

New Hampshire Local Government Center

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When to Release Police Investigative Files

Q. Are police files open to the public under [RSA 91-A](#), the Right to Know Law?

A. Every citizen has a right to inspect and copy public records, unless [RSA 91-A:5](#) or some other statute exempts those records. See [RSA 91-A:4](#). Although our Right to Know Law doesn't mention police files specifically, the new Hampshire Supreme Court has ruled that certain law enforcement investigative files must be disclosed to the public upon request. *Lodge v. Knowlton*, 118 N.H. 574 (1978). In that opinion, the Court adopted portions of the federal Freedom of Information Act (FOIA), 5 U.S.C., 552(b)(7), as the standard for determining which police investigative files are subject to disclosure and which are not. The six-prong FOIA test adopted by the Court includes the following six considerations for analyzing whether certain police investigatory records should not be disclosed. The records would:

- Interfere with enforcement proceedings;
- Deprive a person of a right to a fair trial or impartial adjudication;
- Constitute an unwarranted invasion of privacy;
- Disclose the identity of a confidential source ... or confidential information furnished only by a confidential source;
- Disclose investigative techniques and procedures; or
- Endanger the life or physical safety of law enforcement personnel.

Q. When does release of a police file "constitute an unwarranted invasion of privacy?"

A. The Court has said the FOIA six-prong test doesn't give any greater guidance to answer this question than does New Hampshire's Right to Know Law, which also exempts from public disclosure records that would constitute an invasion of privacy. In [Union Leader Corp. v. City of Nashua](#), 141 N.H. 473 (1996), the Court laid out some guidelines for balancing requests for police files with concerns about privacy interests. The Court said the Right to Know Law exemptions require a balancing of the public interest in disclosure ... against the government interest in nondisclosure, and in privacy exemption cases, the individual's privacy interest in nondisclosure." The nature of the requested information must be examined in relation to the basic purpose of the Right to Know Law, which, the Court said, is openness in government and accountability of public officials. The Court said this balance "will never be easy to strike," but added that emphasis must be placed on "the fullest responsible disclosure." However, the Court said, if disclosure "does not serve the purpose of informing the citizenry about the activities of their government, disclosure will not be warranted." There may be times when "strong privacy interests are at stake," including when information from police files is requested. For example, the Court said "individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity."

This was an issue in a case the Court decided this year. In [New Hampshire Civil Liberties Union v. City of Manchester](#) (April 30, 2003), the Court described its three-part test for exempting from disclosure records that would constitute an invasion of privacy:

- Is there a privacy interest that would be invaded by disclosure? If not, the Right to Know Law requires disclosure.
- What is the public's interest in disclosure? Disclosure should inform the public about the conduct of their government.
- The public interest in disclosure must be balanced against the government interest in nondisclosure and the individual's privacy interest in nondisclosure. The nature of the requested document and its relationship to the basic purpose of the Right to Know Law must be examined. The party opposing disclosure--which could be the individual and/or the municipality--"bears a heavy burden to shift the balance toward nondisclosure."

In this case, the New Hampshire Civil Liberties Union (NHCLU) requested copies of photographs taken by the police of people who had consented to be photographed over the last five years. These were people who had been stopped by the police but not arrested. The city refused the request, citing the privacy interests of those photographed in not being unwarrantedly associated with criminal activity. However, the Court said that privacy interest was not relevant because the individuals consented to be photographed and because photographs that were part of police investigations--including pictures of victims, witnesses and suspects--were exempted from the request by the trial court. Other factors minimizing any invasion of privacy included: exempting names, addresses and dates of birth of those photographed; no evidence that disclosure would affect on-going police investigations; disclosure of the photographs as a large group and not for individual publication or dissemination.

The Court said disclosure of the photographs could reveal “information about the decisions made by police officers to stop and photograph persons of a certain appearance. As such, the photographs could provide information about the operation of the police department.”

The Court concluded in this case that the privacy interest in not disclosing the photographs was minimal while the public had a strong interest in disclosure of information about how the police department operated.

Q. Are other resources available to help make decisions about the release of police files?

A. The Attorney General’s Office publishes a Memorandum on New Hampshire’s Right to Know Law, which includes guidance on dealing with requests for law enforcement investigative files. It can be found at www.nh.gov/nhdoj.

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