

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

Donna M. Green

v.

School Administrative Unit #55, Earl F. Metzler II,  
Timberlane Regional School District, Nancy Steenson

Case No. 2015-0274

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APPENDIX TO BRIEF FOR DONNA M. GREEN

APPELLANT

---

Richard J. Lehmann, Esquire, (NH Bar #9339)  
DOUGLAS, LEONARD & GARVEY, P.C.  
14 South Street, Suite 5  
Concord, NH 03301  
(603) 224-1988

**ORAL ARGUMENT BY:**  
**Richard J. Lehmann, Esq.**

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# The State of New Hampshire

ROCKINGHAM

SUPERIOR COURT

Donna M. Green

v.

School Administrative Unit #55, et al.

218-2015-CV-00090

## Final Order

Plaintiff Donna M. Green's complaint seeks relief under RSA 91-A. More specifically, she seeks an order requiring School Administrative Unit #55 ("SAU 55") to produce certain requested information in electronic form and seeks attorneys' fees in connection with the SAU 55's delay in producing a copy of a videotape. For the reasons stated below, the Court is unable to order the relief sought and enters judgment in favor of SAU 55.

## Facts

The parties agreed at the start of the March 6, 2015 hearing that there are no material factual disputes between the parties. On January 21, 2015, Green, who is a member of Timberlane Regional School Board ("TRSB"), sought certain budget-related documents from SAU 55 for herself "and the school board." In that communication, Green did not indicate that the request was made pursuant to RSA 91-A. In response, Defendant Nancy Steenson, the chairperson of the TRSB, informed Green that as she was asking for copies of documents for all board members, she should first ask other board members to "weigh in" on the request.

Two days later, on January 23, 2015, Green informed SAU 55 that her document

request was pursuant to RSA 91-A:4. Three days later, on January 26, 2015, SAU 55 informed Green that the records she sought were available "for inspection and review" but requested that Green make an appointment to review the documents. Another three days later, on January 29, 2015, SAU 55 informed Green that the documents were "immediately available for public inspection." SAU 55, however, refused to provide the information in an electronic format.

Green filed her complaint on February 3, 2015. In addition to pursuing her demand that documents be produced electronically, Green seeks attorneys' fees in connection with a request in the summer of 2014 for a videotape of a July 2014 encounter between her and a certain SAU employee or employees. After this encounter, Green was informed that the SAU was investigating the incident and would consult with the police. During the March 6, 2015 hearing, counsel for the SAU made an offer of proof that three SAU employees would testify that they were instructed by the Plaistow Police Department not to turn over the video to Green while the police investigation was pending. The employees would further testify that they provided Green with a copy of the video in September of 2014 shortly after being informed by the Plaistow Police that they were free to do so. While Green stated her doubts about SAU's position on this issue, she did not seek to cross-examine the SAU witnesses or provide any contrary evidence from the Plaistow Police.

### Analysis

#### I. Green Is Not Entitled to Electronic Copies.

Green's argument is based largely on the language in a 1973 New Hampshire Supreme Court case, *Menge v. Manchester*, 113 N.H. 533, in which the court held that the plaintiff was entitled to make copies of a "computerized tape" containing field record

cards associated with each parcel of property in Manchester. The court emphasized that it read amendments to the RSA 91-A as an instruction to resolve questions under the law "with a view to providing the utmost information."

The language in *Menge* is undoubtedly supportive of Green's position but it is limited by subsequent amendments to RSA 91-A, which in fairly plain language state that it is the choice of the public entity whether to produce documents in electronic or conventional format. RSA 91-A:4 V states that any "public body or agency which maintains governmental records in electronic format may, in lieu of producing original records, copy governmental records requested to electronic media. . . ." (emphasis added). By using the word "may" rather than "shall," the legislature clearly decided to give governmental units the discretion to provide documents stored electronically in either electronic or hard-copy form. For that reason, the Court rules that Green is not entitled to electronic copies. See also *Nolen v. City of Keene*, 09-E-0152 (J. Arnold) (holding that RSA 91-A did not require the City to provide records to the plaintiff by email).

The Court notes in passing that it finds persuasive Green's argument that the refusal of SAU 55 to provide by email electronic copies of budgets already in existence creates considerably more work for her. In civil litigation, it has become routine for parties to insist that documents be produced in native format for the very same reasons articulated by Green. If litigants are entitled to electronic documents, there may be a strong policy argument to be made for extending that same privilege to the public under RSA 91-A. But as noted by the counsel for the SAU, that is a decision for the legislature.


II. Green Is Not Entitled to Attorneys' Fees.

SAU 55 argues that it is entitled to its attorneys' fees in connection with the videotape that was withheld by SAU 55 per the instruction of the Plaistow Police Department. As noted previously, Green has expressed skepticism about this instruction but did not present any evidence to the contrary. Under *Murray v. State Police*, 154 N.H. 579, 582 (2006), a case that is relied on by SAU 55, documents in police investigative file may be exempt from disclosure under RSA 91-A if they meet certain criteria. Although it is unclear that this exception would apply to the videotape in question – the court in *Murray* noted that the interference with enforcement proceeding exception requires that the document be created for law enforcement purposes – the language of RSA 91-A:8 prevents an award of attorneys' fees. Under 91-A:8 I, attorneys' fees are awardable only if, *inter alia*, a lawsuit is necessary to ensure compliance with the statute. Here, there is no dispute that the videotape was provided by SAU 55 to Green well before the filing of the complaint in the above matter. Further, with respect to electronic records, the Court is ruling that Green is not entitled to documents in that format. For both reasons, Green is not entitled to an award of attorneys' fees.

For the foregoing reasons, judgment is awarded to Defendants.

So Ordered.

3/9/15  
Date

  
\_\_\_\_\_  
David A. Anderson  
Associate Justice

**COPY**

The STATE OF NEW HAMPSIRE  
Rockingham, SS. SUPERIOR COURT

Docket #

03-2 14 05 0 033 01

Donna M. Green, pro se

NOTES ON WHICH TO BE

V.

School Administrative Unit #55, Earl F. Metzler II  
Timberlane Regional School District, Nancy Steenson

Metzler DG

PETITION UNDER R.S.A. 91-A, THE RIGHT TO KNOW

Now Comes Plaintiff, Donna M. Green, pro se to place this motion before the Honorable Court for just disposition on two 91-A violations and to make known the following facts.

**I do hereby attest to the following facts with respect to 91-A:4 violation ONE:**

1. Donna Green is a duly elected member of the Timberlane Regional School Board at the time of this filing and was such during the time of events in this petition. She is the author of a blog on Timberlane issues called TimberlaneandSandown.wordpress.com. School Administrative Unit #55 (SAU 55) 30 Greenough Rd., Plaistow, NH. administers the Timberlane Regional School District and the Hampstead School District.
2. Earl F. Metzler II is the superintendent of SAU 55.
3. Nancy Steenson is the Chairman of the Timberlane Regional School Board at the time of this filing and was such during the time of events in this petition except where otherwise stated.

4. Ms. Cathleen (Cathy) Belcher is the Executive Assistant to Superintendent Metzler.
5. On January 21, 2015 Green sent an email to Steenson requesting

"the administration provide me and the school board with the financial system's salary detail output for the 2014-2015 budget. I similarly request the same for the proposed 2015-2016 budget as per that which is given the Hampstead Budget Committee as attached. Both requests are to include all district staff. The information is to include the full code for each staff member, FTE information and all else included in Hampstead's attached salary detail."

This was the beginning of the email chain the relevant portions of which are excerpted below in order of their receipt. (Emails are attached as Exhibit One. A sample of the Hampstead budget information is Exhibit Two.)

6. On Jan. 22, 2015 Steenson replied:

"If you feel that board members would be interested in this report, please make a motion to request it on behalf of the board during other business tonight. The Hampstead and Timberlane districts may share SAU administration, but are run completely separately, as you know. We have done many things differently for many years. Nobody at the SAU is depriving the Timberlane board of documents; the reports you reference have not been requested nor needed by the Timberlane board in the past. Perhaps you'd like to briefly explain why they would be of use for the benefit of the rest of the board tonight."

7. On Jan. 23, 2015 Green replied:

"Obviously this is a direct violation of RSA 91-A:4

'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.'

As a school board member I am entitled to these documents at any time they are available - without charge, as they are part of my duty to examine if I feel the need.

I do not have to explain to anyone why I want to review and copy any document within the parameters of my position as an elected official of the Timberlane Board or a citizen.

These documents are clearly not exempt under RSA 91-A:5 and there is no reasonable explanation as to why the school would withhold them."

9. On Jan. 26, 2015 Ms. Steenson replied:

"I have been away since Friday. You may make an appointment with Mr. Stokinger if you'd like, to see the documents you request. Please note that I advised you to bring this up at last week's board meeting, so that we could see if there was interest from other board members. You apparently decided not to do so. I am not authorizing hundreds of pages of documents to be distributed to all board members at your request. That would be a tremendous waste of district resources. These are documents much more relevant to the Budget Committee, and no one on the School Board has needed or wanted them in the past. As such, they are available if requested, but are not automatically distributed. We don't have a paper mill at our disposal. Copies cost a lot of money in labor and supplies. I would think you would know that."

10. On Jan. 26, 2015 Mrs. Green replied:

"Well, in that case, give me the file electronically and we will all save money and time. I await receipt of the file."

11. On Jan. 26, 2015 Ms. Steenson replied:

"I responded to your request. I'm sure Mr. Stokinger will be most helpful. "

12. On Jan. 26, 2015 Green replied to Steenson:

"In fact, you did not respond to my request. My request is for an electronic file of the salary detail - or a paper report, whichever suits the district. I am not making an appointment with Mr. Stokinger - and even more so given tomorrow all offices will be closed."

13. On Jan. 26, 2015 Green replied again to Steenson:

"The proper response to a Right to Know request is to hand over what is in the

immediate control of the person in charge of the documents. All the documents requested could have been emailed or copied in the time it has taken to answer these excuses for not providing a school board member with documents.

This isn't that difficult. The NH AG's Office and Secretary of State respond to 91-A requests all the time in a timely fashion. It is beyond reason as to why this office can not do so.

As per RSA 91-A a citizen or school board member is to receive a written explanation as to why an electronic copy was not simply emailed - as it is a document readily at hand."

14. On Jan. 26, 2015 Ms. Belcher replied:

"Thank you for your email dated January 25th regarding your request to inspect and possibly copy salary information for the years 2014-15 and 2015-16. This information is available for public inspection immediately; however, we ask that as a courtesy to the operations of this office, you call for an appointment."

15. On Jan. 27, 2015 Green replied to Belcher:

"How is the salary information stored? Does it have a separate access and function code?

Are you going to print it so it can be inspected? That seems obviously counter productive.

Please emails me an electronic copy when the office reopens. If you will not comply with this request, I require the specific provision in the law by which you are refusing to provide this information. The people of Sandown, whom I represent, expect your office to do everything possible to facilitate my requests for public information."

16. On Jan. 29, 2015 Belcher replied:

"Thank you for your email response regarding the District's notification to you that the salary information you requested is available for public inspection. As indicated in my email dated January 26th, the information you requested is immediately available for public inspection."

17. On Jan. 29, 2015 Green responded:

"Allow me to draw your attention to the following NH Supreme Court decision: *Menge v. Manchester*, 113 N.H. 533, 311 A.2d 116 (1973) which you can find here

Please provide the electronic file associated with this information via email today. This is public information and should be given to me in whatever output file format is

supported by your financial software; e.g; pdf, export to spreadsheet, export to .c.s.v  
If you will not comply with this request, I require the specific provision in the law by  
which you are refusing to provide this information. The people of Sandown, whom I  
represent, expect your office to do everything possible to facilitate my requests for  
public information."

18. On Jan. 29, 2015 Dr. Metzler responded to Green evidently intending to reply to  
Belcher:

"Send her the same reply and leave it at that."

19. The information Green requests is freely given to the Hampstead School Budget  
Committee and generated by SAU 55 with the same financial software as used for  
Timberlane School District.

**Assertions for Violation One:**

**The Plaintiff asserts a violation of 91-A:4 I and IV**

1. The Plaintiff requires this information immediately in order to understanding the staffing levels built into the school district's proposed budget going to voters on March 10, 2015.
2. The Plaintiff also requires the salary budget details in order to confirm the accuracy of reports submitted to the NH Department of Education. It is her duty as an elected member of the school board to ensure the accuracy of information given to the public and the state.
3. By not making voluminous budget salary detail financial information available in electronic form, SAU 55 is not complying with the spirit of 91-A which is to provide access to governmental records. Access that is unnecessarily, even deliberately burdensome or expensive to the public is access denied. SAU 55 could easily provide a pdf file to the Plaintiff and refuses to do so in order to thwart her attempts to learn about the staffing levels in the school district.
4. Timberlane Regional School District has a history of refusing to disclose staffing

information to Green as evidenced by the following time line in which the school board violated RSA 91-A:4, IV by refusing to make readily available information available within five business days of request (Exhibit Three: email chain summarized below):

Dec. 9, 2013: staffing information requested of Timberlane Budget Committee Chairman. Request ignored and information was not forthcoming.

Dec. 20, 2013: official Right to Know request was made to TRSB Chairman at that time, Robert Collins.

Jan. 3, 2014 (eight business days): request refused on on the grounds that the "information is not available."

Jan. 17, 2014: slightly reworded request submitted.

Jan. 17, 2014: request again denied on the basis that the "information is not available."

Jan. 17, 2014: Green threatens to take the issue up with the Attorney General's office.

Jan. 20, 2014: Collins replies that information will "become available in the next several weeks."

Jan. 21, 2014: Green replies "several weeks" is an unacceptable time frame for information obviously at hand. Demands information be provided by end of business Jan. 22.

Jan. 23, 2014 Staffing information received as filed with Department of Education. 8 business days from Dec. 20<sup>th</sup> request. Deadline for DOE filing of this information was Oct. 15, 2013. (DOE filing deadline information Exhibit Four.)

3. The staffing information from "2" above became the foundation for a withering attack by Green on the staffing levels in the Timberlane School District at the School Deliberative Session in Feb. 2014 where a motion promulgated by Green to lower the budget by

millions had wide support.

4. In this most recent violation, Green first requested the salary information from the School Board chairman in conformity with school board protocol that all information requests be addressed to the chairman. (Exhibit Five: School Board Rules, specifically #6)
5. There is no question salaries are public information as per *Mans v. Lebanon School Board*, 112 N.H. 160 (1972).
6. The school board chairman disingenuously proposed putting Green's staffing information request before the board knowing that the board would vote it down as has been done to all of Green's previous information requests.
7. Although the original request was not a formal Right to Know request, the state's disclosure laws nevertheless apply. RSA 91-A does not require approval from a board or explanation to a board for the release of information.
8. Upon receiving Steenson's constructive refusal to make the information available, Green then made a formal Right to Know request of the School Board chairman to determine if the information would be released at all; hence, the request to inspect and copy.
9. Upon knowledge that the SAU was prepared to allow inspection of the documents and knowing that the documents in question were voluminous, Green then requested the information in electronic form in order to expedite her work and save herself copying costs. Without an electronic file, Green would be required to spend hours at the SAU office scanning the documents into her scanner, or pay 50 cents a page from the district to receive this information at the likely cost of well over \$100. The district's Right to

Know policy imposes a charge of 50 cents a page for copies. Green has paid this fee many times in the past for previous Right to Know requests for district documents while she was a Timberlane Budget Committee member and also as a school board member. (Timberlane's Right to Know Policy is Exhibit Six)

10. SAU 55, in keeping with its Right to Know policy which was never approved by the Timberlane School Board, is constructively refusing to provide an electronic file for Green's use.

11. The ruling in *Menge v. City of Manchester*, 113 N.H. 533 (1973) finds in favor of the plaintiff who sought to obtain computer records in their stored form. The judgment states:

"The ease and minimal cost of the tape reproduction as compared to the expense and labor involved in abstracting the information from the field cards are a common sense argument in favor of the former. RSA 91-A:4 (Supp. 1972) provides that every citizen may "make memoranda abstracts, photographic or photostatic copies" of public records. "Taking into account the practical realities of the situation, we believe it not only possible, but in accord with our law and what seems to be its basic philosophy, to so construe the statute as to permit" plaintiff to have the reproduced tapes at his expense."

**I do hereby attest to the following facts with respect to 91-A:4 I and IV violation TWO:**

1. On July 24, 2014 Green had a verbal disagreement with Catherine Belcher, Executive Assistant to Superintendent Metzler at the SAU #55 offices, the subject of which is not material to this petition.
2. The disagreement occurred at the front reception desk and was fully videotaped by security cameras.

3. On July 25, 2014 Superintendent Metzler notified Donna Green via email:

"Mrs Green - Today it was reported to me that you were both disrespectful and harassing to several employees. Of course I will investigate this report and if validated I will need to limit your access to the SAU. This is both disturbing and unfortunate. I will also be consulting with both the Plaistow Police Department and district council." (Exhibit Seven).

5. On July 25, 2014 Green submitted a Right to Know request under 91-A :4 (l) seeking to view and copy the surveillance recording at the SAU office. (Exhibit Eight)

6. On July 25, 2014 Steenson responded directing Green to submit the RTK request to the SAU which spurred an email exchange between the two in which Green argued the video should be released to her at once while the SAU argued that they were under police instructions to withhold it without providing evidence of such instruction. The police would be going beyond the law to make such an instruction. (Exhibit Nine)

7. On July 27, 2014 Steenson notified Green via email:

"Mrs. Green,

It has been reported to me that an investigation is being conducted by the Superintendent's office concerning your interactions with an SAU staff member on July 24, 2014. Until such time as the investigation is complete, you are hereby barred from entering upon the SAU #55 premises without the expressed written permission of the Superintendent of Schools. Dr. Metzler will make appropriate arrangements for you to conduct your duties as a school board member." (Exhibit Ten)

8. Green, understanding the July 27th communication from Steenson as a constructive no trespass order, obtained the legal services of Richard J. Lehmann of Douglas, Leonard & Garvey, P.C. to dispute the "no trespass order" and to obtain the surveillance video tape. The cost of Mr. Lehmann's service was \$3,000. (All Mr. Lehmann's letters on Green's behalf are Exhibit Eleven)

9. September 26, 2014 SAU 55 released the surveillance tape to Green in an electronic file format that was not readable by standard software. Green posted the video file on

her blog inviting others to put it in a readable form. Due to the efforts of a blog reader, the video was made readable and posted on September 27, 2014 on blog site TimberlaneandSandown.wordpress.com.

10. On October 22, 2014 Attorney Lehmann sent a followup letter to the Plaistow Police. They closed their investigation that day. It had been open for approximately eleven weeks.

**Assertions to Violation Two:**

1. Green believes that the superintendent's report to the Plaistow police was politically motivated to intimidate and discredit a public critic. Green believes the surveillance tapes exonerated her and its delayed release harmed to her reputation.
2. Green asserts that the intervention of Attorney Lehmann was necessary to obtain the video tape. (Legal Letters: Exhibit Eleven)
3. The delay in releasing the surveillance tape was in violation of 91-A 4 (IV) and inexcusable and malicious.
4. Green further asserts that Attorney Lehmann was instrumental in "clarifying" the no trespass order so that Green could continue in the performance of her elected duties with respect to viewing invoices and other documents housed at the SAU office

**Desired Redress for both violations:**

Donna Green respectfully requests the following remedy from the Honorable Court:

1. SAU 55 be instructed to immediately provide an electronic file in a mutually agreeable format of the Timberlane 2014-2015 budget salary details and the Timberlane 2015-2016 proposed and default budget salary details with the same information content as provided in Exhibit Two from the Hampstead School District budget report.



2. SAU 55 be compelled to pay Donna Green \$3,000 in reimbursement of her legal fees as provided by under 91-A:8 (I) for the necessary engagement of Attorney Lehmann to obtain her rights to government information.
3. SAU 55 and the Timberlane Regional School District be instructed to stop withholding public information from elected school district officials.
4. SAU 55 and the Timberlane Regional School District be instructed to stop charging school district elected officials for public information.
5. SAU 55 and the Timberlane Regional School District be required to pay Donna Green the associated copying, filing and serving costs for this petition to the court and all past Right to Know fees collected from her.
6. SAU 55 and Timberlane Regional School District be required to disgorge all Right to Know fees collected by them from elected officials of the school district or SAU.

AND any other relief the Honorable Court should find on behalf of the Plaintiff.

I, Donna M. Green, the undersigned do hereby attest that the above stated facts are true and correct to the best of my knowledge.

Donna M. Green

Dated: February 3, 2015.

Donna M. Green  
3 Cranberry Meadow Rd.  
Sandown, NH 03873  
603-974-0758  
STATE OF NEW HAMPSHIRE

Personally appeared before me this \_\_\_\_ day of February, in the year 2015, Donna

The STATE OF NEW HAMPSIRE

Rockingham, SS. SUPERIOR COURT

Docket #

Donna M. Green, pro se

V.

School Administrative Unit #55, Earl F. Metzler II, Superintendent  
Timberlane Regional School District, Nancy Steenson, Chairman

GENERAL AFFIDAVIT

BEFORE ME, the undersigned Notary, Richard M Bergeron JR.

on this 3<sup>rd</sup> day of February 2015 personally appeared Donna M. Green, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says: I am a resident of Sandown, NH and a taxpayer in the Timberlane Regional School District. The attached copied emails are true copies of emails I wrote to the Timberlane Regional School Board and SAU 55 personally received in response with no alteration. I further aver that all the documents herein are genuine copies.

Donna M. Green

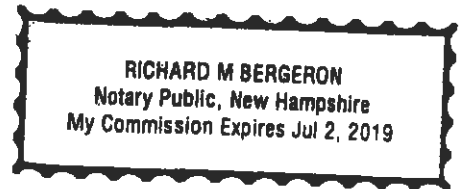
Donna M. Green

3 Cranberry Meadow Road, Sandown, New Hampshire 03873

Subscribed and sworn to before me, this 3<sup>rd</sup> day of February 2015.

[Signature]

NOTARY PUBLIC



My commission expires: July 2<sup>nd</sup>, 2019.



Donna Green &lt;donnagre@gmail.com&gt;

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## Request to see salary information

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Donna Green &lt;donnagre@gmail.com&gt;

Fri, Jan 23, 2015 at 1:20 PM

To: TRSD School Board <trsb@timberlane.net>, nancypetunia <nancysteenson@comcast.net>, "Metzler, Earl" <earl.metzler@timberlane.net>, TRSD Budget Committee <budcom2@timberlane.net>  
 Cc: Ed Naile <ednaile@comcast.net>, graham@soulefirm.com, Cathleen Gorman <cgormanconsulting@yahoo.com>, Arthur Green <azgreen@comcast.net>

Timberlane Regional School Board:

Please be advised that I, School Board member Donna Green, request an opportunity to inspect and possibly copy the following documents: the 2014-2015 salary detail printout from Timberlane's financial software program for the entire Timberlane district staff, and the same for the proposed budget of 2015-2016.

Here is my first request emailed to Ms. Nancy Steenson, Chair of Timberlane School Board on Jan 21, 2015:

Dear Ms. Steenson:

As a member of the Timberlane School Board, I am formally requesting that the administration provide me and the school board with the financial system's salary detail output for the 2014-2015 budget. I similarly request the same for the proposed 2015-2016 budget as per that which is given the Hampstead Budget Committee as attached. Both requests are to include all district staff. The information is to include the full code for each staff member, FTE information and all else included in Hampstead's attached salary detail.

As I am sure you are aware, the salaries of all public employees are a matter of public record in New Hampshire.

If the administration requests a vote of the board to provide this information, I will ask why this information is given to the people of Hampstead and not to the people of Timberlane. Are we somehow less worthy of the same level of disclosure as the people of Hampstead?

Hampstead and Timberlane share the same SAU administration and the same financial software. Because I know this to be a simple printout from your financial system, as attached, I look forward to receiving this information at the school board meeting on Thursday night.

Thank you,  
 Donna Green  
 Sandown representative

re: "Reported Staffing Numbers Don't Add Up," [TimberlaneandSandown.wordpress.com](http://TimberlaneandSandown.wordpress.com)

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My first request was met with the following response from the Timberlane school board received 10:36 am, Jan. 22, 2015

Mrs. Green,

*If you feel that board members would be interested in this report, please make a motion to request it on behalf of the board during other business tonight. The Hampstead and Timberlane districts may share SAU administration, but are run completely separately, as you know. We have done many things differently for many years. Nobody at the SAU is depriving the Timberlane board of documents; the reports you reference have not been requested nor needed by the Timberlane board in the past. Perhaps you'd like to briefly explain why they would be of use for the benefit of the rest of the board tonight.*

**Nancy**

Obviously this is a direct violation of RSA 91-A:4

***" 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."***

As a school board member I am entitled to these documents at any time they are available - without charge, as they are part of my duty to examine if I feel the need.

I do not have to explain to anyone why I want to review and copy any document within the parameters of my position as an elected official of the Timberlane Board or a citizen.

These documents are clearly not exempt under RSA 91-A:5 and there is no reasonable explanation as to why the school would withhold them.

Thank you in advance for your cooperation.

Donna Green

cc: Gordon Graham, Leslie Soule Kidder

cc Ed Naile



Donna Green <donnagre@gmail.com>

---

## Request to see salary information

---

nancysteenson <nancysteenson@comcast.net>

Mon, Jan 26, 2015 at 12:18 PM

To: Donna Green <donnagre@gmail.com>

Cc: "Metzler, Earl" <Earl.Metzler@timberlane.net>, "Stokinger, George" <George.Stokinger@timberlane.net>

Mrs. Green,

I have been away since Friday. You may make an appointment with Mr. Stokinger if you'd like, to see the documents you request. Please note that I advised you to bring this up at last week's board meeting, so that we could see if there was interest from other board members. You apparently decided not to do so. I am not authorizing hundreds of pages of documents to be distributed to all board members at your request. That would be a tremendous waste of district resources. These are documents much more relevant to the Budget Committee, and no one on the School Board has needed or wanted them in the past. As such, they are available if requested, but are not automatically distributed. We don't have a paper mill at our disposal. Copies cost a lot of money in labor and supplies. I would think you would know that.

Nancy

**From:** Donna Green [mailto:donnagre@gmail.com]

**Sent:** Friday, January 23, 2015 1:21 PM

**To:** TRSD School Board; nancypetunia; Metzler, Earl; TRSD Budget Committee

**Cc:** Ed Naile; graham@soulefirm.com; Cathleen Gorman; Arthur Green

**Subject:** Request to see salary information

[Quoted text hidden]



Donna Green <donnagre@gmail.com>

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## Request to see salary information

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Donna Green <donnagre@gmail.com>

Mon, Jan 26, 2015 at 12:51 PM

To: nancysteenson <nancysteenson@comcast.net>

Cc: Ed Naile <ednaile@comcast.net>, Radio Rich Girard at Large <rich@girardatlarge.com>, Cathleen Gorman <cgormanconsulting@yahoo.com>

Well, in that case, give me the file electronically and we will all save money and time. I await receipt of the file.  
Donna

On Mon, Jan 26, 2015 at 12:18 PM, nancysteenson <nancysteenson@comcast.net> wrote:  
[Quoted text hidden]



Donna Green <donnagre@gmail.com>

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## Request to see salary information

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nancysteenson <nancysteenson@comcast.net>

Mon, Jan 26, 2015 at 1:40 PM

To: Donna Green <donnagre@gmail.com>

Mrs. Green,

I responded to your request. I'm sure Mr. Stokinger will be most helpful.

Nancy

**From:** Donna Green [mailto:donnagre@gmail.com]

**Sent:** Monday, January 26, 2015 12:52 PM

**To:** nancysteenson

**Cc:** Ed Naile; Radio Rich Girard at Large; Cathleen Gorman

**Subject:** Re: Request to see salary information

Well, in that case, give me the file electronically and we will all save money and time. I await receipt of the file.

Donna

On Mon, Jan 26, 2015 at 12:18 PM, nancysteenson <nancysteenson@comcast.net> wrote:

Mrs. Green,

I have been away since Friday. You may make an appointment with Mr. Stokinger if you'd like, to see the documents you request. Please note that I advised you to bring this up at last week's board meeting, so that we could see if there was interest from other board members. You apparently decided not to do so. I am not authorizing hundreds of pages of documents to be distributed to all board members at your request. That would be a tremendous waste of district resources. These are documents much more relevant to the Budget Committee, and no one on the School Board has needed or wanted them in the past. As such, they are available if requested, but are not automatically distributed. We don't have a paper mill at our disposal. Copies cost a lot of money in labor and supplies. I would think you would know that.

21

Nancy



Donna Green <donnagre@gmail.com>

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## Request to see salary information

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Donna Green <donnagre@gmail.com>

Mon, Jan 26, 2015 at 1:44 PM

To: nancysteenson <nancysteenson@comcast.net>

Cc: Radio Rich Girard at Large <rich@girardatlarge.com>, Ed Naile <ednaile@comcast.net>

In fact, you did not respond to my request. My request is for an electronic file of the salary detail - or a paper report, whichever suits the district. I am not making an appointment with Mr. Stokinger - and even more so given tomorrow all offices will be closed.

[Quoted text hidden]





Donna Green <donnagre@gmail.com>

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## Request to see salary information

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Donna Green <donnagre@gmail.com>

Mon, Jan 26, 2015 at 2:30 PM

To: nancysteenson <nancysteenson@comcast.net>, Ed Naile <ednaile@comcast.net>, Radio Rich Girard at Large <rich@girardatlarge.com>

The proper response to a Right to Know request is to hand over what is in the immediate control of the person in charge of the documents. All the documents requested could have been emailed or copied in the time it has taken to answer these excuses for not providing a school board member with documents.

This isn't that difficult. The NH AG's Office and Secretary of State respond to 91-A requests all the time in a timely fashion. It is beyond reason as to why this office can not do so.

As per RSA 91-A a citizen or school board member is to receive a written explanation as to why an electronic copy was not simply emailed - as it is a document readily at hand.

Donna, with the assistance of Ed Naile

[Quoted text hidden]



Donna Green <donnagre@gmail.com>

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## Request to see salary information

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Belcher, Catherine <Catherine.Belcher@timberlane.net>  
To: Donna Green <donnagre@gmail.com>

Mon, Jan 26, 2015 at 5:00 PM

Hello Donna,

Thank you for your email dated January 25th regarding your request to inspect and possibly copy salary information for the years 2014-15 and 2015-16. This information is available for public inspection immediately; however, we ask that as a courtesy to the operations of this office, you call for an appointment.

Our office hours are Monday through Friday from 8:30 am to 4:00 pm.

Have a good evening,  
Cathy

[cid:image001.png@01D03989.A10B27B0]  
Cathy Belcher  
Executive Assistant to the Superintendent  
and Assistant Superintendent of Schools  
(603) 382-6119 ext. 2217  
catherine.belcher@timberlane.net<mailto:catherine.belcher@timberlane.net>

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SCHOOL ADMINISTRATIVE UNIT NO 55  
Serving the Hampstead and  
Timberlane Regional School Districts

**CONFIDENTIALITY NOTICE:** This e-mail message and any attachment to it is intended only for the individual or entity to which it is addressed and may contain confidential and/or privileged materials. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, please contact the sender by reply e-mail, delete this message and destroy all copies and backups of the original message.

From: Donna Green <donnagre@gmail.com<mailto:donnagre@gmail.com>>  
Date: January 23, 2015 at 1:20:45 PM EST  
To: TRSD School Board <trsb@timberlane.net<mailto:trsb@timberlane.net>>, nancypetunia <nancysteenson@comcast.net<mailto:nancysteenson@comcast.net>>, "Metzler, Earl" <earl.metzler@timberlane.net<mailto:earl.metzler@timberlane.net>>, TRSD Budget Committee <budcom2@timberlane.net<mailto:budcom2@timberlane.net>>  
Cc: Ed Naile <ednaile@comcast.net<mailto:ednaile@comcast.net>>, <graham@soulefirm.com<mailto:graham@soulefirm.com>>, Cathleen Gorman <cgormanconsulting@yahoo.com<mailto:cgormanconsulting@yahoo.com>>, Arthur Green <azgreen@comcast.net<mailto:azgreen@comcast.net>>  
Subject: Request to see salary information  
Timberlane Regional School Board:

Please be advised that I, School Board member Donna Green, request an opportunity to inspect and possibly copy the following documents: the 2014-2015 salary detail printout from Timberlane's financial software program for the entire Timberlane district staff, and the same for the proposed budget of 2015-2016.

Here is my first request emailed to Ms. Nancy Steenson, Chair of Timberlane School Board on Jan 21, 2015:

Dear Ms. Steenson:



Donna Green <donnagre@gmail.com>

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## Request to see salary information

---

Donna Green <donnagre@gmail.com>

Tue, Jan 27, 2015 at 4:37 PM

To: "Belcher, Catherine" <Catherine.Belcher@timberlane.net>, nancypetunia <nancysteenson@comcast.net>  
Cc: Radio Rich Girard at Large <rich@girardatlarge.com>, Ed Naile <ednaile@comcast.net>

Dear Ms. Belcher,

How is the salary information stored? Does it have a separate access and function code?

Are you going to print it so it can be inspected? That seems obviously counter productive.

Please emails me an electronic copy when the office reopens. If you will not comply with this request, I require the specific provision in the law by which you are refusing to provide this information. The people of Sandown, whom I represent, expect your office to do everything possible to facilitate my requests for public information.

Thank you,  
Donna Green

On Mon, Jan 26, 2015 at 5:00 PM, Belcher, Catherine <Catherine.Belcher@timberlane.net> wrote:  
Hello Donna,

Thank you for your email dated January 25th regarding your request to inspect and possibly copy salary information for the years 2014-15 and 2015-16. This information is available for public inspection immediately; however, we ask that as a courtesy to the operations of this office, you call for an appointment.

Our office hours are Monday through Friday from 8:30 am to 4:00 pm.

Have a good evening,  
Cathy

[cid:image001.png@01D03989.A10B27B0]  
Cathy Belcher  
Executive Assistant to the Superintendent  
and Assistant Superintendent of Schools  
(603) 382-6119 ext. 2217  
catherine.belcher@timberlane.net<mailto:catherine.belcher@timberlane.net>

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SCHOOL ADMINISTRATIVE UNIT NO 55  
Serving the Hampstead and Timberlane Regional School Districts  
[Quoted text hidden]



Donna Green <donnagre@gmail.com>

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## Request to see salary information

---

Belcher, Catherine <Catherine.Belcher@timberlane.net>  
To: Donna Green <donnagre@gmail.com>

Thu, Jan 29, 2015 at 9:26 AM

Hello Donna,

Thank you for your email response regarding the District's notification to you that the salary information you requested is available for public inspection. As indicated in my email dated January 26th, the information you requested is immediately available for public inspection.

Have a good day,  
Cathy

[cid:image001.png@01D03BA1.E13673C0]

Cathy Belcher

Executive Assistant to the Superintendent  
and Assistant Superintendent of Schools  
(603) 382-6119 ext. 2217

catherine.belcher@timberlane.net<mailto:catherine.belcher@timberlane.net>

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SCHOOL ADMINISTRATIVE UNIT NO 55  
Serving the Hampstead and  
Timberlane Regional School Districts

**CONFIDENTIALITY NOTICE:** This e-mail message and any attachment to it is intended only for the individual or entity to which it is addressed and may contain confidential and/or privileged materials. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, please contact the sender by reply e-mail, delete this message and destroy all copies and backups of the original message.

From: Donna Green [mailto:donnagre@gmail.com]  
Sent: Tuesday, January 27, 2015 4:37 PM  
To: Belcher, Catherine; Nancy Steenson  
Cc: Radio Rich Girard at Large; Ed Naile  
Subject: Re: Request to see salary information

Dear Ms. Belcher,

How is the salary information stored? Does it have a separate access and function code?

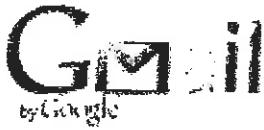
Are you going to print it so it can be inspected? That seems obviously counter productive.

Please emails me an electronic copy when the office reopens. If you will not comply with this request, I require the specific provision in the law by which you are refusing to provide this information. The people of Sandown, whom I represent, expect your office to do everything possible to facilitate my requests for public information.

Thank you,  
Donna Green

26

On Mon, Jan 26, 2015 at 5:00 PM, Belcher, Catherine <Catherine.Belcher@timberlane.net> wrote:



Donna Green <donnagre@gmail.com>

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## Request to see salary information

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Donna Green <donnagre@gmail.com>

Thu, Jan 29, 2015 at 10:56 AM

To: "Belcher, Catherine" <Catherine.Belcher@timberlane.net>

Cc: cindybuco <cindybuco@yahoo.com>, Cathleen Gorman <cgormanconsulting@yahoo.com>, Arthur Green <azgreen@comcast.net>, Harriet Cady <kd4318@yahoo.com>, Radio Rich Girard at Large <rich@girardatlarge.com>, Ed Naile <ednaile@comcast.net>, graham@soulefirm.com

Dear Ms. Belcher:

Allow me to draw your attention to the following NH Supreme Court decision:

**Menge v. Manchester, 113 N.H. 533, 311 A.2d 116 (1973) which you can find here**

<http://www.orol.org/rtk/rtknh/6574-1973-09-28.html>.

Please provide the electronic file associated with this information via email today. This is public information and should be given to me in whatever output file format is supported by your financial software; e.g; pdf, export to spreadsheet, export to .c.s.v

If you will not comply with this request, I require the specific provision in the law by which you are refusing to provide this information. The people of Sandown, whom I represent, expect your office to do everything possible to facilitate my requests for public information.

Thank you,  
Donna Green  
[Quoted text hidden]



Donna Green <donnagre@gmail.com>

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## Request to see salary information

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Metzler, Earl <Earl.Metzler@timberlane.net>  
To: Donna Green <donnagre@gmail.com>

Thu, Jan 29, 2015 at 10:58 AM

Send her the same reply and leave it at that.

Dr. Earl F. Metzler II

On Jan 29, 2015, at 10:57 AM, Donna Green <donnagre@gmail.com<mailto:donnagre@gmail.com>> wrote:

Dear Ms. Belcher:

Allow me to draw your attention to the following NH Supreme Court decision:

Menge v. Manchester, 113 N.H. 533, 311 A.2d 116 (1973) which you can find here  
<http://www.orol.org/rtk/rtknh/6574-1973-09-28.html>.

Please provide the electronic file associated with this information via email today. This is public information and should be given to me in whatever output file format is supported by your financial software; e.g; pdf, export to spreadsheet, export to .c.s.v

If you will not comply with this request, I require the specific provision in the law by which you are refusing to provide this information. The people of Sandown, whom I represent, expect your office to do everything possible to facilitate my requests for public information.

Thank you,  
Donna Green

On Thu, Jan 29, 2015 at 9:26 AM, Belcher, Catherine <Catherine.Belcher@timberlane.net<mailto:Catherine.Belcher@timberlane.net>> wrote:  
Hello Donna,

Thank you for your email response regarding the District's notification to you that the salary information you requested is available for public inspection. As indicated in my email dated January 26th, the information you requested is immediately available for public inspection.

Have a good day,  
Cathy

[cid:image001.png@01D03BA1.E13673C0]

Cathy Belcher

Executive Assistant to the Superintendent  
and Assistant Superintendent of Schools

(603) 382-6119 ext. 2217<tel:%28603%29%20382-6119%20ext.%202217>

catherine.belcher@timberlane.net<mailto:catherine.belcher@timberlane.net><mailto:catherine.belcher@timberlane.net><mailto:catherine.belcher@timberlane.net>>

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## **RIGHT TO KNOW REQUESTS**

Right to Know requests shall be submitted to the Superintendent's Office in writing (emails are acceptable). Although written requests are not required by law, it is beneficial to both the District and the requester to have documentation of the request.

Pursuant to RSA 91-A and upon receipt of a Right to Know request, the School District shall within 5 business days make such record available, deny the request in writing with reason, or furnish written acknowledgement of the request and include a statement of the time reasonably necessary to determine whether the request shall be granted or denied.

Materials and/documentation produced to fulfill a Right to Know request shall be subject to a charge \$.50 per page (only hardcopies will be produced; no electronic copies will be provided) and shall be picked up at the Superintendent's office during normal business hours. For materials that can only be made available electronically (i.e. video recordings) requesters may provide their own thumb drive (in original, sealed packaging only) or the District shall provide the thumb drive at the requester's expense.

Providence, RI Superior Court

Docket #

Case # 218-2015-CV-000090

2015-07-06 09:51 AM

NOTED FOR REPLY

Donna M. Green, pro se

V.

School Administrative Unit #55, Earl. F. Metzler II

Timberlane Regional School District, Nancy Steenson

**OBJECTION TO MOTION TO DISMISS**

Now Comes Plaintiff, Donna M. Green, pro se, to object to the Defendants' Motion to Dismiss on the following basis:

**I. COUNT ONE: VIOLATION OF RSA 91-A:4, I AND IV.**

**The Plaintiff disputes Section "B" argument of the defense.** The Defendants claim 91-A provisions do not require a governmental body to reproduce records in an electronic format, or to "compile, cross-reference, or assemble information." The Plaintiff is not asking for records to be reproduced in an electronic format or to "compile, cross-reference, or assemble information." The documents in question exist in electronic format, were created and always stored in electronic format and the Plaintiff simply wants them as they currently exist - without any manipulation whatsoever.



Furthermore, RSA 91-A:4, V, says:

...any public body ...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.... 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.

Given the voluminous nature of the documentation requested, electronic format is the most practical way for this information to be useful to the Plaintiff (and the general public) in understanding the working of the governmental entity. This fact goes to the heart of RSA 91-A:1, the Preamble, which says in relevant part:

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.

Case law also supports the Plaintiff's claim. *See Menge v. Manchester, 113 N.H. 533, 311 A. 2<sup>nd</sup> 116 (1973)* wherein the court ruled that it was in accord with our laws to provide Right to Know information in the most practical form possible.

The Defendants' denial of electronic files in this instance and as a general policy violates the spirit of the Right to Know law as well as case law.

## II. COUNT TWO – VIOLATION OF RSA 91-A:4, I AND IV

### **The Plaintiff denies claims in Section "A" Factual Background:**

- Mrs. Green was not disrespectful and/or harassing to SAU employees;
- Defendant Metzler's letter to the Plaistow Police Department of August 4, 2014 was issued only to make it appear as though the police had actually ordered the

surveillance recording to be withheld. There is no evidence other than self-generated correspondence that any instruction was ever in fact issued to the SAU. Green obtained all correspondence between the Plaistow Police and Defendant Metzler and certain other persons in the district and SAU, none of which contained any instruction to withhold the surveillance recording.

- Plaintiff Green did in fact respond to the police promptly and submitted a written statement to the police on August 5, 2014 and was entirely cooperative until Green learned that the investigating officer was a former chairman of the Timberlane School Board and a long-time associate of school board members who unjustifiably censured Green. See Exhibits 1 and 2.
- The police investigation was delayed solely by the investigating officer because of his political ties to Defendant Metzler whose interests were served by having the cloud of the investigation hang over the Plaintiff for as long as possible. Only the Plaintiff's lawyer brought about a close to the investigation. The investigating officer has subsequently been rewarded by the district with a new special duty detail for school board and budget committee meetings.
- The police investigation was open from August 4, 2014 when the investigating officer contacted Green – not “as of August 25, 2014” as the Defendants claims.
- The police never “confirmed the authorization,” to release the recording as defense claims. At no time did the police ever state that they had asked for the tape to be withheld, nor did they ever “authorize” its release.

**The Plaintiff denies claims in Section “B,” Argument:**

Defendants cite certain exemptions established in *Murray v. State Police*, 154 N.H. 579, 913 A.2d 737 (2006). None of these exemptions apply to security video recording a public interaction occurring in a public place. There is no reasonable claim that releasing this recording would in any way hinder an investigation or enforcement proceedings.

Furthermore, the Plaistow Police had a copy of this recording for their own investigation as communicated to the Plaintiff in an email from the Acting Chief of the Plaistow Police and had no need to require the SAU to withhold it even if they had the legal authority to do so, which they did not. See Exhibit 3.

Since the investigating officer had a copy of the surveillance video since at least August 19, 2014, the date of the Acting Police Chief's email to Green (Exhibit 3), the defendants' claim that the video was released as promptly as possible and independent of Attorney Lehmann's letters is false. The police did not “authorize” the release of the tape – just as they never instructed the withholding of it.

**III. Attorney Fees**

Plaintiff agrees that in order to recover attorney fees, it must be established that the school district “knew or should have known that the conduct engaged in was in violation of the chapter...” RSA 91-A:8, I. Given that the SAU and the school district were in regular contact with their lawyers concerning this incident and specifically in regards to the surveillance recording, they knew or should have known that withholding the recording was in violation of the law. See Exhibit 4. The Plaintiff can not be held responsible for the district's poor legal advice.

chapter..." Plaintiff claims that a lawsuit begins with the hiring of a lawyer. In *ATV Watch v. Department of Resources and Economic Development*, 155 N.H. 434, 923 A 2<sup>nd</sup> 1061 (2007) the Supreme Court ruled that

The plain language of the statute indicates that the legislature intended for a petitioning party to recover attorney's fees when retention of legal counsel is necessary to secure access to public documents.

There is no doubt that Attorney Lehmann's services to the Plaintiff were necessary in order to obtain a public document, in this case a surveillance recording, and that the Defendants should have known what they were doing was in violation of RSA 91-A since they were told so by the Plaintiff and sought legal counsel on such. The fact that this incident happened before the current *pro se* action makes no material difference under the law.

### Special Considerations

The Plaintiff is also petitioning the court to rebuke the Timberlane School District and SAU 55 for its abuse of the Right to Know law in forcing her and other elected officials out of favor with the administration to file Right to Know requests and to pay for public information necessary to discharge their elected duties as they see fit. Should the Plaintiff's petition be dismissed, serious untoward consequences to her ability to discharge her public service, should she be re-elected, will result.

### Conclusion

The Defendants have failed in every point to show the Plaintiff's case lacks merit. The Plaintiff urges the court to hear her case in full and not to dismiss it. If in its wisdom the honorable court *see fit* to dismiss, Plaintiff would ask that it not be with prejudice.

Respectfully submitted and true to the

best of my knowledge,

March 5, 2015

By: Donna M. Green

Donna M. Green, pro se  
3 Cranberry Meadow Rd.  
Sandown., NH 03873  
603-974-0758  
donnagre@gmail.com

Certificate of Service

I hereby certify that a copy of this pleading has been emailed and forwarded, postage prepaid, on March 5, 2015 to the attorney for the Defendants, Jeanne M. Kincaid, Esq. A

Donna M. Green

Donna M. Green, pro se

Rockingham SS

STATE of NEW HAMPSHIRE

RECEIVED  
ROCKINGHAM  
SUPERIOR COURT Superior Court

2015 MAR 19 P 2:38  
Docket #218-2015-CV-00090

Donna M Green

V

School Administrative Unit #55, et al.

Motion to Reconsider

Now comes Donna M. Green, pro se, an elected member of the Timberlane Regional School Board representing Sandown, NH and requests the Honorable Court Reconsider the Orders dated March 9, 2015 for the reasons enumerated below.

Answer to Part I. Green Is Not Entitled to Electronic Copies

1. Plaintiff believes and respectfully argues that the Court erred in its March 9, 2015 FINAL ORDER in Part 1 by not taking into consideration the statute's complete language and intent. Plaintiff believes that when looking at all of RSA 91-A the Court will find that this Motion to Reconsider has merit.
2. Plaintiff believes that the Honorable Court should be guided by the New Hampshire Supreme Court's rulings with respect to the Right to Know law in *Premium Research Services v. N.H. Department of Labor*, 162 N.H. 741, 743, 34 A.3d 1225 (2011). The entire paragraph from that ruling is relevant to the Plaintiff's argument in that it 1) looked to the overall context of 91-A, 2) construed provisions to favor disclosure, and 3) saw legislative history as an aid in ambiguity:

Resolving the issues on appeal requires that we interpret the Right-to-Know Law, which is a question of law that we review de novo. *ATV Watch v. N.H. Dep't of Transp.*, 161 N.H.746,752, 20 A.3d 919 (2011). **When interpreting a statute, including the Right-to-**

**Know Law, we first look to the plain meaning of the words used and will consider legislative history only if the statutory language is ambiguous. *Id.*** We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. *Lambert v. Belknap County Convention*, 157 N.H. 375, 378, 949 A.2d 709 (2008). **We also interpret a statute in the context of the overall statutory scheme and not in isolation. *Id.*** We resolve questions regarding the Right-to-Know Law with a view to providing the utmost information in order to best effectuate the statutory and constitutional objective of facilitating access to all public documents. *ATV Watch*, 161 N.H. At 752, 20 A.3d 919. **Therefore, we construe provisions favoring disclosure broadly, while construing exemptions narrowly. *Hampton Police Assoc. v. Town of Hampton*, 162 N.H. 7, 11, 20 A.3d 994 (2011).**  
[emphasis added]

3. Although the Court acknowledges the supportive precedent of *Menge v. Manchester*, the Honorable Court's decision concluded that Green is not entitled to her request for an electronic file of specific budget information. The decision hinged on the word, "may" in one sentence of RSA 91-A:4 V. The decision says:

...subsequent amendments to RSA 91-A, which in fairly plain language state that it is the choice of the public entity whether to produce documents in electronic or conventional format. RSA 91-A:4 V states that "any public body or agency which maintains governmental records in electronic format may, in lieu of producing original records, copy governmental records requested to electronic media..." (emphasis added). By using the word "may" rather than "shall," the legislature clearly decided to give governmental units the discretion to provide documents stored electronically in either electronic or hard-copy form.

4. The Plaintiff contends that focusing on a single word does not do justice to the intent of the entire statute, which is captured in its preamble:

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.

5. As stated in the Main Motion filed by the Plaintiff on Feb. 3, 2015, if Green does not receive the salary and staffing information requested in a format that allows for data mining, such as in the statement of the Court in *Merge*, Green will have no practical way to independently verify the Timberlane Regional School District's filings to the New Hampshire Department of Education. Since all other options available to the Plaintiff require so many arduous hours of work as to be impractical and unreasonably burdensome, she will be frustrated from holding the school government accountable. This is contrary to the intent of the Right to Know law as expressed in its preamble and relies on a single word in that law rather than referencing the entire spirit and intent of the statute.

6. Further, the phrase from RSA 91-A:4, V cited by this Honorable Court in the Final Order should be read in the full context of RSA 91-A:4, V. This reads in full:

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.

7. The first sentence is more properly interpreted to mean that a governmental record stored in an electronic format, such as in a database or proprietary format specific to a software program, need not be provided in its raw form. Instead, it may be copied or exported into a "standard or common file format." As an example, the financial software program used by SAU 55 stores its records in a proprietary format, but as SAU 55 has demonstrated in Hampstead and Timberlane, this software program can export the data into a common format (pdf). In this context, the word "may" is more properly interpreted to mean that SAU 55 has the discretion to provide either the raw format, or the standard or common format.

8. The second sentence controls when the electronic record may be printed by an agency. This is a conditional sentence with two parts to the condition, at least one of which must be satisfied in order for SAU 55 to be allowed to print an electronic record instead of providing an electronic copy:

A) "copying to electronic media is not reasonably practicable, or"

B) "the person or entity requesting access requests a different method"

9. Condition A is more properly interpreted to mean that in the case where the software program does not practically support exporting into a standard or common file format, then the record may be printed. This does not apply to this case since SAU 55 has already provided electronic files in pdf format and, given the known capability of the software program, it is similarly practicable to do so in other formats

such as Excel. In the context of the first condition, the second condition of "a different method" means that the requester has asked for a non-standard or uncommon format, or has asked for the original format that may reveal confidential information. In this context, the word "may" is more properly interpreted to mean that SAU 55 has the discretion to provide the records in a non-standard or uncommon format or one that complies with "a different method." The Plaintiff is asking only for a common format that allows data mining and in no way is requesting a format that reveals confidential information. Since neither conditions A or B are met in this case, SAU 55 must provide the records in an common electronic format.

10. Since failing to provide the record in a common electronic format impedes access to the record, the burden of proof falls on SAU 55 that the conditions enabling the records to be printed have been met. That is, SAU 55 must prove either that providing the requested format is not practicable or that Green requested a format that is not standard or common. SAU 55 provided no evidence in support of this burden.

11. The last part of the second sentence, "...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," means that the agency should try to reasonably comply with the request. In other words, don't print the record if there is a better way of responding to the request that is more consistent with the preamble, as discussed below.

12. When read in the full context of section RSA 91-A:4, V, it is clear that the request by the plaintiff for a standard and common format that the SAU 's software provides must be provided.

13. Further, the Plaintiff believes that the use of the word “may” in the legislation cited by the Court is ambiguous. The Honorable Court is interpreting “may” to mean, “you have the choice of;” whereas the Plaintiff believes the legislation is using “may” in the sense of “you have permission to.” The intent of RSA 91-A:4 V is to aid public bodies in complying with Right to Know requests. The intent is not to limit or restrict information in electronic format, but rather to enable public entities to provide “common file formats” or “a different method” to satisfy requests for public information.

14. Because of this ambiguity in the meaning of “may,” it is appropriate to refer to the legislative history of 91-A. According to an introduction to the *Attorney General's Memorandum on New Hampshire's Right to Know Law*, dated July 15, 2009: “[I]n 2008 and 2009, the New Hampshire Legislature amended the Right-to-Know law to clarify how it applies to governmental records in electronic form, electronic communications used to transact governmental business, and the duty to preserve electronic records.” It is the Plaintiff's contention that the amendments with respect to electronic information were done to clarify and assert the public nature of electronic information and to aid the public in obtaining electronic information as such.

15. Apart from 91-A:4 V, other sections of the statute supports the Plaintiff's request. 91-A: 4, I states:

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.[emphasis added]

This portion of law states that every citizen "HAS THE RIGHT," to copy records by electronic means. There is no doubt the budget records in question were created and stored in electronic format; therefore, the SAU is obliged to allow some sort of electronic copy.

16. The honorable Court also cites *Nolan v. City of Keene*, 09-E-0152 "holding that RSA 91-A did not require the City to provide records to the plaintiff by email."

The Plaintiff contends that the facts of *Nolan* are materially different from that of

Green's: a) Green is not arguing for an email delivery of information but rather

for information already existing in electronic form;

b) The information requested in *Nolan v. Keene* was not voluminous; whereas Green is requesting what could be as much as 700 paper pages of budget information;

c) The information in *Nolan v. Keene* was not made less useful to the requester in holding government accountable by being received in paper.

17. In support of the Plaintiff's argument, the *Nolan* decision did consider the burdensomeness of the information requested: "The evidence in this case demonstrates that the records he requested were not so numerous that the cost of copying or inspection was burdensome. In fact, it appears that there were only thirty to forty pages of records, at most."

18. It should be stressed that the Plaintiff has never requested the Defendants to create or assemble information that doesn't already exist in electronic format. Per RSA 91-A:1-a, IV: " 'Information' means knowledge, opinions, facts, or data of any kind and whatever form maintained by the governmental entity including, but not limited to, written, aural, visual, **electronic**, or other physical form" (emphasis added). The corresponding information the Plaintiff requests for Timberlane is emailed to the Hampstead Budget Committee in electronic form. Even though the Hampstead School District is a unique entity from the Timberlane Regional School District, the two districts share the identical financial software and the identical government reporting requirements on staffing and budgets, as well as the same business administrator at SAU55.

19. The Defendants provided no credible reason for not providing this information which has not been offered to the Plaintiff in either electronic or paper form. In all the correspondence with the SAU, the Plaintiff has only been given the opportunity to inspect the information. No offer of a copy, or to allow a copy, has ever been made. The SAU's charge for copies is 50 cents a page, which could amount to hundreds of dollars and as such is itself a barrier to information.

#### **Changing Factors After Decision**

20. The SAU has made public on March 13, 2015, without notifying the Plaintiff, a pdf. budget detail document of the information the Plaintiff requests for budget year 2015-2016, but stripped of names and each named individual's full-time equivalent standing. This does not at all satisfy Green's requests; however, it does show beyond any doubt that such a report exists for Timberlane at SAU 55.

Conclusion to Part I

21. The greatest possible access to information must take into consideration the burden to the public in obtaining and using public information. If it does not, citizens cannot practically use public information to hold their governments accountable which is the intent of the Right to Know law. The Plaintiff requests an electronic file of information that already exists in electronic format, access to which is clearly intended by the law. The SAU may – in the sense of being permitted to -- provide the information in a common file format.

Wherefore the Plaintiff requests the Honorable Court to:

- A. Reconsider its Final Order of March 9, 2015 in light of all the above;
- B. Require SAU 55 and the Timberlane School District to immediately provide Green with an electronic file in a mutually agreeable format of the salary and staffing budget detail for Timberlane's 2014-15 budget year, and salary and staffing budget detail for 2015-16 approved and default budgets.
- C. Award the Plaintiff her filing, service and associated costs of this action.

Part II Green is Not Entitled to Attorney's Fees

The Plaintiff defers to the judgment of the Court with respect to previously expended attorney fees and does not ask for a reconsideration on this matter.

I, Donna M. Green, the undersigned do hereby attest that the above stated facts are true and correct to the best of my knowledge. Respectfully submitted by

Donna M. Green

Donna M. Green, pro se  
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603-974-0758  
donnagre@gmail.com  
STATE of NEW HAMSHIRE

Dated: March 19, 2015.

Denied for the reasons stated in  
the objection and in the court's  
March 9, 2015 order.  
44  
4/1/15  
DAVID A. ANDERSON

Certificate of Service

I hereby certify that a copy of this pleading has been emailed and forwarded, postage prepaid, on March 19, 2015 to the attorney for the Defendants, Jeanne M. Kincaid, Esq.



Donna M. Green, pro se

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

Rockingham Superior Court  
Rockingham Cty Courthouse/PO Box 1258  
Kingston NH 03848-1258

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<http://www.courts.state.nh.us>

**NOTICE OF DECISION**

**DONNA M GREEN  
3 CRANBERRY MEADOW ROAD  
SANDOWN NH 03873-2218**

**Case Name: Donna M Green v School Administrative Unit #55, et al  
Case Number: 218-2015-CV-00090**

Please be advised that on March 09, 2015 Judge Anderson made the following order relative to:  
Verified Motion to Dismiss; Denied as being moot given the Court's Final Order.

Final Order (copy enclosed)

March 10, 2015

Raymond W. Taylor  
Clerk of Court

(507)

C: Jeanne M. Kincaid, ESQ



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**NOTICE OF DECISION**

**DONNA M GREEN  
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**Case Name: Donna M Green v School Administrative Unit #55, et al  
Case Number: 218-2015-CV-00090**

Please be advised that on April 01, 2015 Judge Anderson made the following order relative to:

Motion to Reconsider

**Denied for the reasons stated in the objection and in the Court's March 9, 2015 order.**

April 02, 2015

Raymond W. Taylor  
Clerk of Court

(507)

C: Jeanne M. Kincaid, ESQ