

EXHIBIT A



Town of Salem Schedule of Fees for Fiscal Year 2017

(Adopted by the Board of Selectmen on 8/22/16 and 10/3/16 - effective 1/1/17)

**TOWN OF SALEM
FEE SCHEDULE
POLICE DEPARTMENT**

<u>DESCRIPTION</u>	<u>AMOUNT</u>	<u>LAST UPDATED</u>	<u>FEE GOVERNED BY</u>
Alarm Permits		2009	Town Ord 178
Residential	\$25		
Commercial	\$50		
Pistol Permits	\$10		Set by State RSA
Fingerprints	\$15	2016	
Insurance Reports	\$15	2016	
Insurance Fatal Reports/Photos	\$30	2016	
VIN Verifications	\$10	2016	
License to Sell Firearms	\$25	2016	
Pawnbroker License	\$1,250	2013	Town Ord 387
Subpoena Fee	\$40	2016	
Parking Tickets	\$15 - \$100	2010	Board of Selectmen- Town Ord 466
Kennel Fees	\$15/day	2016	
Outside Details			
Police Officer Detail Rate	\$55	2016	
Strike Details	\$79	2016	
Car Detail Rate	\$9	2007	

EXHIBIT B



AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE

18 Low Avenue
Concord, New Hampshire 03301
603-225-3080
www.ACLU-NH.org

DEVON CHAFFEE
EXECUTIVE DIRECTOR

May 25, 2017

VIA FIRST CLASS MAIL AND EMAIL (pdonovan@salempd.com)

Paul T. Donovan
Chief of Police
Salem Police Department
33 Geremonty Drive
Salem, NH 03079

Re: Right-to-Know Request Regarding Immigration Enforcement

Dear Chief Donovan:

This is a Right-to-Know request to the Salem Police Department (“the Department”) pursuant to RSA 91-A and Part I, Article 8 of the New Hampshire Constitution by the American Civil Liberties Union of New Hampshire (“ACLU-NH”). The ACLU-NH defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Hampshire Constitutions. In furtherance of that mission, the ACLU-NH regularly conducts research into government activities in New Hampshire. We ask that your Department waive all fees associated with responding to this request. Please contact me to discuss the fee waiver in advance of preparing any copies.

Below are the specific requests:

1. All records relating to or referencing Immigration and Customs Enforcement (“ICE”), Homeland Security Investigations (“HSI”), or U.S. Customs and Border Protection (CBP a.k.a. Border Patrol), as well as their employees, created from November 1, 2016 to the start of the Department’s search for records.
2. All communications between any member of the Department and any member of ICE, HSI or the CPB from November 1, 2016 to the start of the Department’s search for records.
3. Any emails, communications, policies, or procedures—whether formal or informal—concerning the handling of suspects who a Department officer may believe is in the United States unlawfully.
4. Any memoranda of understanding or agreements—standing or otherwise—with ICE, HSI, or CPB from 2007 to the present.

In responding to this request, please consider the time limits mandated by the Right-to-Know law. In discussing those limits in *ATV Watch v. N.H. Dep’t of Res. & Econ. Dev.*, 155

N.H. 434 (2007), the New Hampshire Supreme Court has stated that RSA 91-A:4, IV requires that a public body or agency, “within 5 business days of the request, make such records available, deny the request in writing with reasons, or to furnish written acknowledgement of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied.” *Id.* at 440.

If produced, these records must be produced irrespective of their storage format; that is, they must be produced whether they are kept in tangible (hard copy) form or in an electronically-stored format, including but not limited to e-mail communications. If any records are withheld, or any portion redacted, please specify the specific reasons and statutory exemption relied upon. See RSA 91-A:4, IV (official must “make such record available” or “deny the request in writing *with reasons*”) (emphasis added).

Thank you for your anticipated cooperation. I look forward to hearing from you as soon as possible. Of course, if you have any questions or concerns, do not hesitate to contact me.

Very truly yours,



Gilles Bissonnette
ACLU-NH, Legal Director
Gilles@aclu-nh.org

EXHIBIT C

From: [Savage, Sharon](#)
To: [Gilles Bissonnette](#)
Subject: Salem Police Fee per report
Date: Tuesday, May 30, 2017 9:11:31 AM

Mr. Bissonnette,

In reviewing your letter, the fee per report \$15.00. I will not be able to waive the fee. Once I have the total # of reports, I will contact you with the total amount that will be owed.

Any questions please let me know.

Sharon Savage
Records Supervisor

Before printing think green; read on the screen.

This message contains information intended solely for the individual named. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system.

E-mail sent and received on the Town's system is subject to potential disclosure under N.H. R.S.A. 91-A and in litigation unless exempt by law. Users of the e-mail system should be aware that e-mail is not a private or confidential means of communication.

EXHIBIT D

Gilles Bissonnette

From: Chase, James <jchase@salempd.com>
Sent: Tuesday, May 30, 2017 11:20 AM
To: Gilles Bissonnette
Cc: Savage, Sharon; Dolan, Joel
Subject: FW: Salem Police Fee per report

Follow Up Flag: Follow up
Flag Status: Flagged

Mr. Gilles,

I am seeking clarification regarding your RTK request.

In your RTK request #1, it states "All records relating to or referencing".. ICE, HIS or US Customs and Border Protection.

We may or may not have police reports (a.k.a reports) where these agencies are referenced. Each report (record) will cost \$15.00.

It will take extensive research by our staff to research our files for the past 7 months.

If you are changing your RTK request and **do not want any police reports (records) included**, please send us a revised RTK request.

Thank you.

James S. Chase
Deputy Chief of Police
Salem NH Police Department
Salem, NH 03079
603-890-2014
jchase@salempd.com



From: Savage, Sharon
Sent: Tuesday, May 30, 2017 10:45 AM
To: Chase, James; Dolan, Joel
Subject: FW: Salem Police Fee per report

From: Gilles Bissonnette [<mailto:gilles@aclu-nh.org>]
Sent: Tuesday, May 30, 2017 9:25 AM
To: Savage, Sharon <ssavage@salempd.com>
Subject: RE: Salem Police Fee per report

Thank you Ms. Savage. I am unclear what a "report" it, as we are not seeking documents from individual cases, but rather documents concerning communications with ICE etc. Can you let me know why this report process is necessary? Under the RTK law, costs incurred need to be tailored to the actual costs of production (i.e., copy costs). Thx.

Gilles Bissonnette
Legal Director
American Civil Liberties Union of New Hampshire
18 Low Avenue
Concord, NH 03301
Phone: 603-224-5591 ext. 103
gilles@aclu-nh.org
www.aclu-nh.org



Because Freedom Can't Protect Itself

From: Savage, Sharon [<mailto:ssavage@salempd.com>]
Sent: Tuesday, May 30, 2017 9:11 AM
To: Gilles Bissonnette <gilles@aclu-nh.org>
Subject: Salem Police Fee per report

Mr. Bissonnette,

In reviewing your letter, the fee per report \$15.00. I will not be able to waive the fee. Once I have the total # of reports, I will contact you with the total amount that will be owed.

Any questions please let me know.

Sharon Savage
Records Supervisor

Before printing think green; read on the screen.

This message contains information intended solely for the individual named. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system.

E-mail sent and received on the Town's system is subject to potential disclosure under N.H. R.S.A. 91-A and in litigation unless exempt by law. Users of the e-mail system should be aware that e-mail is not a private or confidential means of communication.



Salem Police Department

Paul T. Donovan
Chief of Police

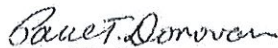
June 16, 2017

American Civil Liberties Union of New Hampshire
18 Low Avenue
Concord, NH 03301
Attn: Gilles Bissonnette

Dear Mr. Bissonette,

In response to your 4 specific requests under Right to Know dated May 25, 2017 for records pursuant RSA 91-A relating to or referencing Customs Enforcement (ICE), Homeland Security Investigations (HSI), or U.S Customs and Border Protection (CBP a.k.a. Border Patrol), as well as their employees:

1. All records relating to or referencing ICE, HIS or U.S. Customs and Border Protection from November 1, 2016 to May 25, 2017: We have located 8 police reports that meet this request. The cost for each report is \$15.00. If you would like to review the reports before purchasing them, please email our Records Supervisor Sharon Savage ssavage@salempd.com to schedule a date and time.
2. All communications between any member of the Department and any member of ICE, HSI or the CPB from November 1, 2016 to May 25, 2016: We have no known communications other than the police reports and e-mails provided in the other sections.
3. Our Records Department has had 10 e-mails from ICE and 1 e-mail from U.S. Homeland Security. These e-mails have been attached and there is no cost associated with these e-mails.
4. The Salem NH Police Department does not have a memoranda of understanding (MOU) or agreements with ICE, HSI, or CPB from 2007 to today's date.


Paul T. Donovan
Chief of Police

PTD/jsc

EXHIBIT E

Gilles Bissonnette

From: Chase, James <jchase@salempd.com>
Sent: Monday, July 17, 2017 10:31 AM
To: Gilles Bissonnette; Donovan, Paul; Savage, Sharon; Dolan, Joel; Smith, Jason
Subject: Salem PD RTK Request - Response

Follow Up Flag: Follow up
Flag Status: Flagged

Mr. Bissonnette,

The Town of Salem – Board of Selectmen - sets the rate that we charge for each report (\$15.00).

The attachments that you are asking about are the local contact sheets, which has the history of any person who has contact with the Salem Police Department.

The reports sent in the attachments are the reports that we have already researched and printed waiting for your viewing. The local contact sheets will be provided to you when you review the reports.

Thank you.

James S. Chase
Deputy Chief of Police
Salem NH Police Department
Salem, NH 03079
603-890-2014
jchase@salempd.com



From: Gilles Bissonnette [mailto:gilles@aclu-nh.org]
Sent: Friday, July 14, 2017 12:21 PM
To: Donovan, Paul; Savage, Sharon; Dolan, Joel; Chase, James; Smith, Jason
Subject: Salem PD RTK Request

Thank you again for responding to our 91-A request. Would someone from your Department be willing to chat briefly? I wanted to follow up on a few outstanding issues.

1. I see from the emails produced in response to request no. 3 (see attached) that there are attachments. Could the Department send me the attachments, which may be police reports sent from the Salem PD to ICE?
2. Also, do you know whether these attachments are different from the police reports referenced in response to request no. 1 in the Department's June 16 letter. If they are, our hope is that they can be produced easily, and we would be happy to pay a reasonable copy fee.

3. Unless I am mistaken, I see that your Department is seeking \$15 per police report (which totals \$140 for 8 reports). From my review of Chapter 91-A, I do not see such labor fees permitted under the statute (in fact, the legislature most recently declined to adopt such a law). RSA 91-A:4(IV) provides for costs relating only to the actual costs incurred in physically producing the information, which typically constitutes photocopy production fees. Of course, we are willing to pay for a reasonable photocopying rate on a per page basis.

Thanks in advance, and I look forward to chatting. Have a great weekend.

Best,

Gilles Bissonnette
Legal Director
American Civil Liberties Union of New Hampshire
18 Low Avenue
Concord, NH 03301
Phone: 603-224-5591 ext. 103
gilles@aclu-nh.org
www.aclu-nh.org



Because Freedom Can't Protect Itself

Before printing think green; read on the screen.

This message contains information intended solely for the individual named. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system.

E-mail sent and received on the Town's system is subject to potential disclosure under N.H. R.S.A. 91-A and in litigation unless exempt by law. Users of the e-mail system should be aware that e-mail is not a private or confidential means of communication.

EXHIBIT F

Gilles Bissonnette

From: Chase, James <jchase@salempd.com>
Sent: Monday, July 17, 2017 3:04 PM
To: Gilles Bissonnette
Cc: Savage, Sharon; Donovan, Paul
Subject: RE: Salem PD RTK Request - Response
Attachments: SChief_22317071713560.pdf

Mr. Bissonnette,

I have attached the Fee Schedule taken from the Town of Salem Website.

The Salem Police Department charges \$15 per report, whether it is an accident report, insurance report or just a regular police incident report.

Note:

As we have stated in our RTK response, you are able to review the requested reports before you purchase them.

If you choose to do this, please contact our Records Supervisor, Sharon Savage ssavage@salempd.com.

Thank you.

James S. Chase
Deputy Chief of Police
Salem NH Police Department
Salem, NH 03079
603-890-2014
jchase@salempd.com



From: Gilles Bissonnette [mailto:gilles@aclu-nh.org]
Sent: Monday, July 17, 2017 2:51 PM
To: Chase, James; Donovan, Paul; Savage, Sharon; Dolan, Joel; Smith, Jason
Subject: RE: Salem PD RTK Request - Response

Thank you Deputy Chief Chase. Can you forward me the policy or Board guidance dealing with the \$15 report fee you reference? I have never seen such a charge before, so it would be helpful to review it.

Gilles Bissonnette

Legal Director
American Civil Liberties Union of New Hampshire
18 Low Avenue
Concord, NH 03301
Phone: 603-224-5591 ext. 103
gilles@aclu-nh.org
www.aclu-nh.org



Because Freedom Can't Protect Itself

From: Chase, James [<mailto:jchase@salemnpd.com>]
Sent: Monday, July 17, 2017 10:31 AM
To: Gilles Bissonnette <gilles@aclu-nh.org>; Donovan, Paul <pdonovan@salemnpd.com>; Savage, Sharon <ssavage@salemnpd.com>; Dolan, Joel <jdolan@salemnpd.com>; Smith, Jason <jsmith@salemnpd.com>
Subject: Salem PD RTK Request - Response

Mr. Bissonette,

The Town of Salem – Board of Selectmen - sets the rate that we charge for each report (\$15.00).

The attachments that you are asking about are the local contact sheets, which has the history of any person who has contact with the Salem Police Department.

The reports sent in the attachments are the reports that we have already researched and printed waiting for your viewing. The local contact sheets will be provided to you when you review the reports.

Thank you.

James S. Chase
Deputy Chief of Police
Salem NH Police Department
Salem, NH 03079
603-890-2014
jchase@salemnpd.com



From: Gilles Bissonnette [<mailto:gilles@aclu-nh.org>]
Sent: Friday, July 14, 2017 12:21 PM
To: Donovan, Paul; Savage, Sharon; Dolan, Joel; Chase, James; Smith, Jason
Subject: Salem PD RTK Request

Thank you again for responding to our 91-A request. Would someone from your Department be willing to chat briefly? I wanted to follow up on a few outstanding issues.

1. I see from the emails produced in response to request no. 3 (see attached) that there are attachments. Could the Department send me the attachments, which may be police reports sent from the Salem PD to ICE?
2. Also, do you know whether these attachments are different from the police reports referenced in response to request no. 1 in the Department's June 16 letter. If they are, our hope is that they can be produced easily, and we would be happy to pay a reasonable copy fee.
3. Unless I am mistaken, I see that your Department is seeking \$15 per police report (which totals \$140 for 8 reports). From my review of Chapter 91-A, I do not see such labor fees permitted under the statute (in fact, the legislature most recently declined to adopt such a law). RSA 91-A:4(IV) provides for costs relating only to the actual costs incurred in physically producing the information, which typically constitutes photocopy production fees. Of course, we are willing to pay for a reasonable photocopying rate on a per page basis.

Thanks in advance, and I look forward to chatting. Have a great weekend.

Best,

Gilles Bissonnette
Legal Director
American Civil Liberties Union of New Hampshire
18 Low Avenue
Concord, NH 03301
Phone: 603-224-5591 ext. 103
gilles@aclu-nh.org
www.aclu-nh.org



Because Freedom Can't Protect Itself

Before printing think green; read on the screen.

This message contains information intended solely for the individual named. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system.

E-mail sent and received on the Town's system is subject to potential disclosure under N.H. R.S.A. 91-A and in litigation unless exempt by law. Users of the e-mail system should be aware that e-mail is not a private or confidential means of communication.



Town of Salem Schedule of Fees for Fiscal Year 2017

(Adopted by the Board of Selectmen on 8/22/16 and 10/3/16 - effective 1/1/17)

TOWN OF SALEM
FEE SCHEDULE
POLICE DEPARTMENT

<u>DESCRIPTION</u>	<u>AMOUNT</u>	<u>LAST UPDATED</u>	<u>FEE GOVERNED BY</u>
Alarm Permits		2009	Town Ord 178
Residential	\$25		
Commercial	\$50		
Pistol Permits	\$10		Set by State RSA
Fingerprints	\$15	2016	
Insurance Reports	\$15	2016	
Insurance Fatal Reports/Photos	\$30	2016	
VIN Verifications	\$10	2016	
License to Sell Firearms	\$25	2016	
Pawnbroker License	\$1,250	2013	Town Ord 387
Subpoena Fee	\$40	2016	
Parking Tickets	\$15 - \$100	2010	Board of Selectmen- Town Ord 466
Kennel Fees	\$15/day	2016	
Outside Details			
Police Officer Detail Rate	\$55	2016	
Strike Details	\$79	2016	
Car Detail Rate	\$9	2007	

EXHIBIT G

Tuftonboro v. Blowen-Ledoux, Doc. No. 212-2016-CV-201 (Carroll Super. Ct., August 8, 2017) (Ignatius, J.)

THE STATE OF NEW HAMPSHIRE

CARROLL, SS. SUPERIOR COURT

Town of Tuftonboro

v.

Maxim Blowen-Ledoux, A.A.L. and Robert McWhirter

212-2016-CV-0201

ORDER

The plaintiff, Town of Tuftonboro ("Town"), filed a complaint on December 7, 2016, against defendants Maxim Blowen-Ledoux and Robert McWhirter, seeking guidance regarding payment for production of e-mail records requested by the defendants pursuant to RSA 91-A. The defendants filed a counterclaim on February 6, 2017, seeking the e-mail records electronically at no charge, plus attorneys fees and costs, and for the Selectmen to undergo remedial training at their own expense. By agreement, production of records has been held in abeyance pending order of the Court.

After scheduling delays requested by the parties, the Court conducted a trial on June 12, 2017, at which the parties appeared with counsel. Upon consideration of the evidence and arguments, the Court finds and rules as follows.

BACKGROUND AND FACTS

The following facts do not appear to be in dispute. The defendants are residents of the Town. Between them they requested an estimated 11,000 to 13,000 e-mails to and from Town officials. The defendants seek electronic transfer of the records, with no hard copies produced.

[2] The Town responded by stating it would produce the e-mails after evaluating whether they contained confidential information that would have to be redacted. Further, if files were to be produced electronically, "metadata"¹ containing identifying information would have to be reviewed and stripped out as necessary on each electronic record. According to the Town, this would involve both the application of a software program to block certain metadata and, more importantly, individual review by a Town employee viewing each document. The Town stated it would charge its standard \$0.25 per page for production, whether in hard copy or electronic file. The charge was later reduced to \$0.15 per page when a new policy was adopted on April 1, 2017.

The defendants objected, arguing there should be no charge for electronic files as there was no use of a copier, paper or other supplies. They also narrowed the request to approximately 1,000 to 1,750 e-mails. Faced with the potentially large charge for the records as well as legal fees, they undertook a fundraising effort from other supporters. The Town sought names of the donors to this fundraising campaign, which the defendants refused to provide.

The testimony and arguments at hearing centered on metadata and the process of its removal. The Town presented testimony of Patrick Harvie, a computer specialist, who explained the various ways to remove metadata revealing information regarding the

sender and the sender's computer. For example, an electronic record would reveal the sender's e-mail address, the computer's Internet Protocol (IP) address, the network used, software and programs used, and whether a particular software program is the most current version. The identity and vintage of a software program would make it easier for a hacker to infiltrate the sender's account. The Town argues it would be [3] irresponsible to release documents electronically without first "scrubbing" them to remove metadata. The Town asserts that the costs in scrutinizing files to redact confidential information from electronic copies should be recovered in the same way that the cost of production of hard copies is recovered. The Town does not seek recovery for employee time but does seek recovery of costs of use of equipment, including computers and software. The Town did not introduce its revised documents policy and did not testify to the calculations leading to the \$0.15 per page charge.

The defendants assert the Town has no authority to request an advisory opinion. Further, they argue any computers used in the redaction process have already been purchased and thus there are no incremental costs to be recovered, as there would be with hard copies that consume paper, toner and the like.

ANALYSIS

The Court is mindful of its jurisdiction and is not issuing an advisory opinion. See N.H. Const. Part 2, Art. 74; Piper v. Meredith, 109 N.H. 328 (1969). RSA 491:22 grants the Superior Court jurisdiction to adjudicate petitions for declaratory judgments brought by "a person claiming a present legal or equitable right or title." This Court has not been presented with a hypothetical or "future" issue for determination. The evidence presented

herein addresses a specific issue in dispute with identified parties, claims, counterclaims and alleged harms. The parties agreed that they would obtain a court order on costs before moving forward with the discovery request. To the extent the defendants ask the Court to withhold ruling for lack of jurisdiction, the request is DENIED.

The Supreme Court has addressed the delivery of electronic copies, holding that the person seeking records may opt for electronic or hard copies. Green v. Sch. Admin. [4] Unit #55, 168 N.H. 796 (2016). Construing RSA 91-A:4, the Court found that because electronic transfer did not require the provider in Green to "compile or assemble the documents into a new form" there was no cost to be recovered. Id. at 802-803.

The Town is understandably concerned about the potential for disclosure of confidential information such as personal e-mails, IP addresses or other identifying computer information.² This step would be required whether the document was delivered electronically or in hard copy.

Complying with the documents request in this case involves not simply the transfer of an electronic record, as in Green, but the scrutiny and manipulation of that record before it is transferred, to ensure that confidential information is not transmitted within the file's metadata. For example, a document may appear in hard copy only to show a name, but when reviewed in the electronic file one can see the sender's e-mail address, IP address, and the software program used to create the file. As noted by the Town, revealing a program and its vintage allows a "hacker" some of the information needed to gain access to the sender's internet account. Software tools available to the Town allow certain metadata to be redacted but, according to the Town's witness, there remains a need for

an individual to scrutinize each file. Other than the time of one or more employees to view and "scrub" each file, however, there is no cost to produce the records electronically and the Town has stated it does not seek the per page charge on the basis of employee time.

While one might argue the "form" of the document has changed, the Court does not find these redactions to be the type of format change Green envisioned. For example, [5] data contained in text is not being compiled into a chart format, or resorted to analyze a different time period or category of information. The Town asserted the computer the Town employs to scrutinize the electronic files is a cost of document disclosure. It did not testify, however, that a new computer, hardware, or software program had been purchased to respond to these requests. Because the Town provided no evidence of actual costs incurred in preparing these documents, other than employee time, which the Town does not seek to recover, the Court finds no actual cost to be recovered from the defendants.

Regarding disclosure of the defendants' supporters and donors, the Court finds no basis under RSA 91-A or otherwise to compel such disclosure. It is unclear from the record if the Town still seeks this information. To the extent the Town still seeks the names of supporter and donors, the Town has made no persuasive showing why this information is needed and its request is DENIED.

Regarding the argument that the Town violated RSA 91-A in seeking cost recovery, it must be noted that from the state the Town agreed to make the requested documents available. The only issue has been what charge, if any, is appropriate. The Court does not find its uncertainty regarding costs, in an evolving field, to constitute a violation of RSA

91-A. That being the case, the Court finds no basis to award attorneys fees and costs to the defendants. ATV Watch v. N.H. Dep't of Transp., 161 N.H. 746 (2011). The defendant's request for attorneys fees and costs is DENIED. Similarly, the Court finds no basis to require the Selectmen to undergo remedial training in RSA 91-A compliance; the defendants' request for training is DENIED.

[6] So Ordered.

August 8, 2017 /s/

Amy L. Ignatius

Presiding Justice

¹ "Metadata" is often defined as "data that provides information about other data."

² By this order the Court does not conclude that an e-mail address is necessarily confidential. Whether a private or official e-mail address or other identifying information is "confidential" under RSA 91-A is likely a fact specific inquiry; for purposes of this order, such information is presumed confidential, as neither party has objected to the intention of the Town to react, but only to the cost, if any, to be recovered.

EXHIBIT H

New Hampshire General Court - Bill Status System

Docket of HB646

Docket Abbreviations

Bill Title: allowing public bodies or agencies to charge for the costs of retrieval of public records under the right-to-know law.

Official Docket of HB646.:

Date	Body	Description
1/8/2015	H	Introduced and Referred to Judiciary; HJ 12 , PG. 233
2/4/2015	H	Public Hearing: 2/12/2015 10:00 AM LOB 208 ==RECESSED==
2/24/2015	H	Continued Public Hearing: 3/3/2015 10:00 AM LOB 208
2/25/2015	H	Executive Session: 3/3/2015 10:30 AM LOB 208 ==RECESSED==
3/3/2015	H	Continued Executive Session: 3/5/2015 9:00 AM LOB 208
3/5/2015	H	Majority Committee Report: Ought to Pass with Amendment #2015-0753h for Mar 11 (Vote 14-4; RC); HC19 , PG. 429-430
3/5/2015	H	Minority Committee Report: Inexpedient to Legislate
3/12/2015	H	Lay on Table (Rep Hinch): MA VV; HJ 26 , PG. 1228-1229
11/18/2015	H	Died on the Table

NH House

NH Senate

HB 646-FN-LOCAL - AS INTRODUCED

2015 SESSION

15-0624
01/03

HOUSE BILL **646-FN-LOCAL**

AN ACT allowing public bodies or agencies to charge for the costs of retrieval of public records under the right-to-know law.

SPONSORS: Rep. P. Long, Hills 10; Rep. Byron, Hills 20; Rep. Hess, Merr 24

COMMITTEE: Judiciary

ANALYSIS

This bill allows public bodies or agencies to charge for the costs of retrieval of public records under the right-to-know law under certain circumstances.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 646-FN-LOCAL - AS INTRODUCED

15-0624
01/03

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT allowing public bodies or agencies to charge for the costs of retrieval of public records under the right-to-know law.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Right-to-Know; Minutes and Records Available for Public Inspection. Amend RSA 91-A:4, IV
2 to read as follows:

3 IV. Each public body or agency shall, upon request for any governmental record reasonably
4 described, make available for inspection and copying any such governmental record within its files
5 when such records are immediately available for such release. If a public body or agency is unable to
6 make a governmental record available for immediate inspection and copying, it shall, within 5
7 business days of request, make such record available, deny the request in writing with reasons, or
8 furnish written acknowledgment of the receipt of the request and a statement of the time reasonably
9 necessary to determine whether the request shall be granted or denied. If a computer, photocopying
10 machine, or other device maintained for use by a public body or agency is used by the public body or
11 agency to copy the governmental record requested, the person requesting the copy may be charged
12 the actual cost of providing the copy, which cost may be collected by the public body or agency. *If the*
13 *time required to retrieve the requested records is estimated to exceed one hour, the public*
14 *body or agency may charge for the cost of labor after the first hour, at a rate not exceeding*
15 *the applicable minimum wage, and may require payment of the estimated cost before*
16 *retrieving the records. No charge shall be made for the cost of searching for or retrieving*
17 *minutes of any public body meeting that occurred less than one year before the date of the*
18 *request. Any labor charges may be waived for any individual who demonstrates an*
19 *inability to pay.* Nothing in this section shall exempt any person from paying fees otherwise
20 established by law for obtaining copies of governmental records or documents, but if such fee is
21 established for the copy, no additional costs or fees shall be charged.

22 2 Effective Date. This act shall take effect January 1, 2016.

LBAO
15-0624
01/26/15

HB 646-FN-LOCAL - FISCAL NOTE

AN ACT allowing public bodies or agencies to charge for the costs of retrieval of public records under the right-to-know law.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill, **as introduced**, as it is awaiting information from the Department of Justice and New Hampshire Association of Counties, who were contacted on 12/30/14. When completed, the fiscal note will be forwarded to the House Clerk's Office.

House Judiciary
March 5, 2015
2015-0753h
01/09

Amendment to HB 646

Amend RSA 91-A:4, IV as inserted by section 1 of the bill by replacing it with the following:

IV. Each public body or agency shall, upon request for any governmental record reasonably described, make available for inspection and copying any such governmental record within its files when such records are immediately available for such release. If a public body or agency is unable to make a governmental record available for immediate inspection and copying, it shall, within 5 business days of request, make such record available, deny the request in writing with reasons, or furnish written acknowledgment of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied. If a computer, photocopying machine, or other device maintained for use by a public body or agency is used by the public body or agency to copy the governmental record requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public body or agency. Nothing in this section shall exempt any person from paying fees 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. ***No charge shall be imposed for allowing a person to inspect a record that is immediately available.***

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 New Paragraph; Right-to-Know; Charges for Retrieval of Governmental Records. Amend RSA 91-A:4 by inserting after paragraph IV the following new paragraph:

IV-a. A public body may charge a fee to cover the actual labor cost of retrieving and copying the requested records, including reviewing and redacting confidential and other exempt information, subject to the following:

(a) The amount charged per hour shall not exceed the applicable minimum wage, and no charge shall be made for the first hour.

(b) The public body or agency shall provide the requester with a reasonable estimate of the time necessary to respond to the request and of the total cost. If the estimate of the total cost exceeds \$50, the requester may be required to pay all or a portion of the cost prior to retrieval of the records. If the final cost differs from the estimate, the difference shall be refunded or collected, as the case may be, at the time the records are provided.

(c) No charge shall be made for the cost of searching for or retrieving minutes of any public body meeting that occurred less than one year before the date of the request.

(d) Upon request, the public body or agency shall provide a detailed itemization of the costs charged.

(e) A court may reduce or waive the fees charged if it determines that the information requested

is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

(f) The public body or agency may waive any charges for an individual who demonstrates an inability to pay.

EXHIBIT I

New Hampshire General Court - Bill Status System

Docket of HB1611

Docket Abbreviations

Bill Title: allowing a public body or agency to charge a fee for costs of retrieving public records under the right-to-know law.

Official Docket of HB1611.:

Date	Body	Description
2/11/2016	H	Introduced 01/06/2016 and referred to Judiciary HJ 4 P. 20
1/13/2016	H	Public Hearing: 01/19/2016 01:00 PM LOB 208
1/20/2016	H	Executive Session: 02/02/2016 10:00 AM LOB 208
2/5/2016	H	Committee Report: Inexpedient to Legislate for 02/10/2016 (Vote 16-1; CC) HC 7 P. 6
2/10/2016	H	Inexpedient to Legislate: MA VV 02/10/2016 HJ 16 P. 7

NH House

NH Senate

HB 1611-FN-LOCAL - AS INTRODUCED

2016 SESSION

16-2496
01/09

HOUSE BILL

1611-FN-LOCAL

AN ACT allowing a public body or agency to charge a fee for costs of retrieving public records under the right-to-know law.

SPONSORS: Rep. P. Long, Hills. 10

COMMITTEE: Judiciary

ANALYSIS

This bill declares that a public body or agency shall not charge a fee for allowing a person to inspect a record that is immediately available. This bill also allows public bodies or agencies to charge for the costs of retrieval of public records under the right-to-know law under certain circumstances.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Sixteen

AN ACT allowing a public body or agency to charge a fee for costs of retrieving public records under the right-to-know law.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Right-to-Know; Minutes and Records Available for Public Inspection. Amend RSA 91-A:4, IV
2 to read as follows:

3 IV. Each public body or agency shall, upon request for any governmental record reasonably
4 described, make available for inspection and copying any such governmental record within its files
5 when such records are immediately available for such release. If a public body or agency is unable
6 to make a governmental record available for immediate inspection and copying, it shall, within 5
7 business days of request, make such record available, deny the request in writing with reasons, or
8 furnish written acknowledgment of the receipt of the request and a statement of the time
9 reasonably necessary to determine whether the request shall be granted or denied. If a computer,
10 photocopying machine, or other device maintained for use by a public body or agency is used by the
11 public body or agency to copy the governmental record requested, the person requesting the copy
12 may be charged the actual cost of providing the copy, which cost may be collected by the public body
13 or agency. Nothing in this section shall exempt any person from paying fees otherwise established
14 by law for obtaining copies of governmental records or documents, but if such fee is established for
15 the copy, no additional costs or fees shall be charged. ***No charge shall be imposed for allowing
16 a person to inspect a record that is immediately available.***

17 ***IV-a. A public body may charge a fee to cover the actual labor cost of retrieving
18 and copying the requested records, including reviewing and redacting confidential and
19 other exempt information, subject to the following:***

20 ***(a) The amount charged per hour shall not exceed the applicable minimum
21 wage, and no charge shall be made for the first hour.***

22 ***(b) The public body or agency shall provide the requester with a reasonable
23 estimate of the time necessary to respond to the request and of the total cost. If the
24 estimate of the total cost exceeds \$50, the requester may be required to pay all or a portion
25 of the cost prior to retrieval of the records. If the final cost differs from the estimate, the
26 difference shall be refunded or collected, as the case may be, at the time the records are
27 provided.***

28 ***(c) No labor costs shall be charged for retrieving, reviewing, redacting, or
29 copying the following records:***

30 ***(1) Minutes of any public body meeting that occurred less than 10 years***

1 *before the date of the request.*

2 *(2) Any currently effective statute, ordinance, regulation, rule, or procedure*
3 *of the public body or agency.*

4 *(3) Any record directly related to an ongoing administrative or quasi-*
5 *judicial proceeding before any public body or agency, or any such proceeding that was*
6 *concluded within 3 years before the date of the request.*

7 *(4) In records of a public body or agency of a city, town, county, school*
8 *district, or other political subdivision of the state, if the person making the request is a*
9 *resident of, or an owner of real property in, the political subdivision, or the legal*
10 *representative of such a person.*

11 *(d) Upon request, the public body or agency shall provide a detailed*
12 *itemization of the costs charged.*

13 *(e) A court may reduce or waive the fees charged if it determines that the*
14 *information requested is in the public interest because it is likely to contribute*
15 *significantly to public understanding of the operations or activities of the government.*

16 *(f) The public body or agency may waive any charges for an individual who*
17 *demonstrates an inability to pay.*

18 2 Effective Date. This act shall take effect 60 days after passage.

HB 1611-FN-LOCAL AS INTRODUCED

LBAO
16-2496
12/11/15

HB 1611-FN-LOCAL- FISCAL NOTE

AN ACT allowing a public body or agency to charge a fee for costs of retrieving public records under the right-to-know law.

FISCAL IMPACT:

The Department of Justice, Judicial Branch, Department of Administrative Services, University System of New Hampshire, New Hampshire Association of Counties, New Hampshire Municipal Association, and Legislative Branch state this bill, **as introduced**, may increase state, county and local revenue by an indeterminable amount in FY 2017 and in each year thereafter. There will be an indeterminable impact on state, county and local expenditures.

METHODOLOGY:

The Department of Justice states this bill would allow public bodies to charge a rate not to exceed the minimum wage for the time in excess of one hour required to retrieve and copy records requested under the Right-to-Know Law including time required to review and redact confidential and other exempt information. The Department indicates current law allows only for recovery of the actual cost of providing copies. In FY 2015 the Department spent 1,500 hours reviewing records requested under RSA 91-A. The Department indicates if that time was charged at a rate of \$7.25 per hour, the Department would have collected \$10,875. The Department states it is unknown how many requests for information it may produce a particular year so the fiscal impact cannot be determined, but based on the past, fees of approximately \$10,500 to \$12,500 could be collected per year.

The Judicial Branch states the proposed bill would amend RSA 91-A:4 to provide that a public body or agency subject to the Right-to-Know Law cannot charge a fee for inspecting a record that is immediately available and to allow charging the cost of retrieval of public records in certain circumstances. The potential cost to the Branch is in RSA 94-A:4, IV-a(e) which allows a court to reduce or waive fees charged if it determines the information requested is in the public interest. The Branch has no information on how many actions to reduce or waive fees charged may be brought in the superior court. The Branch indicates such actions would be classified as routine equity cases and the cost of an average routine equity case in the superior court will be \$247.11 in FY 2017 and \$262.55 in FY 2018. These amounts do not consider the cost of any appeals that may be taken following trial. The Branch states these costs are based on studies of judicial and clerical weighted caseload times for processing the average routine equity case and the studies are now ten years old for judicial time and eight year old for

HB 1611-FN-LOCAL - AS INTRODUCED

- Page 2 -

clerical time. In addition, the Branch states there have been changes during this time period with respect to how cases are processed.

The Department of Administrative Services states the current and proposed versions of RSA 91-A:4, IV provide that if a fee is established by law for obtaining copies of governmental records, no additional costs or fees shall be charged. The Department does not know how many agencies may have fees established in law. The Department states its administrative rules (Adm 103.01) provides for a fees for copies. The Department is not able to determine the impact on revenue.

The University System of New Hampshire (USNH) assumes each institution would decide whether to assess the fees as allowed in the bill. The USNH does not have information on the annual number of requests that may subject to an assessment and cannot anticipate the nature of such requests or the associated expense that may be recovered by assessing fees. The USNH assumes, if fees were assessed, there would be some administrative costs associated with fee processing and compliance monitoring, and additional fee revenue. Regarding inspection of readily available records, the USNH indicates there would be no fiscal impact as the institutions do not currently charge for inspection of readily available information.

The New Hampshire Association of Counties states this bill will have an indeterminable impact on county revenues and expenditures. The Association states costs and fees would vary by county and based on the specific request.

The New Hampshire Municipal Association states municipal officers frequently spend many hours responding to Right-to-Know Law requests and being able to recover a portion of the cost will increase municipal revenue. The Association does not have information on time spent responding to such requests and has no basis for projecting the time required in the future. The Association assumes allowing municipalities to require payment before retrieving records may deter some requests and reduce municipal expenditures since it is not unusual for individuals to request information and then fail to pick it up.

The Legislative Branch indicates it does not charge a fee for inspection of readily available information and that provision of the bill will have no fiscal impact. The Branch assumes any additional revenue related to the retrieval of other information will depend on the number and complexity of complaints which is not known.

HB 1611-FN-LOCAL, allowing a public body or agency to charge a fee for costs of retrieving public records under the right-to-know law. **INEXPEDIENT TO LEGISLATE.**

Rep. Michael Sylvia for Judiciary. This bill would allow a public body to charge for the cost of retrieving, copying and redacting confidential and other exempt information requested under the Right-to-Know Law. While the majority believes there should be a limit to excessive requests under RSA 91-A, the committee felt public bodies currently have the ability to fend off frivolous requests. The bill as written would create a barrier to government transparency. **Vote 16-1.**

LEGISLATIVE ADMINISTRATION

HB 1531, permitting the legislature to open the state house on weekends. **OUGHT TO PASS.**

Rep. Stephen Shurtleff for Legislative Administration. This bill would allow the New Hampshire Legislature to enter into a memorandum of understanding with a non-profit entity to enable the New Hampshire State House to be open on Saturdays. The memorandum would address issues including security, staffing, hours of operation, and janitorial services. All expenses incurred would be borne by the non-profit entity. The final memorandum must be approved by the Joint Facilities Committee before Saturday openings would be permitted. **Vote 9-0.**

HB 1593-FN-LOCAL, restricting fees for obtaining copies of public records and requiring certain information on public official and legislative financial disclosure forms. **INEXPEDIENT TO LEGISLATE.**

Rep. Lucy Weber for Legislative Administration. The first section of this bill prohibits public bodies and agencies from recovering labor costs for searching and compiling information requested under the Right-to-Know Law. The committee received testimony that these costs are already unrecoverable under the present language, so the change is not needed. The remaining two sections require the public filing of significant information having to do with member spouses, their employment, and their business interests. Representatives are bound by the Legislative Ethics rules and it is important that Representatives' information is available to the public. Committee members believed that spouses of Representatives should retain their privacy. **Vote 9-0.**

PUBLIC WORKS AND HIGHWAYS

HB 1602-FN-A-LOCAL, establishing a road usage fee and making an appropriation therefor. **REFER FOR INTERIM STUDY.**

Rep. Mark McConkey for Public Works and Highways. The bill evolved from a mechanism to create a fair and level playing field for alternative fuel vehicles to ensure owners of these vehicles pay their fair share for using New Hampshire's roads and bridges. While many feel this concept should be adopted the proposed bill evolved into what some consider a way to raise extra revenue for the Department of Transportation. The proposed bill would not only level the playing field for alternative fuel vehicles but would have raised fees on so called high mileage vehicles. The full committee supports a recommendation of Interim Study. **Vote 18-0.**

RESOURCES, RECREATION AND DEVELOPMENT

HB 1291, eliminating the land use board, establishing an advisory board, and requiring approval of federal land acquisitions by the governor, executive council, and general court. **INEXPEDIENT TO LEGISLATE.**

Rep. Judith Spang for Resources, Recreation and Development. This bill addresses the process by which the federal government acquires land in New Hampshire. The committee felt that adding a vote of the General Court to the approval process that already includes the Governor and Council, the Department of Resources and Economic Development (DRED), and a local municipal vote is excessive. The proposed advisory board of five landowners to review federal land acquisition would not include membership specifically from the area involved. The current process is thorough. DRED evaluates the terms and conditions of acquisitions and adherence to NH statutory limits on the amount of land the federal government can own in the state. The percentage of a municipality's total assessed valuation that the federal government may own is being addressed by another House bill. **Vote 16-0.**

HB 1536-FN-A, relative to funding for search and rescue operations of the fish and game department, and applying resident fishing licenses to use by the purchaser's family. **INEXPEDIENT TO LEGISLATE.**

Rep. David Russell for Resources, Recreation and Development. The funding for search and rescue operations by the Fish and Game Department comes from boat, snowmobile, and OHRV registrations. If there is a shortfall, the department pays for the remainder using hunting and fishing license revenue. Removing this dedicated source of funding and replacing it with an appropriation from the General Fund was not seen as a stable source of revenue for the program and also loses out on any future revenue growth from increased numbers of registrations. Testimony from the department shows that the Search and Rescue Fund will close without a deficit. Regarding the part of the bill creating a family fishing license, children under 16 already do not need a license to fish. Such a license would also create a challenge for enforcement, requiring conservation officers to verify the marital status of an adult fishing under another person's license. **Vote 17-0.**