



City of Rochester, New Hampshire

OFFICE OF THE CITY ATTORNEY

31 Wakefield Street • Rochester, NH 03867

(603) 335-7599

www.rochesternh.gov

January 13, 2025

Hon. Robert Lynn
Chairman, House Judiciary Committee
State House – House Member Mail
107 North Main Street
Concord, NH 03301

Dear Chairman Lynn:

In 2022, the General Court of New Hampshire established the office of the Right-To-Know Ombudsman (“RKO”) for the express purpose of providing the public a simpler, less expensive, and faster alternative process to resolve complaints under RSA 91-A. This effort has failed.

Navigating the RKO process is more convoluted, ultimately costs more, and takes far longer than seeking relief in Superior Court. Accordingly, House Bill 111-FN should not be enacted.

Removing Right-To-Know complaints from the courtroom has only led to confusion, aggravation, inefficiency and discordant results. The RKO is self-described as “not ... part of the state’s judicial system, but rather as an agency in the executive branch of government, tasked with quasi-judicial functions, the drafting of administrative rules, as well as other duties.” *In Re: Town of Hill 001*, RKO 2023-023 *1. So, while the RKO is not a court, the office is authorized to levy sanctions and money damages against municipalities, which requires municipalities to treat this process the same as a court case and employ attorneys accustomed to court rules and processes to litigate these matters. With the RKO, however, these rules do not apply. Parties are not required to adhere to New Hampshire’s rules of civil procedure or evidence, and because the RKO is not a court, parties cannot seek subpoenas to compel witness testimony. There exists within the RKO no protections of substantive and procedural due process. The RKO has even permitted non-attorneys to represent parties in a legal capacity at significant potential peril to the non-attorney, both ethically and legally. *See In Re: Rochester School Department 001 & 002*, RKO 2023-027.

Moreover, despite the stated goals of simplicity, the RKO provides no opportunity for mediation or informal resolution of these matters. Instead, matters proceed before the RKO in a complicated, interminable slog governed by a labyrinthine set of administrative rules¹ issued by the RKO itself. An agency created to make matters easier for participants went out of its way to make finding a workable solution harder for citizens and public bodies alike.

¹ gencourt.state.nh.us/rules/state_agencies/rko.html

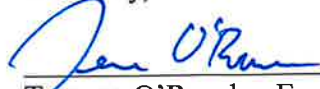
On top of being more complex, it is, quite simply, more expensive to litigate complaints under RSA 91-A before the RKO. Despite the proliferation of virtual hearings over the past several years, parties are required by the RKO to appear in person in Concord, necessitating at least three costly trips to and from the capital. Municipalities face an even greater financial burden. As the party with the evidentiary burden in most Right-To-Know matters, municipalities must present witnesses at the hearings in Concord, the vast majority – if not all – of whom are city or town employees. The individual municipalities must not only compensate their employees for the unnecessary travel to and from Concord, but they also suffer from the loss of productivity from those employees. While the filing fee was reduced to \$25.00, the RKO does not accept electronic filing of documents, requiring parties to pay the cost to produce paper copies and mail them to the RKO and the other parties.

Going three for three on failure of purpose, matters before the RKO take far longer to resolve than before the Superior Courts. Under RSA 91-A:7-b, the RKO “shall determine whether there have been any violations of this chapter and issue a ruling within 30 calendar days following the receipt of the parties’ submissions.” RSA 91-A:7-b(V). Following the filing of the original complaint with the RKO, the “public body or public agency shall have 20 calendar days” to submit a response. Which means that no later than 50 days from the filing of the original complaint, the RKO shall make its ruling. This is simply not happening. In *In Re: Rochester School Department 001 & 002*, RKO 2023-027, the original complaint was received by the RKO on October 17, 2023. It is now, of course, January 2025, and the matter is still pending. So much time has elapsed since the filing of the complaint, each of the school board members present at the meeting in question either chose not to run for re-election or was defeated at the ballot box, and the superintendent accepted a position with another school district.

This is far from the only example of matters before the RKO taking far longer than 50 days to resolve. In *In Re: Milton School District 001*, RKO 2024-003, the complaint was submitted in January 2024, and the final decision was rendered June 9, 2024. In *In Re: New Boston Planning Board 001*, RKO 2023-15, the original complaint was filed July 25, 2023, and the final decision was rendered March 24, 2024. In *In Re: Town of Hill 001*, the complaint was submitted on September 7, 2023. On March 14, 2024, the RKO recused itself from the matter without a final substantive ruling, rendering itself “unable to provide either party with guidance regarding how this recusal (which is a ‘final ruling’ by this office) might appropriately be handled so as to address the core of the complainant’s complaint.” *Id.* at *6. The list goes on.

In sum, the office of the Right-To-Know Ombudsman does not provide the public an effective process to resolve RSA 91-A complaints, and the position should not be extended for any length of time. The experiment may have been a noble one, but regardless of the intent, it has failed.

Sincerely,



Terence O'Rourke, Esq.
City Attorney
City of Rochester