Statement by Gilles Bissonnette, Esq., ACLU-NH Legal Director, and
Gregory V. Sullivan, Esq., President of the New England First Amendment Coalition
Senate Judiciary Committee
ACLU-NH and NEFAC Opposition to SB626
Hearing: February 3, 2026

We submit this testimony on behalf of the American Civil Liberties Union of New Hampshire ("ACLU-NH")—a non-partisan, non-profit organization working to protect civil liberties for over 50 years—and the New England First Amendment Coalition ("NEFAC")—a non-partisan organization that promotes public access to the government and the work it does. NEFAC is a broad-based organization of people who believe in the power of transparency in a democratic society. NEFAC's members include lawyers, journalists, historians, librarians, and academicians, as well as private citizens and organizations whose core beliefs include the principles of the First Amendment. This testimony pertains to both the original version of SB626, as well as the proposed amendment (2026-0403s). The ACLU-NH and NEFAC oppose SB626 and the proposed amendment, both of which restrict Right-to-Know requests to New Hampshire "citizens."

I. Background.

This bill follows the well-reasoned decision of Superior Court Judge Daniel E. Will in *In re: City of Rochester*, No. 217-2023-CV-621 (Strafford Cty. Super. Ct. Aug. 9, 2024), who concluded that RSA ch. 91-A—when read as a whole and in its full context—does not restrict Right-to-Know requests to New Hampshire citizens. This decision, which is attached, followed the unreasonable choice of one municipality to deny a public records request to a media outlet that covers Rochester, New Hampshire because that outlet had a place of business at that outlet's owner's residential address in Lebanon, Maine. We believe that Judge Will's decision was correct and should not be changed through SB626.

II. SB626's Citizenship Requirement, If Enacted, Would Hinder Transparency and Would Ignore the Fact that State Policy Choices Often Have an Impact Beyond a State's Borders.

SB626 is problematic because, if enacted, it would limit transparency with respect to certain public records, *even when producing the records would not be unduly burdensome*. Indeed, Part I, Article 8 of the New Hampshire Constitution does *not* limit right of access to "citizens," but rather uses the phrase "the public" when it more broadly states that "the public's right of access to governmental proceedings and records shall not be unreasonably restricted." While we appreciate efforts of the sponsors to narrow the scope of the bill—which includes the addition of language incorporating as "citizens" non-domiciliaries who own property (and, thus, pay property taxes) and "any media as defined in RSA 91-A:4, IX"—this bill still narrows the scope of our Right-to-Know Law.

Critically, this bill fails to recognize that New Hampshire state and local policy/law enforcement choices often have an impact beyond New Hampshire's borders. For example, let's use an example of a Massachusetts resident who is driving to his camp in Maine on I-95 and gets pulled over and ticketed in Hampton. This driver is concerned about whether the arrest was lawful and wants to file Right-to-Know request. Under SB626, he would be prevented from doing so. The same would be true for (i) a real estate developer from out of state interested in purchasing land in New Hampshire and who would like to get historical assessing and tax records, or (ii) someone living out of state looking to purchase a home in New Hampshire and who wants to obtain historical assessing and tax records. While

it is true that SB626 may be construed as only giving municipalities discretion to not comply with these types of requests, based on our experience it is likely that municipalities will view this bill as a requirement not to comply with these requests.

SB626 poses an additional concern. In addition to imposing a "citizen" requirement, it suggests that public bodies may be able to make the unilateral decision as to who is a "citizen" and, thus, require the requester to provide "reasonable proof of domicile or property ownership analogous to the documents allowed to prove domicile pursuant to RSA 654:12, I(c)." This is excessive and gives public bodies a significant amount of power that could be abused.

Furthermore, it is unclear how this bill would intersect with the ability to make anonymous requests, which currently is allowed under RSA ch. 91-A. The New Hampshire Supreme Court has explained that "given the competing interests inherent in a request to the government for disclosure, it would not be unreasonable for a requester to desire anonymity in the early stages when making a Right-to-Know Law request." *See Censabella v. Hillsborough County Atty.*, 171 N.H. 424, 428 (2018). There, the Court concluded that nothing in RSA ch. 91-A required the petitioner to request inspection of government records directly instead of through her attorney, and it was not necessary that the petitioner disclose her identity in the request. It is difficult to see how a requester could remain anonymous while also having to, at the request of the public body, potentially provide "reasonable proof of domicile or property ownership" under SB626.

III. The Vast Majority of States Do *Not* Have a State "Citizenship" Requirement Under Their Public Records Laws.

According to one resource, "[a]t least five states are known to restrict the right to request public records, either by statute or legal opinion, to citizens of the state."[1] Thus, the vast majority of states do *not* have a state citizenship requirement under their public records laws. This is for good reason, as a "citizenship" requirement, as explained above, would ignore the fact that state policy choices often have an impact beyond a state's borders.

IV. New Hampshire Has Already Addressed Many Concerns Raised By Municipalities Through HB1002, Which Was Enacted in 2024. New Hampshire Should Be Increasing Transparency, Not Hindering It.

New Hampshire has already addressed many concerns by municipalities about excessive requests under HB1002, which was enacted in 2024. HB1002 allows public bodies to charge requestors a fee in certain circumstances where the municipality is being asked to produce hundreds of pages of electronic records whether or not paper copies are being produced. The ACLU-NH and NEFAC did not oppose this enacted proposal, which was the subject of extensive negotiation. If New Hampshire is to make any further changes to RSA ch. 91-A, such changes should expand the Right-to-Know Law—like through prior failed efforts to require the payment of attorneys' fees to a requester if a requester successfully sues under the Law (2024 HB HB307) or requiring public bodies to send documents electronically rather than compelling requesters to physically show up to collect documents (2025 HB HB66)—rather than limiting it through provisions like SB626 that restrict access to information.

[1] *See* https://rightontransparency.org/state-citizens/. This website has been attached for reference.

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. **SUPERIOR COURT**

In re: City of Rochester-002

Docket No. 217-2023-CV-621

ORDER

The petitioner, the City of Rochester (the "City" or "Rochester"), denied the request of the *Rochester Voice* for certain City documents pursuant to RSA 91-A ("Right to Know law" or "91-A"), on the basis that the *Rochester Voice* is not a "citizen" of New Hampshire. The *Rochester Voice* took the issue to the Right to Know Ombudsman (the "Ombudsman"), who found in its favor. Rochester appealed the Ombudsman's decision to this Court pursuant to RSA 91-A:7-c, I.

This Court held a hearing on Rochester's appeal on May 5, 2024, at which Harrison Thorp appeared as a non-attorney representative for the respondent.[1] The City also submitted a memorandum of law in support of its position. (Doc. 9). After consideration of the parties' arguments and applicable law, for the reasons that follow, the decision of the Ombudsman is AFFIRMED.

Standard of Review

"Any party may appeal the ombudsman's final ruling to the superior court[.]" RSA 91-A:7-c, I. "On appeal, the superior court shall treat all factual findings of the ombudsman as prima facie lawful and reasonable, and shall not set them aside, absent errors of law, unless it is persuaded by a balance of probabilities on the evidence before it that the ombudsman's decision is unreasonable." RSA 91-A:7-c, II.

[1] The City does not object to Mr. Thorp's representation of the *Rochester Voice*.

Background

Unless otherwise noted, the Ombudsman found the following facts. (Doc. 1).

The Ombudsman framed the issue the parties presented to him as "[w]hether the City of Rochester violated RSA 91-A:4, I and/or RSA 91-A:4, IV in regard to its denial of a request made to it on or about April 12, 2023, on the basis that the requester was not a 'citizen of New Hampshire.'" The Ombudsman answered in the affirmative. The Ombudsman found, as a matter of fact, that the *Rochester Voice*, and not Mr. Thorp, serves as the "claimant" for purposes of the dispute.

The *Rochester Voice* is an electronic publication, with a place of business at Mr. Thorp's residential address in Lebanon, Maine and a mailing address (a post office box) in Milton, New Hampshire. The Ombudsman took judicial notice of the fact that Lebanon, Maine partially borders Rochester, New Hampshire. Organized in 2017, the *Rochester Voice* focuses on matters of interest to the greater Rochester community. Mr. Thorp has registered the *Rochester Voice* as a tradename at the New Hampshire Department of State as an "Online Newspaper."

Though expressing concern about (1) the potential magnitude of the question whether 91-A limits its benefits to citizens of New Hampshire, and (2) the limitations of the office of the Ombudsman as a quasi-judicial office of the executive branch, which does not "establish the law of RSA 91-A," the Ombudsman concluded:

> On the facts of this particular case, where an individual residing in a Maine municipality neighboring Rochester operates a local 'online newspaper' under a registered New Hampshire trade name and who, in that capacity, possesses a Milton, NH mailing address, . . . the [Ombudsman] concludes that (whatever the word "citizen" might ultimately be declared to mean by those with the definitive authority to make such a multi-faceted determination) the term would likely be viewed as sufficiently expansive to encompass the enterprise undertaken by Mr. Thorp in this case.

Analysis

Identity of the Respondent

Rochester's arguments in this appeal focus on Mr. Thorp and the fact that he, as an individual, does not reside in New Hampshire and, therefore, cannot be viewed as a "citizen" to whom the Right to Know law provides governmental access. According to the City, Mr. Thorp's status as a non-"citizen" of New Hampshire divests him of any statutory right to invoke RSA 91-A:4 to obtain public records from Rochester and forecloses "aggrieved party" standing pursuant to RSA 91-A:7-b, I. (Doc. 9).

As mentioned, Rochester's argument rests on a factual premise – contrary to the Ombudsman's factual finding – that Mr. Thorp and the *Rochester Voice* are one in the same for RSA 91-A purposes, or that Mr. Thorp, and not the *Rochester Voice*, served as the claimant before the Ombudsman and as the appealing party in this Court. (*See e.g.*, Doc. 1, Notice of Appeal ¶ 8 (noting "it is the City['s] position that the word 'citizen' in RSA 91-A:4, I refers to citizens of the State of New Hampshire. Mr. Thorp's definition in unclear [sic], however, one must assume that he, as a citizen of Maine, desires that 'citizen' be defined as citizen of the United States.")). But the Ombudsman found, as a matter of fact, to the contrary, identifying the *Rochester Voice*, and not Mr. Thorp, as the claimant. The Ombudsman found Mr. Thorp to be a non-attorney representative of the claimant, the *Rochester Voice*. Neither before the Ombudsman nor in this appeal did Rochester argue that the Ombudsman committed legal error in this finding. (*See generally* Docs. 1 & 9). The Court, therefore, accepts, as it must, the Ombudsman's finding that the *Rochester Voice*, and not Mr. Thorp, serves as the respondent for purposes of this appeal. *See State v. Blackmer*, 149 N.H. 47, 49 (2003) (declining to address arguments not preserved, not sufficiently developed, or not raised in notice of appeal). Mr.

Thorp emphasized this fact at the May 2, 2024 hearing, and also the *Rochester Voice*'s unique footing as a news entity that reports on issues concerning the City of Rochester.

Application Of 91-A

The most important lens through which to view any public records dispute lies in the core purpose of the Right to Know law, "to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people," by providing "the utmost information to the public about what the government is up to." *Seacoast Newspapers, Inc. v. City of Portsmouth*, 173 N.H. 325, 338 (2020) (quoting RSA 91-A:1; *Goode v. N.H. Off. of Leg. Budget Assistant*, 148 N.H. 551, 555 (2002)). "[T]he statute furthers 'our state constitutional requirement that the public's right of access to governmental proceedings and records shall not be unreasonably restricted.'" *Id*. (citation omitted). In keeping with that broad, constitutionally underpinned purpose, courts "resolve questions regarding the Right-to-Know Law with a view to providing the utmost information, *broadly construing* its provisions in favor of disclosure and interpreting its exemptions restrictively." *Id*. (citations omitted) (emphasis added).

As the City correctly points out, "[s]tanding under the New Hampshire Constitution requires parties to have personal legal or equitable rights that are adverse to one another with regard to an actual, not hypothetical, dispute which is capable of judicial redress." *Duncan v. State*, 166 N.H. 630, 642–43 (2014) (*superseded by Constitutional Amendment* on other grounds, as stated in *Carrigan v. N.H. Dep't of Health and Hum. Servs.*, 174 N.H. 362 (2021) (citations omitted)). A person or entity lacking any right to obtain public records cannot claim 91-A relief. That person or entity, therefore, cannot claim status as a "party aggrieved" by a violation of the Right to Know law. *See* RSA 91-A:7-b, -c.

The *Rochester Voice*'s standing in this appeal turns on the construction of the term "citizen" in RSA 91-A:4 ("Every citizen . . . has the right to inspect all governmental records . . ."). To resolve this dispute, the Court turns to the well-worn, "ordinary rules of statutory interpretation." *Union Leader Corp. v. Town of Salem*, 173 N.H. 345, 350 (2020). The Court considers "the plain meaning of the words used" in a manner that advances the broad, public access purposes of the Right to Know law. *See id*. The Court views provisions of the Right to Know law not in isolation, but rather, "in the context of the overall statutory scheme." *Clay v. City of Dover*, 169 N.H. 681, 685 (2017).

Carefully defining the specific inquiry presents a critical predicate to the application of the statute to the facts in this appeal, because the identity of the claimant drives the application of the statute. The City, leaning on Mr. Thorp's status as a non-New Hampshire resident, characterizes the inquiry as binary – whether the use of the word "citizen" in RSA 91-A:4 contemplates only "citizens" of New Hampshire rather than, more broadly, "citizens" of the United States of America. But that overlooks the Ombudsman's more specific framing that governs this appeal: whether "an individual residing in a Maine municipality neighboring Rochester [who] operates a local 'online newspaper' under a registered New Hampshire trade name and who, in that capacity, possesses a Milton, NH mailing address," may, on behalf of the online newspaper, claim entitlement to public records via the Right to Know law, and don the mantle of "party aggrieved" with standing to utilize the statute's remedies. *See* RSA 91-A:7-b, -c; *Duncan*, 166 N.H. at 642–43. Considering the inquiry as the Ombudsman aptly defined it, for the reasons that follow, the Court concludes that the Ombudsman did not err.

The Right to Know law does not define the term "citizen." The Oxford English Dictionary defines the term as "[a] legally recognized subject or national of a state,

commonwealth, or other polity, either native or naturalized, having certain rights [and] privileges[.]" Oxford English Dictionary, s.v. "citizen (n. & adj.)," https://doi.org/10.1093/OED/2431197993 (accessed June 21, 2024); *see Appeal of Town of Lincoln*, 172 N.H. 244, 248 (2019) (using dictionary definition for common usage of undefined statutory term). On its face, the dictionary definition does not limit "citizen," without any further modifier, to "citizen of New Hampshire" or even "citizen of a particular state (or municipality, subdivision, etc.)." And, in light of that definition, even Mr. Thorp could be considered a "citizen."

As the City observes, the word "citizen" appears in various provisions within RSA chapter 91-A. For example, RSA 91-A:4, I provides:

> 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). Similarly, RSA 91-A:4, II provides:

> After the completion of a meeting of a public body, every citizen, during the regular or business hours of such public body, and on the regular business premises of such public body, has the right to inspect all notes, materials, tapes, or other sources used for compiling the minutes of such meetings, and to make memoranda or abstracts or to copy such notes, materials, tapes, or sources inspected, except as otherwise prohibited by statute or RSA 91-A:5.

(Emphasis added).

But the provisions at substantive issue (which concern a public body's refusal to provide electronic copies of public records) do not use the word, "citizen." RSA 91-A:4, IV(a) states, "[e]ach 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. And, RSA 91-A:4, V employs "person or entity" rather than "citizen," as follows:

> 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. . . .

RSA 91-A:4, V (emphasis added).[2] The legislature's determination not to limit who may request public records and its use of "person or entity" with respect to the format in which they may be provided, further suggests that the legislature did not intend "citizens" to include the modifier, "of New Hampshire."

The Right to Know law furthers Part I, Article 8 of the New Hampshire Constitution, *see Seacoast Newspapers*, 173 N.H. at 338, which provides, in pertinent part:

> All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted.

N.H. CONST., pt. I, art. 8. Similar to the relevant provisions of the Right to Know law, Part I, Article 8 refers to "the people" and "the public." *See e.g.*, RSA 91-A:2, II (meetings of public bodies "shall be open to the public"). The statute also provides that "any party aggrieved" may

[2] Somewhat dissonantly, the City declines to provide electronic copies of documents (requests for which are governed by RSA 91-A:4, IV and V, both of which omit the word "citizen"), but agrees to permit Mr. Thorp, on behalf of the *Rochester Voice*, to come to City Hall to view the documents during the City's regular business hours (the procedure for which is governed by RSA 91-A:4, I, which uses the word "citizen").

lodge a complaint with the Ombudsman (whose decision may be appealed to the Superior Court), and, further, that "[a]ny person aggrieved" may go directly to Superior Court for injunctive relief. RSA 91-A:7-b, I; RSA 91-A:7-c (emphasis added). The statutory language more closely tracks the language of the constitutional provision to which it gives life than the limited definition the City advances.

In view of the statute's broad, public access to government purpose, and in the context of the relevant provisions in this appeal, Rochester construes "citizens" overly narrowly in seeking to limit that term to "citizens" of New Hampshire. The City's argument would exclude not only citizens of other States of the United States, but non-citizen residents of New Hampshire (or other States), as well as any "person" other than a natural person or individual (as opposed to legal entity). *Cf.* RSA 21:9 ("The word 'person' may extend and be applied to bodies corporate and politic as well as to individuals."); RSA 21:6 (defining "resident" or "inhabitant"). The Court need not cite to the scores of Right to Know law cases brought by news organizations and other entities; the notion that the Right to Know law extends to legal entities is not novel. Similar to the Ombudsman, the Court "is skeptical that [Rochester's intended] result was intended by the General Court when it considered the language of RSA 91-A."

The City's construction would create logical inconsistencies within the Right to Know law that further augur against the City's narrow construction of "citizen." *See Appeal of Town of Lincoln*, 172 N.H. at 248 (courts "construe all parts of a statute together to effectuate its overall purpose and to avoid an absurd or unjust result"). The Right to Know law, for example, expressly contemplates a request by an "entity," which necessarily cannot be considered a "citizen" of New Hampshire, however "citizen" is defined. *See* RSA 91-A:4, V (providing procedures for physical printouts or other methods "if the person or entity requesting access

requests a different method") (emphasis added). While the law considers an entity to be a person in some circumstances, the Court has not located any instance in which common or statutory law considers an entity to be a citizen.

Although Mr. Thorp is neither a citizen nor a resident of the State of New Hampshire, the respondent in this case, the *Rochester Voice* (as the Ombudsman found and the City does not challenge), is a news organization with a mailing address in New Hampshire and a tradename registered in New Hampshire. And the *Rochester Voice* has covered issues of public interest concerning the City of Rochester since as early as 2017, and serves, as a practical matter, to advance the constitutional ends of open and responsive government and the parallel purpose of the Right to Know law. *See* N.H. CONST. pt. I, art. 8; RSA 91-A:1. Not only does the *Rochester Voice* – the claimant the Ombudsman identified without challenge - exist in New Hampshire, but to construe the Right to Know law to prohibit the *Rochester Voice* from making records requests not only would fail to construe "citizen" and "aggrieved party" "with a view to providing the utmost information," *see Seacoast Newspapers*, 173 N.H. at 338, but would also potentially impinge upon the freedom of the press. *See* N.H. CONST. pt. I, art. 22 ("Free speech and liberty of the press are essential to the security of freedom in a state: They ought, therefore, to be inviolably preserved."); *see also Doe v. Comm'r of N.H. Dep't of Health & Hum. Servs.*, 174 N.H. 239, 251 (2021) (under doctrine of constitutional avoidance, courts construe statutes to "avoid conflict with constitutional rights wherever reasonably possible").

All of this leads to the ineluctable conclusion, based on ordinary principles of statutory construction, that the legislature did not intend to limit either the right to (1) make records requests, or (2) to seek judicial relief to vindicate any violations of that right, to legally recognized subjects of the State of New Hampshire, either native or naturalized, having certain

rights and privileges due to that status. In other words, the Right to Know law cannot be fairly construed so as to confine its benefits solely to "citizens" of New Hampshire. The Ombudsman did not commit error in identifying the *Rochester Voice*, an entity albeit undefined, but with a mailing address located in and a tradename registered in New Hampshire, as entitled to make public records requests pursuant to RSA 91-A.

From the conclusion that the *Rochester Voice* is properly viewed as eligible to make public records requests flows the further conclusion that the *Rochester Voice* counts as a "party aggrieved" by the City's refusal to honor the records request at issue. *See* RSA 91-A:7-b. From a dictionary definition perspective, the City's denial to the *Rochester Voice* of documents otherwise subject to disclosure has aggrieved the *Rochester Voice. See Oxford English Dictionary*, s.v. "aggrieved (adj.)" July 2023, https://doi.org/10.1093/OED/5858745507 (accessed Aug. 1, 2024) (defining "aggrieved" as "[i]njured in respect to one's rights, relations, or position; injuriously affected by someone's action, wronged; having a grievance (at)"). Buttressing this construction is the general rule that "if the information is subject to disclosure, it belongs to all." *Censabella v. Hillsborough Cnty. Att'y*, 171 N.H. 424, 427 (2018) (quoting *Lambert v. Belknap Cnty. Convention*, 157 N.H. 375, 383 (2008)). Indeed, "[p]ublic bodies have a statutory duty to respond diligently to all records requests, regardless of who makes the request." *Id*. (citation omitted).

The Court concludes that the respondent, the *Rochester Voice*, falls among those with a statutory right to make public records requests and to vindicate violations of that right through legal action. This compels the further conclusion that the *Rochester Voice* and the City "have personal legal or equitable rights that are adverse to one another with regard to an actual, not hypothetical, dispute which is capable of judicial redress," as a result of which the *Rochester*

Voice has standing (based on the facts the Ombudsman found that remain unchallenged) to vindicate alleged violations of 91-A. *See Duncan*, 166 N.H. at 642–43.

One final note concerns the scope of this appeal. At oral argument, the City identified practical concerns and difficulties from lengthy records requests by, for example, persons from outside the United States or companies from across the country. Whatever the merits of Rochester's concerns, the Court cannot, without legislative guidance, tailor the otherwise broad language of the statute and its broad purpose to ease the government's asserted compliance burden. More practically, this appeal does not implicate larger questions about the outer limits of the universe of those the statute entitles to request records. Governed by the unchallenged facts the Ombudsman found, this appeal presents the more mundane and narrow inquiry of whether the City has met its burden to establish that the Ombudsman erred in concluding that the *Rochester Voice* constitutes a "party aggrieved" with standing to seek judicial redress of violations of that right. *See* RSA 91-A:7-b, -c; *Duncan*, 166 N.H. at 642–43. Whatever limits the definition of "citizen" may reflect in other contexts, the City has failed to demonstrate Ombudsman error in this specific appeal.

The decision of the Ombudsman is AFFIRMED.

So Ordered.

Date: August 9, 2024

Hon. Daniel E. Will

Clerk's Notice of Decision
Document Sent to Parties
on 08/13/2024

States Should Not Limit Open Records Requests to State Citizens

Guiding Principle:

Barring non-state citizens from the open-records process offends the people's foundational right to access government information. The fact a potential requester lives in a different state should not determine his or her ability to request public records. State policy choices often have impacts beyond a state's borders. More importantly, first principles of good government, such as ensuring accountability for decision-making, counsel in favor of broad access to public records.

The Issue

At least five states are known to restrict the right to request public records, either by statute or legal opinion, to citizens of the state:

  - "[A]ccess to most public records of this state are limited to Alabama citizens." – Att'y Gen. Op. 2018-030

- Arkansas
  - "[A]ll public records shall be open to inspection and copying by any citizen of the State of Arkansas[.]" – Code Ann. § 25-19-105(a)(1)

- Delaware
  - "Reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen." – 29 Del. C. § 10001
  - "We find for the following reasons that the Freedom of Information Act . . . applies only to Delaware citizens." – Op. Att'y Gen., No. 96-ib01 (Jan. 2, 1996)

- Tennessee
  - "All state, county, and municipal records shall . . . be open for personal inspection by any citizen of Tennessee." – Tenn. Code § 10-7-503(a)(2)(A)

- Virginia
  - "[A]ll public records shall be open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth[.]" – Code Ann. § 2.2-3704.A

Other states have public records laws that contain language that, while not generally acknowledged or currently interpreted as a bar to out-of-state requesters, leaves open

similarly states that "government records shall be readily accessible for inspection, copying, or examination *by the citizens of this State*[.]" N.J. Rev. Stat. § 47:1A-1 (emphasis added). As it stands, the New Jersey Attorney General does not presently interpret this language as prohibiting government entities from processing records requests filed by out-of-state requesters. Oddly, Nebraska limits the right of access to "all citizens of this state," while simultaneously extending it to "other persons interested in the examination of public records." Neb. Rev. Stat. § 87-712(1). South Dakota does the same. *See* S.D. Code L. § 1-27-1 ("[A]ll citizens of this state, and all other persons interested in the examination of the public records . . .").

In Kentucky, public records are limited to "any resident of the Commonwealth," but that definition also includes some out-of-state requesters, namely foreign business entities registered with the state and certain news-media organizations. KRS 61.870(10)(a) to (f). Other out-of-state requesters are disallowed.

State citizenship or residency requirements have not gone unchallenged. But in 2013, the U.S. Supreme Court ruled that such requirements were constitutionally permissible. Specifically, in *McBurney v. Young*, Justice Alito, writing for a unanimous court, affirmed Virginia's limitation and explained that it neither violated the Privileges and Immunities Clause nor the Dormant Commerce Clause. *See* 569 U.S. 221 (2013).

Some states have recognized the incongruence of a commitment to open government and a citizenship or residency-based limitation of who can file a records request. Florida amended its "Government in Sunshine" Law decades

state's citizenship requirement from its Public Records Act. *See, e.g.*, S.B. 3280, § 7 (2008). These are positive developments that should be copied in those states that still disallow out-of-state requesters.

Policy Recommendation

States should remove residency requirements for open records requests by specifying that "any person" can submit a request.

There are no compelling reasons to limit records requests to state citizens, especially in light of broader principles underlying open government and transparency. Most states do not have such limits, and they process requests from out-of-state requesters without issue. Most sophisticated records requesters can find an in-state proxy to submit requests on their behalf, thus circumventing the limitations, but many average requesters do not have such access.

Statutory Language Example – Arizona: "Any person may request to examine or be furnished copies, printouts or photographs of any public record" – A.R.S. § 39-121

Endorsements

- AFP Foundation
- Beacon Center of Tennessee
- Better Cities Project
- Goldwater Institute
- Mackinac Center for Public Policy
- Mountain States Policy Center

RIGHT ON TRANSPARENCY