TITLE VI
PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 91-A
ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

Section 91-A:1

91-A:1 Preamble. – Openness in the conduct of 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.

Source. 1967, 251:1. 1971, 327:1. 1977, 540:1, eff. Sept. 13, 1977.

Section 91-A:1-a

91-A:1-a Definitions. – In this chapter:

I. "Advisory committee" means any committee, council, commission, or other like body whose primary purpose is to consider an issue or issues designated by the appointing authority so as to provide such authority with advice or recommendations concerning the formulation of any public policy or legislation that may be promoted, modified, or opposed by such authority.

II. "Governmental proceedings" means the transaction of any functions affecting any or all citizens of the state by a public body.

III. "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."

IV. "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.

V. "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.

VI. "Public body" means any of the following:

(a) The general court including executive sessions of committees; and including any advisory committee established by the general court.

(b) The executive council and the governor with the executive council; including any advisory committee established by the governor by executive order or by the executive council.

(c) Any board or commission of any state agency or authority, including the board of trustees of the

university system of New Hampshire and any committee, advisory or otherwise, established by such entities.

(d) 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.

(e) 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.

Source. 1977, 540:2. 1986, 83:2. 1989, 274:1. 1995, 260:4. 2001, 223:1. 2008, 278:3, eff. July 1, 2008 at 12:01 a.m.; 303:3, eff. July 1, 2008; 303:8, eff. Sept. 5, 2008 at 12:01 a.m.; 354:1, eff. Sept. 5, 2008.

Section 91-A:2

91-A:2 Meetings Open to Public. –

I. For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. "Meeting" shall also not include:

(a) Strategy or negotiations with respect to collective bargaining;

(b) Consultation with legal counsel;

(c) A caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 44:2; or

(d) Circulation of draft documents which, when finalized, are intended only to formalize decisions previously made in a meeting; provided, that nothing in this subparagraph shall be construed to alter or affect the application of any other section of RSA 91-A to such documents or related communications.

II. Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such meetings, including names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general

circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.

(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.

(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

(d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

(e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.

Source. 1967, 251:1. 1969, 482:1. 1971, 327:2. 1975, 383:1. 1977, 540:3. 1983, 279:1. 1986, 83:3. 1991, 217:2. 2003, 287:7. 2007, 59:2. 2008, 278:2, eff. July 1, 2008 at 12:01 a.m.; 303:4, eff. July 1, 2008.

Section 91-A:2-a

91-A:2-a Communications Outside Meetings. –

I. Unless exempted from the definition of "meeting" under RSA 91-A:2, I, public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with the provisions of RSA 91-A:2, II or III.

II. Communications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

Source. 2008, 303:4, eff. July 1, 2008.

Section 91-A:2-b

91-A:2-b Meetings of the Economic Strategic Commission to Study the Relationship Between New Hampshire Businesses and State Government by Open Blogging Permitted. – [Repealed 2012, 232:14, eff. Dec. 1, 2012.]

Section 91-A:3

91-A:3 Nonpublic Sessions. –

I. (a) Public bodies shall not meet in nonpublic session, except for one of the purposes set out in paragraph II. No session at which evidence, information, or testimony in any form is received shall be closed to the public, except as provided in paragraph II. No public body may enter nonpublic session, except pursuant to a motion properly made and seconded.

(b) Any motion to enter nonpublic session shall state on its face the specific exemption under paragraph II which is relied upon as foundation for the nonpublic session. The vote on any such motion shall be by roll call, and shall require the affirmative vote of the majority of members present.

(c) All discussions held and decisions made during nonpublic session shall be confined to the matters set out in the motion.

II. Only the following matters shall be considered or acted upon in nonpublic session:

(a) The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted.

(b) The hiring of any person as a public employee.

(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant.

(d) Consideration of the acquisition, sale, or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.

(e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the public body or any subdivision thereof, or against any member thereof because of his or her membership in such public body, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any public body for the purposes of this subparagraph.

(f) Consideration of applications by the adult parole board under RSA 651-A.

(g) Consideration of security-related issues bearing on the immediate safety of security personnel or inmates at the county correctional facilities by county correctional superintendents or their designees.

(h) Consideration of applications by the business finance authority under RSA 162-A:7-10 and 162-A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application.

(i) Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

(j) Consideration of confidential, commercial, or financial information that is exempt from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or RSA 541-A.

III. Minutes of meetings in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of the public body itself, or render the proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying out of all emergency functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. This shall include training to carry out such functions. In the event of such circumstances, information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply.

Source. 1967, 251:1. 1969, 482:2. 1971, 327:3. 1977, 540:4. 1983, 184:1. 1986, 83:4. 1991, 217:3. 1992, 34:1, 2. 1993, 46:1; 335:16. 2002, 222:2, 3. 2004, 42:1. 2008, 303:4. 2010, 206:1, eff. June 22, 2010.

Section 91-A:4

91-A:4 Minutes and Records Available for Public Inspection. –

I. Every citizen during the regular or business hours of all public bodies or agencies, and on the regular business premises of such public bodies or agencies, has the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies, including minutes of meetings of the public bodies, and to copy and make memoranda or abstracts of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5. In this section, "to copy" means the reproduction of original records by whatever method, including but not limited to photography, photostatic copy, printing, or electronic or tape recording.

I-a. Records of any payment made to an employee of any public body or agency listed in RSA 91-A:1-a, VI(a)-(d), or to the employee's agent or designee, upon the resignation, discharge, or retirement of the employee, paid in addition to regular salary and accrued vacation, sick, or other leave, shall immediately be made available without alteration for public inspection. All records of payments shall be available for public inspection notwithstanding that the matter may have been considered or acted upon in nonpublic session pursuant to RSA 91-A:3.

II. After the completion of a meeting of a public body, every citizen, during the regular or business hours of such public body, and on the regular business premises of such public body, has the right to inspect all notes, materials, tapes, or other sources used for compiling the minutes of such meetings, and

to make memoranda or abstracts or to copy such notes, materials, tapes, or sources inspected, except as otherwise prohibited by statute or RSA 91-A:5.

III. Each public body or agency shall keep and maintain all governmental records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the governmental records pertaining to such public body or agency shall be kept in an office of the political subdivision in which such public body or agency is located or, in the case of a state agency, in an office designated by the secretary of state.

III-a. Governmental records created or maintained in electronic form shall be kept and maintained for the same retention or archival periods as their paper counterparts. Governmental records in electronic form kept and maintained beyond the applicable retention or archival period shall remain accessible and available in accordance with RSA 91-A:4, III. Methods that may be used to keep and maintain governmental records in electronic form may include, but are not limited to, copying to microfilm or paper or to durable electronic media using standard or common file formats.

III-b. A governmental record in electronic form shall no longer be subject to disclosure pursuant to this section after it has been initially and legally deleted. For purposes of this paragraph, a record in electronic form shall be considered to have been deleted only if it is no longer readily accessible to the public body or agency itself. The mere transfer of an electronic record to a readily accessible "deleted items" folder or similar location on a computer shall not constitute deletion of the record.

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.

V. In the same manner as set forth in RSA 91-A:4, IV, any public body or agency which maintains governmental records in electronic format may, in lieu of providing original records, copy governmental records requested to electronic media using standard or common file formats in a manner that does not reveal information which is confidential under this chapter or any other law. If copying to electronic media is not reasonably practicable, or if the person or entity requesting access requests a different method, the public body or agency may provide a printout of governmental records requested, or may use any other means reasonably calculated to comply with the request in light of the purpose of this chapter as expressed in RSA 91-A:1. Access to work papers, personnel data, and other confidential information under RSA 91-A:5, IV shall not be provided.

VI. Every agreement to settle a lawsuit against a governmental unit, threatened lawsuit, or other claim, entered into by any political subdivision or its insurer, shall be kept on file at the municipal clerk's office and made available for public inspection for a period of no less than 10 years from the date of settlement.

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.

Source. 1967, 251:1. 1983, 279:2. 1986, 83:5. 1997, 90:2. 2001, 223:2. 2004, 246:2. 2008, 303:4. 2009, 299:1, eff. Sept. 29, 2009.

Section 91-A:5

91-A:5 Exemptions. – The following governmental records are exempted from the provisions of this chapter:

I. Records of grand and petit juries.

I-a. The master jury list as defined in RSA 500-A:1, IV.

II. Records of parole and pardon boards.

III. Personal school records of pupils.

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.

V. Teacher certification records in the department of education, provided that the department shall make available teacher certification status information.

VI. Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

VII. Unique pupil identification information collected in accordance with RSA 193-E:5.

VIII. Any notes or other materials made for personal use that do not have an official purpose, including but not limited to, notes and materials made prior to, during, or after a governmental proceeding.

IX. Preliminary drafts, notes, and 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.

Source. 1967, 251:1. 1986, 83:6. 1989, 184:2. 1990, 134:1. 1993, 79:1. 2002, 222:4. 2004, 147:5; 246:3, 4. 2008, 303:4, eff. July 1, 2008. 2013, 261:9, eff. July 1, 2013.

Section 91-A:5-a

91-A:5-a Limited Purpose Release. – Records from non-public sessions under RSA 91-A:3, II(i) or that are exempt under RSA 91-A:5, VI may be released to local or state safety officials. Records released under this section shall be marked "limited purpose release" and shall not be redisclosed by the recipient.

Source. 2002, 222:5, eff. Jan. 1, 2003.

Section 91-A:6

91-A:6 Employment Security. – This chapter shall apply to RSA 282-A, relative to employment security; however, in addition to the exemptions under RSA 91-A:5, the provisions of RSA 282-A:117-123 shall also apply; this provision shall be administered and construed in the spirit of that section, and the exemptions from the provisions of this chapter shall include anything exempt from public inspection under RSA 282-A:117-123 together with all records and data developed from RSA 282-A:117-123.

Source. 1967, 251:1. 1981, 576:5, eff. July 1, 1981.

Section 91-A:7

91-A:7 Violation. – Any person aggrieved by a violation of this chapter may petition the superior court for injunctive relief. In order to satisfy the purposes of this chapter, the courts shall give proceedings under this chapter high priority on the court calendar. Such a petitioner may appear with or without counsel. The petition shall be deemed sufficient if it states facts constituting a violation of this chapter, and may be filed by the petitioner or his or her counsel with the clerk of court or any justice thereof. Thereupon the clerk of court or any justice shall order service by copy of the petition on the person or persons charged. When any justice shall find that time probably is of the essence, he or she may order notice by any reasonable means, and he or she shall have authority to issue an order ex parte when he or she shall reasonably deem such an order necessary to insure compliance with the provisions of this chapter.

Source. 1967, 251:1. 1977, 540:5. 2008, 303:5, eff. July 1, 2008.

Section 91-A:8

91-A:8 Remedies. –

I. If any public body or public agency or officer, employee, or other official thereof, violates any provisions of this chapter, such public body or public agency shall 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. Fees shall not be awarded unless the court finds that the public body, public agency, or person knew or should have known that the conduct engaged in was in violation of this chapter or if the parties, by agreement, provide that no such fees shall be paid.

II. The court may award attorney's fees to a public body or public agency or employee or member thereof, for having to defend against a lawsuit under the provisions of this chapter, when the court finds that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive.

III. The court may invalidate an action of a public body or public agency taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.

IV. If the court finds that an officer, employee, or other official of a public body or public agency has violated any provision of this chapter in bad faith, the court shall impose against such person a civil penalty of not less than $250 and not more than $2,000. Upon such finding, such person or persons may also be required to reimburse the public body or public agency for any attorney's fees or costs it paid pursuant to paragraph I. If the person is an officer, employee, or official of the state or of an agency or body of the state, the penalty shall be deposited in the general fund. If the person is an officer, employee, or official of a political subdivision of the state or of an agency or body of a political subdivision of the

state, the penalty shall be payable to the political subdivision.

V. The court may also enjoin future violations of this chapter, and may require any officer, employee, or other official of a public body or public agency found to have violated the provisions of this chapter to undergo appropriate remedial training, at such person or person's expense.

Source. 1973, 113:1. 1977, 540:6. 1986, 83:7. 2001, 289:3. 2008, 303:6. 2012, 206:1, eff. Jan. 1, 2013.

Section 91-A:9

91-A:9 Destruction of Certain Information Prohibited. – A person is guilty of a misdemeanor who knowingly destroys any information with the purpose to prevent such information from being inspected or disclosed in response to a request under this chapter. If a request for inspection is denied on the grounds that the information is exempt under this chapter, the requested material shall be preserved for 90 days or while any lawsuit pursuant to RSA 91-A:7-8 is pending.

Source. 2002, 175:1, eff. Jan. 1, 2003.

Procedure for Release of Personal Information for Research Purposes

Section 91-A:10

91-A:10 Release of Statistical Tables and Limited Data Sets for Research. –

I. In this subdivision:

(a) "Agency" means each state board, commission, department, institution, officer or other state official or group.

(b) "Agency head" means the head of any governmental agency which is responsible for the collection and use of any data on persons or summary data.

(c) "Cell size" means the count of individuals that share a set of characteristics contained in a statistical table.

(d) "Data set" means a collection of personal information on one or more individuals, whether in electronic or manual files.

(e) "Direct identifiers" means:

(1) Names.

(2) Postal address information other than town or city, state, and zip code.

(3) Telephone and fax numbers.

(4) Electronic mail addresses.

(5) Social security numbers.

(6) Certificate and license numbers.

(7) Vehicle identifiers and serial numbers, including license plate numbers.

(8) Personal Internet IP addresses and URLs.

(9) Biometric identifiers, including finger and voice prints.

(10) Personal photographic images.

(f) "Individual" means a human being, alive or dead, who is the subject of personal information and includes the individual's legal or other authorized representative.

(g) "Limited data set" means a data set from which all direct identifiers have been removed or blanked.

(h) "Personal information" means information relating to an individual that is reported to the state or is derived from any interaction between the state and an individual and which:

(1) Contains direct identifiers.

(2) Is under the control of the state.

(i) "Provided by law" means use and disclosure as permitted or required by New Hampshire state law governing programs or activities undertaken by the state or its agencies, or required by federal law.

(j) "Public record" means records available to any person without restriction.

(k) "State" means the state of New Hampshire, its agencies or instrumentalities.

(l) "Statistical table" means single or multi-variate counts based on the personal information contained in a data set and which does not include any direct identifiers.

II. Except as otherwise provided by law, upon request an agency shall release limited data sets and statistical tables with any cell size more than 0 and less than 5 contained in agency files to requestors for the purposes of research under the following conditions:

(a) The requestor submits a written application that contains:

(1) The following information about the principal investigator in charge of the research:

(A) name, address, and phone number;

(B) organizational affiliation;

(C) professional qualification; and

(D) name and phone number of principal investigator's contact person, if any.

(2) The names and qualifications of additional research staff, if any, who will have access to the data.

(3) A research protocol which shall contain:

(A) a summary of background, purposes, and origin of the research;

(B) a statement of the general problem or issue to be addressed by the research;

(C) the research design and methodology including either the topics of exploratory research or the specific research hypotheses to be tested;

(D) the procedures that will be followed to maintain the confidentiality of any data or copies of records provided to the investigator; and

(E) the intended research completion date.

(4) The following information about the data or statistical tables being requested:

(A) general types of information;

(B) time period of the data or statistical tables;

(C) specific data items or fields of information required, if applicable;

(D) medium in which the data or statistical tables are to be supplied; and

(E) any special format or layout of data requested by the principal investigator.

(b) The requestor signs a "Data Use Agreement" signed by the principal investigator that contains the following:

(1) Agreement not to use or further disclose the information to any person or organization other than as described in the application and as permitted by the Data Use Agreement without the written consent of the agency.

(2) Agreement not to use or further disclose the information as otherwise required by law.

(3) Agreement not to seek to ascertain the identity of individuals revealed in the limited data set and/or statistical tables.

(4) Agreement not to publish or make public the content of cells in statistical tables in which the

cell size is more than 0 and less than 5 unless:

(A) otherwise provided by law; or

(B) the information is a public record.

(5) Agreement to report to the agency any use or disclosure of the information contrary to the agreement of which the principal investigator becomes aware.

(6) A date on which the data set and/or statistical tables will be returned to the agency and/or all copies in the possession of the requestor will be destroyed.

III. The agency head shall release limited data sets and statistical tables and sign the Data Use Agreement on behalf of the state when:

(a) The application submitted is complete.

(b) Adequate measures to ensure the confidentiality of any person are documented.

(c) The investigator and research staff are qualified as indicated by:

(1) Documentation of training and previous research, including prior publications; and

(2) Affiliation with a university, private research organization, medical center, state agency, or other institution which will provide sufficient research resources.

(d) There is no other state law, federal law, or federal regulation prohibiting release of the requested information.

IV. Within 10 days of a receipt of written application, the agency head, or designee, shall respond to the request. Whenever the agency head denies release of requested information, the agency head shall send the requestor a letter identifying the specific criteria which are the basis of the denial. Should release be denied due to other law, the letter shall identify the specific state law, federal law, or federal regulation prohibiting the release. Otherwise the agency head shall provide the requested data or set a date on which the data shall be provided.

V. Any person violating any provision of a signed Data Use Agreement shall be guilty of a violation.

VI. Nothing in this section shall exempt any requestor from paying fees otherwise established by law for obtaining copies of limited data sets or statistical tables. Such fees shall be based on the cost of providing the copy in the format requested. The agency head shall provide the requestor with a written description of the basis for the fee.

Source. 2003, 292:2, eff. July 18, 2003.

Right-to-Know Oversight Commission

Section 91-A:11-15

91-A:11 to 91-A:15 Repealed. – [Repealed 2005, 3:2, eff. Nov. 1, 2010.]