

The Right-to-Know Law: Meetings and Governmental Records Virtual Workshop - April 15, 2021 - Questions & Answers

#	Question:	Name of Person who Asked:	Answer(s):
1	Is this the same presentation that will be provided remotely to Plaistow next Monday evening?	Peter Bealo	Answered Live
2	Many community boards and committees are still opting for virtual public meetings. While there are pros and cons to this, my concern is with the increased electronic communication between board members that can occur outside of meetings. Many new people are coming on these boards that do not know the risks of hitting "reply all" in emails, which could easily lead to meaningful conversations occurring outside of the public meeting. How do we educate boards in this area? Would NHMA consider offering reminders and best practices on their website, publications, and emails on this subject, especially considering the COVID 19 pandemic that we are in?	Anonymous Attendee	That's a good idea, and we will discuss it. We have been emphasizing the risks in our trainings, as you'll hear shortly.
3	If the Governor lifts the State of Emergency can a town committee still meet all remotely via Zoom? It is much more desirable and we have been getting more public attendance without the need to drive to the town hall?	Stephanie Spyvee	A board may have rules of procedure that allow less than a quorum of appear at a meeting remotely. However, without a specific change to the RTK, there is no ability to meet entirely remotely. While we were hopeful that such legislation would be adopted this year given how popular remote meetings are with municipalities and other public bodies, the legislature disagreed. Certainly, it is something that you should speak with your legislators about.
4	If a meeting is with a group of less than a quorum of the official body, is that still a public meeting requiring notification, access etc?	Rosemary D'Arcy	If the intent was to have a quorum present, then yes. If it's a circumstantial meeting, no, but members should be reminded to discuss board business only at board meetings.
5	I am a Town Moderator and under the intent of RTK, I was asked to provide the names of Poll Watchers that were present during the recent General Election. Does an Election fall into the domain of the RTK?	Ric Haskins	As it is unlikely that you would have the names of members of the public attending the event, there would be no records of such attendance and there would be nothing to disclose. However, for specific election-related questions, such as records from the AccuVote Machines, Bud Fitch at the SOS's office has a memo on that issue and has been helping Moderators work through those requests.
6	Am I required to keep track of those that attend such as an election especially the public viewing area?	Ric Haskins	No, and I am not aware of any municipality that tries to keep track of members of the public, and members of the public who do attend may decline to be identified.
7	Are Joint Loss Management Committees subject to RTK?	Anonymous Attendee	live answered
8	How detailed do minutes of discussions need to be if no vote is taken?	Ann Pierce	The minimum required contents of minutes are: (1) the names of members, (2) persons appearing before the public bodies, (3) a brief description of the subject matter discussed, (4) state final decisions made, and, (5) state the names of the members who made or seconded each motion shall be recorded in the minutes.
9	Can a sub committee have just 1 member?	Matthew Buonomano	A committee must be more than 1 member, otherwise it's just an appointment.
10	What about Facebook discussions? Are those meetings if there are a quorum of a Board/Committee present and a "topic" that would be part of their business is being discussed?	Dee Voss	Board members should not be engaging in Facebook discussions about board business, generally, and certainly not with other board members. The ability of a quorum of the board to discuss contemporaneously board business is the key to whether something is a meeting.
11	You said anyone who attends a meeting can record it. Are there limitations on that? The Technologies? Must an attendee announce that they are recording?	Matthew Buonomano	No.
12	does the Governor's emergency order with the language relaxing the timelines for Planning Board applications etc... also cover RTK requests and expectations of conditional approval?	James Doggett	Emergency Order #23 relaxes the following: Requirement to make public records immediately available under RSA 91-A:4, IV, but must still comply with the requirements under RSA 91-A:4, IV(b)
13	When is consultation with legal representation a non-meeting, and when should it be non-public?	Brian Doerpholz	Contemporaneous communication with the lawyer - i.e. an active phone call or in-person meeting or Zoom meeting - is a "nonmeeting." Discussion of what the lawyer wrote - without the lawyer present - is "nonpublic."
14	If a member of the public emails the committee with a question, should all the committee members be copied? And the response shared with everybody? Or just kept between the member of the public and the chair/responder?	Anonymous Attendee	live answered
15	What happens if 3 members of the Board of Selectmen attend a properly noticed ZBA meeting. Are the select boards members in violation?	Anonymous Attendee	Only if the select board intends on discussing select board business together.
16	If the public meeting fails to have a quorum is it still necessary to keep meeting minutes?	LeeAnn Childress	No, but if there is no quorum, the members present should cancel the 'meeting.'
17	Are Emergency Management Departments who meet and take minutes subject to RTK?	Anonymous Attendee	live answered
18	If we have 3 selectboard members, 2 have to be physically present, only one can be remote? It is not permissible for 2 to be remote? What if one cannot attend, and one has to attend remotely?	Brian Doerpholz	Correct. That's how the statute reads. We would like that to change, but proposals to allow remote meetings went nowhere in the legislature this year. We are hoping that members will connect with legislators and explain to them the importance of this option.
19	Does a board member, attending meeting virtually, need to identify why they are attending virtually? And is that reason required to be noted in meeting minutes?	Anonymous Attendee	Yes, the remote board member must identify why it is not practicable for them to attend in person, and that reason must be noted in the minutes.
20	Do citizens have a right to get on the agenda?	Anonymous Attendee	No. The board sets the agenda and may or may not allow public comment and/or a dedicated issue presentation.
21	If a member of the public emails the committee with a question, should all the committee members be copied? And the response shared with everybody? Or just kept between the member of the public and the chair/responder?	Anonymous Attendee	live answered
22	Does the public have to know if the meeting is being recorded? Either by the board or by someone(public) attending the meeting?	Anonymous Attendee	No, any member of the public has a right to record and need not provide notice. Remember: A public meeting is a public space. Therefore, the public can record without limitation.
23	Should board members not use personal email accounts? Should towns have special email accounts e.g. associated with domains that the Town manages? How would a town get a record of board member emails if they use their own personal accounts?	Matthew Buonomano	I will be covering this in records. If I forget, please remind me.
24	Some of our boards are meeting exclusively remote via Zoom. Is this permissible? Many of the public do not have computer access to attend this way.	Brian Doerpholz	Emergency Order #12 provides the requirement in RSA 91-A:2, III(c), that each part of a meeting of a public body be audible or otherwise discernible to the public "at the location specified in the meeting notice as the location of the meeting," is waived for the duration of the State of Emergency declared in Executive Order 2020-04 so long as the public body: a) Provides public access to the meeting by telephone, with additional access possibilities by video or other electronic means; b) Provides public notice of the necessary information for accessing the meeting; c) Provides a mechanism for the public to alert the public body during the meeting if there are problems with access; and d) Adjourns the meeting if the public is unable to access the meeting.
25	What if the question is about something that the public wouldn't want to be discussed in public?	Anonymous Attendee	Once EO#12 expires, it will no longer be permissible to meet entirely remotely. There is no guarantee of privacy if you ask something of a public body.

26	Under (C) " Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant."	Anonymous Attendee	live answered
27	If you are the public employee that a Board may be discussing in non-public session - do you have the right to be informed of, and attend the non-public session?	Anonymous Attendee	It would be the better practice, if a public body can, to give notice to the person whose reputation might be harmed by a public discussion that there is a non-public session in order to allow the affected party to request an open meeting. However, if the non-public session was under 91-A:3, II (a) such as dismissal, promotion, compensation or discipline, the employee is only given the right to attend if the employee has a right to an open meeting.
28	What about quotes from businesses about work that may be done?	Rosemary D'Arcy	I need you to clarify what you mean about quotes from businesses about work that might be done
29	How should a Board handle a request for very old documents that are fragile and near-impossible to copy, let alone be handled.	James Doggett	Access could be afforded by some method of copying or visualization that would not cause damage to the fragile document
30	A chairman forwards an email that is a matter of opinion from members of the public or board members from other boards to their entire board. For example, a member of a zoning board sends an email that they don't like orange houses to the Chairman of the Planning Board. It is advisable for the Chairman of the Planning Board to be forwarding that to the entire board via email?	Anonymous Attendee	The chairman should not forward the email, the chairman should send to email to staff and then plan to discuss the opinion at an appropriate time at a public meeting
31	also how should I handle a request for a copy of a full-sized plan set which I do not have the ability to copy or scan due to their size.	James Doggett	Tell the requesting party the copy can only be provided by an outside copying service and quote them the fee for doing this, including the courier service cost, to have copy provided
32	If a Governmental Agency receives a RTK request over the phone, can they require the requestor send the request in writing, or does the Governmental Agency have to accept the verbal request if it was via telephone?	Pam McElroy	You could tell the requesting party that in order to make sure the request for records is correctly responded to by asking the person to send a confirmatory email, or, tell the requesting party that the town will send an email that seeks to memorialize the verbal request and ask the requesting party to confirm the email is accurate
33	If the body has requested a quote from a builder to do repair work on a building, but may not ultimately use that builder, is that public record?	Rosemary D'Arcy	Yes, any document received by a public body or agency is a public record, unless exempt, and a quote for work to be done by a builder is not exempt from disclosure
34	Are Residential Use Permits issued by a Building Inspector and the application for the Residential Use Permit subject to the Right-to-Know Law?	Anonymous Attendee	There might be some information on a Residential Use Permit whose disclosure would constitute an invasion of privacy. Unless truly private information would be disclosed (e.g., date of birth, names of children, etc.) the Residential Use Permit should be disclosed
35	You have referred to 'staff' when handling email communications. What if you have no 'staff'? The example above where a planning board/orange houses answer says forward to 'staff' and then discuss at a meeting. Without an administrator who does the chair forward to?	Anonymous Attendee	The chairman would take steps to be sure the email is made part of an application file, if that is what the email communication is about, or, the chairman would simply plan to make the content of the email an agenda item to be discussed at a public meeting
36	What if that building permit application has their	Patricia Gale	live answered
37	sorry sent before ready if the building permit has personal email for a builder or home owner. Is that something that should not be available for public inspection?	Patricia Gale	I think the personal email address for the homeowner would qualify as information whose disclosure would constitute an invasion of privacy, but the builder's email address, since it is a commercial operation, would not have a degree of privacy expectation that would warrant redaction
38	Our town has a water resource committee and people ask questions about what to do if their well runs dry. They try and help by giving them info on how to trouble shoot etc. Is this committee business or just general advice. Should all the committee be involved or just the expert giving the advice?	Anonymous Attendee	I would not encourage individual board members to provide advice to individuals on how to address water quantity or quality issues.
39	Any advice on how to handle 1st Amendment Audits? They are occurring all over the state. They usually target municipalities and police departments.	Anonymous Attendee	Make sure the auditor knows that there are non-public areas of town hall that they cannot wander into or access. Also, provide courteous interaction, provide answers to simple questions, but do not engage in an extended back and forth with the auditor. If you can send me an email as legalinquiries@nhmunicipal.org I can send you a guidance document I received by a municipal law list serv
40	So as a Town we should not be requiring the owner to supply their email address on the application. This stays in the public file that anyone can see.	Patricia Gale	No, I am not saying you should not ask for the owner's email address, but what I am saying is that the disclosure of that email address might constitute an invasion of privacy and if a person asks for a copy of a document that contains that email address you may have to redact that email address
41	With regard to privacy within a library, is it permissible to use the patron address records for mailed invitations to a fundraising event for the Library?	Anonymous Attendee	I am pretty sure that patron borrowing records are per se exempt from disclosure. I would not recommend using those addresses for that purpose
42	If there are only 3 members on a committee, contacting even 1 person creates a quorum. Could you provide advice regarding options that a committee of 3 has for reviewing a draft of minutes or how a new member can ask questions of the Chair via email without invoking a Quorum?	Anonymous Attendee	Minutes that require review can be distributed via email that tells the members to review and be prepared to address corrections and approval of those minutes at a public meeting of the board. If a member has a question to pose to the chairman, have the member pose that question at a public meeting.
43	Thank you.	Patricia Gale	live answered
44	Applications for subdivisions are posted on our Town Website.. this includes email addresses. Should we discontinue this?	Crystal Tuttle	You could just redact the email addresses of individuals and still post the applications on the Town website
45	What about a board member keeping copies of minutes, agendas, etc. Are these official records? Should they be deleted?	Rosemary D'Arcy	Copies of records kept by a board member would be governmental records where the official minutes, agendas are kept by the municipality
46	Is a town responsible to have zoning and/or building ordinances and all regulations available to the public in paper form in the office or is it legal to guide them to the electronic version on the website?	Anonymous Attendee	A paper copy of those regulations might be necessary if the member of the public does not have electronic access, otherwise the electronic version should be sufficient