

New England First Amendment Coalition

*The region's leading
defender of First Amendment
freedoms and government
transparency — the foundation
of a healthy democracy.*

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SUBMITTED VIA EMAIL TO PBEEDE@MOULTONBOROUGH.NH.GOV

Moultonborough Police Department
PO Box 121 / 1035 Whittier Highway
Moultonborough, NH 03254
c/o Chief of Police Peter W. Beede, Jr.

October 13, 2025

RE: RSA 91-A Request for Records Related to Arrest of Nicholas Braun

Dear Chief Beede,

We are writing on behalf of the New England First Amendment Coalition, a 501(c)(3) non-partisan non-profit organization and the region's leading advocate for government transparency. Our Board of Directors and team of New Hampshire advisors include many of the state's leading media attorneys and investigative journalists. In addition to providing educational services and First Amendment advocacy, we also manage a journalism and open government litigation fund to support Right to Know Law cases.¹

Please consider this a request for the following records pursuant to RSA 91-A and Part 1, Article 8 of the New Hampshire Constitution:

All records, no matter what form, including but not limited to, printed documents, electronic documents, emails, or any other form, relating to Nicholas Braun's arrest on Aug. 29 along with supplemental booking images, body camera materials, police reports and affidavits.

We understand that our request follows similar ones by the Laconia Daily Sun and other news outlets. We also understand that these requests were denied because "it is the practice of the Moultonborough Police Department to not release any police reports, cruiser video, body worn camera, etc. during prosecution of any individual arrested" by your department, except as required through the judicial discovery process.² You further explained in a press release regarding Braun's arrest that the records requested are exempt from disclosure to the extent that their production could reasonably be expected to interfere with enforcement proceedings or deprive an individual of their right to a fair trial.³

Respectfully, we would like to now address those arguments for non-disclosure. Just because a case is being prosecuted, does not necessarily justify under 91-A the withholding of records, including police reports. This issue was litigated last year in *Hanover v. Valley News*.⁴ The facts in that case are similar to those here. The Valley News requested from the Hanover Police Department the arrest reports of two individuals. One reason the department cited when denying the request was that the arrest records were part of a case that "remained an active criminal prosecution."

The *Hanover* court explained that the *Murray* exemptions you cite in your press release only apply if the records are (1) investigatory and (2) compiled for law enforcement purposes. If both these requirements are met, then the analysis continues with a six-prong test. In the case of arrest reports, the court acknowledged that they are compiled for law enforcement purposes; however, as to the first question, the court determined, "an arrest report is not an

investigatory file.” The court explained that arrest records are not records dealing with the investigation and detection of crime, but rather are the product of such an investigation. Booking images, body camera materials and affidavits similarly are products of investigations and not investigatory documents themselves.

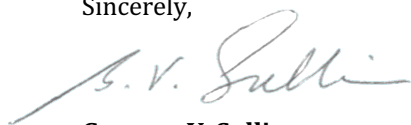
Even if these materials are all considered investigatory records (and to be clear, that is not our position), they can only be withheld if one of six considerations are met, including the (A) and (B) exemptions cited by your department.

To satisfy exemption (A), according to the *Hanover* court, the petitioner must show that “enforcement proceedings are pending or reasonably anticipated and that disclosure of the requested documents could reasonably be expected to interfere” with law enforcement proceedings. Specificity is required, such as providing a listing of categories of the documents your department seeks to withhold as well as accompanying explanations.⁵ Indeed, exemption (A) was designed to eliminate “blanket exemptions” to government records simply because they were found in investigatory files compiled for law enforcement purposes.⁶ To our knowledge, you have only provided such blanket denials per your department policy and in response to requests similar to ours.

The standard for withholding these documents is even higher for exemption (B) which requires a showing that the requested records “would deprive a person of a right to fair trial or impartial adjudication.” According to the *Hanover* court, an entity seeking nondisclosure under this exemption must show, in addition to a trial being imminent, “that it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of [the] proceedings.” Again, like with exemption (A), speculative claims are not sufficient.

Other municipalities throughout the state provide police reports and other records despite there being a criminal prosecution. RSA 91-A prohibits the type of blanket exemptions reflected in your policy and used to justify the withholding of those documents we are now requesting. Given the caselaw cited above and the fact that the underlying allegations in the records requested would need to be public in a criminal case anyway, we are hopeful you’ll comply with our request.

Sincerely,



Gregory V. Sullivan
President



Justin Silverman
Executive Director

¹ Visit nefac.org to learn more about the New England First Amendment Coalition and its leadership.

² See enclosed Sept. 3 Moultonborough Police Department press release.

³ *Id.*

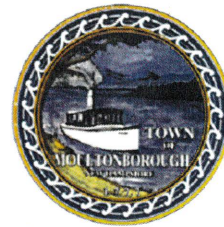
⁴ See *Town of Hanover/Hanover Police Department v. Valley News*, No. 215-2024-CV-00016, N.H. Super. Ct. Grafton County, June 7, 2024.

⁵ In *Murray v. N.H. Div. of State Police*, Special Investigation Unit, 154 N.H. 579 (N.H. 2006), the court cited examples of the types of categories and explanations that may be sufficient for exemption (A). Those categories included: “details regarding initial allegations giving rise to th[e] investigation; interviews with witnesses and subjects; investigative reports furnished to the prosecuting attorneys; contacts with prosecutive attorneys, regarding allegations, subsequent progress of investigations, and prosecutive opinions” In comparison, the court found the following categories insufficient without additional annotation or explanation: “photographs,” “correspondence (letters and e-mails),” “maps and diagrams” and “tax records.”

⁶ *Id.*



Moultonborough Police Department



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PRESS RELEASE

UPDATE

For Immediate Release
September 3, 2025

On Friday, August 29, 2025, at 11:15 p.m., Nicholas J. Braun (37 years old) of New York City, New York was arrested for DUI-Impairment and Operating Without Lights on Lee Road in the Town of Moultonborough, New Hampshire.

Due to the large volume of inquiries in this matter for police reports, cruiser video, body worn camera video, etc., the Moultonborough Police Department is issuing the following statement in regards to this matter and the numerous requests that have come from the media:

It is the practice of the Moultonborough Police Department to not release any police reports, cruiser video, body worn camera, etc. during prosecution of any individual arrested by this agency, except to the defendant and/or the defendant's attorney through the discovery process. This is done under the following exceptions to NH RSA 91-A, which are as follows:

Under the exemption from the Right-to-Know Law, RSA ch. 91-A (2001 & Supp. 2011), known as the Murray exemption, "records or information compiled for law enforcement purposes" are exempt from disclosure, but only to the extent that the production of such records or information: (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication.

RSA 91-A:5 Exemptions - X. Video and audio recordings made by a law enforcement officer using a body-worn camera pursuant to RSA 105-D except where such recordings depict any of the following:

- (a) Any restraint or use of force by a law enforcement officer; provided, however, that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.
- (b) The discharge of a firearm, provided that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.
- (c) An encounter that results in an arrest for a felony-level offense, provided, however, that this exemption shall not apply to recordings or portions thereof that constitute an invasion of privacy or which are otherwise exempt from disclosure.

This case remains an active investigation/prosecution pending the adjudication of all charges.

Authority: Chief Peter W. Beede, Jr.