



CITY OF MANCHESTER

Board of Aldermen



MEMORANDUM

To: Committee on Administration
Aldermen Craig, Ludwig, Shea, Shaw, and Katsiantonis

From: Alderman Bill Barry *Q. Barry*
Ward 10

Date: April 7, 2014

Re: Policy & Procedures for Access to Governmental Records

It was quickly apparent to me when I took office in January that there seemed to be confusion on how the City handles public requests for government records. It seemed that each department processed these differently depending on the complexity of the request. All requests filed under the Right-To-Know law (NH RSA 91-A), however, must be handled in a very specific and organized manner.

City departments, excluding the Police Department, received over 100 requests for public records last year alone. These requests come in various forms, verbally, by e-mail, by formal letter, etc., and often take considerable time and require some level of experience to process correctly. I believe a comprehensive policy and procedure manual must be adopted by the Board of Mayor and Aldermen so that all municipal officials and staff are given the proper guidance to ensure that requests for access to governmental records are met in a timely and appropriate manner. This will also provide clear guidance to the public when they request these records so that their right to access is not unintentionally impeded.

I have worked with the City Clerk and the City Solicitor to assist me in drafting the attached document. I would like to personally thank the cities of Concord, Nashua, and especially Keene, for the assistance they provided along the way. Their input has been invaluable throughout the drafting process.

As you will note in the draft document, the matter of charging applicable fees for copies of government records is addressed. A copy fee is generally intended to supplant additional labor charges by taking into account the average time to research and complete a request, an average employee hourly wage, copier or computer server equipment costs, service or maintenance agreement costs on applicable equipment, etc. This approach can be significantly cheaper for the public and less cumbersome for the staff than calculating time and labor rates for each person involved in fulfilling each request.

The current citywide policy on copy fees, which may be found in the Manchester Revenue Handbook, is \$1.00 for the first page and \$.50 for each additional page. This fee was adopted by the board on March 7, 1989 and does not supersede a fee that has been otherwise established in state law or local ordinance. I would ask that the board also reaffirm the previous copy charge and do so periodically in the future.

The final item for consideration is creating a public disclaimer to be placed on all outgoing e-mails from City officials and staff so that recipients are clear that their communication may be subject to public disclosure. I have drafted a sample below:

“NOTICE: Under New Hampshire’s Right-to-Know law (RSA 91-A), documents - including e-mail - in the possession of public officials or public agencies about City business are classified as public records. There are very few exceptions therefore, this e-mail communication may be subject to public disclosure.”

A similar disclaimer would be added to the City’s website, particularly on pages that provide links to e-mail addresses for City officials and staff. While we all want continued input from our constituents, it is important that they understand that written communication may be classified as public records.

In summary, I would ask that the following three items be considered by the committee:

- *A motion to approve and adopt a policy and procedure manual for requests for access to governmental records;*
- *A motion to reaffirm the City copy fee adopted by the board on 3/7/1989 or establish a new City copy fee; and*
- *A motion to direct the Information Systems department to include a public disclaimer on all outgoing City e-mails and on the City website.*

Thank you for your consideration.



REQUESTS FOR ACCESS TO GOVERNMENTAL RECORDS
CITY OF MANCHESTER - POLICY & PROCEDURES

April 7, 2014

REQUESTS FOR ACCESS TO GOVERNMENTAL RECORDS
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REQUESTS FOR ACCESS TO GOVERNMENTAL RECORDS
CITY OF MANCHESTER - POLICY & PROCEDURES

I. SUBJECT

Right-to-Know Requests for Access to Governmental Records and General Requests for Information.

II. AUTHORITY

NH RSA 91-A

III. PURPOSE

- A. To provide elected and appointed municipal officials and municipal staff with guidance through defined procedures to ensure that requests for access to governmental records are met in a timely and appropriate manner.
- B. To provide the public with guidance when requesting access to a governmental record so that their right to access and inspect such records is not unintentionally or otherwise impeded.

IV. DEFINITIONS

- A. *Copy* – means any reproduction of the original governmental record, whether requested in paper or electronic form, shall constitute a copy. This includes, but is not limited to, requests for copies of email correspondence. A copy of an original email record, requested in electronic form, shall constitute one record and the applicable copy fee shall apply. Fees for copies are established by the Board of Mayor and Aldermen and may be set periodically.
- B. *Governmental records* – means any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body. The term "governmental records" shall also include the term "public records." Email correspondence strictly between an elected official and a constituent is not considered a governmental or public record.
- C. *Information* – means knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic, or other physical form.

D. *Public agency* – means any agency, authority, department, or office of the state or of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision.

E. *Public body (Municipal)* – means any of the following:

1. Any legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto.
2. Any corporation that has as its sole member the state of New Hampshire, any county, town, municipal corporation, school district, school administrative unit, village district, or other political subdivision, and that is determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code.

V. **GROUP RESPONSIBILITIES**

- A. *City Clerk* – The Office of the City Clerk may receive initial written record requests pursuant to RSA 91-A and intended for another municipal department, board or commission. The City Clerk will respond to the requestor within the required five (5) days and forward the request to the appropriate municipal department, board or commission for timely completion. The City Clerk will assist the municipal staff with requests as necessary.
- B. *City Solicitor* – The Office of the City Solicitor will review record requests that have not met any of the conditions outlined in (C.) of this section to assist the City Clerk and appropriate municipal staff to ensure timely completion of the record request.
- C. *Department Heads and staff* – Departments that receive a request for a record within its custody that is clearly open for public access and the record is immediately accessible and the staff and/or time is available to address the request, the record will be made immediately available. If it is determined that all of these conditions are not met, the requestor will be asked to complete a record request form that will be immediately date stamped and forwarded to the City Clerk for processing. All requests, excluding requests regarding legal discovery, shall be forwarded upon completion to the City Clerk for retention purposes.
- D. *Public Body* – The Board of Mayor and Aldermen shall ensure that established principles of the Right-To-Know Request Policy are maintained. The board will periodically approve the appropriate administrative fee for providing copies. All written requests for records directed to the board or any other municipal board or commission are to be referred to the Office of the City Clerk for processing.
- E. *Record Requestor* – The public has a right to access and inspect governmental records. Requests for public records that are not immediately accessible or inaccessible due to departmental scheduling conflicts, must be submitted in writing to the Office of the City Clerk. A “Request For Access To A Governmental Record” form is available on the City’s website or at the Office of the City Clerk for convenience. All applicable fees and/or charges are due at the commencement of work when copies of public records are requested.

VI. POLICY

A. ESTABLISHED PRINCIPLES

1. Openness in the conduct of public business is essential to a democratic society to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.
2. The public has the right to inspect, during regular business hours and at the appropriate department location, all public governmental records and request copies except those records that are temporarily unavailable or are specifically exempted by law.
3. The public does not have to offer a reason or demonstrate a need to inspect a record. If a record is public, it must be disclosed regardless of the motive for the request.
4. The public must reasonably describe the record being requested.
5. The City is not required to create a record that does not exist, or compile data to create a record in a specific format requested, including electronic format; however, it may be easier to create an electronic summary or other report from a database than it would be to copy large volumes to satisfy specific record requests, and may also be necessary to maintain confidentiality.
6. Records that are exempt from public access are cited under various NH laws and generally include personnel records, medical, welfare, library user, vital records or any other confidential record in which disclosure would constitute an invasion of privacy or jeopardize the security or safety of any individual. Any question as to whether a record or portion of a record may be exempt from disclosure shall be addressed to the City Solicitor prior to release.
7. Written requests for governmental records, which reference right-to-know or RSA 91-A, received by the City of Manchester are to be administered through the Office of the City Clerk in coordination with the City Solicitor and appropriate department.
8. Although the City of Manchester is not required to respond to requests under the Freedom of Information Act (FOIA) which applies only to Federal Governmental Agencies, any requests cited under this Federal law shall be treated as a right to know request and shall be forwarded to the appropriate department or municipal agency for processing.

VII. PROCEDURES

A. ON-SITE RECORD REQUESTS

1. VERBAL REQUEST RECEIVED REGARDING LEGAL DISCOVERY

If a governmental record is requested on-site by an individual or an agent providing tangible interest in a specific case or investigation from a department that routinely receives such requests (example Police, Fire, and Code Enforcement) the department shall process the request administratively and charge the appropriate fees. A tangible interest exists where the person or their agent is requesting information in which the person has a direct interest, such as a police report or a site plan.

2. VERBAL REQUEST RECEIVED NOT CITING RSA 91-A

A general request made verbally by an individual for access to a governmental record shall be furnished for inspection or, if requested, copied as long as the record is readily available and the staff determines that the record is not otherwise exempt. Municipal staff may ask the citizen to make an appointment to inspect the record if the record is temporarily unavailable or the staff receiving the request is unavailable to immediately furnish the request. When a requested record is not immediately made available for inspection, the record must be made available within five (5) business days of the request, or the request may be denied with written reasons cited, or written acknowledgement of the request may be provided to the requestor stating the reasonable time necessary to determine whether the request will be granted or denied.

If the staff determines that the requested record is exempt from public inspection, or is unsure as to whether or not the record is exempt, or there may be associated records outside of their direct control, they shall advise the requestor to furnish a signed written request to the Office of the City Clerk for the record citing right-to-know under NH RSA 91-A.

3. VERBAL REQUEST CITING RSA 91-A

A request made verbally by an individual citing NH RSA 91-A or right-to-know for access to a governmental record shall be referred to the Office of the City Clerk. The Office of the City Clerk shall inform the requestor that all record requests made pursuant to NH RSA 91-A must be furnished in writing with an original signature and delivered to the Office of the City Clerk.

B. *EXTERNAL RECORD REQUESTS*

1. WRITTEN REQUEST RECEIVED REGARDING LEGAL DISCOVERY

If a governmental record is requested in writing by an individual or an agent providing tangible interest in a specific case or investigation from a department that routinely receives such requests (example Police, Fire, and Code Enforcement). The department shall process the request administratively and charge the appropriate fees established for these services.

All requests for access of governmental records through a “duces tucem” subpoena or by written Interrogatory requests shall be immediately brought to the attention of the City Solicitor.

2. ELECTRONIC MAIL REQUEST NOT CITING RSA 91-A

If a governmental record is requested not citing NH RSA 91-A and is received pursuant to an electronic mail message, the staff shall determine if the record is open to public access and readily available for release. If the requested record is determined to be open to public inspection and readily available for release, then the request shall be furnished using a methodology determined most appropriate.

If the staff receives a record request by electronic mail not citing NH RSA 91-A but determines that the requested record is exempt from public inspection, or contains exemptions which shall be redacted prior to release, or if staff is unsure as to whether or not the record is exempt, or there may be associated records outside of their direct control, they shall advise the requestor to furnish a written request for the record containing an original written signature citing right-to-know under NH RSA 91-A and refer the requestor to deliver the written request to the Office of the City Clerk for processing.

3. ELECTRONIC MAIL REQUEST CITING RSA 91-A

If a request is received pursuant to an electronic mail message citing NH RSA 91-A, the staff shall immediately forward the request to the Office of the City Clerk for processing. The Office of the City Clerk shall notify the requestor that all record requests made pursuant to NH RSA 91-A must be furnished in writing with an original signature and delivered to the Office of the City Clerk.

4. WRITTEN REQUEST NOT CITING RSA 91-A

If a governmental record is requested pursuant to a signed written request not citing NH RSA 91-A, the staff shall determine if the record is open to public access and readily available for release. If the requested record is determined to be open to public inspection and readily available for release, then the request shall be furnished using a methodology determined most appropriate.

If the staff receives a written record request not citing NH RSA 91-A but determines that the requested record is exempt from public inspection, or contains exemptions which shall be redacted prior to release, or if staff is unsure as to whether or not the record is exempt, or there may be associated records outside of their direct control, they shall record the date and time of receipt and immediately forward the original to the City Clerk or City Solicitor for guidance.

5. WRITTEN REQUEST CITING RSA 91-A

If a governmental record is requested pursuant to a signed written request citing NH RSA 91-A, the department receiving the request shall record the date and time of receipt and immediately forward the original to the Office of the City Clerk.

The Office of the City Clerk upon receipt of a written request citing NH RSA 91-A, shall immediately date stamp the request and notify the City Solicitor and the appropriate Department Head responsible for the requested record.

If upon determination the requested record is not readily available, the Office of the City Clerk is required to, within five (5) business days either make the record available, deny the request in writing with reason, or furnish written acknowledgement to the requestor stating a reasonable time when the determination of whether the request shall be granted or denied.

If the record requested is not readily available, a meeting shall be scheduled with the City Solicitor and appropriate staff to discuss the request and determine whether the request shall be granted or denied.

Upon determination if the request is to be granted or denied, a written letter shall be sent to the requestor by the Department Head, or his designee, unless otherwise determined by the City Solicitor, informing them of the decision. If the record is subject to disclosure, the requestor shall be informed of the location where, and business hours when, the record may be inspected.

Requested records which are maintained in electronic format may be copied to electronic media, if available, using standard file formats in a manner that does not reveal confidential information or exemptions as defined under NH RSA 91-A:5. Applicable copy fees shall apply to the electronic copy of each record unless an alternative fee has been previously established

by state law or municipal ordinance. This does not prevent the City from recouping any additional costs for electronic media provided by the City. If the person requesting access to a governmental record prefers a different method of delivery other than copied to electronic media, a printout of the requested governmental record shall be offered as an alternative.

The City may provide the requested record to the person requesting access by postal mail if it is determined that the governmental record is not too voluminous or requires special handling. If determined that the requested record may be mailed to the requestor, the City Clerk shall first notify the requestor of any fees. Payment of fees must be received in a form acceptable to the City prior to release of requested record.

C. *PROCEDURES DURING ON-SITE INSPECTION*

1. If the requestor knows specifically what records they would like to review, it is recommended that the requestor be advised to schedule an appointment with the appropriate department so that those records can be assembled ahead of time in preparation for the inspection.
2. All department record holdings are housed in closed stacks which are not openly accessible to the public.
3. Supervision by an employee must be provided at all times during records inspection.
4. Inspected records must remain in their present arrangement; documents shall stay in order.
5. Only one record series shall be inspected at a time.
6. To preserve the original record for future use, no marks, erasures or other changes to the record shall be allowed when accessed for inspection.
7. Due to the risk of damage to documents, use of ink is prohibited. The requestor inspecting governmental record shall use pencil when taking notes.
8. In order to preserve the original record from physical damage, hand held scanners are not permitted. Photocopying is permitted unless the appropriate staff considers the item to be fragile, exceptionally valuable, or too large to photocopy safely. Duplication shall be performed by staff or through an approved qualified professional. Additional security and procedures as determined by the appropriate staff may be required for fragile, one-of-a-kind, or historically significant records.

D. *REDACTION OF NON-PUBLIC INFORMATION*

1. Although redaction of non-public information is not specifically addressed in NH RSA 91-A, there may be certain governmental records that contain some information that must be disclosed and some information that is exempt from disclosure and which the public body or agency has a duty not to disclose.
2. Under these circumstances, the governmental entity may have an obligation to produce the non-exempt portion of the requested record if the exempt portion can be reasonably redacted or

separated from the requested record.

3. Respondents to a request for information shall protect the identities of constituents who contact their elected representatives through electronic mail by redacting names, home addresses, email addresses, and telephone numbers.
4. Redaction must effectively block out the exempt portion of the record so that it is unreadable.
5. A copy of both the redacted and un-redacted record should be retained along with an explanation of why certain information is redacted. Citing the application exemptions of disclosure under NH RSA 91-A is helpful for the requestor to assess the appropriateness of the redaction.
6. Respondents to a request for information that requires redacting information should consult the City Solicitor for assistance.

VIII. FEES AND CHARGES

- A. The City of Manchester is authorized to charge the requestor for any fees otherwise established by law for providing copies of governmental records prior to the commencement of the work. The appropriate administrative fee for providing copies is set periodically by the Board of Mayor and Aldermen.
- B. If a computer, photocopy machine, camera, scanner or other device is to be used to copy a requested governmental record, the person requesting the copy shall be charged the established fee prior to the commencement of work.
- C. The City of Manchester charges the actual cost of postage and required envelope(s) for any postal mailing associated with record requests and the actual cost of electronic media storage (i.e. DVD, CD-ROMs, thumb drives, memory sticks, etc.), if available. Only City provided electronic media storage devices will be used to make electronic copies of records.



Office of the City Clerk
One City Hall Plaza
Manchester, NH 03101

REQUEST FOR ACCESS TO A GOVERNMENTAL RECORD

PLEASE COMPLETE THE FOLLOWING:

I _____, hereby request access under NH RSA 91-A to the following governmental record.
Print full name

Record Date: _____ Record Name: _____

Signature: _____ Request Date: _____

Mailing Address: _____

Telephone: _____ Email: _____

IN ACCORDANCE WITH RSA 91-A, THE CITY WILL DETERMINE WHETHER THE REQUESTED GOVERNMENTAL RECORD IS AVAILABLE FOR PUBLIC INSPECTION. UPON SUCH DETERMINATION IT SHALL, WITHIN FIVE (5) BUSINESS DAYS OF THE DATE OF THE REQUEST, MAKE THE RECORD AVAILABLE, DENY THE REQUEST IN WRITING WITH SPECIFIC REASONS, OR ACKNOWLEDGE THE RECEIPT OF THE REQUEST WITH A STATEMENT OF THE TIME REASONABLY NECESSARY TO DETERMINE WHETHER THE REQUEST WILL BE GRANTED OR DENIED.