

# MUNICIPAL RECORDS RETENTION COMMITTEE AGENDA

**THURSDAY, JANUARY 9, 2014**

**9:30 AM ROOM 204**

- Review minutes of November 21, 2013 meeting.
- Discuss updates to Hooksett Municipal Records Listing spreadsheet.
- Review email from NHMA legal regarding electronic records policy.
- Discuss draft structure for Municipal Records policy and addition of policy to Town website.
- Coordinate date for February meeting.

Correspondence and input from NHMA Legal:

Dear Mr. Rainier,

While we do not have sample policies, I am happy to provide information on best practices and the law.

As you know, RSA 33-A:3-a includes a retention schedule for a variety of municipal records. Electronic records must be retained for the same minimum amount of time as their paper counterparts. RSA 91-A:4, III-a. Records (electronic or otherwise) may be retained longer than the minimum time period in the statute, but so long as they exist they remain "governmental records" subject to disclosure upon reasonable request by a member of the public. See RSA 91-A:4.

Translating this into practical terms for a policy:

1. Any record retained solely in electronic form must continue to be "accessible" to the public. This means the format of the electronic record must be updated when it is necessary to accommodate changing technology in equipment and software. (For instance, any record retained on an 8-track tape or a floppy disk would no longer be considered "accessible" at this point.)
2. Records required by RSA 33-A:3-a to be retained for more than 10 years must be kept in paper or microfilm form. An electronic copy may be retained as well, but the "official" copy will be the paper or microfilm copy. RSA 33-A:5-a. This means the Municipal Records Committee should maintain a list of the categories of documents in this category and ensure the required

paper/microfilm copy is retained. This information must be shared with the affected official or department so everyone is aware of their responsibilities.

3. One central question about electronic records is “where are they?” The Committee should work to designate a specific employee or position (transferring to their successor, of course) or a specific town office or department to maintain various categories of electronic records. This can help when a request is made because that electronic record should be maintained by one specific person or office so you know where to begin looking. However, this is not a perfect system because if the “official” copy is deleted once the retention period has ended but another copy is retained by a different office or official, the record still exists for purposes of RSA 91-A.
4. To help address the problem above, we suggest the policy set forth guidelines for deleting/destroying electronic records. If the record is of a type which must be retained for more than 10 years, print it, file it where it belongs and may be found if needed, and delete the electronic versions. The law is satisfied and the amount of electronic clutter is reduced. If the record may be kept solely in an electronic version, the policy should require keeping a list of each such category and the deletion of the record once the retention period has ended. For example, many boards record their meetings and use the recording to create the minutes. While the minutes must be retained permanently (thus in paper or microfilm), the recording of the meeting may be deleted once the minutes have been approved. Each board should adopt a policy about this and stick to it. *Brent v. Paquette*, 132 N.H. 415 (1989).
5. A particular person should be tasked with deleting/destroying a particular kind of record when a policy calls for deletion. This task is passed on to the next person in that position or office and should be part of their training for the job or office.
6. Under RSA 91-A:4, III-b, electronic records are considered deleted (and no longer subject to request) once they are “initially and legally deleted.” This means that (a) the record has been deleted AND the deleted items folder has been emptied, and (b) the legal retention period for that category of record has ended. All employees and officials should be educated about this. Simply deleting an item is not enough; the deleted items/trash bin/recycle bin on the computer must be emptied as well. It can be helpful to think of it in these terms: If you have to ask an IT professional to help you retrieve the record, it no longer exists for RSA 91-A purposes. (Please note this only applies to requests under the Right to Know Law. Subpoenas or document requests as part of a court proceeding are handled very differently and may require a forensic IT professional to retrieve deleted items.)
7. Multiple versions of electronic records usually exist. This creates confusion about where the records are, where to search when a request is made, and how far the town must go to find all records that are responsive to the request. As of today, there is no perfect way to avoid these issues. However, a few practices can reduce the problem somewhat, including:
  - a. Designating an official person or official to retain records.
  - b. Every person in town government should also be reminded to delete records that do not need to be retained. A periodic purge of electronic records is extremely helpful because it reduces the number of records and the number of places to search.

- c. Many email systems will permit the user to set up an automatic deletion of the “deleted items” folder every time the user logs out. (Personally, I use Outlook and have it set so that every time I log out, all the items in my deleted items folder are deleted.)
  - d. Discourage the use of private email accounts for official business. This can help reduce the number of systems on which electronic records reside.
8. Finally, and I cannot overemphasize this point, the best way to reduce electronic record issues is NOT to create them in the first place. Once an electronic record is sent as an email, as an attachment to an email, posted on a website, put onto social media, or placed into the “cloud,” the original creator loses control over it. The record may be reposted, re-mailed, downloaded, printed, and distributed freely. If no town employee, department or official has the record anymore, it is not technically available for disclosure under RSA 91-A. However, if others have retained a copy, there may be a difficult public relations problem instead. If you don’t want to see it on the front page of the Union Leader or on the Facebook page of the local gadfly, don’t send it out electronically in any form.

I hope this information is helpful.

Regards,

Christine Fillmore

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NH Municipal Association

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