

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT

New Hampshire Center for Public Interest Journalism, et al.

v.

New Hampshire Department of Justice

Docket No. 226-2018-CV-00537

MOTION TO DISMISS

The defendant, the New Hampshire Department of Justice (“DOJ”), by and through counsel, hereby moves to dismiss this matter as moot. In support thereof, the DOJ states as follows:

1. This case concerns whether and to what extent the DOJ’s Exculpatory Evidence Schedule (“EES”) is a public document pursuant to RSA chapter 91-A and Part I, Article 8 of the New Hampshire Constitution.

2. When the petitioners filed this action, no legislative act governed the EES.

3. Recently, the legislature passed a statute regulating the EES, RSA 105:13-d [Exculpatory Evidence Schedule].

4. RSA 105:13-d authorizes the DOJ to maintain an EES and specifies when and under what circumstances entries on the EES will become public under RSA chapter 91-A. *See generally* RSA 105:13-d.

5. RSA 105:13-d essentially balances the public’s right of access to governmental records, N.H. Const. Pt. I, Art. 8, with the reputational and privacy rights of present and former law enforcement officers, *see, e.g.*, N.H. Const. Pt. I, Art. 15; *N.H. Ctr. for Public Interest Journalism v. N.H. Dept. of Justice*, 173 N.H. 648, 659-660

(2020); *Gantert v. City of Rochester*, 168 N.H. 640, 648 (2016); *Duchesne v. Hillsborough County Attorney*, 167 N.H. 774, 782-83 (2015), to create a workable legal regime under which all of those important rights are adequately protected and vindicated.

6. As a result, RSA 105:13-d moots this case. *See Sullivan v. Town of Hampton Bd. of Selectmen*, 153 N.H. 690, 692 (2006) (“The doctrine of mootness is designed to avoid deciding issues that have become academic or dead.”) (internal quotations omitted).

7. It alone dictates when and under what circumstances the EES and entries on it become public under RSA chapter 91-A.

8. The operative petition does not challenge the constitutionality of RSA 105:13-d and seeks as relief the same result RSA 105:13-d will ultimately produce: a public version of the EES that excludes officers who are challenging their placement on it.

9. In other words, RSA 105:13-d exclusively governs when and under what circumstances EES entries become public and creates a process that provides the remaining petitioner with all the relief requested in the original petition, leaving nothing further for this court to do.

10. Accordingly, for the foregoing reasons and the reasons provided in further detail in the DOJ’s memorandum of law in support of its motion to dismiss filed this day, this court should find that RSA 105:13-d moots this case and dismiss the matter.

WHEREFORE, the DOJ respectfully requests that this court enter an order:

- A. Finding that RSA 105:13-d moots this case;
- B. Dismiss this case as moot; and
- C. Granting such further relief as the court deems just and equitable.

**NEW HAMPSHIRE
DEPARTMENT OF JUSTICE**

By its attorneys,

JOHN M. FORMELLA,
ATTORNEY GENERAL

October 25, 2021

/s/Anthony J. Galdieri
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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2021 a copy of the foregoing memorandum of law was electronically filed through the Court's electronic filing system and sent to all parties who have entered electronic service contacts. Copies to all other interested parties will be sent via US mail, if applicable.

/s/ Anthony J. Galdieri
Anthony J. Galdieri