



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

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Jane M. Ferrini, Assistant City Attorney – 603-610-7256 (Direct Dial)

February 7, 2018

VIA E-MAIL

Rep. Mindi Messmer (*mind.messmer@leg.state.nh.us*)
Rep. Robert Renny Cushing (*renny.cushing@leg.state.nh.us*)
Rep. Philip Bean (*philip.bean@leg.state.nh.us*)
Rep. Henry Marsh (*henry.marsh@leg.state.nh.us*)
State of New Hampshire

RE: Right-to-Know Request

Dear Representatives Messmer, Cushing, Bean and Marsh,

The City acknowledges receipt of your letter dated January 31, 2018 addressed to Coakley Landfill Group c/o Attorney Robert Sullivan and Peter Forbes of U.S. Air Force Civil Engineering Center and received by this office on February 1, 2018 requesting, “an opportunity to inspect or obtain copies of public records that pertain to the following:

1. Minutes of non-public meetings between responsible parties including but not limited to those listed in the Participation Agreement dated September 27, 1991 (“Participation Agreement”).
2. Minutes of non-public meetings between the Coakley Landfill Group, City of Portsmouth, Department of Defense and regulatory agencies including but not limited to the USEPA and New Hampshire DES.
3. Copies of all reports to the New Hampshire Attorney General on behalf of Coakley Landfill Group or the City of Portsmouth.
4. Copies of all submittals to the New Hampshire Division of Charitable Trust including all annual financial reports (IRS Form 990, or functional equivalent).
5. Copies of all Coakley Landfill Group bank records.
6. Copies of annual audited financial reports of the operations of the parties listed in the Participation Agreement and other responsible parties from 1991 to current.
7. All correspondence from 1991 to present relating to Coakley Landfill Group meetings concerning moneys paid by the Department of Defense (DOD) to carry out the pump and treat system for the Coakley Landfill Superfund Site.
8. A copy of the Memorandum of Agreement and any other correspondence between the Department of Defense, the USEPA and/or state regulators regarding the allocation of \$5.25M referenced in Section 6.3 of the Participation Agreement. Copies of any documents relating or referencing the payment for the pump and treat system installation and following correspondences relating to the decision made by Coakley Landfill Group and regulators regarding the decision not to install said system and the response form the DOD about that decision.

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9. Any and all correspondence relating to the Coakley Landfill Group notification to the Department of Defense that the pump and treat system would not be installed.
10. Coakley Landfill Group is to provide an estimate of the current liabilities for the all towns listed in the Participation Agreement for payback of all money owed upon closure of the Coakley Landfill Superfund site.
11. Any and all correspondence relating to any waiving of the refund of monies received from the Department of Defense for the pump and treat system, if not installed.
12. Any and all correspondence relating to the abandonment of the pump and treat installation.
13. Any and all correspondence regarding waiving liability for off-site migration for contamination to responsible parties.
14. Any and all correspondence with government officials regarding Coakley Landfill Superfund Site, including but not limited to, former Senator Bob Smith."

The City also acknowledges receipt of your supplement to that request dated January 31, 2018 and received in this office via e-mail on February 2, 2018 which indicated:

"Under the New Hampshire Right to Know Law R.S.A. Ch. 91-A et seq., we are requesting an opportunity to inspect or obtain copies of public records that pertain to the following:

1. Minutes of non-public meetings between responsible parties including but not limited to those listed in the Participation Agreement dated September 27, 1991 ("Participation Agreement").
2. Minutes of non-public meetings between the Coakley Landfill Group, City of Portsmouth, Department of Defense and regulatory agencies including but not limited to the USEPA and New Hampshire DES.
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Because the Coakley Landfill Group is a voluntary association of parties and not a governmental entity the Right-to-Know law would not apply to the Coakley Landfill Group. Therefore, your requests are being treated as Right-to-Know law requests of the City of Portsmouth, which is subject to the provisions of the Right-to-Know law (RSA 91-A).

Accordingly, all City records responsive to your requests are being assembled, and generally being made suitable for your review. This is a large complex project insofar as the records commence in approximately 1992 and the landfill has been in very active remediation since that time to the present date. It appears that when fully assembled the records which you seek will constitute approximately one hundred (100) bankers boxes of documents, each box measuring 12" x 15.5". Moreover, since 1992 Portsmouth City Hall has moved from a former location on Daniel Street to its current location on Junkins Avenue. The boxes of documents have become re-distributed to several municipal buildings located in different parts of the City. The work of collecting and indexing the documents is being performed by municipal employees who simultaneously have other work which needs to be done. Therefore, it is anticipated that all records will not be in one place for your review for approximately six (6) weeks.

When the project described in the previous paragraph is completed, I believe that all existing City records responsive to your requests will be located in a single place and available for your review per RSA 91-A.

Once the records are all assembled in one place, a City staff member with some familiarity with them will be assigned to assist you in reviewing whatever records you wish to see. I will also be available for that purpose. You may either make arrangements for copying whatever documents you wish or the City will provide copies at the City's nominal rate of \$2.00 for the first page and \$0.50 for each page thereafter.

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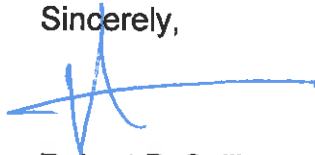
To the extent that you would like to discuss the foregoing approach to the City's response to your Right-to-Know law request I am available to do so. Depending upon the focus of your inquiry it may be possible to simplify the work for both the City staff and yourselves by narrowing the scope of your requests. The City is open to discussing any approach to this very involved project.

Notwithstanding the daunting logistical issue created by the number of your requests in light of the volume of the City's records, you may be assured that the City will cooperate with you to fully comply with the City's obligation under Right-to-Know law jurisprudence.

Insofar as the City has received a Right-to-Know law request which is similar in many ways to yours from Mr. James Splaine dated January 31, 2017 he will be receiving a letter very similar to this one.

Please call if you have any questions.

Sincerely,



Robert P. Sullivan
City Attorney

RPS/rao

cc: John P. Bohenko, City Manager
Coakley Landfill Executive Committee
Town of North Hampton
Town of Newington
Peter Forbes, U.S. Air Force Civil Engineer Center
James Splaine