

THE STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
SOUTHERN DISTRICT**

**SUPERIOR COURT
No. 2022-CV-00309**

Laurie Ortolano

v.

City of Nashua, 201 Main Street Real Estate Corporation,
and 201 Main Street Financial Corporation

ORDER

The petitioner, Laurie Ortolano, has brought this pro se action against the defendants, the City of Nashua (the “City”), 201 Main Street Real Estate Corporation and 201 Main Street Financial Corporation (collectively the “201 Corporations”), pursuant to New Hampshire’s Right-to-Know (“RTK”) Law, RSA 91-A, to enforce her right to access public records and public meetings, and to seek the imposition of financial sanctions. The Court held a six-day bench trial on the matter on December 18, 19, and 20, 2023, and April 10, 11, and 12, 2024.¹ The parties submitted hundreds of exhibits for the Court’s consideration. The Court heard testimony from several witnesses including: Ms. Ortolano, Celia Leonard, William Cannon, Richard Lannan, Tim Cummings, John Griffin, Deborah Novotny, Marylou Blaisdell, and Amy DeRoche. After considering the record, the parties’ arguments, and the applicable law, the Court finds and rules as follows.

Background

In her petition, Ms. Ortolano separates the City and the 201 Corporations’ alleged RSA 91-A violations into three subject areas: (1) the Downtown Improvement

¹ This trial was scheduled for three days, but the parties ultimately required an additional three days to finish the presentation of evidence.

Committee and the downtown barriers ordinance; (2) the construction of the Nashua Performing Arts Center; and (3) the Tax Increment Financing Advisory Board.

Generally, Ms. Ortolano argues that the defendants violated RSA 91-A in the following ways: (i) failing to properly notice meetings; (ii) failing to post meeting minutes within five days; (iii) failing to generate sufficient minutes; and (iv) failing to provide responses and/or to provide adequate responses to RTK requests. Ms. Ortolano seeks various remedies for these violations including the imposition of civil fines and penalties against individuals who she contends violated RSA 91-A in bad faith. The defendants deny the majority of allegations made in Ms. Ortolano's petition, while also conceding that some of the RSA 91-A violations alleged by Ms. Ortolano did occur. However, the defendants maintain that any violations that did occur were cured or resolved prior to the filing of Ms. Ortolano's petition and, moreover, none of these violations were committed in bad faith.

"Resolution of this case requires [the Court] to interpret certain . . . provisions of the Right-to-Know Law." Am. Civ. Liberties Union of N.H. v. N.H. Dep't of State Police, 176 N.H. 302, 305–6 (2023) (cleaned up). When interpreting the law, the Court "appl[ies] the ordinary rules of statutory construction . . . and first look[s] to the plain meaning of the words used." Ettinger v. Town of Madison Planning Bd., 162 N.H. 785, 788 (2011) (citing Union Leader Corp. v. City of Nashua, 141 N.H. 473, 475 (1996)). It "interpret[s] 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." Am. Civ. Liberties Union of N.H., 176 N.H. at 306 (cleaned up). It must "also interpret a statute in the context of the overall statutory scheme and not in isolation." Id.

Accordingly, the Court resolves questions under the Right-to-Know Law in light of the statute's purpose. Ettinger, 162 N.H. at 788; see RSA 91-A:1 (2013) (statement of purpose). Thus, the Court "construe[s] provisions favoring disclosure broadly, while construing exemptions narrowly." 38 Endicott St. N., LLC v. State Fire Marshal, N.H. Div. of Fire Safety, 163 N.H. 656, 660 (2012). Where the dispute concerns the disclosure of information, the burden of proof is on the party seeking nondisclosure. N.H. Civ. Liberties Union v. City of Manchester, 149 N.H. 437, 439 (2003).

The Court must first determine whether the defendants violated the RTK Law, and if so, what remedies, if any, are appropriate. Accordingly, the Court will address the RSA 91-A violations Ms. Ortolano alleges under each subject area before turning to Ms. Ortolano's requested relief.

I. The Downtown Improvement Committee ("DIC") / Downtown Barriers Ordinance – RSA 91-A Violations Alleged Against the City

A. Factual Background

The Court finds the following facts based on the evidence presented at trial. At a December 8, 2021 Infrastructure Committee meeting, there was extensive public comment and discussion amongst committee members regarding a recommended ordinance, O-21-076, which involved the installation of "downtown barriers" for an additional three years (the "downtown barriers ordinance"). The downtown barriers were erected along Main Street and a few other streets in downtown Nashua to create expanded space for outdoor dining during the COVID-19 pandemic. However, the barriers eliminated a significant number of parking spaces and caused heavy traffic, which in turn decreased the number of customers shopping at retail stores downtown resulting in other issues that frustrated many Nashua residents. Thus, many members

of the public did not support the reimplementation of the downtown barriers—at least not in the same manner they had been installed previously. Sixteen members of the public, including Ms. Ortolano, retail owners, restaurant owners, and committee members spoke at the meeting in favor of a modified plan focused on a compromise to reduce the negative impacts of the barriers. (See Ex. 3 at 4–27.) A petition signed by citizens seeking the removal of the barriers was provided to the Infrastructure Committee. After listening to the public comments, the City’s Economic Development Director, Tim Cummings, stated:

I agree with everything that’s being said. I think when I started my comments I said I looked at this issue as the start of a conversation. I’d be happy to facilitate a working group as suggested. It would be a public meeting where we publicly notice it. Happy to have anyone who’s interested participate and to that end Mr. Chairman, I would ask that you appoint one or two members of the Infrastructure Committee to participate in that group. But you know, happy to work on it. . . . Happy to convene some folks. Happy to continue the conversation and see if we can develop a compromise that everyone would be happy with.

(Ex. 3 at 27 (emphasis added).) The committee members then discussed the procedural aspects of the legislation such as pending deadlines, and ultimately determined that it would be best to table the vote on the ordinance and re-file it in the new year. Director Cummings told the Chair, Alderman Michael O’Brien, “so you could file this legislation again in January understanding that it would come to the Infrastructure Committee and there would be a working group on it and it would go so on and so forth through the process. That’s what you’d need to do.” (Id. at 29.)

Alderman O’Brien replied,

Oh, I intend to because I am encouraged to hear the fact and the words compromised and I thank you for those that brought that forward to speak about that and come up with the solution. It is my intention probably, maybe, to have it as a full committee, but I’m willing to appoint committee members.

I would encourage that it's open to members of the public – the stakeholders. We've got to have stakeholders. We've got to have you people at the meeting to really tell us. To come up with this aldermanic meeting like this, it's great but it's kind of like after the horse got out of the barn a bit. We need to have your input as we come up and draft this legislation. So we can do that. So Mr. Cummings, it sounds like the only legal or best way for this particular thing would be to have the motion to table and then to bring it back as a working group.

(Id. (errors in original).) Director Cummings then requested Alderman O'Brien "give [him] an indication of who should be a part of that working group," and stated that he would "be happy to set up a meeting for next week just to kind of get it going." (Id.) After a brief exchange with other members of the committee, Director Cummings clarified with Alderman O'Brien as follows:

So Mr. Chair if I hear you correctly, it sounds like maybe you want to wait until January before you start the working group because you have an organizational effort that you need to get through . . .

Alderman O'Brien replied:

I could probably give you some names. This thing needs to be – I am totally aware that this thing needs to be done. . . .if we decide to go with the outdoor dining and that's right around a couple of snowfalls away. So anyways, so yeah I'll expedite that. I guarantee you because this needs to be resolved.

(Id. at 30.) The committee then tabled its vote on the downtown barriers ordinance, O-21-076.

The following day, December 9, 2021, Ms. Ortolano sent Alderman O'Brien the following email, on which she cc'd Director Cummings and Mayor Jim Donchess:

Alderm[a]n O'Brien,

Who is responsible for the selection of the members to the Downtown Barrier Work Group? How are these members going to be selected? As I have expressed last evening, I would like to serve on that committee. Does this work group, that will be public meetings, have to be approved by the Board of Aldermen?

A response would be appreciated.

Laurie

(Ex. 4.) On Saturday December 11, 2021, Alderman O'Brien responded to Ms. Ortolano's email and explained that the "formation of the committee is a project in progress," and informed her that "[n]o correspondence or requests of committee assignments have been sent out to the stake holders (the downtown property owners) for committee participation." (Ex. 5.)

On January 11, 2022, the Chairman of the Downtown Improvement Committee ("DIC") Marylou Blaisdell, emailed Director Cummings and Amy DeRoche regarding the preparation of an agenda for the DIC meeting scheduled for January 14, 2022. (Ex. 6.) The email read as follows:

Subject: Friday Meeting DIC

Good Morning,

Preparing the agenda for Friday. My agenda is mainly updates to PAC, barrier program and financials. Please let me know what you have. Also, who do I contact to get an updated financial of available \$\$ and spent \$\$ for our committee? Thanks.

(Id.) The following day, January 12, 2022, Ms. Ortolano emailed Alderman O'Brien and Director Cummings "requesting an update on the barriers committee" and asking whether "this committee ha[d] been selected." (Ex. 7.) Ms. Ortolano then stated, "If you are unwilling or unable to answer the question, below is a right-to-know request under RSA 91-A for: [1] [any] records or documents that name the people on the barrier committee. [2] all email communications sent or received by Mr. Cummings regarding

the barrier committee.” (Id.) Ms. Ortolano did not receive a response from Director Cummings or Alderman O’Brien.

On January 14, 2022, the DIC held a meeting that was not noticed on the City’s website or calendar, the locations where meeting notices are usually posted. Present at the meeting were Ms. Blaisdell, Director Cummings, and five other individuals who are presumed to be members of the DIC. (Ex. 8.) On January 26, 2022, the Infrastructure Committee held a public meeting at which Ms. Ortolano raised the topic of the downtown barriers during her public comment, and the following exchange ensued:

Ms. Ortolano: I’d like to know a little bit about what the plans are for the barriers and I was hoping to hear a discussion on that tonight. I’m a little bit concerned given the timeframe where we usually get those out that no committee has been picked and we’re letting, you know, essentially a couple months go by before we have a meeting to convene on this. I don’t want this to be a situation where the administration or the Mayor just jams something through and all of a sudden the barriers are dropped back in the street without conducting a proper survey. . . .

. . .

Alderman Comeau: . . . Just to touch on something that the previous speaker brought up, I have gotten some communication from constituents. I know there was talk in a meeting in December about a potential – I don’t know if it’s like a citizens['] committee to discuss the barriers. I had a couple of people reach out to me and want to know how they can get on a public interest committee like that if one is formed. I don’t think that’s in the works yet but if it is, maybe Director Cummings I don’t know if you can speak to how somebody would or who somebody would reach out to get on a committee like that. . . .

Chairman O’Brien: I can answer that. There is an organization that has been around probably since the inception of mainstream [sic], and we’re relying on them for the citizen input. That way we can have stakeholders of Main Street because this affects Main Street. It has nothing to do with my particular neighborhood. So anything that will be discussed with the barrier thing will be members of this committee as well as the stakeholders on Main Street because they’re the ones who are going to have any positive or alleged positive or negative fiscal impact or anything else with it. So that’s the objective that the board’s doing right now. I think we do have a couple

of names. Nothing has been etched in stone as of yet. I've got to work with coordination with Director Cummings. Not saying that time is of the essence, but it is. . . . Hopefully we can get this done whenever this committee decides on a particular barrier issue. And even though it will be in the hands of a committee, any members of this infrastructure Committee can come and attend particular meetings. Okay with that being said, I hope that answers your question.

(Ex. 9 at 21–22 (errors in original).) Alderman O'Brien's new description of the barriers committee as essentially an exclusive and private committee that would not invite broad public participation stood in stark contrast to how he and Director Cummings previously described this potential committee at the December 8 Infrastructure Committee meeting. In response to Alderman O'Brien's statement, on January 27, 2022, Ms. Ortolano sent Director Cummings and Alderman O'Brien the following RTK request (the "January 27 RTK request"):

Mr. Cummings and Mr. O'Brien,

Pursuant to the Right to Know Law (RSA. 91-A), I am requesting public access, within 5 business days, to the governmental records reasonably described as follows:

1. **The names of the people 'stakeholders' selected to serve on the Downtown Barrier Committee. Please provide the document or record with the names for this group and the name of the group.**
2. **Any posting for meetings of the Downtown Barrier Committee**
3. **Please provide me with the record of the regulation, legislation, or statute that authorized the person authorized to select the committee as well as the process for approving the committee**

. . .

(Ex. 10 (emphasis in original).) On February 1, 2022, Director Cummings replied to Ms. Ortolano's January 27 RTK request and provided her with what he had identified as responsive documents. (See Ex. 11.) Notably, these documents did not include the January 11 email Ms. Blaisdell had sent to Director Cummings regarding the agenda for

the DIC meeting that was held on January 14. However, Ms. Ortolano was unaware of this at the time and appreciatively replied to Director Cummings as follows:

Thank you for your response. I think this is the first time in 2+ years, an Alderman has responded to a RTK request. I am going to resubmit this every Monday because I don't know when the committee will be selected and I believe that time is running out on engaging stakeholders in the barrier issue. Some of the downtown business owners that I think would want to be involved have stated that no one has contacted them. While I understand that RSA 91-A does not require questions to be answered, one way to avoid continued RTK requests regarding the establishment of this committee would be to state when the committee will be selected and the first meeting will be held. Just a time and money saving suggestion.

Thank you for the information. Have a good day.

Laurie

(Ex. 12.)

As promised, on February 4, Ms. Ortolano emailed Alderman O'Brien and Director Cummings another RTK request (the "February 4 RTK request") pertaining to the barriers committee, in which she again requested,

- 1. The names of the people 'stakeholders' selected to serve on the Downtown Barrier Committee. Please provide the document or record(s) including letter and emails with the names for this group and the name of the group.**
- 2. Please provide me with the record of the regulation, legislation, or statute that authorized the person authorized to select the committee as well as the process for approving the committee**

. . .

(Ex. 13.)

On February 11, 2022, at 7:45 a.m., the DIC held a meeting at which Director Cummings presented the downtown barriers plan for 2022 to the committee. (See Ex. 15.) This meeting was not posted on the City's website in either of the normal locations. At 4:22 p.m. that afternoon—after the DIC meeting had already occurred—Director

Cummings responded to Ms. Ortolano's February 4 RTK request and provided additional responsive documents. Included in those responsive documents was an email Director Cummings received from Ms. Blaisdell on February 5 that read: "Good Morning, Our February DIC meeting is Friday, February 11th at 7:45 a.m. in room 208 city hall. . . . [Director Cummings] will present an overview of the proposed barrier program for 2022 – it is important to review. Further agenda items to follow." (Id.)

On February 14, Alderman Comeau sent Director Cummings the following email concerning the February 11 DIC meeting:

Subject: Downtown Improvement Committee?

Hi Tim,

Can you tell me what happened with the Downtown Improvement Committee meeting last Friday the 11th? I'm getting citizens' complaints because a meeting was held without notice to the public and no agenda was posted on the city website. That's illegal, isn't it? What do I tell these people who are asking me?

(Ex. 17.) Director Cummings replied to Alderman Comeau and explained that he understood the public meeting notice requirement had been met because the meeting log was posted on the bulletin board located at City Hall. (Id.) Unsatisfied with this response, Alderman Comeau replied:

Tim,

I'm no lawyer, but unfortunately, that doesn't satisfy the requirements of RSA 91-A:2:

(b) If a public body chooses to post meeting notices on the body's Internet website, it shall do so in a consistent and reasonably accessible location on the website. If it does not post notices on the website, it shall post and maintain a notice on the website stating where meeting notices are posted.

We can't use the city website and calendar for public notices for years and then suddenly not and say notice was given because a piece of paper no

one knows is created each week was tacked to a board that almost no one in the public knows exists.

Based on the history of posting meeting notices to the Agenda Center and the City Calendar, the public has a reasonable expectation to find notices of future meetings on the city's website. The City homepage has a calendar right out in front with two tabs, one says "General Calendar" and the other says "City Meetings". Neither calendar includes a record of this meeting.

The fact that a meeting of the Downtown Improvement Committee is on the City Calendar for every month in 2022, all on the second Friday of the month, all at 7:45 am in Conference Room 208 would lead a reasonable person to come to the conclusion that this is a regularly occurring meeting, and the fact that someone removed from the calendar, or didn't add to the calendar, the February meeting is highly irregular. Who in your office is responsible for posting DIC meetings to the city calendar?

(Ex. 17.)

On February 15, 2022, at 12:21 a.m. Ms. Ortolano emailed Ms. Blaisdell and requested the DIC meeting minutes from June 2021 to present, as well as survey data collection from downtown store owners. (Ex. 18.) Ms. Blaisdell responded at around 7:45 a.m. and informed Ms. Ortolano that she was on vacation but would address the request upon her return. (See City's Ex. A-28.) Ms. Ortolano then asked Ms. Blaisdell when she would return, and stated that she could pursue the information through another source if Ms. Blaisdell was away for an extended period of time. (See City's Ex. A-29.) Ms. Blaisdell replied that she would be returning that week and would also check to see whether the meeting minutes had been posted in accordance with RSA 91-A. (See City's Ex. A-30.) Ms. Ortolano then replied, "Let me pursue the information through Tim Cummings and Ben Clemons who attended." (City's Ex. A-31.) Ms. Ortolano asked whether Alderman O'Brien or any other Aldermen attended, (see City's Ex. A-31), to which Ms. Blaisdell answered, "You'll have your information by Friday,"

(see City's Ex. A-32). Shortly thereafter, Ms. Ortolano sent the following email to Ms. Blaisdell and Director Cummings:

Subject: Re: DIC Committee

Mr. Cummings,
Can I come to City Hall and inspect the records today please. This is information that has already been given to the public. There is a posting on social media and I would like to put the public information out there on the post. This issue is of great public interest.

Ms. Blaisdell,
Did you find out if the meeting was posted properly as a public meeting? I know with your 10 years + experience as the Board of Assessor's Chairman, you are quite familiar with RSA 91-A and public meetings. Your prompt response is appreciated. If you are unaware, I have been in continuous communication with Mr. O'Brien and Tim Cummings requesting information on barriers, the committee and any public meetings. It appears deliberate and underhanded to have held this meeting without proper[] legal compliance.

...

(City's Ex. A-33.) After not receiving a prompt response, Ms. Ortolano followed up with Director Cummings a few hours later, again requesting the presentation he gave at the DIC meeting and to immediately inspect the meeting minutes. (See City's Ex. A-35.) Mr. Cummings then provided Ms. Ortolano with the downtown barriers plan for 2022 that he had submitted to the Board of Aldermen. He also told Ms. Ortolano that "[t]here was no letter to solicit input or information on this matter from businesses or stakeholders" because he suspected "this proposal will have the input and public comment opportunities [she] is seeking through the normal course of business." (City's Ex. A-36.) In closing, he stated, "Please note, I don't typically engage and answer questions, but want you to have the correct information. This is a one[-]off exception and I will not reply further if engaged." (Id.)

That evening at 8:30 p.m., Ms. Ortolano emailed Director Cummings—cc’ing several City employees, including Mayor Donchess, Steve Bolton, Ms. Blaisdell, Aldermanic President Lori Wilshire, Alderman O’Brien, and the City Clerk Susan Lovering—regarding the City’s failure to properly notice the February 11 DIC meeting, in violation of RSA 91-A. Ms. Ortolano further expressed frustration over the timing of Director Cummings’s response to her February 4 RTK request, which was sent, conveniently, hours after the meeting—about which she had made numerous attempts to obtain information—had already taken place. (See Ex. 16.) She informed Director Cummings that the February 11 DIC meeting was not posted in the normal locations on the City’s website in accordance with RSA 91-A, and noted how concerning this was given that the meeting was “of wide public interest.” (Id.) She requested that someone “tell [her] who is responsible for posting these meetings” because “[c]itizens should not have to email constantly and try to guess who posts the meetings[.]” (Id.) She also asked if there had been a DIC meeting in January, and if so, when it was held. Ms. Ortolano did not receive a response to this email.

Ms. Blaisdell eventually provided Ms. Ortolano with the January 14, 2022 DIC meeting minutes. Ms. Blaisdell did not, however, provide Ms. Ortolano with any of the minutes from the 2021 DIC meetings which were all eventually posted on the City’s website on February 24, 2022. On February 16, 2022, Ms. Ortolano went to the Clerk’s Office at Nashua City Hall to obtain the 2021 DIC meeting minutes. When the records were not located in the Clerk’s Office, Ms. Ortolano was instructed to go to the City’s Economic Development Office. Ultimately, Ms. Ortolano was not permitted to inspect

the records at the Economic Development Office and was told to schedule a meeting if she wanted access to the public records.

B. Analysis

Ms. Ortolano asserts that the City's conduct as outlined above violated RSA 91-A in numerous ways. Specifically, she contends that the City violated RSA 91-A:4 when it failed to respond or respond adequately to RTK requests, and violated RSA 91-A:2, II, on each occasion that it failed to properly notice meetings or post minutes in accordance with the statute. The Court will address each alleged violation in turn.

1. January 12, 2022: Alleged Violation of RSA 91-A:4, IV (b)

Ms. Ortolano asserts that Alderman O'Brien's and Director Cummings' failure to respond to her January 12 RTK request for "records or documents that name the people on the barrier committee" and "all email communications sent or received by Mr. Cummings regarding the barrier committee" violated RSA 91-A:4, IV (b). (See Am. Compl. ¶ 21.) The City disagrees and contends that "individual Aldermen are not 'public bodies' or 'public agencies'" under RSA 91-A and are therefore not required to answer RTK requests. (City's Post-Trial Mem. at 9.) Even assuming that the City's interpretation of the statute is correct, this argument is unavailing as Director Cummings is indisputably subject to the RTK Law and was also a recipient of Ms. Ortolano's January 12 RTK request. Ms. Ortolano never received a response to this request. As such, this constitutes a violation of RSA 91-A:4, IV.

2. January 14, 2022: Alleged Violation of RSA 91-A:2, II-b (a) and (b)

Ms. Ortolano asserts that on January 14, 2022, the City violated RSA 91-A:2, II-b (a) and (b), because it failed to notice the January 14 DIC meeting on the City's website

and in one physical location. (See Am. Compl. ¶ 22.) For its part, the City contends that the January 14, 2022 DIC meeting was noticed on the weekly meeting log which was posted at the Elm Street entrance of Nashua City Hall. (See City's Ex. A-14; see also Trial Tr. 12/18/23, at 78, 158.) The City concedes, however, that the notice was not posted on the City's website. The City claims this was due to staffing issues that were addressed before Ms. Ortolano brought the present petition.

Under the Right-to-Know Law, "[s]ubject to the provisions of RSA 91-A:3, all meetings . . . shall be open to the public." RSA 91-A:2, II. A meeting requires a quorum of the public body convened in a manner that allows contemporaneous communication to discuss a matter under the DIC's "supervision, control, jurisdiction, or advisory power." RSA 91-A:2, I. These meetings must meet certain requirements listed in RSA 91-A:2, II, including requirements regarding the keeping of minutes. Further, "a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours . . . prior to such meetings." RSA 91-A:2, II (emphasis added). Further, pursuant to RSA 91-A:2, II-b (b),

If a public body chooses to post meeting notices on the body's Internet website, it shall do so in a consistent and reasonably accessible location on the website. If it does not post notices on the website, it shall post and maintain a notice on the website stating where meeting notices are posted.

It is undisputed that the City maintains an internet website where it chooses to post meeting notices. Here, the January 14 DIC meeting notice was not posted on the City's website—contrary to the DIC's standard and consistent practice—and there was no notice on the City's website stating that the meeting notices were posted at the Elm

Street entrance of Nashua City Hall. If the City had a standard practice of also posting meeting notices at City Hall, it should have been noted on the City's website so that situations like the one here could be avoided. Citizens should not have to go on a proverbial scavenger hunt to find out when and where meetings are taking place. The Court understands that the failure to notice the meeting on the City's website was apparently due to a staffing issues. However, staffing issues do not obviate the City's responsibility to comply with RSA 91-A. Accordingly, the Court finds that the City violated RSA 91-A:2, II by failing to notice the January 11 DIC meeting in two locations, and failing to notice it on the City's website or, alternatively, to provide a notice on the website stating where the meeting notice could be found.

3. February 1, 2022: Alleged Violation of RSA 91-A:4, IV

Ms. Ortolano argues that Director Cummings's response to her January 27 RTK request was incomplete, and therefore did not comply with RSA 91-A. As previously noted, on January 27, Ms. Ortolano submitted a RTK request to Director Cummings requesting, (1) "the names of the people 'stakeholders' selected to serve on the Downtown Barrier Committee" along with the "document or record with the names for this group and the name of the group," (2) "any posting for meetings of the Downtown Barrier Committee," and (3) "the record of the regulation, legislation, or statute that authorized the person authorized to select the committee as well as the process for approving the committee." (Ex. 10 (cleaned up).) Director Cummings responded to Ms. Ortolano's January 27 RTK request on February 1, 2022, and provided her with several responsive documents. (See Ex. 11.) However, Ms. Ortolano asserts that this production was incomplete because Director Cummings neglected to include the

January 11 email he received from Ms. Blaisdell regarding the agenda for January 14 DIC meeting.

The City does not dispute that Ms. Blaisdell's email was not included in Director Cummings's production of responsive documents, but nonetheless the City asserts that Ms. Ortolano received a complete response within five business days as required by RSA 91-A:4, IV, and therefore there was no RTK violation. (See Ex. A-18.) The Court disagrees. The purpose of the RTK Law is to improve public access to governmental records and to provide the "utmost information" to the public about what its "government is up to." Green v. Sch. Admin. Unit #55, 168 N.H. 796, 802 (2016). The "adequacy of an agency's search for documents is judged by a standard of reasonableness." Colquhoun v. City of Nashua, 175 N.H. 474, 483 (2022). Thus, while "an agency is not required to undertake an exhaustive search for requested documents" it nonetheless has a "responsibility to conduct a reasonable search – as the legislature has observed: 'Openness in the conduct of public business is essential to a democratic society.' RSA 91-A:1 (2013)." Id. 175 N.H. at 483–84. "Openness requires the ability of the public to obtain the 'greatest possible access to the actions, discussions and records of all public bodies.' RSA 91-A." Id. at 484. "Whether a [RTK] request reasonably describes the records sought is highly context-specific." Id. at 483 (cleaned up).

Here, the DIC held its first meeting on January 14, 2022, at which Director Cummings, Ms. Blaisdell, and five other individuals were present. Presumably, the other five individuals are the members of the DIC. All of these individuals were cc'd on Ms. Blaisdell's January 11, 2022 email to Director Cummings regarding the January 14 DIC meeting. Indeed, Director Cummings provided some responsive documents to Ms.

Ortolano's January 27 RTK request. After viewing these documents, however, the Court is hard pressed to understand how a reasonable search resulted in the production of these documents, including emails, but not the email specifically addressed to the DIC with all of its members, containing a general agenda including discussion of the downtown barriers and the date of an upcoming meeting. It is not difficult to discern the purpose of Ms. Ortolano's RTK request. The January 11 email, in the Court's view, is more relevant and responsive to her request than any of the documents actually produced by Director Cummings. The City does not contend that Ms. Ortolano's request was not reasonably described or that the search it undertook was exhaustive and did not turn up this email. Based on the foregoing, the Court concludes that the evidence demonstrates that the City's response and production of documents was not adequate and therefore violated RSA 91-A.

4. February 11, 2022: Alleged Violation of RSA 91-A:2, II-b(b)

Ms. Ortolano argues that on February 11, 2022 the City violated RSA 91-A:2, II-b (b) because it failed to notice the February 11 DIC meeting on the City's website. (See Am. Compl. ¶ 22.) For its part, the City contends that the February 11 DIC meeting was noticed on the weekly meeting log which was posted at the Elm Street entrance of Nashua City Hall. The City concedes that the notice was not posted on the City's website. The City also asserts that because "[i]t is the practice of the City to post meeting notices on its website, . . . there is no need to 'post and maintain a notice on the website stating where meeting notices are posted.'" (City's Post-Trial Mem. at 12.)

RSA 91-A:2, II-b (b) provides as follows:

If a public body chooses to post meeting notices on the body's Internet website, it shall do so in a consistent and reasonably accessible location on

the website. If it does not post notices on the website, it shall post and maintain a notice on the website stating where meeting notices are posted.

It is undisputed that the City chooses to post meeting notices on its website and typically does so in a consistent and reasonably accessible location but failed to do so here. Additionally, the fact that the City posted the notice at Nashua City Hall does not cure its failure to post the notice on its website because the website did not contain a notice informing citizens where the meeting notice was posted. Accordingly, for these reasons, as well as the reasons articulated previously with respect to the City's failure to properly notice the January 14 DIC meeting, the Court concludes the City violated RSA 91-A:2, II-b (b).

Ms. Ortolano further argues that the City's failure to post the meeting in accordance with RSA 91-A:2 "required the City to nullify all motions in the February 11, 2022 meeting [and] post a new meeting in compliance with RSA 91-A." (Am. Compl. ¶ 25.) The City disagrees, stating that RSA 91-A:2 does not require nullification of motions, and maintains that because the DIC was "advisory," no public comments were required and no motions were made or voted upon. (City's Post-Trial Mem. at 12.) Moreover, it contends that the Board of Aldermen was the decision-making body on the barriers, and because Ms. Ortolano utilized the public comment at the Board of Aldermen and committee meetings regarding the barriers, the City's failure to notice the February 11 DIC meeting was of no consequence. (Id.)

The Court agrees with the City that RSA 91-A:2 does not require that all motions from a meeting held in violation of this chapter be nullified. Therefore, the Court does not find that the City violated RSA 91-A in failing to "nullify" any motions or votes taken during the meeting. However, the Court disagrees that the City's failure to notice the

meeting was of no consequence, and will further address this when considering Ms. Ortolano's requests for certain remedies.

5. February 11, 2022: Alleged Violation of RSA 91-A:4, IV

As discussed previously, on Friday, February 4, 2022, Ms. Ortolano submitted a RTK request to Alderman O'Brien and Director Cummings essentially reiterating her January 27 RTK request for records regarding the barriers committee. Director Cummings responded to Ms. Ortolano's request five business days later at 4:20 p.m. on Friday, February 11, 2022, and provided four pages of responsive records. Included in these records was an email Director Cummings received from Ms. Blaisdell on February 5 regarding the February 11 DIC meeting that occurred that morning at 7:45 a.m. Ms. Ortolano contends that Director Cummings's delay in producing this email until after the DIC meeting had already taken place violated RSA 91-A:4, IV. The City disagrees, arguing that because Director Cummings responded within five business days and his response included Ms. Blaisdell's email, his response was complete and timely in compliance with RSA 91-A.

Pursuant to RSA 91-A:4, IV(b):

If a public body or agency is unable to make a governmental record available for immediate inspection and copying the public body or agency shall, within 5 business days of a request: (1) Make such record available; (2) Deny the request; or (3) Provide a written statement of the time reasonably necessary to determine whether the request shall be granted or denied and the reason for the delay.

In enacting this provision, "the legislature envisioned circumstances in which public officials would not be able to satisfy a citizen's request immediately." Brent v. Paquette, 132 N.H. 415, 422 (1989).

Director Cummings responded to Ms. Ortolano's February 4 RTK request within exactly five business days. Thus, he technically complied with RSA 91-A:4, IV. See ATV Watch v. N.H. Dep't of Transp., 161 N.H. 746, 756 (2011). However, the Court notes that it understands Ms. Ortolano's frustration with the timing of Director Cummings' response at the eleventh hour after the information in the documents produced—specifically, the time and place of the DIC meeting—was essentially moot.

6. February 15, 2022: Alleged Violation of RSA 91-A:4, I

To briefly reiterate, on Tuesday, February 15, 2022, Ms. Ortolano sent Ms. Blaisdell an email requesting a copy of the DIC minutes from June 2021 to present and documentation pertaining to data collection from Main Street retail shop owners. Ms. Blaisdell responded a few hours later informing Ms. Ortolano that she was on vacation and would address Ms. Ortolano's request upon her return. After Ms. Ortolano inquired as to how long that would be, Ms. Blaisdell informed her that she would return on Friday. Ms. Ortolano then made the same RTK request to Mr. Cummings who, a few hours later, provided Ms. Ortolano with the survey data and proposal she requested. On February 16, 2022, Ms. Blaisdell provided Ms. Ortolano with the meeting minutes for the January 14 DIC meeting, but did not provide her with any of the DIC meeting minutes from 2021. These meeting minutes were later posted on the City's website on February 24, 2022.

Ms. Ortolano contends that Ms. Blaisdell's failure to respond to her RTK request "either through denial or delay with a reason provided" violated RSA 91-A:4, IV (b). (Am. Compl. ¶ 38.) In response, the City contends that because Ms. Blaisdell responded on the same day that Ms. Ortolano made the request, informing her that she

was on vacation and would answer the request upon her return, that it is not a violation of RSA 91-A. The City also notes that Ms. Ortolano received the records she requested within five-business days and thus there was no violation of RSA 91-A. As stated earlier, RSA 91-A:4, IV(b) provides,

If a public body or agency is unable to make a governmental record available for immediate inspection and copying the public body or agency shall, within 5 business days of a request: (1) Make such record available; (2) Deny the request; or (3) Provide a written statement of the time reasonably necessary to determine whether the request shall be granted or denied and the reason for the delay.

As the City points out, Director Cummings provided Ms. Ortolano with the survey data and proposal that she requested. Consequently, the City complied with RSA 91-A with respect to the portion of Ms. Ortolano's request that sought those records. However, Ms. Ortolano also sought the DIC meeting minutes dating back to 2021. Ms. Blaisdell produced the January 14 DIC meeting minutes, but did not produce any of the other meeting minutes requested by Ms. Ortolano. Thus, Ms. Blaisdell failed to make the DIC meeting minutes dating back to 2021 available, deny the request, or provide a written statement of the time reasonably necessary to determine whether those would be provided. See RSA 91-A:4, IV(b)(1)-(3). These failures were in violation of RSA 91-A.

7. February 16, 2022: Alleged Violation of RSA 91-A:2, II and RSA 91-A:4

Ms. Ortolano alleges that the City's failure to post the meeting minutes from any of the DIC meetings within five days on the City's website and its failure to allow immediate inspection of the minutes violated RSA 91-A. For its part, the City argues that the RSA 91-A does not require that the minutes be located in a place that would make them available for immediate inspection and does not require a public body or agency to make public records available for immediate inspection. The City admits that

the DIC meeting minutes from June 2021, August 2021, January 2022, and February 2022, were all posted on the City's website on February 24, 2022. With respect to the outstanding months, the City asserts that despite the DIC meetings' having been noticed on the weekly meeting logs for July 2021, September 2021, October 2021, November 2021, and December 2021, the absence of meeting minutes for those DIC meetings on the City's website indicates that the meeting did not go forward or there was no quorum.

Pursuant to RSA 91-A:2, II, "minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting . . . and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception." The statute further provides that "[i]f a public body maintains an Internet website or contracts with a third party to maintain an Internet website on its behalf, it shall either post its approved minutes in a consistent and reasonably accessible location on the website or post and maintain a notice on the website stating where the minutes may be reviewed and copies requested." RSA 91-A:2, II-b(a).

Here, the City posted the minutes from the June 2021 and August 2021 DIC meetings in February 2022—long after the five-day deadline enumerated under RSA 91-A had lapsed. Similarly, while not as egregious a delay, the City also posted the minutes from the January 14 and February 11, 2022 DIC meetings after the five-day deadline on February 24, 2022. Evidently, the City neither posted the meeting minutes consistently in a reasonably accessible location on its website, nor did the City post or maintain a notice on its website stating where the minutes might be reviewed and copies requested. Notably, these minutes were only posted after Ms. Ortolano brought

the violations to the City's attention and sought to inspect them. Accordingly, the City's failure to post the minutes for the DIC meetings within five days violated RSA 91-A:4, and the City's failure to post the meeting minutes on its website consistently and in a reasonably accessible location violated RSA 91-A:2, II-b (a).

II. The Nashua Performing Arts Center ("NPAC") – RSA 91-A violations alleged against the City and the 201 Corporations

A. Factual Background

In 2017, residents voted in favor of establishing a Nashua Performing Arts Center ("NPAC") in downtown Nashua. In September 2017, the Board of Aldermen ("BOA") formed the Performing Arts Center Steering Committee (the "Steering Committee") to guide the creation of the NPAC. (See 201 Corps.' Ex. A.) The development of the NPAC required raising approximately \$4 million of private funds. The NPAC qualified for a New Market Tax Credit ("NMTC") transaction because Nashua is located in New Hampshire's most impoverished census tract. The Steering Committee determined that \$2.5 million would be raised through the NMTC transaction and the remaining \$1.5 million would be raised from private donations. However, the NMTC transaction could not be effectuated until after the \$1.5 million was raised from private donations.

In the Spring of 2019, the City held a public hearing on the formation of two new voluntary nonprofit corporations: 201 Main Street Real Estate Corporation and 201 Main Street Financing Corporation (the "201 Corporations"). (See 201 Corps.' Ex. F.) On June 11, 2019, the BOA passed R 19-136 which authorized the formation of the 201 Corporations pursuant to RSA 162-G:15 in connection with the development of the NPAC. Between June and November 2019, the Capital Campaign Committee became a 501(C)(3) nonprofit corporation formally known as Nashua Community Arts. Nashua