



## CITY OF PORTSMOUTH

Municipal Complex  
1 Junkins Avenue  
Portsmouth, New Hampshire 03801  
mayor@cityofportsmouth.com  
(603) 610-7200

Deaglan McEachern  
Mayor

Honorable Senator Sharon Carson, Chair  
Senate Judiciary Committee  
State House, Room 100  
107 North Main Street  
Concord, New Hampshire 03301

April 13, 2022

Madam Chair Carson and Members of the Senate Judiciary Committee:

On behalf of the City of Portsmouth, I am writing in opposition to House Bill 1073 relative to amending the attorney-client privilege and the attorney work product exemption under New Hampshire's Right-to-Know law.

As you are aware, last year the legislature amended RSA 91-A:5, XII, exempting from disclosure under the Right-To-Know law "records protected under the attorney-client privilege or the attorney work product doctrine". This legislation was adopted in response to the New Hampshire Supreme Court case of *Hampstead School Board v. School Administrative Unit No. 55*. *Hampstead* imposed a new balancing requirement for municipalities to apply to the attorney-client privilege and work product doctrine. After the decision, numerous public entities and municipalities intervened by filing a Motion to Reconsider. The Supreme Court withdrew its opinion, and the Legislature, recognizing the importance of protecting the attorney-client privilege, amended RSA 91-A:5, XII, by adding records created through attorney-client privilege or the attorney work product doctrine as documents exempt from disclosure under the Right-To-Know law. HB 1073 amends RSA 91-A:5, XII by adding the phrase "**consistent with the public's right to know**". This amended language creates ambiguity the Supreme Court sought to avoid by withdrawing its opinion and appears to attempt to reverse the exemption enacted last year.

The attorney-client privilege and the attorney work product doctrine preserve confidential communications between public bodies and their attorneys. Governmental bodies need to seek the advice of counsel for a wide variety of legal issues, including but not limited, interpreting local and state laws, negotiating and interpreting contracts and legal advice on threatened or pending litigation. Removing or creating ambiguity regarding the attorney-client privilege for municipalities, as this bill does, could impede the efficient operation of government by having a chilling effect of public officials seeking legal advice, which would potentially expose cities and towns to unnecessary litigation and increase costs.

The attorney-client privilege and the work product exemption are essential to the successful operation of government in New Hampshire. Passing HB 1073 would thwart the efficient operation of government. As such, for the reasons set forth above, the City of Portsmouth respectfully requests that the Committee vote HB 1073 Inexpedient to Legislate. Thank you for your consideration.

Sincerely,

Deaglan McEachern, Mayor of the City of Portsmouth

cc: Portsmouth City Council  
City Manager Karen Conard  
Portsmouth Legislative Delegation