

# TOWN OF AUBURN

## ADMINISTRATIVE POLICY FOR REQUESTS FOR GOVERNMENTAL DOCUMENTS AND RECORDS

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The preamble to RSA 91-A indicates that: *“Openness in the conduct of the public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.”*

### Purpose

To ensure the Town of Auburn meets not only the letter, but the spirit, of the so called “Right to Know” law (RSA 91-A), the Town of Auburn is adopting the following policy to provide guidance to the public seeking access to governmental records so the right to access and inspect such records is not unintentionally impeded. Further, this policy is intended to provide Town officials and personnel guidance to ensure requests for access to governmental records are met in a timely and appropriate manner.

### Policy / Principles

- 1) The public has the right to inspect, during regular business hours and at the appropriate department location, all public governmental records, and to request copies of such records, except for those records that are temporarily unavailable or are specifically exempted by law.
- 2) The term “governmental record” is defined as: “[A]ny 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. “ The term “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 terms “governmental record” and “public record” are synonymous for purposes of the right to know law.
- 3) The public does not have to offer a reason or demonstrate a need to inspect a record, nor should a reason be requested. If a record is public, it must be disclosed if requested, regardless of the motive for the request.
- 4) The public must reasonably describe the record or records being requested. An overly broad, general request for records will not be deemed to be an appropriate request for public records that can reasonably be fulfilled by the Town.
- 5) The Town is not required to create a record that does not exist, or to cross-reference or compile data to create a record in a specific format requested, including electronic format. The Town is simply required to provide the

TOWN OF AUBURN  
ADMINISTRATIVE POLICY FOR REQUESTS FOR  
GOVERNMENTAL DOCUMENTS AND RECORDS

---

document(s) or record(s) in the format the Town maintains the record. If the Town maintains materials, such as a tape recording used to create the minutes of a meeting, this constitutes an accessible public record, unless otherwise exempted under the law.

- 6) Written requests for governmental records, which reference right-to-know, Freedom of Information Act (FOIA) or RSA 91-A, received by the Town of Auburn are to be administered through the Office of the Town Administrator, in coordination with the appropriate department(s) and Town Counsel if necessary.
- 7) Governmental records shall be made available for inspection and or copying at the municipal office where the record is stored. At no time shall governmental records leave the public facility for any reason, unless it is in the possession of a Town official or employee with expressed authority to travel with the document(s) for a specified purpose.

**Exemptions**

- 1) There is a general presumption favoring disclosure of public records. Exemptions from the mandatory disclosure rule are interpreted narrowly. Records that are exempt from public access are defined under various New Hampshire laws, including RSA 91-A, and generally include personnel records, medical records, welfare, library user, vital records or other confidential records which the NH Legislature has determined would constitute an invasion of privacy or jeopardize the security or safety of an individual.
- 2) Records that are generally exempt from disclosure are preliminary drafts, notes, memoranda and other documents not in their final form and not disclosed, circulated or available to a quorum or a majority of the members of a public body. For example, personal notes which a board member uses for his or her own purposes during a public meeting, which are not shared with other board members, are exempt from disclosure.
- 3) If it is deemed necessary by Town officials or personnel, Town Counsel will be asked to review a request for public documents or to review the documents requested to determine if they are subject to disclosure, or if redaction of non-public information from documents is an appropriate action. If information is redacted, an explanation of why certain information is redacted shall be provided to the requestor, citing the applicable exemption(s) of disclosure under NH RSA 91-A.
- 4) Attorney-client privileged communications are generally exempt from disclosure. All correspondence from and to counsel to any Town employee or board, or Town official acting in his or her official capacity, should be deemed

TOWN OF AUBURN  
ADMINISTRATIVE POLICY FOR REQUESTS FOR  
GOVERNMENTAL DOCUMENTS AND RECORDS

---

privileged and not subject to disclosure in the first instance. Town counsel should be consulted to determine whether circumstances may warrant consideration of waiver of the attorney client privilege.

**Procedures**

In response to a general request made verbally, by mail or by electronic mail, by an individual(s) for access to a governmental record, the Town shall furnish the record for inspection or, if requested, copying, as long as the record is readily available and the staff determines that the record is not otherwise exempt. Town staff shall respond to a request for a governmental record(s) regardless of whether the request cites specifically to the right to know law, RSA 91-A.

Municipal staff may ask the individual 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. All requests must be responded to within five (5) business days. In response to the request, Town staff shall either: (a) produce the record(s); (b) deny the request with written reasons cited; or (c) provide a written acknowledgement of the request stating the reasonable time necessary to determine whether the request will be granted or denied, or, if granted, the time necessary for the Town to produce the record(s) for inspection and/or copying.

Should staff determine that the requested record is exempt from public inspection, or if there is uncertainty as to whether or not the record is exempt, or if there are associated records outside of the staff member's direct control, staff shall advise the requestor to furnish a signed written request for the record to the Office of the Town Administrator, citing right-to-know request under RSA 91-A.

**Subpoena or Interrogatory Requests**

All requests for access to governmental records through a "duces tecum" subpoena or by written Interrogatory requests shall be immediately brought to the attention of the Town Administrator to ensure both timely compliance and consultation with Town Counsel.

**Redaction of Non-Public Information**

Although redaction of non-public information is not specifically addressed in 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 official, body or agency may have a duty not to disclose.

TOWN OF AUBURN  
ADMINISTRATIVE POLICY FOR REQUESTS FOR  
GOVERNMENTAL DOCUMENTS AND RECORDS

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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.

Redaction must effectively block out the exempt portion of the record so that it is unreadable. Should information need to be redacted, a written explanation citing the applicable exemptions of disclosure under RSA 91-A will accompany the redacted records to the requestor, to explain the appropriateness of the redaction.

Preservation Duty

If a request for a governmental record(s) is denied on the grounds that it is exempt from disclosure under the right to know law, the requested material shall be preserved for at least 90 days, or while any lawsuit filed pursuant to the right to know law remains pending. This provision does not alleviate the Town's obligation to preserve governmental records for the minimum time period set forth in R.S.A. 33-A:3-a or any regulations adopted under that chapter.

Detailed Records Request Form

To assist in ensuring requests for governmental documents and records are complied with accurately and timely, a "Request for Access to a Governmental Record" form appears as Appendix A to this policy. This form may be used to ensure the Town provides the record(s) or information sought to the extent that it is able to do so. A Town employee accepting a completed request form shall date stamp the form upon receipt. However, a person requesting access to a governmental record shall not be denied access to a record(s) which is subject to disclosure for failure to complete this form.

Fees and Charges

Should the Town provide copies of governmental records to a requestor, the Town shall charge fees as outlined in the Town of Auburn's Document Fee Schedule adopted by the Board of Selectmen, unless a different fee is specified in a state statute for specific documents or governmental records.

TOWN OF AUBURN  
ADMINISTRATIVE POLICY FOR REQUESTS FOR  
GOVERNMENTAL DOCUMENTS AND RECORDS

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**E-Mail Communications**

As part of this policy, the Town is establishing a public disclaimer to be placed on all outgoing e-mails from municipal officials and staff which will clearly advise recipients that their communications with the Town may be subject to public disclosure.

A similar disclaimer will be included to the Town's website, particularly on pages that provide links to e-mail addresses for Town officials and staff.

The disclaimer should read as follows:

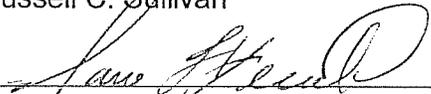
*NOTICE: Privacy should not be assumed with emails associated with Town Business. Under New Hampshire's Right-to-Know law (RSA 91-A), documents – including e-mail communications – in the possession of public officials or public agencies concerning Town business are classified as public records that may be subject to public disclosure.*

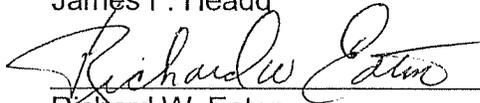
**Effective Date:**

This policy shall take effect on December 1, 2014.

Adopted by the Board of Selectmen the 24<sup>th</sup> day of November, 2014.

  
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Russell C. Sullivan

  
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James F. Headd

  
\_\_\_\_\_  
Richard W. Eaton  
AUBURN BOARD OF SELECTMEN

Received and recorded this 3 day of December, 2014

  
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Joanne T. Linxweiler, Town Clerk

TOWN OF AUBURN  
ADMINISTRATIVE POLICY FOR REQUESTS FOR  
GOVERNMENTAL DOCUMENTS AND RECORDS

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APPENDIX A  
REQUEST FOR ACCESS TO A GOVERNMENTAL RECORD

Request Copies of:

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Request Review the following Documents:

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Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Date: \_\_\_\_\_