

NEWS RELEASE

FROM: Derek M Horne, Town Administrator

RE: Goffstown Public Library Response to Right to Know Request

DATE: 03/12/2024

GOFFSTOWN – The Goffstown Select Board are confident in the Library Director's decision to provide redacted copies of governmental records responsive to a RSA 91-A request, following the Town attorney's legal advice.

On Sunday, February 4, 2024 the Goffstown Public Library (GPL) received an RSA 91-A request seeking information to find out if candidates for Library Board of Trustees currently hold library cards with the GPL. Prior to responding to this request, the Library Director coordinated with Goffstown Town Administrator to seek legal advice from the Town's legal counsel, Drummond Woodsum. The Town attorney advised the library should provide any governmental record it has that would show whether each of the listed people are library members. The Town attorney advised the person's phone number(s), address, SSN number, or other personal information should not be disclosed and should be redacted before disclosure.

On Monday, February 5, 2024, the Library Director provided redacted copies of governmental records responsive to the RSA 91-A request, following the Town attorney's legal advice.

The Goffstown Select Board voted 4-0-0 on Monday, March 11, 2024 to waive the Town's attorney client privilege on the emails from Attorney Matt Serge, Drummond Woodsum, related to the release of these records (emails attached).

Derek Horne

From: Matthew R. Serge <MSerge@dwmlaw.com>
Sent: Monday, February 5, 2024 3:57 PM
To: Derek Horne
Cc: Danielle Basora; Diane Hebert; Kathy Coughlin; Dianne Hathaway
Subject: RE: RSA 91-A Request

NOTICE: This email originated outside the **Town of Goffstown**.

Hi, Derek. The request is subject to RSA 91-A, and the library should provide any governmental record it has that would show whether or not each of the listed people are library members. Please note though that the only information that should be provided is whether or not each person is a member. The person's phone number(s), address, SSN number, or other personal information should not be disclosed. If any of this information is included on a record it should be redacted before disclosure.

The request should not be answered in a yes/no format since RSA 91-A does not entitle a requesting party to ask questions. Rather, the person has a right to see governmental records that are responsive to a request.

Please let me know if you have additional questions. Thank you.

-Matt

From: Derek Horne <Derek.Horne@GoffstownNH.gov>
Sent: Monday, February 5, 2024 9:56 AM
To: Matthew R. Serge <MSerge@dwmlaw.com>
Cc: Danielle Basora <Danielle.Basora@GoffstownNH.gov>; Diane Hebert <dianerosehebert@gmail.com>; Kathy Coughlin <cubbiedoc@comcast.net>; Dianne Hathaway <DianneH@GoffstownLibrary.com>
Subject: FW: RSA 91-A Request
Importance: High

****CAUTION**** This message originated from an **external source**. DO NOT reply, click links, or open attachments unless you have verified the sender and know the content is safe.

Matt,

Can you provide guidance to the Library on the 91-A request below?

Thank you,

Derek

Derek M. Horne
Town Administrator
Town of Goffstown
16 Main Street
Goffstown, NH 03045
P | 603-497-8990 ext. 101
F | 603-497-8993
Derek.Horne@GoffstownNH.Gov

From: Dianne Hathaway <DianneH@GoffstownLibrary.com>
Sent: Monday, February 5, 2024 9:52 AM
To: Derek Horne <Derek.Horne@GoffstownNH.gov>
Cc: Subject: RSA 91-A Request
Importance: High

Good morning, Derek,
I have received a 91-A request:

Hello Dianne,

I'd like to formally request information to find out if the following people currently hold library cards with the GPL.

*Brian Campbell
Elizabeth Jipson
Joe Alexander
Judy Johnson
Lisa Mazur
Theresa Curtis*

My interpretation of the law, below, is that I can release the information due to the official RSA 91-A request. The answers would be yes or no, and there is no request for cardholder contact or usage information. I do not want to make that decision without legal review. Will you send the request along for me, please? The charge can be applied to budget line 55010000-45030.

NH RSA 201-D:11 Library User Records; Confidentiality.

I. Library records which contain the names or other personal identifying information regarding the users of public or other than public libraries shall be confidential and shall not be disclosed except as provided in paragraph II. Such records include, but are not

limited to, library, information system, and archival records related to the circulation and use of library materials or services.

II. Records described in paragraph I may be disclosed to the extent necessary for the proper operation of such libraries and shall be disclosed upon request by or consent of the user or pursuant to subpoena, court order, or **where otherwise required by statute.**

III. Nothing in this section shall be construed to prohibit any library from releasing statistical information and other data regarding the circulation or use of library materials provided, however, that the identity of the users of such library materials shall be considered confidential and shall not be disclosed to the general public except as provided in paragraph II.

Thank you,
Dianne

Dianne Hathaway, Library Director

2022 NHLTA Library Director of the Year
2019 NHLTA Library of the Year
2018 Ann Geisel Award of Merit Recipient, NHLA

Goffstown Public Library
2 High Street
Goffstown, NH 03045
(603) 497-2102 x601

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Derek Horne

From: Matthew R. Serge <MSerge@dwmlaw.com>
Sent: Friday, February 23, 2024 11:15 AM
To: Derek Horne
Cc: Steven M. Whitley
Subject: RE: Clarification of 91-A advice

NOTICE: This email originated outside the **Town of Goffstown**.

Hi, Derek. Thank you for your message, and I am happy to provide some clarification to my previous comment. If I recall correctly, a member of the public requested confirmation that certain individuals have a library card. It appears that this request is related to an upcoming election where these individuals are running for library trustee. Of course, the reason for a 91-A request is irrelevant, but the background information is helpful. When considering access to library records, we must consider both RSA 201-D:11 and RSA 91-A.

RSA 201-D:11, in part, states:

- I. Library records which contain the names or other personal identifying information regarding the users of public or other than public libraries shall be confidential and shall not be disclosed except as provided in paragraph II. Such records include, but are not limited to, library, information system, and archival records related to the circulation and use of library materials or services, including records of materials that have been viewed or stored in electronic form.
- II. Records described in paragraph I may be disclosed to the extent necessary for the proper operation of such libraries and shall be disclosed upon request by or consent of the user or pursuant to subpoena, court order, or where otherwise required by statute.

When examining this statute, the important phrase is “library records”, which is defined as those records “related to the circulation and use of library materials or services, including records of materials that have been viewed or stored in electronic form”. Thus, I interpret this statutory section as prohibiting the disclosure of any library patron’s record showing what he/she has taken out of the library, or otherwise accessed at the library, etc. I do not interpret the statute as prohibiting the disclosure of the names (and names only) of those individuals who hold library cards. I say name only because addresses, phone numbers, and other personal information would not be shared. And, consistent with RSA 201-D:11, I, no information concerning any member’s use of the library is disclosable.

Regardless, however, RSA 201-D:11, II provides that record may be disclosed as required by statute. This arguably opens the door to using RSA 91-A to require the release of any library records that are not otherwise exempt under RSA 91-A:5, IV. This statute exempts the following from disclosure:

- IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a public body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

The New Hampshire Supreme Court has consistently held that when deciding whether a particular record is exempt under this provision, the municipality must determine not only that the record is confidential, but also that the release of the record would constitute an invasion of privacy. In doing so, the municipality needs to balance the public's interest in seeing the information versus the privacy interest at stake.

Here, I do not see releasing the names of individuals who have library cards as an invasion of privacy, nor a violation of RSA 201-D:11. Indeed, since the library is a public building, anyone can enter and observe those who use the circulation desk and provide a library card. This is different from providing access to each user's personal contact information and records showing what the user has taken out of the library, both of which would be an invasion of privacy.

If I recall, the request that was received for this matter was not specific to a record, but rather asked simply for confirmation that certain individuals have library cards. RSA 91-A affords members of the public the right to request governmental records, and attend public meetings, but it does not entitle someone to ask questions. That said, I think the better course of action is treat the request like a record request. The definition of "governmental records" is

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."

So, the next question is whether the library has any “governmental records” responsive to the request. This could include a spreadsheet with current library member names, for example. This would arguably qualify as a “governmental record” because the document would be created by a public body in furtherance of its official function. Now, please note that the government is not required to create a new record in order to answer a request. See RSA 91-A:4, VII (Nothing in this chapter shall be construed to require a public body or agency to compile, cross-reference, or assemble information into a form in which it is not already kept or reported by that body or agency). So, unless the library already has a document that lists the names of current members, it need not create one. If there is not existing record that answers the person’s request, the library can say that. If a responsive record does exist, and contains any additional information such as home address, phone numbers, emails, etc., that information can be redacted since it would be exempt from disclosure under RSA 91-A:5, IV.

Finally, I want to note that to the extent one or more individuals object to information being shared, they have the right to file an action in superior court to prevent the disclosure until the issue can be litigated (i.e. whether the library is required to release a particular record).

As I noted the other day, I will be out of the office next week for school break, and returning on Monday, March 4. If you do need further assistance with this next week, I believe Steven will be available on Thursday and Friday. He and I have discussed this matter. I am copying him on this email as well. Thanks.

-Matt

From: Derek Horne <Derek.Horne@GoffstownNH.gov>
Sent: Thursday, February 22, 2024 9:37 AM
To: Matthew R. Serge <MSerge@dwmlaw.com>
Cc: Dianne Hathaway <DianneH@GoffstownLibrary.com>; Danielle Basora <Danielle.Basora@GoffstownNH.gov>; Diane Hebert <dianerosehebert@gmail.com>; Kathy Coughlin <cubbiedoc@comcast.net>
Subject: FW: Clarification of 91-A advice
Importance: High

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Good morning Matt,

Two weeks ago, I sent you an email seeking information about a Right to Know request seeking library cardholder information. Attached is your response. Since acting on your response, the Library Trustees have received feedback the release of records was contested as a violation of NH RSA 91-A:5 (Exemptions to RTK law) and NH RSA 201-D:11.

The Library Trustees sent along the request below, seeking clarification on the decision. As I understand it, they are not looking to formally respond to feedback they've received; rather they want to understand the rationale behind the advice considering 91-A:5 and 201-D:11.

Thank you,
Derek

Derek M. Horne
Town Administrator
Town of Goffstown
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Goffstown, NH 03045
P | 603-497-8990 ext. 101
F | 603-497-8993
Derek.Horne@GoffstownNH.Gov

From: Dianne Hathaway <DianneH@GoffstownLibrary.com>
Sent: Thursday, February 22, 2024 9:24 AM
To: Derek Horne <Derek.Horne@GoffstownNH.gov>
Cc: Diane Hebert <dianerosehebert@gmail.com>; Kathy Coughlin <cubbiedoc@comcast.net>; Dianne Hathaway <DianneH@GoffstownLibrary.com>
Subject: Fw: Clarification of 91-A advice
Importance: High

Good morning, Derek. Will you please send this along to Matt as a follow-up to the email regarding the previous 91-A request?

Thanks,
Dianne

Dianne Hathaway, Library Director

2022 NHLTA Library Director of the Year
2019 NHLTA Library of the Year
2018 Ann Geisel Award of Merit Recipient, NHLA

Goffstown Public Library
2 High Street
Goffstown, NH 03045
(603) 497-2102 x601

From: Diane Hebert <dianerosehebert@gmail.com>
Sent: Thursday, February 22, 2024 8:43 AM
To: Dianne Hathaway <DianneH@GoffstownLibrary.com>
Subject: Clarification of 91-A advice

NOTICE: This email originated outside the **Town of Goffstown.**

Good morning, Dianne! I hope today finds you well.

The Board is seeking clarification from town counsel, if possible, on the advice given in regards to the 91-A request for the library records of the six candidates running for Library Trustee positions.

As you know, the release of records was contested as a violation of NH RSA 91-A:5 (Exemptions to RTK law) and NH RSA 201-D:11, so a response that addresses the rationale for the advice in light of those particular statutes would be most helpful.

Thanks,
Diane

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