

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT  
MAY TERM

DEB PAUL

v.

TOWN OF LONDONDERRY

**PETITION FOR ACCESS TO PUBLIC RECORDS**

NOW COMES, Petitioner, Deb Paul, by and through counsel, Coyle Law, PLLC, and respectfully petitions this Honorable Court for relief pursuant to RSA 91-A and Part I, Article 8 of the New Hampshire Constitution. The relief requested addresses the 1) original violation of the Right to Know Law and 2) the continued violation of the Right to Know Law and 3) the need for judicial relief. In further support, the following is stated:

**PARTIES, JURISDICTION, VENUE**

1. Petitioner, Deb Paul, is a resident of Londonderry, New Hampshire.
2. Respondent, the Town of Londonderry, is a “public body” in the State of New Hampshire and, as such, is subject to the Right-to-Know law under RSA 91-A:1a, VI and N.H. Const. Part I, Art. 8.
3. This Court has jurisdiction over this matter pursuant to RSA 91-A:7. “Any person aggrieved by a violation of [RSA 91-A] may petition to Superior Court for injunctive relief. ... The petition shall be deemed sufficient if it states fact constitution a violation of this chapter. ...” RSA 91-A:7.

4. Venue is proper this Court pursuant to RSA 507:9 because the Petitioner and Respondent are located in Rockingham County.

### FACTS

5. On March 13, 2023 Petitioner through counsel, Kevin Coyle, requested a single public record from the Town of Londonderry. Specifically, Petitioner sent the following request to Town Manager Michael Malaguti:

“Under NH RSA 91-a, I hereby request a copy of a correspondence from Councilor John Farrell to Councilor Deb Paul. This is the communication Ms. Paul was provided access to on today’s date. As the document is readily available, I would expect access to it within 5 days allowed under NH law.”

6. On March 20, 2023, the Town, through counsel Attorney Elizabeth Bailey, refused to provide the document requested, characterizing it as an “Internal Town employee email to John Farrell, Chairman Londonderry Town Council, copying Tara Koza, HR Manager and attached internal complaint” *See Attachment 1*.
7. The Town claimed an exemption, citing RSA 91-A:5, IV.
8. The Town failed to comply with RSA 91-A:4 IV(c) by failing to provide a brief explanation of how the exemption applies to the record withheld.
9. Counsel for the Plaintiff reached out multiple times to Attorney Bailey to urge the Town to comply with the request which involved an employee complaint against an elected Town Official.
10. The Town of Londonderry 1) failed to comply with the 91-A request, 2) failed to articulate any explanation for how the claimed exemption applied to the withheld record; and 3) specifically invited this litigation.

## ARGUMENT

11. The New Hampshire Right-to-Know law provides “every citizen with a right to inspect and copy government records except as otherwise prohibited by statute.” RSA 91-A:4, I. Such government records must be made available upon request. RSA 91-A:4, IV.
12. The purpose of the Right-to-Know Law “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.” RSA 91-A:1. The law “furthers the state constitutional requirement that the public’s right to access to governmental proceedings and records shall not be unreasonably restricted.” N.H. Right to Life v. Director, New Hampshire Charitable Trusts Unit, 169 N.H. 95, 103 (2016) (internal quotation omitted); see also N.H. Const. pt. 1, art. 6.
13. “Questions regarding the Right-to-Know law [must be resolved] with a view to providing the utmost information. ...” NH Right to Life, 169 N.H. at 103. The Court must “broadly construe provisions favoring disclosure and interpret exceptions restrictively.” Id.
14. A party seeking to avoid disclosure “bears a heavy burden to shift the balance toward nondisclosure.” Id.
15. The New Hampshire Right-to-Know procedure for response is simple. Upon receipt of a request for records, the public body must make the same available immediately or within 5 business days, “deny the request in writing with reasons, or furnish written acknowledgement of the receipt of the request and a statement of time reasonably necessary to determine whether the request shall be granted or denied.” RSA 91-A:4, IV.

16. RSA 91-A:8 mandates the public entity “to be liable for reasonable attorney’s fees and costs incurred in a lawsuit under this chapter, provided that the court finds that such lawsuit was necessary in order to enforce compliance with the provisions of this chapter or to address a purposeful violation of this chapter.”
17. Here, Petitioner made a request for record to the Town of Londonderry and the record was not provided. When the lack of compliance was discovered and a further opportunity was given to comply with the law, the Town again declined to provide the requested record.
18. This response is a clear violation of the Right-to-Know Law.
19. Petitioner requests this Court order the production of the records as outlined in Paragraph I and award attorneys’ fees pursuant to RSA 91-A:8, I. Further, Petitioner requests the Court grant leave to supplement this request to include remedies pursuant to RSA 91-A:8, IV if evidence supporting such is revealed through the discovery process.

WHEREFORE, Petitioner specifically requests this Court:

- A. Order production of records requested in Paragraph 1;
- B. Order Respondent to pay the cost of attorneys’ fees necessary to secure the release of such documents; or
- C. Grant Petitioner leave to supplement the request for remedies pursuant to RSA 91-A:8, IV if evidence supporting such is revealed through the discovery process.
- D. Schedule a hearing on this matter for the parties to be heard.

The Petitioner

Deb Paul

By her Attorneys,

COYLE LAW, PLLC

/s/ Kevin L. Coyle

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Kevin L. Coyle; NHBA #10501  
660 Middle Street  
Portsmouth, NH 03801  
(603) 234-8654  
[coylelawnh@gmail.com](mailto:coylelawnh@gmail.com)

DATE: May 4, 2023

### **CERTIFICATE OF SERVICE**

I hereby certify a copy of the foregoing petition was sent this date via email to Attorney Elizabeth Bailey at [ebailey@sheehan.com](mailto:ebailey@sheehan.com). Attorney Bailey indicated she would accept service on behalf of the Town of Londonderry.

/s/ Kevin L. Coyle

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Kevin L. Coyle  
NH Bar # 10501

## ATTACHMENT 1

# SHEEHAN PHINNEY

Boston • Concord • Manchester • Portsmouth • Upper Valley

Elizabeth A. Bailey, Esq.  
Direct Dial: 603-627-8241  
ebailey@sheehan.com

Reply to: Manchester Office  
1000 Elm Street, 17<sup>th</sup> floor  
PO Box 3701  
Manchester, NH 03105-3701

March 20, 2023

**Via Email Only**

Kevin Coyle, Esq.  
[coyle.law.nh@gmail.com](mailto:coyle.law.nh@gmail.com)

**Re: March 13, 2023 Right to Know Request Related to Communication to Town  
Councilor Paul**

Dear Attorney Coyle:

Thank you for your March 13, 2023 email to Town Manager Michael Malaguti, in which pursuant to RSA 91-A you requested a "copy of correspondence from Councilor John Farrell to Councilor Deb Paul. This is the communication Ms. Paul was provided access to on [March 13, 2023]." For ease of reference, I attach a copy of this RSA 91-A request. Our law firm represents the Town on some matters, and I have been asked to respond to you on the Town's behalf as legal counsel.

When responding to an RSA 91-A request, the Town complies with the definition of government records stated in RSA 91-A:1-a:

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'

The Town also complies with the exemptions stated in RSA 91-A:5 and those created by case law.

To respond to your RSA 91-A request, this will confirm that the communication provided to Councilor Paul on March 13, 2023 was not a correspondence from Councilor John Farrell to Councilor Deb Paul. Below please find a summary of the requested communication, and the reasons why the Town believes it is properly exempt from disclosure under RSA 91-A.

Kevin Coyle, Esq.  
March 20, 2023  
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Bate Stamp Page Number(s)	Category of Document	Statute/Case Law/Administrative Rule/Court Order*
March 13, 2023 RTK 1-4	Internal Town employee email to John Farrell, Chairman, Londonderry Town Council, copying Tara Koza, HR Manager and attached internal complaint	RSA 91-A:5, IV exemptions concerning the "internal personnel practices" and "confidential" information whose disclosure would constitute invasion of privacy, based on applicable definitions, balancing tests and/or invasion of privacy considerations outlined in <u>Reid v. N.H. AG</u> , 169 N.H. 509 (2016); <u>Seacoast v. Newspapers, Inc. v. City of Portsmouth</u> , 173 N.H. 325 (2020); <u>Union Leader Corp. v. Town of Salem</u> , 173 N.H. 345 (2020); <u>Hampstead School Board v. School Admin. Unit No. 55</u> , 2021 N.H. LEXIS 64 (2021)

Accordingly, the Town does not provide the requested communication, which the Town believes to be exempt from disclosure under RSA 91-A for the reasons described above. Thank you.

Sincerely,



Elizabeth A. Bailey

EAB:edf

Cc: Town Counsel Chair John W. Farrell - [jfarrell@londonderrynh.org](mailto:jfarrell@londonderrynh.org)