

THE STATE OF NEW HAMPSHIRE

MERRIMACK, ss

MERRIMACK SUPERIOR COURT
DOCKET NO.:

217-2022-CV-01114

UNION LEADER CORPORATION
100 William Loeb Drive
Manchester, New Hampshire 03109

v.

New Hampshire Department of Safety
Division of State Police
33 Hazen Drive
Concord, New Hampshire 03305

COMPLAINT OF UNION LEADER CORPORATION
FOR ACCESS TO PUBLIC RECORDS

Union Leader Corporation, (hereinafter "Union Leader"), through counsel, complains against the New Hampshire Department of Safety, (hereinafter "Department of Safety"), and states as follows:

1. Union Leader submits this complaint for public records pursuant to the Constitution of New Hampshire, Part I, Article 8, and the provisions of New Hampshire Revised Statutes Annotated Chapter 91-A, The Right to Know Law.
2. Union Leader is a corporation organized and existing under the laws of the State of New Hampshire with a principal office of 100 William Loeb Drive, Manchester, New Hampshire 03109. Union Leader is a publisher of newspapers of general circulation, and other media, throughout the state of New Hampshire, and elsewhere.
3. The respondent Department of Public Safety whose address is 33 Hazen Drive

Concord, New Hampshire 03305, is a body politic organized and existing pursuant to the Constitutional and statutory laws of the State of New Hampshire, and is therefore subject to the provisions of R.S.A. Chapter 91-A.

4. On October 13, 2022, through a news gathering correspondent representing Union Leader, and again on November 21, through counsel, Union Leader requested public records from the Department of Safety, pursuant to R.S.A. ch. 91-A. Copies of the requests are attached hereto as Exhibit 1.
5. Union Leader's requests specifically sought incident reports and any other public records relating to the New Hampshire State Police response at the Sununu Youth Services Center on October 7-8th, 2022.
6. On information and belief, since August of 2022, police and emergency medical services have responded to calls for help at least ten (10) times in response to incidents at the facility, some resulting in serious injuries to staff and residents, and property damage.¹ The State Police have been making routine "check-ins" at the facility since September.²
7. The requested incident reports and other records constitute governmental records, also known as public records, as defined by N.H. R.S.A. 91-A:1, a, III.
8. By e-mails dated November 3rd, 2022, and again on November 29, 2022, the Department of Safety, acting through Lieutenant Brian V. Viglione and through counsel, denied the requests. The denials are attached hereto as Exhibit 2.
9. The Department of Safety admits that the records sought do not constitute "case records," shielded from disclosure pursuant to R.S.A. ch. 170-G:8-a, but erroneously relies on R.S.A. ch. 169-B, and Petition of State, 172 N.H. 493

¹ Albertson-Grove, Josie, October 18, 2022, [*Sununu Center leaning on mandatory overtime amid staff crisis, as workers raise alarm about unprecedented injuries.*](#) (Attached hereto as Exhibit 3)

² Hayward, Mark, September 13, 2022, [*State Police to make routine check-ins at Sununu Center.*](#) (Attached hereto as Exhibit 4).

(2019) in support of its position withholding the requested records. R.S.A. ch. 169-B:34 through 169-B:38 relate to confidentiality of proceedings and records in juvenile court cases. Union Leader is not seeking access to court records or proceedings. Nor is it seeking information about any juvenile delinquency proceeding. Furthermore, Union Leader agrees that any and all juvenile identifying information can and should be redacted from the requested records.

10. This case is significantly distinguishable from the facts of Petition of State, 172 N.H. 493, wherein the Court held that “investigative records compiled by the AGO concerning a juvenile subject to the provisions of R.S.A. ch. 169-B” id at 499, should remain confidential. In that case, the Court declined to release records, reasoning that the request was “made in the context of a juvenile delinquency proceeding brought under R.S.A. chapter 169-B” and conspicuously noting that the request was “not a Petition pursuant to R.S.A. 91-A.” Id. at 499.
11. Finally, even if the records were subject to some protection or confidentiality, the law in New Hampshire is well settled that when the information sought will shed light on the performance of public officials or public agencies, then any legitimate privacy interest asserted will be weighed against the benefit conferred upon the public in being able to scrutinize the actions of public actors. See e.g. Union Leader Corporation v. City of Nashua, 141 N.H. 473 (1996). Union Leader seeks information about the response of a public agency at a state-run facility.
12. To advance the purposes of the Right-to-Know Law, courts are instructed to construe provisions favoring disclosure broadly and exemptions narrowly. Herron v. Northwood, 111 N.H. 324, 326, 282 A.2d 661, 663 (1971). “The party resisting disclosure bears a heavy burden to shift the balance toward nondisclosure.” N.H. Civil Liberties Union v. City of Manchester, 149 N.H. 437, 440 (2003).
13. The Department of Safety has no reasonable valid basis for denying access to the information requested by Union Leader. The records are not protected by R.S.A. ch. 169-B, and the exemptions to disclosure that are contained in section 5 of

R.S.A. ch. 91-A, are to be construed narrowly, and do not cover the records at issue in this Complaint.

REQUEST FOR RELIEF

WHEREFORE, Union Leader now prays that this honorable Court:

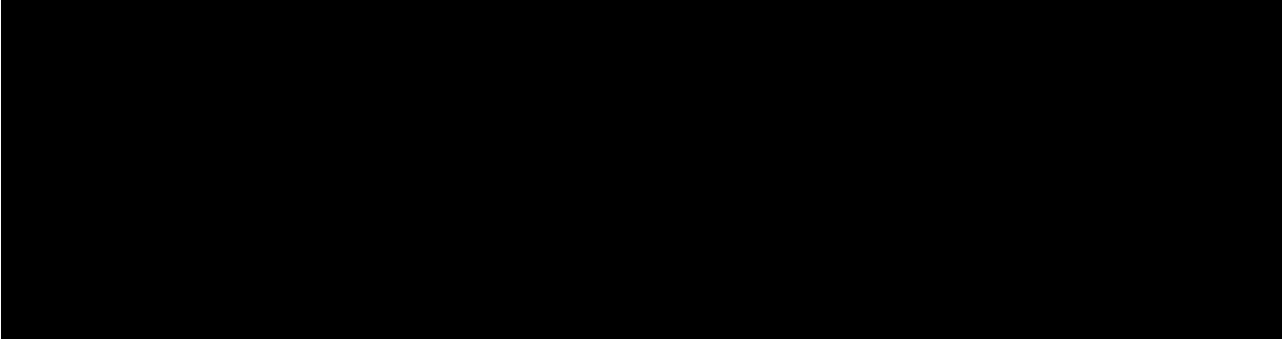
- A. schedule this matter for an expedited hearing, pursuant to the provisions of R.S.A. 91-A:7;
- B. issue an Order requiring the New Hampshire Department of Safety to disclose all of the records and information in its possession relating to the State Police response to the Sununu Youth Services Center on October 7th and/or 8th, 2022;
- C. issue an Order awarding to Union Leader reimbursement by the New Hampshire Department of Safety of Union Leader's reasonable attorneys' fees and costs incurred in bringing this action, pursuant to the provisions of R.S.A. 91-A:8; and
- D. grant such other and further relief as the Court deems just .

Respectfully submitted,
UNION LEADER CORPORATION,
by its attorney,

/s/ Kathleen C. Sullivan
KATHLEEN C. SULLIVAN
N.H. Bar # 14791
Malloy & Sullivan,
Lawyers Professional Corporation
59 Water Street
Hingham, Massachusetts 02043
(781)749-4141
k.sullivan@msslpc.net

Dated: December 7, 2022

EXHIBIT 1



From: **Josie Grove** <jgrove@unionleader.com>
Date: Thu, Oct 13, 2022 at 10:22 AM
Subject: Union Leader 91-a request Oct. 13, 2022
To: <SPHeadquarters@dos.nh.gov>

To whom it may concern:

Under the New Hampshire Right to Know Law R.S.A. Ch. 91-A et seq., I am requesting an opportunity to inspect or obtain copies of public records related to the state police response at the Sununu Youth Services Center on Oct. 7-8 2022, including any incident reports with confidential information redacted.

If there are any fees for searching or copying these records, please inform me. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of conditions at the Sununu Youth Services Center. I am a representative of the news media, and this request is for newsgathering purposes. This information is not being sought for commercial purposes.

The New Hampshire Right to Know Law requires a response time of five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Sincerely,

Josie Albertson-Grove

603-505-5808

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Josie Albertson-Grove | Reporter
New Hampshire Union Leader | 100 William Loeb Drive, Manchester, NH 03109
jgrove@unionleader.com
www.unionleader.com

"Open Up New Hampshire"



Gregory V. Sullivan, MA, NH
Kathleen C. Sullivan, MA, NH
Kerstin H. Peterson, MA

Founders
Ralph Warren Sullivan
Richard A. Sullivan
James Malloy
Morton Myerson

November 21, 2022

Lieutenant Brian V. Viglione
Troop Commander, Troop B
New Hampshire Department of Safety
Division of State Police
33 Hazen Drive
Concord, NH 03305

Re: Right to Know Request of Josie Albertson-Grove/Union Leader Corporation

Dear Lieutenant Viglione,

We represent Union Leader Corporation with respect to a Right-to-Know request dated October 13, 2022, submitted by Ms. Josie Alberston-Grove on behalf of Union Leader Corporation, seeking incident reports and any other public records relating to New Hampshire State Police responding to the Sununu Youth Services Center on October 7th and/or 8th, 2022. That request, along with your response dated November 3rd is attached for your reference.

Your reliance upon RSA 169-B, RSA 170-G:8-a, and Petition of State, 172 NH 493 (2019), is misplaced. There is no question that the records sought were not “created by the department of health and human services” and are not “case records” as defined by RSA 170-G:8-a. In fact, that statute explicitly states that “records created by third parties, such as. . . police officers” are excluded from the protections provided. RSA 170-G:8-a(I)(b).

RSA 169-B:35 protects “Court records of proceedings under this chapter [169-B].” The request in this case is not made in connection with any proceeding under 169-B. In Petition of State, the Court explained that the Attorney General’s request to release investigative files was “made in the context of a juvenile delinquency proceeding brought under RSA chapter 169-B” and further reasoned that “this is not a Petition pursuant to RSA 91-A” (emphasis added).

This IS a request made pursuant to RSA 91-A. It is not submitted in the context of any juvenile delinquency proceeding, and is not seeking names or other identifying information about any juvenile. As Ms. Albertson-Grove indicated in her initial request redaction of information is available to your department where necessary. None of the authorities cited by you shield the records requested in this case.



Furthermore, even if the requested records were considered confidential, the law in New Hampshire is clear that confidential records are not categorically exempt pursuant to the provisions of RSA 91-A. Law enforcement records are subject to a balancing test to determine whether or not the government's interest in non-disclosure outweighs the public's right to know what the government is up to. I direct your attention to the case of Lodge v. Knowlton, 118 N.H. 574 (1978), wherein the Supreme Court detailed the factors to be considered regarding the disclosure of law enforcement investigative records.

Please reconsider your blanket denial and contact me to discuss a resolution of this dispute short of litigation. In the event that records are not released within the next week, we will file a Petition for Access to Public Records in the Superior Court, and will request an award of attorneys' fees. Thank you in advance for your anticipated response.

Sincerely,

Kathleen C. Sullivan

EXHIBIT 2



Colonel Nathan A. Noyes
Director

State of New Hampshire

DEPARTMENT OF SAFETY

Robert L. Quinn, Commissioner of Safety

Division of State Police

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305



November 3rd, 2022

Josie Albertson-Grove
jgrove@unionleader.com

Re: Right to Know Request –

Ms. Albertson-Grove,

I am writing in response to your request to the New Hampshire State Police, received by this office on 10/13/2022 for all public records related to the state police response at the Sununu Youth Services Center on Oct. 7-8 2022, including any incident reports with confidential information redacted. It has been determined law enforcement investigative records pertaining to juvenile delinquency, in the absence of any applicable, specific disclosures of delinquency-related information in RSA 169-B and RSA 170-G:8-a, are confidential per RSA 169-B and are therefore not publicly available under RSA 91-A . Petition of the State of New Hampshire, No. 2018-0601 (August 6, 2019).

Respectfully,

Lieutenant Brian V. Viglione
Troop Commander, Troop B

From: [Hilts, David](#)
To: [Katy Sullivan](#); [Gregory V. Sullivan](#)
Subject: RE: Right to Know Request of Josie Albertson-Grove/Union Leader Corporation
Date: Tuesday, November 29, 2022 2:31:38 PM
Attachments: [Viglione11212022ltr.pdf](#)
[Final response letter.pdf](#)

Kathy,

I'm in receipt of your letter to Lt. Viglione dated November 21, 2022 regarding notice of your intent to file a RSA 91-A petition unless we reconsider our position that the records pertaining to juvenile delinquency Josie Albertson-Grove requested are exempt from disclosure under RSA 91-A. Respectfully, I am confident that Petition of State, 172 N.H. 493 (2019) is dispositive that these records are exempt. As with the records in that case, I agree with you that the records at issue do not constitute "case records" of DHHS per RSA 170-G:8-a. However, that fact did not stop the trial court in that case to find and hold that:

the courts, police departments, and prosecutors throughout the state have always considered the investigative files of agencies involved with juvenile delinquencies to be subject to the confidentiality provisions of RSA 169-B. To find otherwise would render the confidentiality requirements of the statute meaningless. Little would be gained from closing court records to the public while allowing prosecutorial agencies to discuss and disclose their findings and records with the press or to publicly release those records. 172 N.H. at 475.

The Court ultimately agreed with the trial court, finding and holding that:

RSA chapter 169-B establishes special, largely nonpublic, procedures for juveniles and authorizes broad restrictions on access to juvenile case and court records. The importance the legislature attaches to the confidentiality of juvenile records is reflected in the fact that disclosure of records in violation of RSA chapter 169-B is a crime. Although the chapter does not expressly define what is encompassed within the meaning of court records, we construe the statute liberally to effect its purpose of rehabilitating delinquent minors by shielding them "from the environment surrounding adult offenders and inherent in the ordinary criminal processes." State v. Smith, 124 N.H. at 512-13, 474 A.2d 987 (quotation omitted); see RSA 169-B:1 (2014). Thus, it is reasonable to conclude that the legislature intended that investigative records compiled by the AGO concerning a juvenile subject to the provisions of RSA chapter 169-B be confidential. 172 N.H. 498-99.

The Court's recognition that the AGO's request was not a 91-A petition was only made to determine that the lower court's consideration of the best interests of the subject child was appropriate in the context of a juvenile delinquency proceeding. However, the converse is not true; AGO's arguments that 91-A's transparency mandates were also wholly unavailing in the Court's analysis. As such, the requested juvenile delinquency records in the hands of the investigating agency are confidential per RSA 169-B whose disclosure is "otherwise prohibited by statute" per RSA 91-A:4, I. Therefore, neither a balancing test nor reference to the law enforcement exemption factors of Lodge or 38 Endicott St North, LLC is necessary or appropriate. In light of the recent case law governing this issue, we believe your petition will be unsuccessful and that the State would be entitled to recover

attorneys fees under RSA 91-A:8, II.

David M. Hilts
Senior Staff Counsel
Office of the Commissioner
New Hampshire Department of Safety
33 Hazen Drive
Concord, NH 03305
W (603) 227-0040
F (603) 271-1033

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From: Gregory V. Sullivan <g.sullivan@mslpc.net>

Sent: Tuesday, November 22, 2022 3:21 PM

To: Viglione, Brian <brian.v.viglione@dos.nh.gov>

Cc: Katy Sullivan <k.sullivan@mslpc.net>

Subject: Right to Know Request of Josie Albertson-Grove/Union Leader Corporation

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Lieutenant Viglione: Please see the attached letter. Thank you.

Sincerely,

Gregory V. Sullivan, Esq.

**Malloy & Sullivan,
Lawyers Professional Corporation
59 Water Street
Hingham, MA 02043**

**3793 West Side Road
North Conway, NH 03860**

g.sullivan@mslpc.net

Telephone: 781-749-4141

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Cell Phone: 617-633-2626

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EXHIBIT 3

https://www.unionleader.com/news/safety/sununu-center-leaning-on-mandatory-overtime-amid-staff-crisis-as-workers-raise-alarm-about-unprecedented/article_938b4fd5-dc57-5907-99f1-dc2a9bd7a6db.html

Sununu Center leaning on mandatory overtime amid staff crisis, as workers raise alarm about unprecedented injuries

By Josie Albertson-Grove Union Leader Staff
Oct 18, 2022



Sununu Youth Development Center in Manchester.

Union Leader File

Amid a staffing crisis that has left New Hampshire's juvenile detention facility less than half-staffed and has led to mandated overtime, the union that represents workers at the Sununu Youth Services Center is raising concerns about the number of employees injured on the job.

For the past week, staff at the center and juvenile-justice staff brought in to offset the shortage have been required to work overtime.

The state also has asked volunteers from other divisions of the state Department of Health and Human Services to work overtime shifts at the center after some training. Joseph Ribsam, director of the Division of Children, Youth and Families, said about 50 volunteers are in training.

Even with these interventions, Ribsam said the center has been struggling to maintain preferred staff levels.

Beyond the widespread shortage of people willing to work stressful, low-paying human services jobs, the staffing problem has been exacerbated by the center's uncertain future.

The Legislature passed a bill requiring the center to close in March 2023. In May 2022, legislators could not agree on what should replace it – leaving the future cloudy and adding another layer of difficulty to an already-tough employment market, Ribsam said.

Over the summer, 10 of the center's "youth counselors," the front-line staff who work with incarcerated children and teenagers, applied for other jobs and left largely because of the looming closure, leaving the center with 20 counselors, Ribsam said. The ideal staffing level is 45 youth counselors, he said. Two of the center's four teachers also left in the summer of 2022, and Ribsam said a third departed in September.

Police responses

Short-staffing has made working at the center more difficult, the union that represents Sununu Center staff and many other state workers said in a statement.

The State Employees Association said the center is becoming more dangerous. "Staff injuries are now commonplace," read the association's statement, issued Tuesday on behalf of Sununu Center staff.

The union said in the past three months, Sununu Center staff have had to call for help from police or for medical help more than 10 times.

"This is unprecedented," the statement read, "and our agencies are broken."

Ribsam said the police responses to the Sununu Center are unprecedented.

In the five years he has been in New Hampshire, Ribsam said, state police had never been called to assist Sununu Center staff dealing with children until this past August.

Since then, Ribsam said state police were called to the center once in September and again on Oct. 7. A scuffle between teenagers and state police involved one juvenile reaching for a trooper's firearm, Ribsam said.

State police have declined to discuss the responses beyond confirming them. The Union Leader filed a Right-to-Know request for incident reports from the Oct. 7 scuffle, and was told that it would take at least three months to obtain the public records.

On Sunday, Ribsam said, an employee was taken from the center in an ambulance after a physical altercation with one of the teens in the center.

That was at least the second time in recent months a Sununu Center employee was hospitalized, he said.

The State Employees Association said Sununu Center staffers are on edge because of the injuries.

"While we are grateful our injured co-workers are still with us, some have suffered severe injuries, and the safety of the employees and the children we are entrusted to care for is at risk," the association said.

Overtime and training

As of last week, overtime has been required of Sununu Center staff and juvenile probation and parole officers. Ribsam said he regretted that mandatory overtime was needed to keep safe staffing levels, but he hoped it would be temporary.

An email Ribsam sent to employees, obtained by the Union Leader, said that after staff volunteered for extra shifts, mandatory overtime would be distributed from least-senior to most-senior staff.

The Sununu Center also is leaning on juvenile probation and parole officers to supplement center staff, as well as a staffing agency and employees from other parts of the Department of Health and Human Services.

Ribsam said about 50 employees who have never worked at the Sununu Center are undergoing some basic training in sexual-abuse prevention, learning to use handcuffs and how to physically defend themselves.

Those new volunteers will initially “shadow” more experienced Sununu Center staff, Ribsam said, but could eventually be on their own with the children and teenagers.

No way out?

In a statement, the union that represents Sununu Center staff said the center is becoming too dangerous.

“SYSC and Juvenile Justice in NH are in crisis with no solution in sight,” the statement read.

While the dozen children and teenagers confined in the Sununu Center are there because of their complex behavioral health needs, trauma histories and at-times violent behavior, Ribsam said it's not beyond the level of what the Sununu Center can deal with — when fully staffed.

“The staffing numbers have gotten so low that it's not just the ability to respond to an incident but it's the ability to engage with kids every day,” Ribsam said.

When there are enough staff at the center to fully engage the kids, he said — working with them during the day, playing basketball and badminton, working on their schoolwork — the kids have tended to be less likely to lash out.

Ribsam said there aren't other, safer, places for the children and teenagers incarcerated at the Sununu Center. Neighboring states have closed their juvenile detention facilities or are facing staff crises of their own.

But until the Legislature gives some certainty to the center, Ribsam said staffing will remain a problem.

“Until we actually make that decision, this kind of cloud is going to make it really hard to stabilize and hire the staff that we need to make this place run well.”

jgrove@unionleader.com

This story has been updated and corrected. Three teachers have left the center since June.

MORE INFORMATION



Sununu Center workers union details injuries, frustrations at understaffed detention facility

Josie Albertson-Grove

EXHIBIT 4

https://www.unionleader.com/news/crime/state-police-to-make-routine-check-ins-at-sununu-center/article_057d053b-3ddf-5a8e-972c-632a29b471cf.html

State police to make routine check-ins at Sununu Center

By Mark Hayward Union Leader Staff
Sep 13, 2022



Manchester police and state police were called to the Sununu Youth Services Center due to disturbances four times between Friday and Saturday.

file photo

New Hampshire State Police will perform routine, in-person check-ins at the Sununu Youth Services Center, state officials said on Monday, following a weekend of disturbances at the juvenile lock-up.

Manchester police and state police were called to the River Road location four times between Friday and Saturday.

Minor injuries took place, according to the state Department of Health and Human Services, which operates the facility.

DHHS did not specify if those injured were staff or residents.

In a statement issued Monday, DHHS spokesman Jake Leon said the incidents are “common in justice settings” but low staffing levels prompted the police presence to ensure adequate care.

“We acted quickly over the weekend to complete facility upgrades to ensure the safety of all staff and residents,” the Leon statement reads.

State police will check in with the Sununu Youth Service Center during each shift, he said. State police spokesman Amber Lagace said the check-ins will be in person.

“The temporary increased support of State Police will help ensure that the facility is able to respond to resident escalations quickly and keep residents and staff safe,” Leon said.

Officials have not provided specifics about the unrest.

Leon said staffing is a challenge at the Sununu Center, but was consistent with federal standards.

“Pay enhancements” approved by state leaders last week will provide an important tool in assisting with recruitment to increase staffing levels in the longer term, he wrote.

State law currently calls for the Sununu Center to close in March. The Sununu Center and its predecessor, the Youth Development Center, are the subjects of lawsuits representing hundreds of former residents who claim sexual and physical abuse over decades of operation.

MORE INFORMATION



Manchester police, state troopers called to quell 'unruly' youth at Sununu Youth Services Center



Sununu Center workers union details injuries, frustrations at understaffed detention facility

Mark Hayward