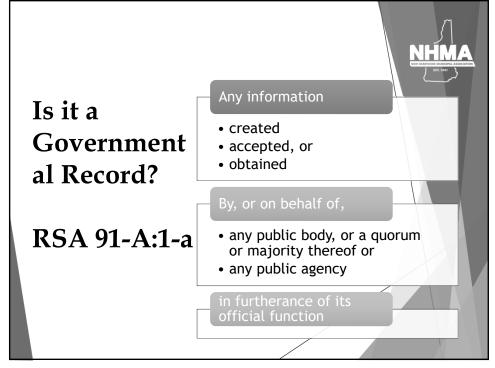
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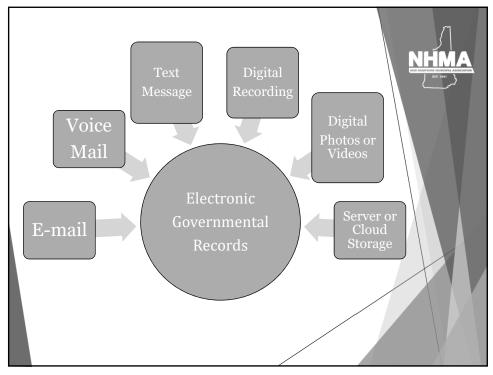


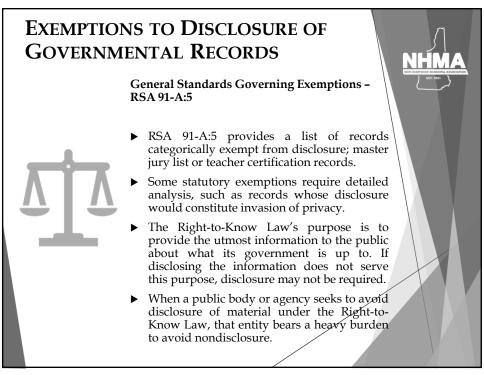


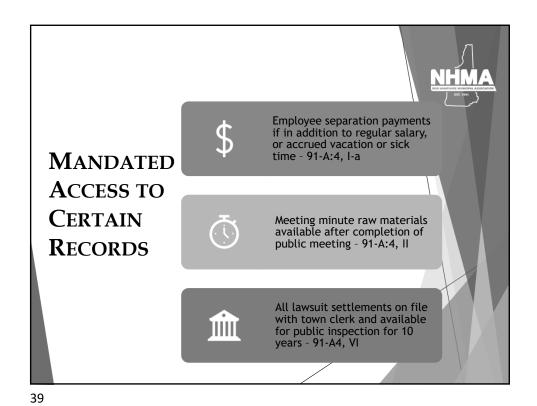










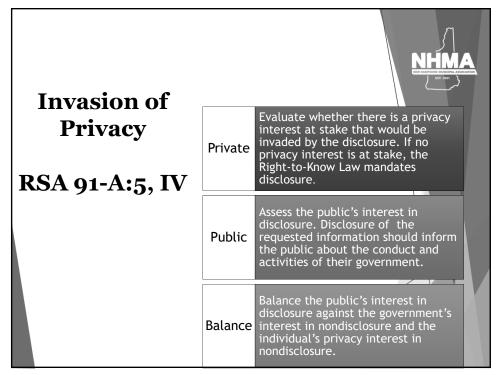


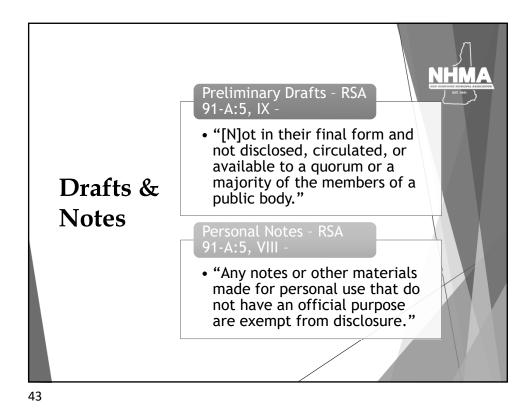
RSA 91-A:5, IV "record pertaining to internal personnel practices" are exempt from disclosure dib PRIOR TO 2016, THE NOW, SCORING UNDER REID V. NH NH SUPREME COURT SHEETS USED TO ATTY. GENERAL ONLY APPLIED THIS ASSESS EMPLOYMENT INFORMATION IS **EXEMPTION TO POSITION** EXEMPT AS DISCIPLINARY, **CANDIDATES ARE** "INTERNAL **EMPLOYMENT-**EXEMPT INTERNAL **PERSONNEL RELATED** PERSONNEL PRACTICES" IF IT IS INVESTIGATIONS OF PRACTICES UNDER BOTH "INTERNAL" **EMPLOYEES AND** CLAY V. CITY OF AND "PERSONNEL". PUBLIC OFFICIALS. DOVER.

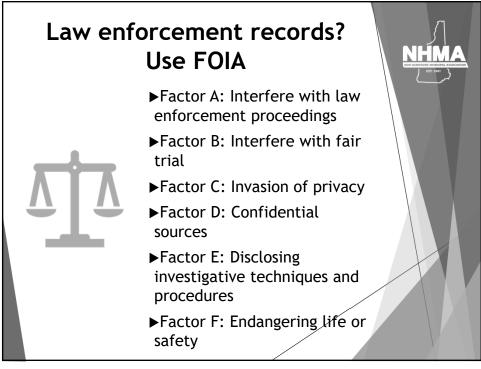
Confidential, Commercial or Financial Information: RSA 91- A:5, IV

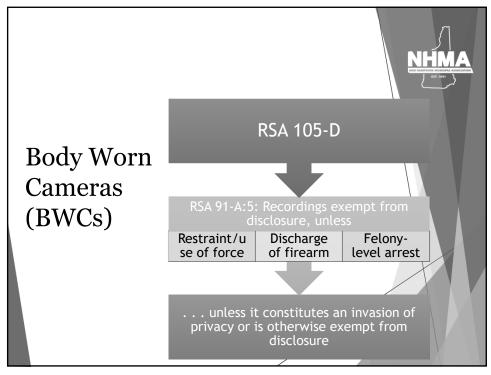
- ➤ This determination must be made objectively and should not be based on the subjective expectations of the party generating it.
- ➤ The emphasis placed on the potential harm that will result from disclosure, rather than simply promises of confidentiality, or whether the information has customarily been regarded as confidential.

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IT Security

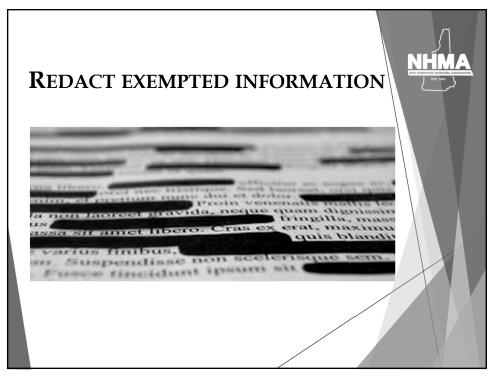
- ▶ As of Aug. 4, RSA 91-A:5 is amended by adding a new paragraph XI, providing that records pertain to information technology systems are exempt from disclosure under the Right-to-Know Law if release of those records would disclose security details that would aid an attempted security breach or circumvention of law.
- Very limited exemption. Applies, essentially, to the security protocols and measures installed on municipally owned systems.
- Attempt to limit hackability of municipal systems.

Basics of Record Production



- ▶ Records must be provided immediately *only* when they are immediately available for release. (But not under E.O. #23!)
- ▶ RTK *does not* give citizens the right to review records in any quantity and wherever kept immediately upon demand.
- ▶ Requiring appointment to review records is permitted.
- ▶ RTK does not require document "compilation."

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"Something" w/in 5 Days

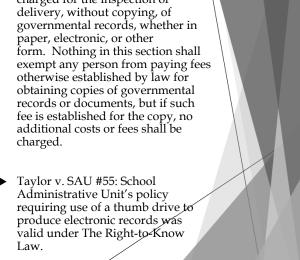
- As of Jan. 1, 2020, municipalities must:
 - ▶ Provide a written statement of time necessary to determine whether request granted or denied; AND
 - ▶ *Provide a reason for the delay!*
 - ► Amendment to RSA 91-A:4, IV HB 396 2019 NH Laws Chapter 107
- NHMA Suggestion for Reason for Delay -
 - ▶ Need time to determine whether or not record exists;
 - Need time to determine whether it is disclosable;
 - ▶ If disclosable, need time to determine how much time it will take to make the requested records ready for review or copying.

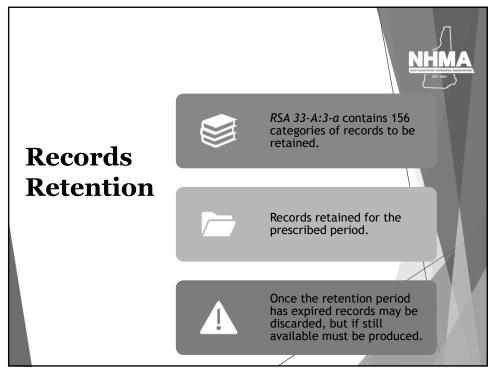
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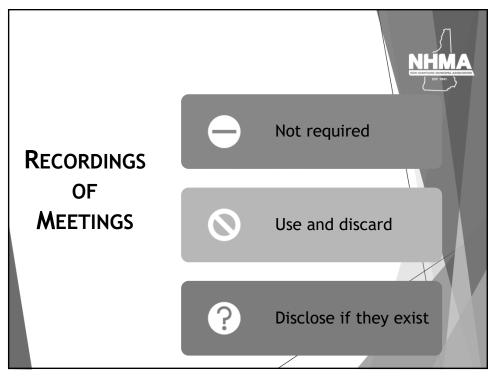
Green v. SAU #55: Electronic Records Produced Electronically.

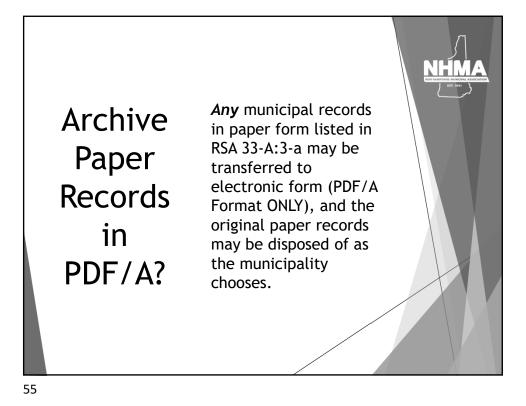
Production of Electronic Records

- 91-A:4, IV: 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 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.
- ► Taylor v. SAU #55: School Administrative Unit's policy produce electronic records was valid under The Right-to-Know





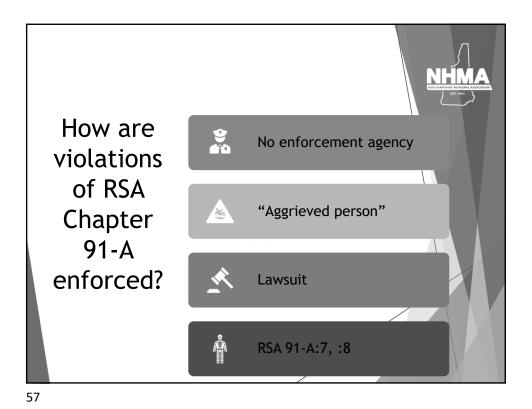




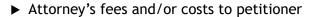
DELETION OF
ELECTRONIC
GOVERNMENTAL
RECORDS

A governmental record in electronic form is no longer required to be disclosed once it has been "initially and legally deleted." RSA 91-A:4, III-b.

A record can be "legally deleted" if it is not subject to a retention period, or if the required retention period for that record has expired.







- ▶ Invalidation of an action
- ► Civil penalty against an individual officer, employee, or other official for bad faith violations
- ▶ Injunction
- ► Remedial training
- ► Knowing destruction: misdemeanor
- ▶ Attorney's fees and costs may also be awarded to a public body, agency, employee, or official when the lawsuit was brought in bad faith, or was frivolous, unjust, vexatious, wanton, or oppressive.



Every citizen can request records. *

The record request must be "reasonably described." RSA 91-A:4, IV.

Any search for records must be reasonably calculated to uncover relevant documents.

There is no obligation to compile, cross reference or assemble records.

Requiring a citizen make an appointment to review records is permitted.

When denying access provide written reasons.

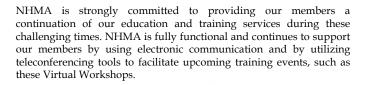
Redact exempt information

Reasonable fees allowed

Is it really deleted? RSA 91-A:4, III-b

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We hope you will join us in these virtual workshops and we are appreciative of your support.

We wish you, and your residents, good health!

nhmainfo@nhmunicipal.org / 800.852.3358 / www.nhmunicipal.org

