

New Hampshire Case Law Chart for Sealing Records

Case	Court/ Year	Notes
<i>Petition of Keene Sentinel</i>	136 N.H. 121 (1991)	In its petition, the newspaper asserted that both state and federal constitutions guaranteed it a right of access to divorce records of a political candidate. The trial court denied the newspaper's request, basing its decision on the fact that the records were previously partially and completely impounded by the trial judge during the divorce. The Court ultimately held that (1) the newspaper had standing without being made a party to a case to request court records; (2) the burden of proof rested on the party seeking nondisclosure that there was some overriding consideration or special circumstance that outweighed the public's access right; and (3) the motivations of the newspaper were irrelevant to the question of access.
<i>Associated Press v. State</i>	153 N.H. 120 (2005)	The petitioners, Associated Press and other news organizations, appealed an order from the trial court, which denied their petition for a declaration that RSA 458:15-b was unconstitutional and for an injunction enjoining enforcement. They asserted the statute was unconstitutional because it violated the public's right of access to court records guaranteed by the New Hampshire Constitution. The Court upheld the trial court's decision that subsections I and II of the statute were constitutional but held that subsection III was an unconstitutional restriction.
<i>In re N.B.</i>	169 N.H. 265 (2016)	The New Hampshire Division for Children, Youth and Families (DCYF) and the Court Appointed Special Advocates of New Hampshire (CASA) had not lost standing to seek an order regarding nondisclosure of court records on the ground that the neglect case was closed and the children had been adopted by appellant, as such a ruling would defeat the purpose of maintaining confidential records, and N.H. Fam. Div. R. 1.30 recognized that parties' interests continued after a case was closed; (2) The portion of the trial court's order which stated that any future lawsuit or the pleadings therein filed by appellant against DCYF and CASA had to be filed under seal constituted a prior restraint on free speech and limited access to the courts in violation of N.H. Const. pt. I, arts. 8 and 22 in that it was overbroad and did not use the least restrictive means available to achieve its purpose.
<i>State v. Kibby</i>	170 N.H. 255 (2017)	(1)-Defendant, who had sent letters to the trial court concerning his representation by counsel, had failed to meet his burden of demonstrating with specificity that the letters contained privileged communications sufficient to justify maintaining them under seal; (2)-Because defendant conceded that

		<p>unsealing certain motions would not compromise his defense and that he sought a ruling only for future cases, he had failed, as a matter of law, to meet his burden of demonstrating with specificity a compelling interest to justify maintaining the motions under seal. The Court affirmed the trial court's decision.</p>
<i>In re State</i>	146 N.H. 621 (2001)	<p>By petition for writ of certiorari, the State appealed an order of the Keene District Court (New Hampshire) unsealing certain search warrants, search warrant applications, supporting affidavits, and returns.</p> <p>The issue before the court was what constituted an “overriding consideration or special circumstance”- a sufficiently compelling interest - to overcome the presumption of access to the documents in an ongoing, pre-indictment criminal investigation. In most pre-indictment investigations, the existence of an investigation itself provided the circumstance that justified preventing public access to the records. This case was precisely the type of case which should have been afforded protection from disclosure. It arose out of a complex ongoing investigation in which no indictments had been returned, and no arrests had been made. The investigation began only five months earlier when police started searching for two individuals who disappeared, seemingly without a trace. The cooperation of witnesses and the existence of evidence, especially evidence yet to be discovered, was crucial to the investigation. The secrecy of the nature and scope of the investigation was critical to ensure that potential suspects were not able to avoid detection. The State satisfied its burden of proof by showing that disclosure of the documents would have impeded its investigation into the matter.</p>

New Hampshire Case Law Chart for Guidance by Right to Know, 91-A

Case	Court/ Year	Notes
<i>New Hampshire Right to Life v. Director, New Hampshire Charitable Trusts Unit</i>	143 A.2d 829 (N.H. 2016)	Substance: Privacy interests. Under some circumstances, individuals retain a strong privacy interest in their identities , and information identifying individuals may be withheld under Right-to-Know Law to protect that privacy interest; one such circumstance is when public identification could conceivably subject those identified to harassment and annoyance in the conduct of their official duties and in their private lives.
<i>Hampton Police Ass’n, Inc. v. Town of Hampton</i>	20 A.3d 994 (N.H. 2011)	Substance: Confidential information. The determination of whether information is confidential for purposes of the Right-to-Know Law is assessed objectively, not based upon the subjective expectations of the party generating that information. To show that information is sufficiently confidential to justify nondisclosure under the Right-to-Know Law, the party resisting disclosure must prove that disclosure is likely to: (1) impair the information holder’s ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.

<p><i>Professional Firefighters of New Hampshire v. Local Government Center, Inc.</i></p>	<p>992 A.2d 582 (N.H. 2010)</p>	<p>Substance: Privacy interests. Three-Step analysis using objective standard: (1) evaluate whether there is a privacy interest at stake that would be invaded by the disclosure; (2) assess the public’s interest in disclosure; (3) balance the public interest in disclosure against the government’s interest in nondisclosure and the individual’s privacy interest in nondisclosure.</p> <p><i>See also Reid v. New Hampshire Attorney General, 152 A.2d 860 (N.H. 2016) (personnel files).</i></p> <p>Process: In camera; Vaughn index. When there is a question whether materials are exempt from public access, the trial judge should conduct an in camera review to determine whether portions of the materials meet any of the other statutory exemptions of the Right-to-Know Law; however, in large document cases, where the imbalance of information distorts the adversary process such that neither the plaintiffs nor the court can effectively review disputed evidence, use of Vaughn index is appropriate</p>
<p><i>Lambert v. Belknap County Convention</i></p>	<p>949 A.2d 709 (N.H. 2008)</p>	<p>Substance: Names & Addresses Whether disclosure of a list of names is significant or de minimis threat depends upon the characteristics revealed by virtue of being on the particular list, and the consequences likely to ensue.</p>
<p><i>Lamy v. New Hampshire Public Utilities Com’n</i></p>	<p>872 A.2d 1006 (N.H. 2005)</p>	<p>Substance: Names & Addresses; Financial Information; Personnel Files. The Right-to-Know Law exemption from disclosure to prevent invasion of privacy means that <i>financial information</i> and <i>personnel files</i> and other information necessary to an individual’s privacy need not be disclosed.</p> <p>Discernable interest exists in the ability to retreat to the seclusion of one’s home and to avoid enforced disclosure of one’s name and address. Only a modest privacy interest is assigned to an individual’s bare name and home address under privacy exemption Electrical utility’s residential customers had a privacy interest in their name and home</p>

		addresses in utility's E-1 reports on voltage testing since disclosure would serve as a conduit into the sanctuary of the home. Privacy interest in not being disturbed at home outweighed the public interest in derivative use of names and addresses of electrical utility's residential customers so that they could be contacts at home about voltage complaints (which was virtually non-existent)
<i>Goode v. New Hampshire Office of Legislative Budget Assistant,</i>	813 A.2d 381 (N.H. 2002)	Substance: Confidential information. Even if records are deemed confidential under Right-to-Know law, they are not per se exempt from disclosure; rather, to determine whether records are exempt as confidential, the benefits of disclosure to the public must be weighed against the benefits of non-disclosure to the government.
<i>Union Leader Corp. v. New Hampshire Finance Authority</i>	705 A.2d 725 (N.H. 1997)	Substance: Privacy interests. In a petition seeking to gain access to documents under the Right-to-Know Law pertaining to public housing developments, where interveners argued that disclosure of many of the disputed exhibits would constitute an unwarranted intrusion into personal or private affairs, the review had to necessarily focus on whether the interveners showed that the information sought would not inform the public about the authority's activities with respect to the housing developments in question, or that a valid privacy interest, on balance, outweighed the public interest in disclosure.
1986 Op. Atty. Gen. 198	1986	Subject: Privacy interests. Bank tax returns are not subject to public disclosure

New Hampshire Federal District Court Case Law Chart

Case	Court/ Year	Notes
<p><i>Thurlow v. Senk</i>, No. 16-cv-512-SM, 2018 WL 324823, at *3</p>	<p>D.N.H. 2018</p>	<p>Process: Applying Local Rule 83.12(c)</p> <p>Substance: Counseling records.</p> <p>Respondent ordered to file with the court a complete copy of the complainant's counseling records submitted to the Superior Court in the state court post-conviction proceedings; may be filed under provisional seal, along with a motion to seal and, if so, the filing must also include: (i) a motion to seal the records at Level I and/or Level II in accord with local rule and the motion shall be served on petitioner; and (ii) s motion for a protective order, which shall be served on petitioner, accompanied by a proposed protective order, which will allow the petitioner reasonable access to the sealed records to which he had access in the Superior Court, while protecting the confidentiality of the records to the extent possible.</p>
<p><i>Town of Wolfeboro v. Wright-Pierce</i>, No 12-cv-130-JD, 2014 WL 280474</p>	<p>D.N.H. Jan. 23, 2014</p>	<p>Substance: Confidential per Agreement By Parties</p>

<p><i>Wrobel v. Maughan,</i> No. 12-cv-379-PB, 2012 5948530, at *1</p>	<p>D.N.H. Nov. 9, 2012</p>	<p>Process: Motion to seal needs to be “particular” citing <i>Dahl v. Bain Capital Partners LLC</i>, 891 F. Supp. 2d 221, 225 (D. Mass 2012)</p> <p>Substance: Information affecting business interests. Business information affecting business interests is relevant to matters of confidentiality. Highly sensitive, confidential or proprietary information and trade secrets may be sealed where sufficient particularity of business interests and business harm, overcomes presumption of public access.</p>
<p><i>United States v. Isaacson,</i> No. 09-cv-332-LM, 2010 WL 3895683 at *2–4</p>	<p>D.N.H. Sept. 28, 2010</p>	<p>Substance: Attorney-client privilege and amount of attorney’s fees. Documents referencing privileged material may be sealed, but documents indicating attorney’s fees may not be sealed. There is a strong common law presumption favoring public access to judicial proceedings and records and only the most compelling reasons can justify non-disclosure of judicial records that come within the scope of the common-law right of access. The court must exercise discretion “in light of the relevant facts and circumstances of the particular case.” Movant has the burden to articulate why an attorney’s specific billing statements should be veiled from public scrutiny.</p> <p><i>Note - This case provides a useful overview of First Circuit law governing whether documents may be sealed.</i></p>
<p><i>Hopkins v. Warden, N.H. State Prison,</i> No. 04-30-M, 2004 WL 3211115, at *13–14</p>	<p>D.N.H. May 20, 2004</p>	<p>Substance: Medical records. Court summarily granted the defendant’s motion to seal his medical records.</p>
<p><i>Hopkins v. Coplan</i> No. 04-30-SM, 2004 WL 1905654, at *3</p>	<p>D.N.H. Aug. 26, 2004</p>	<p>Substance: Confidential Informants Granting motion to seal documents that revealed identity of confidential informants.</p>

<p><i>Decosta v. Chabot</i>, No. 92-425-M, 1994 WL 279739, at *1-2</p>	<p>D.N.H. June 9, 1994</p>	<p>Substance: Privacy and reputation interests - child abuse proceedings. Granting motion to seal records relating to child abuse proceedings. While the motion was brought under RSA 169-C:25, I, the court suggested more broadly that as a matter of general policy the “protect[ion] of the family’s privacy and reputation from irreparable damage” might be sufficient grounds for granting a motion to seal.</p>
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