

THE STATE OF NEW HAMPSHIRE

Merrimack County

Superior Court

Anthony J. Pivero

vs.

Attorney General John Formella
State of New Hampshire
33 Capitol St
Concord NH 03301

Chapter 91-A request for access to governmental records

The plaintiff, retired Nashua police officer, Anthony J. Pivero, seeks injunctive relief and a copy of all records maintained by the Attorney General's Office pertaining to the plaintiff's placement on the Exculpatory Evidence Schedule ("EES").

The plaintiff has made three written requests for the documents pursuant to NH RSA 91-A:4. The documents requested are not included in the exemptions of 91-A:5.

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On or about September 24, 2021, the plaintiff, retired police officer Anthony Pivero, received notice from the NH Attorney General's Office regarding his placement on the EES. Attached as A1.

On or about October 26, 2021, the plaintiff requested any and all documents maintained by the Attorney General relating to the plaintiff's name being placed on the EES. Attached as A2.

On or about November 1, 2021, the plaintiff received notice from the Attorney General's Office stating they received the 91-A request and that the above requested documents would be released on or before December 16, 2021. Attached as A3.

On or about November 17, 2021, the plaintiff made a second request under RSA 91-A citing "time is of the essence." Attached as A4. The Attorney General's Office clearly stated in its September 24, 2021 letter that the plaintiff has only 180 days to challenge his placement on the EES. The plaintiff therefore seeks immediate release of the documents necessary to challenge the

Attorney General's wrongful placement of his name on the EES. The plaintiff claims there is no substantiated allegation of truthfulness in his personnel file maintained by the Nashua Police Department. Therefore his name should not be placed on the EES.

On or about December 19, 2021, the plaintiff filed a third 91-A request with the Attorney General's office. This request was initiated due to the failure of the Attorney General's Office to provide the documents by December 16, 2021 as stated in their earlier letter. Attached as A5.

On or about December 20, 2021, the plaintiff received notice from the Attorney General's Office stating "I am unable to fulfill your request at this time". Attached as A6.

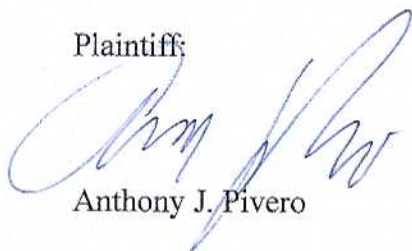
The plaintiff seeks injunctive relief under RSA 91-A:7 by the Superior Court in order to access records maintained by the New Hampshire Attorney General.

The plaintiff seeks all fees and costs related to this matter under RSA-A:8.

The plaintiff requests that the Attorney General be subject to any civil penalty under RSA 91-A:8.

December 27, 2021

Plaintiff:

A handwritten signature in blue ink, appearing to read "Anthony J. Pivero", is written over the printed name.

Anthony J. Pivero

170 Robert Rogers Rd.

Dunbarton N.H. 03046

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



**PLAINTIFF'S
EXHIBIT**

A1

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

September 24, 2021

Anthony Pivero
170 Robert Rogers Rd, PO Box 204
Goffstown, NH 03045

**Re: Notice Concerning RSA 105:13-d and Your Name Appearing on the
Exculpatory Evidence Schedule ("EES")**

Dear Anthony Pivero:

Pursuant to recently enacted RSA 105:13-d, a copy of which is attached to this letter, the Department of Justice is required to notify you of the following:

- (1) **Your name currently appears on the Exculpatory Evidence Schedule ("EES").** Your name was added to the list on 12/20/2017. You were added by Nashua Police Department.
- (2) **You have one hundred and eighty (180) days from the date of notification to file a lawsuit in superior court regarding your placement on the EES.** After 180 days have passed, any cause of action you might have to challenge your placement on the list shall be extinguished.

The statute further states that you are presumed to have received this notice three (3) business days after this Office has sent it via first class mail to your last known address. In addition, any lawsuit you may file regarding your placement on the EES shall name as a party to the lawsuit the law enforcement agency that recommended your placement on the EES. Any such lawsuit shall also provide the Department of Justice with notice that any such action has been filed. You shall provide notice of any court order and the disposition of any such action to the Department of Justice at each stage of the proceeding. These notices are to be sent to:

New Hampshire Department of Justice
Civil Bureau – Civil Litigation Unit
Attn: Exculpatory Evidence Schedule Matters
33 Capitol Street
Concord, NH 03301

180 days from the date of notification, individual's names and the corresponding information on the EES shall be made public, except for any individual with a pending legal action regarding that individual's placement on the EES.

Notice Concerning RSA 105:13-d and Your Name Appearing on the Exculpatory Evidence
Schedule ("EES")
Page 2 of 2

The Department of Justice cannot provide you with legal advice concerning RSA 105:13-d, and any legal remedies it may provide. You may wish to contact your own attorney about any legal remedies you may have under this statute.

Sincerely,



Geoffrey W.R. Ward
Senior Assistant Attorney General
Chief, Criminal Justice Bureau

GWW/gww
Enclosure

Copy to: Attorney General John M. Formella
Deputy Attorney General Jane E. Young
Jeffery A. Strelzin, Director, Division of Public Protection
Anthony J. Galdieri, Solicitor General
Seth M. Zoracki, Chief, Civil Litigation Unit

3275745

October 26, 2021

State of New Hampshire
Attorney General John Formella
33 Capitol Street
Concord, NH. 03301

Re: 91-A request.

Dear Attorney General Formella:

Pursuant to Chapter 91-A . I respectfully request a copy of all records pertaining to my name, Anthony Pivero in relation to the Exculpatory Evidence Schedule.

This request includes all correspondence with the Nashua Police Department regarding my name being added to the "EES".

This request also includes any documents that were provided to you that were used to include my name on the "EES".

As you are aware this is a time sensitive matter and respectfully request that your office provide the above material as soon as possible.

Please feel free to contact me at 603-396-1653 or 170 Robert Rogers Road. Dunbarton, NH. 03046.

Sincerely,


Anthony J. Pivero
Retired Nashua Police Officer

Hand delivered 10-26-21 @ 3:30pm

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

**PLAINTIFF'S
EXHIBIT**

A3

November 1, 2021

SENT VIA U.S. MAIL

Mr. Anthony Pivero
170 Robert Rogers Road
Dunbarton, New Hampshire 03046

Re: **Right To Know Regarding EES**

Dear Mr. Pivero,

The Office of the Attorney General is receipt of your request, received on October 26, 2021, for documents under New Hampshire RSA 91-A for the following:

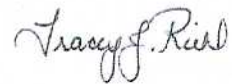
- All correspondence with the Nashua Police Department regarding [requestor's] name being added to the "EES"
- Any documents that were provided to [Attorney General's Office] that were used to include [requestor's] name on the "EES"

We will search our records for responsive documents that may be released under RSA 91-A. Given the large number of 91-A requests currently under review in our office and the expansive nature of your request, we will be unable to complete our search within the five business day period. Currently, we anticipate being able to formally respond to your request on or before December 16, 2021.

Please be advised that there may be costs associated with your request for documents, which is the requestor's responsibility to pay prior to documents being produced. If there are costs, we will notify you accordingly.

If you have any questions, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Tracey J. Riehl".

Tracey J. Riehl
Paralegal II
Criminal Justice Bureau
(603) 271-8409
tracey.riehl@doj.nh.gov

Cc: Geoffrey W.R. Ward, Senior Assistant Attorney General
Nicholas A. ChongYen, Assistant Attorney General

TJR/tjr
Enclosure

Anthony J Pivero
170 Robert Roger Road
Dunbarton NH 03046

November 17, 2021

State of New Hampshire
Attorney General John Formella
33 Capitol Street
Concord, NH 03301

Dear Attorney General Formella,

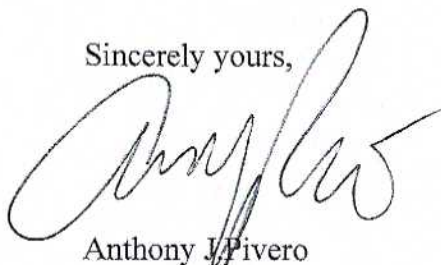
Disappointed by your response regarding my request for documents under RSA 91-A, I am renewing my request again.

My request under 91-A is clearly a *"time is of the essence"* matter. Your office has failed to do your job again. Instead of protecting the rights of Law Enforcement Officers, you have managed to violate them.

According to your letter dated September 24, 2021, my name was placed on the EES on December 20, 2017. I was unaware of this before receiving your letter. This is a deceitful practice. It is without just cause and legal standing.

Your office has not taken any steps to verify the information you received that placed my name on the EES. I am contesting your actions and will be adding your name to legal action to be filed in Superior Court.

Sincerely yours,



Anthony J Pivero

Retired Nashua Police Officer

Anthony J. Pivero
170 Robert Roger Road
Dunbarton NH 03046

December 19, 2021

State of New Hampshire
Attorney General John Formella
33 Capitol Street
Concord, NH 03301

Dear Attorney General Formella,

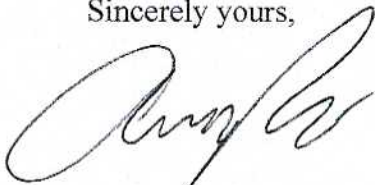
Aggrieved by your decision not to provide me with the requested documents pursuant to New Hampshire RSA 91-A, I am now forced to seek legal counsel and reimbursement of attorney fees from your office.

Your letter dated November 1, 2021, stated that you would provide the requested documents on or before December 16, 2021, which was 60 days after my initial request.

I feel your that your office is unprofessional and malfeasant in it's actions.

I will afford your office 5 days from receipt of this letter to provide the requested documents.

Sincerely yours,



Anthony J. Pivero

Retired Nashua Police Officer

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397



JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

December 20, 2021

SENT VIA U.S. MAIL

Anthony Pivero
170 Robert Rogers Road
Dunbarton, NH 03046

Re: Right To Know Request Regarding EES

Dear Mr. Pivero,

I am in receipt of your request for a complete copy of all files related to your, Anthony Pivero's, placement on the Exculpatory Evidence Schedule ("EES"). I am unable to fulfill your request at this time, even if you were to execute some form of waiver of your privacy interest.

RSA 105:13-d, II(d), sets forth a process by which entries on the EES will become public. At this time, those entries are non-public, and we cannot disclose records related to your client's placement on the EES without those records being made generally available to the public. No statute permits a confidential exchange of documents to occur between your client and this Office. As such, this Office cannot provide you with the documents you have requested.

If you have any questions or wish to discuss this matter further, please feel free to contact me.

Sincerely,

Geoffrey W. R. Ward
Senior Assistant Attorney General
Chief, Criminal Justice Bureau
(603) 271-3671
geoffrey.ward@doj.nh.gov

GWW/tjr

Copy to: Attorney General John M. Formella
Deputy Attorney General Jane E. Young
Solicitor General Anthony J. Galdieri
Senior Assistant Attorney General Seth M. Zoracki